



EMPLOYMENT TRIBUNALS

Claimant: Miss E Guseva

Respondent: Apollo International Ltd

Heard at: London Central

On: 3 February 2020

Before: Employment Judge Khan

Representation

Claimant: In person

Respondent: No appearance

JUDGMENT having been sent to the parties on 3 February 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By an ET1 presented on 4 October 2019, the claimant brought a complaint of unauthorised deductions from wages. Although she also ticked the box for disability discrimination in her claim form, the claimant confirmed during the hearing that her sole complaint was unauthorised deductions from wages.
2. The respondent did not respond to the claim.

The law

The right not to suffer unauthorised deductions

3. Under section 13 of the Employment Rights Act ("ERA") a worker has the right not to suffer unauthorised deductions from wages. A deduction under this section is defined in the following terms:

13 (3) Where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of the wages properly payable to him on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Time limits

4. The time limit for bringing an unauthorised deductions complaint is set out in section 23 ERA, the relevant provisions of which are as follows:
 - (1) Section 23(2) provides that a tribunal shall not consider such a complaint unless it is presented before the end of three months beginning with the date of the payment from which the deduction was made.
 - (2) Section 23(3) provides that where there has been a series of deductions the relevant date for the purposes of subsection (2) is date on which the last of these deductions was made.
 - (3) Section 23(4) provides that a tribunal may consider a complaint if it is satisfied that it was not reasonably practicable for it to have been presented before the end of the relevant period of three months and if the complaint is presented within such further period as the tribunal considers reasonable.

5. An unauthorised deductions complaint is one for which the requirement to contact ACAS prior to instituting proceedings applies. Where a claimant has complied with the requirement to contact ACAS prior to instituting proceedings, the time limit is extended in accordance with section 207B ERA as follows:
 - (1) Where Day A is the date on which the complainant notified ACAS and Day B is the date when the complainant received an early conciliation certificate, the period between the day after Day A and Day B is not to be counted when working out the relevant time limit – section 207B(3)
 - (2) If the time limit would otherwise have expired during the period beginning with Day A and ending one month after Day B, the time limit instead expires at the end of that period i.e. one month after Day B – section 207B(4)
 - (3) For the purposes of section 207B(4), the time limit is the one which has been modified by section 207B(3) and not the “original” time limit.

The claim

6. The claimant complains that the respondent made unauthorised deductions from her wages when it failed to pay her contractual sick pay (“CSP”) in respect of two extended and distinct periods of sickness absence:
 - (a) Between 29 January and 30 April 2018 (“the 2018 deductions”) – so that the alleged deductions were made between February and April 2018 with the date of the last alleged deduction being 30 April 2018.
 - (b) Between 24 January and 30 June 2019 (“the 2019 deductions”) – so that the alleged deductions were made between February and May 2019 with the date of the last alleged deduction being 30 May 2019.

Findings of fact

7. The claimant was employed by the respondent from 1 April 2013 until 20 September 2019 as an Assistant Accountant.

8. The claimant has Autonomic System Dysfunction (anxiety) (“ASD”). This is a long-standing condition.

On whether the tribunal had jurisdiction to consider the claim

9. In respect of the 2018 deductions, the claimant notified ACAS on 4 June 2018 (Day A) and a certificate was issued by ACAS and received by her on 26 June 2019 (Day B). In respect of the 2019 deductions, the claimant notified ACAS on 8 September 2019 (Day A) and an ACAS certificate was issued on 3 October 2019 (Day B). The claimant presented her ET1 on 4 October 2019.
10. I calculated that the time limit for the 2018 deductions expired on 20 August 2018 i.e. three months less one day from the date of the last deduction on 30 April 2018 i.e. 29 July 2018 and modified by adding the 22 days between the day after Day A and Day B. The claimant therefore presented her claim more than 13 months out of time. I concluded that it had been reasonably practicable for the claimant to have presented her claim by 20 August 2018. This meant that the tribunal did not have jurisdiction to consider the claim so far as it related to the 2018 deductions.
11. I calculated that the time limit for the 2019 deductions expired on 29 August 2019 i.e. three months less one day from the date of the last deduction on 30 May 2019. Because the claimant notified ACAS after this date the early conciliation period had no effect on the time limit. I concluded that it had not been reasonably practicable for the claimant to have presented this claim within this time limit and that the additional time between this date and the date when the claim was presented was reasonable. I took account of the fact that the claimant had been unwell with ASD and signed off work until 30 June 2019 and that she had attempted to conciliate before proceeding with this claim and she had presented her claim one day after the ACAS certificate had been issued. I also took account that the claimant had decided against bringing a tribunal claim in 2018 because of the impact she felt this would have on her job and she stopped working for the respondent on 20 September 2019. This meant that the tribunal had jurisdiction to consider the claim so far as it related to the 2019 deductions.
12. For completeness, I concluded that the 2018 deductions were not linked sufficiently factually or temporally with the 2019 deductions. These were two separate periods of sickness absence separated by almost 9 months.

On whether the respondent made unauthorised deductions from the claimant’s wages in 2019

13. I was only concerned with 2019 deductions because of my findings on jurisdiction above.
14. The respondent’s CSP provisions were as follows:

8.5 Provided you comply with Company’s sick pay requirements you will be paid your normal basic salary for 4 weeks in total in any calendar year.

8.6 After the expiry of 4 weeks you will receive 65 per cent of your salary (up to 12 weeks in total).

15. These provisions applied to the claimant. Although she was not provided with a contract, she had received two weeks' CSP at full pay in 2016.
16. The claimant complied with the respondent's sick pay requirements: she contacted the Corporate Administrator to report her sickness absences and she provided the respondent with fit notes for the entire period of her sickness absence.
17. The respondent did not pay CSP in respect of the claimant's sickness absence in 2018.
18. The claimant was therefore entitled to receive the following CSP in respect of her 2019 sickness absence:
 - (a) 4 weeks' basic salary from 24 January 2019, and
 - (b) 65% of her basic salary for the next 12 weeks.
19. The claimant received her normal pay in January 2019. She did not receive any CSP between February and May 2019. She was only paid SSP.
20. I found that because CPS was properly payable to the claimant, in failing to pay CSP to her on each occasion when she was paid between 28 February and 30 May 2019 the respondent made a series of unauthorised deductions from her wages, in contravention of her rights under section 13 ERA.

On the amount that the respondent was ordered to pay the claimant

21. I concluded that the respondent made a series of unauthorised deductions from the claimant's wages between 28 February and 30 May 2019 in the gross amount of £3,624.67. This was calculated as follows:
 - (1) The claimant's monthly basic gross pay in January 2019 was £1733.44.
 - (2) She received the total amount in SSP of £1,832.74 between February and May 2019 as follows: £580.46 in February; £462.78 in March; £412.50 in April; and £377 in May.
 - (3) The respondent deducted the sum of £343.75 to recover an overpayment of SSP.
 - (4) The total pay the claimant received between February and May 2019 was £1,488.99.
 - (5) The gross amount of £5,113.66 was properly payable to the claimant over the same period as follows: £1,733.44 in February; £1,126.74 each month in March, April and May.
 - (6) The respondent accordingly made a series of unauthorised deduction in the amount of £3,624.67 (£5,113.66 less £1,488.99).

Employment Judge Khan

Date 22/05/2020_____

JUDGMENT SENT TO THE PARTIES ON

26/05/2020.....

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FOR THE TRIBUNAL OFFICE