



# EMPLOYMENT TRIBUNALS

**Claimant**

Ms Tanika Meachen

-v-

**Respondent**

Almaz York Limited

**Heard at:** Leeds **On:** 10 February 2020

**Before:** Employment Judge Evans (sitting alone)

**Representation**

For the Claimant: in person

For the Respondent: Mr Almaz, a director of the Respondent

## JUDGMENT

1. By the consent of the parties the name of the Respondent is amended from “Almaz” to “Almaz York Limited”.
2. The Respondent unlawfully deducted £144 from the Claimant’s wages and is ordered to pay the Claimant that amount.

## REASONS

**Preamble**

1. The Claimant was employed by the Respondent from around 6 July 2019 until a date in August 2019. Following the termination of her employment, she presented a Claim to the Employment Tribunal on 4 November 2019 for unlawful deductions from wages. In due course the Respondent presented a Response defending the claims.
2. The claims came before me at 11.30 am on 10 February 2020. The Claimant represented herself and called one other witness, Ms Mary Rice. Mr Almaz gave evidence on behalf of the Respondent.
3. The Claimant produced the following documents at the hearing: witness statements for herself and Ms Rice, and documents marked “items” 2,3,4,5,6,7 and 8. The respondent produced time sheets showing the hours employees had worked for the weeks commencing 1 July 2019, 8 July 2019, 15 July 2019, 22 July 2019 and 29 July 2019.

4. The hearing on 10 February 2020 had been listed for 90 minutes. In fact, identifying how each party would put their case, and hearing evidence and submissions took up all of this time and it was therefore necessary for me to reserve my decision.

**The claims and the discussion of the issues at the beginning of the hearing**

5. At the beginning of the hearing before me it was agreed that the Claimant was employed as a waitress at £8 per hour and that the first day on which she had worked was Saturday 6 July 2019. The Claimant explained that her claim was that the Respondent had made unlawful deductions from wages by failing to pay her all the wages due to her during her employment. The Claimant explained at the beginning of the hearing that her hours worked, the amounts owed and the amounts paid were as follows:

Table 1

<b>Week no.</b>	<b>W/c Monday...</b>	<b>Hours worked</b>	<b>Amount due</b>	<b>Amount paid</b>	<b>Amount owing</b>
1.	1 July 2019	11.5	£92	£0	£92
2.	8 July 2019	36.5	£292	£292	£0
3.	15 July 2019	27.16	£217.30	£217.30	£0
4.	22 July 2019	29.5	£236	£0	£236
5.	29 July 2019	20	£160	£160	£0
6.	5 August 2019	34	£272	£0	£0
7.	12 August 2019	21.5	£172	£0	£172
	<b>Total</b>				<b>£500</b>

6. As such she had been owed £500. However, the Respondent had paid her £120 on 30 August 2019 so the amount due to her was by the date of the hearing £380. She produced the figures above by reference in particular to: (1) some notes she had kept on her phone (“item 3”) which showed hours worked in respect of 7 weeks; and (2) screen shots of her bank statements for the relevant period (“item 4”).
7. The position of the Respondent in relation to these claims was that the Claimant had been paid all her wages except for the £92 due in respect of the week commencing 1 July 2019. This had not been paid because she had not worked her notice period. Mr Almaz said that on occasion she had been paid in cash.

**The Law**

8. Section 13 of the Employment Rights Act 1996 (“the ERA”) provides that an employer may not make a deduction from the “wages” of a worker unless the deduction is required or authorised by virtue of a statutory provision or a relevant provision of the worker’s contract or the worker has previously signified in writing their agreement or consent to the making of the deduction.
9. “Wages” means any sums payable to a worker in connection with their employment, including any fee, bonus, commission, holiday pay or other emolument referable to their employment, whether payable under their contract or otherwise (section 27 of the ERA).
10. Where a Tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and also order the employer to pay the worker the amount of any deductions made in contravention of section 13 (section 24 of the ERA).
11. Where a Tribunal has ordered an employer to repay a worker an amount deducted in contravention of section 13, the amount which the employer is entitled to recover (by whatever means) in respect of the matter in relation to which the deduction or

payment was originally made or received shall be treated as reduced by that amount (section 25(4) of the ERA).

**The hearing and the evidence**

12. The documents showed the following, which can sensibly be set out in tabular form. I have also included the Claimant’s explanation of the bank payments received in a final column:

Table 2

<b>Date</b>	<b>Hours shown on time sheet</b>	<b>Bank payments shown in bank statements</b>	<b>Claimant’s evidence in relation to what the payments were for</b>
<b>Week 1:</b> w/c 1 July 2019	11.5		
<b>Week 2:</b> w/c 8 July 2019	36.5		
<b>Week 3:</b> w/c 15 July 2019	27.16		
<b>Week 4:</b> w/c 22 July 2019	20		
25 July 2019		£150.00	Part payment week 2
25 July 2019		£217.30	Full payment week 3
<b>Week 5:</b> w/c 29 July 2019	34		
1 August 2019		£302.00	Full payment week 5 plus balance due from week 2
<b>Week 6:</b> w/c 5 August 2019			
8 August 2019		£272	Full payment week 6
30 August 2019		£120	Part payment of outstanding amount post termination

13. The oral evidence of the Claimant and Mr Almaz in relation to relevant matters may reasonably be summarised as follows.
14. The Claimant stated that she had worked the hours set out in Table 1. I was puzzled by this because Table 1 suggests that the Claimant worked 21.5 hours in the week commencing 12 August 2019 whereas her witness statement said that the last day she worked was 9 August 2019. I therefore asked the Claimant whether she had worked after 9 August 2019 and she said that she had not. I asked her if she could explain, therefore, why she was claiming 21.5 hours in respect of the week commencing on 12 August 2019 and she said “I don’t really know, it is difficult to figure out the hours, it was very confusing”. In short, her evidence on this point was confused.
15. In answer to questions asked in cross examination the Claimant accepted that on one occasion she had claimed that she had been underpaid by £74 but that when she and Mr Almaz had checked the rotas together she had accepted that this was not in fact the case, she had made a mistake. (I also note that there was a text message at page 2 of “item 2” showing that the Claimant had wrongly thought she

had been underpaid – it seems likely that this was because the money due to her in week 2 was paid partly on 25 July and partly on 1 August.)

16. Mr Almaz in his evidence explained that the working week was Monday to Sunday. Hours were recorded on the timesheets he had provided. He would total the hours for the week up on a Sunday after the business had closed and then would arrange for his accountant to pay each employee the amount due in respect of that week on the following Thursday.
17. Mr Almaz said that the last day the Claimant had worked for him was “possibly” 9 August, but he was not sure.

**Findings of Fact**

18. I am bound to be selective in my references to the evidence when explaining the reasons for my decision. However, I wish to emphasise that I considered all the evidence in the round when reaching my conclusions.
19. The Claimant’s witness statement makes plain that her employment terminated – whether by resignation or dismissal is not entirely clear – on Friday 9 August. I find that that was indeed the last day she worked. That is also consistent with the text messages which she has provided – the message sent by the Claimant on 15 August 2019 at 4.08am is most consistent with the Claimant having already finished work and expecting to be paid on that day for the previous week’s work and an amount she believed to be owing to her from an earlier week. It would have been logical for the Claimant to send the text message early on Thursday 15<sup>th</sup> August because the normal pattern was that she would be paid on a Thursday for the work which she had done in the week finishing on the previous Friday. Further, the Claimant having last worked on 9 August is consistent with the oral evidence of Mr Almaz.
20. Consequently, I find that the Claimant worked for the Respondent for just six weeks, those weeks being as set out in Table 2 above. The consequence of that is that the Claimant was confused and mistaken when she set out her losses for seven weeks, as recorded in Table 1 above. Indeed, her confusion was apparent in her oral evidence, as recorded above. She has included one week too many. (The source of her confusion may be inconsistency in identifying when working weeks began and ended: for example, she refers at paragraph 8 of her witness to “the week 18<sup>th</sup> to 25<sup>th</sup> July” but this is a period beginning on a Thursday and ending on a Thursday and the working week was Monday to Sunday.)
21. Doing the best that I can with the evidence that I have, I find that during the six weeks the Claimant worked for the Respondent she worked the following hours, and was paid the following amounts in respect of those weeks:

<b>Week no</b>	<b>Week (Mon to Sun)</b>	<b>Hours worked</b>	<b>Amount due</b>	<b>Amount paid and when</b>
1.	1 to 7 July	11.5	£92.00	£0
2.	8 to 14 July	36.5	£292.00	£150 on Thurs 25 July £142 on Thurs 1 August
3.	15 to 21 July	27.16	£217.30	£217.30 on Thurs 25 July
4.	22 to 28 July	20	£160.00	£160 on Thurs 1 August
5.	29 July to 4 August	34	£272.00	£272 on Thurs 8 August
6.	5 August to 11	21.5	£172.00	£0

	August			
--	--------	--	--	--

22. All the payments shown in the final column of this table can be seen in the screenshots of the Claimant's bank statements which she has produced.
23. In making these findings I have accepted that the time sheets produced for weeks 1 to 5 were accurate and, indeed, the Claimant did not really query their accuracy at the hearing. So far as Week 6 (5 to 11 August is concerned), I have accepted the evidence of the Claimant in paragraph 10 of her statement that she worked 21.5 hours in her last week. I have accepted this figure because Mr Almaz did not contest this figure in his own evidence, it was broadly consistent with the number of hours the Claimant had worked in previous weeks, and it was consistent with what the Claimant had written to Mr Almaz in a text message on 16 August 2019 (page 7 of "item 2").
24. The consequence of that is that I find that the only hours which the Claimant worked and was not paid for were those she worked in Week 1 (1 to 7 July - 11.5 hours) and Week 6 (5 to 11 August - 21.5 hours). I find that the Claimant was not paid the hours she worked in Week 1 because Mr Almaz accepted that was the case at the hearing. I find that the Claimant was not paid the hours she worked in Week 6 because: (1) her bank statements do not suggest she was paid for these hours (other than in part by the payment of £120 on 30 August); (2) I find that she was not at any point paid in cash as Mr Almaz suggested. I prefer her evidence to that of Mr Almaz in this respect because he suggested that early on in her employment he had paid her in cash whereas in fact Table 2 above demonstrates that she was paid for Weeks 2 to 5 by bank transfer (and of course Week 1 was never paid).
25. Therefore the Claimant worked a total of 33 hours for which she was not paid on the relevant pay day. The amount due in respect of those weeks was £264 but the Respondent subsequently paid her £120 of that on 30 August. £144 is therefore owing to her.

**Conclusions**

26. In light of my findings of fact above, I conclude that the Respondent unlawfully deducted £144 from the Claimant's wages. The Respondent is ordered to pay the Claimant that amount. The Respondent suggested that the fact that the Claimant had not worked her notice period meant the it did not need to pay her some or all of the amount due to her. That is quite wrong. A failure by an employee to work their notice period is not a basis for deductions to be made from their wages (section 13 of the ERA).

Employment Judge Evans

Date: 15 February 2020