



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr M Dirar

OCS Group UK Ltd

**Heard at:** London Central

**On:** 6 March 2020

**Before:** Employment Judge Stout

## **Representations**

**For the claimant:** In person

**For the respondent:** Mr I Ahmed (counsel)

# JUDGMENT

The judgment of the Tribunal is that:

- (1) The Claimant's claim for unlawful deductions from wages is well-founded, but the Respondent is not ordered to repay any amount to the Claimant because it has already paid the Claimant the sums in question.
- (2) The Claimant has not suffered any additional financial loss attributable to the unlawful deductions and is not ordered to pay any amount pursuant to s 24(2) of the Employment Rights Act 1996.

## REASONS

1. The Claimant represented himself. The Respondent was represented by counsel and Ms Holly Trenholme appeared as a witness for the Respondent.
2. The Respondent had prepared a bundle of documents and a chronology, which I read. Ms Trenholme had prepared a witness statement, which I read. The Claimant brought along various hard copy documents, of which two appeared to me to be potentially relevant: a letter from the Council refusing him housing benefit and a notice of repossession in respect of his flat.
3. There had been a previous Preliminary Hearing in this matter on 5 October 2018 before EJ Mason, at which it was identified that the Claimant's employment had transferred under TUPE from Interserve (Facilities Management) Ltd (Interserve) to OCS Group UK Ltd (OCS) on 1 April 2018. OCS was accordingly substituted as Respondent to these proceedings. It is significant to note that the unlawful deductions about which the Claimant claims occurred during the period that he was employed by Interserve.
4. There were two alleged deductions in issue:
  - a. 7 weeks' statutory sick pay for January and February 2018; and
  - b. Wages for March 2018.
5. In respect of the first, the Claimant had said at the hearing before EJ Mason that he accepted he was paid the monies due, albeit late, although he was unsure the payment was correct and suggested he had suffered other financial loss.
6. In respect of the second, the Respondent had understood that the Claimant accepted that the wages for March 2018 had also been paid, again albeit late as there had been correspondence between the parties in May 2018 in which this was apparently confirmed.
7. At this hearing, however, the Claimant appeared uncertain about these concessions and unwilling to accept that he had been paid all he was due. I accordingly considered the issue of liability in respect of the two points in issue as if there had been no past concessions. In doing so, I noted that the Respondent had not attended the hearing expecting to have to prove the matters that they understood the Claimant previously to have conceded and so I did not have copies of any bank statements from either party showing what payments had been made or when.
8. I heard evidence on oath from the Claimant and Ms Trenholme. I made findings of fact on the balance of probabilities.

9. So far as the sick pay was concerned, this concerned 7 weeks when the Claimant was sick in Sudan in January and February 2018. Interserve had not initially recognised as valid his sick notes from Sudan and so had not paid statutory sick pay (SSP) for this period. Later, this was acknowledged to be an error and on 28 May 2018 the Claimant was paid £839.89 gross, which gave a net payment of £655.54. There was a payslip supporting this payment. The parties were agreed that what should have been paid was 7 weeks SSP. At that time SSP was £89.35 per week so 7 weeks would have been £625.45 gross. I find that the Claimant was therefore overpaid sick pay in the gross amount of £214.44.
10. So far as the March 2018 wages were concerned, Interserve wrongly thought the Claimant was on unpaid leave during March 2018 so £1720 was deducted from his wages on 28 March 2018 as is shown in the payslip of that date. In fact, however, it is agreed he was at work and wages were owed. The Respondent's case was that this was repaid as a 'hardship' payment on 18 April 2018. The Respondent's case was that the Claimant had also been paid an additional sum as an actual 'hardship' payment (i.e. *ex gratia*), but there was no evidence of this having actually been paid. The Claimant's evidence, which I accept, was that he received the following payments on the following dates from Interserve:
  - a. 26 Jan 2018 - £191.80
  - b. 28 Feb 2018 - £191.80
  - c. 28 Mar 2018 - £306.53
  - d. 18 Apr 2018 - £1,186.80
  - e. 27 Apr 2018 - £164.16
  - f. 25 May 2018 - £655.55
11. Also on 25 May 2018 he received £1939 from OCS. That includes overtime the Claimant says.
12. Of those, there was no payslip in the bundle supporting either the 18 April 2018 payment or the 27 April 2018 payment. I find that these two payments represent Interserve's attempt to repay the Claimant for his March wages. This was a total of £1350.96. £1,720 gross would be about £1,464 net given the Claimant's apparent level of earnings. So I find that there was in respect of the March wages an underpayment of about £113.
13. Overall, putting the overpayment of sick pay together with the underpayment of wages, I am satisfied on the balance of probabilities that the Claimant has received all monies that are due to him in respect of the 7 weeks' sick pay for January and February 2018 and his March 2018 wages, albeit that he received the payments late.
14. I note, on preparing these written reasons, that I heard no evidence as to what the Claimant had or had not been paid by way of wages for April 2018, but wages for April 2018 were not identified by the Claimant at any point as being in issue.

15. EJ Mason had directed the Claimant at the Preliminary Hearing that *“the Tribunal has no jurisdiction to consider non-financial loss, such as injury to feelings or upset, and urged the Claimant to clarify his financial losses as a result of the alleged unlawful deductions”*. Despite this direction the Claimant had not clarified his financial losses but attended this hearing with only vague information about consequent financial losses and distress. I nonetheless gave the Claimant an opportunity to say orally what his losses were and I found ultimately that he had not suffered any further financial losses attributable to the Respondent’s delay in paying the monies due to him.
16. So far as Council tax is concerned, he said he was already behind on Council tax, but the problems with Interserve exacerbated this. He had to pay a £230 charge for the debt collector’s visit at the end of January 2019. I find that this loss is not attributable to the late payments by the Respondent as the Claimant appears to have been in financial difficulties in any event and the debt collector’s visit happened over six months after the problems were rectified.
17. So far as housing benefit is concerned, he had to make a claim because he was sick. He first tried to claim in April 2018, although he had come back into the country from Sudan at the end of February 2018. The Claimant was in Sudan from 20 December 2017 until end of February 2018. The Claimant said he did not have the figures from Interserve he needed to make the application earlier, but the letter from the Council he showed me indicates that housing benefit claim must be made within one month, that it cannot be made while abroad and that being abroad was not a good reason for delaying a claim. I find that the refusal of housing benefit was not attributable to late payment by the Respondent but owing to the Claimant’s own delay in claiming and the fact that he was out of the country.
18. As to the notice seeking possession of his flat, this was not proceeded with and the Claimant confirmed there was no financial loss.
19. As to utility bills, he said that he thought that British Gas made an extra charge for late payment, but he did not know what that was or when it had happened. Otherwise there were no extra charges. I find that the Claimant has not proved any additional financial loss from this.
20. The Claimant said that his credit rating had suffered and he had not got a credit increase from HSBC, but again he did not have any details and I cannot find this was a financial loss or that it was attributable to the Respondent.
21. For all these reasons, I find that:
  - (1) The Claimant’s claim for unlawful deductions from wages is well-founded, but the Respondent is not ordered to repay any amount to the Claimant because it has already paid the Claimant the sums in question (see s 25(3) of the Employment Rights Act 1996 (ERA 1996)).

- (2) The Claimant has not suffered any additional financial loss attributable to the unlawful deductions and is not ordered to pay any amount pursuant to s 24(2) of the ERA 1996.

Employment Judge Stout

Date 10<sup>th</sup> March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

11/03/2020

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FOR THE TRIBUNAL OFFICE