



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Gerring  
**Respondent:** Ms Louise Green  
**Heard at:** Ashford  
**On:** 22 November 2019  
**Before:** Employment Judge Pritchard

## Representation

**Claimant:** In person assisted by Mrs D Fulop  
**Respondent:** No appearance

# CORRECTED REASONS

**Under the provisions of Rule 69 these reasons dated 22 November 2019 are now corrected to show the case number stated in the top right hand corner.**

1. These reasons for the Judgment dated 22 November 2019, sent to the parties on 15 January 2020, are provided at the Respondent's request.
2. By ET1 presented on 1 August 2018, the Claimant claimed that the Respondent had made unlawful deductions from her wages. In her ET3 the Respondent did not tick the box to indicate that she was defending the claim. She did however she set out her version of events stating that there had been an unintentional error relating to the lower earnings limit.
3. The hearing was due to commence at 10.00 am. The Respondent failed to attend the Tribunal and at about 12.30 pm enquiries were made as to the Respondent's whereabouts. The Tribunal discovered that the Respondent had sent an email to the Tribunal at 10.33 am that morning stating that due to a new job and working commitments she would not be attending the hearing. The Tribunal determined that the hearing should proceed in the Respondent's absence in accordance with Rule 47.
4. It became clear at the commencement of the hearing that the Claimant was also complaining that she had not been provided with itemised pay statements during certain periods of her employment. The Tribunal considered this to be an amendment to the Claim which was allowed and which the Tribunal would determine.
5. The issues falling for consideration were:

- 5.1. Did the Respondent make unlawful/unauthorised deductions from wages?
- 5.2. Did the Respondent fail to provide the Claimant with itemised pay statements?
6. The Tribunal heard evidence under oath from Mrs Fulop, a Certified Accountant. Mrs Fulop is the Claimant's mother in law. The Claimant also gave evidence on her own behalf.
7. The Tribunal accepted the evidence presented, not least in the absence of any challenge by the Respondent, and made the following findings of fact.
8. The Respondent was at relevant times in the child-minding business as a sole trader using her home as business premises. The Claimant commenced employment with the Respondent as a child-minder on 1 May 2017. It was agreed that the Claimant would be paid the applicable National Minimum Wage for working from 7.30 am to 5.30 pm on weekdays except for Wednesdays when she would finish work at 4.00 pm.
9. Although the Claimant requested wage slips from the Respondent, the Respondent failed to provide any until 3 March 2018 when the Claimant again asked the Respondent for wage slips to show proof of earnings for a mortgage application. The Respondent thereafter failed to provide wage slips in the period 16 June 2018 to 12 November 2018 and in the period 22 February 2019 to 24 April 2019.
10. After speaking to Mrs Fulop about her wages in April 2019, the Claimant became aware the Respondent was making deductions from her wages for income tax and National Insurance which were improperly calculated. The Claimant contacted HMRC who informed her that they had no record of her employment with the Respondent (the Tribunal was shown a letter from HMRC evidencing this).
11. Mrs Fulop showed the Tribunal a number of calculations setting what was paid to the Claimant and what should have been paid. The Tribunal accepted that Mrs Fulop's calculations were correct.
12. The Claimant's employment ended on 17 July 2019 which was after she had gone on maternity leave and after the Respondent had ceased to trade.

### **Applicable law**

13. Section 13 of the Employment Rights Act 1996 provides that an employer must not make a deduction from a worker's wages employed by him unless the deduction is required by statute, under a relevant provision in a worker's contract, or the worker has previously signified her written agreement or consent to the making of the deduction. A deficiency in the payment of wages properly payable is a deduction for the purposes of this section.
14. Under section 11 of the Employment Rights Act 1996 where an employer does not give an employee an itemised pay statement as required by section 8, an employee may require a reference to be made to the Employment Tribunal to determine what particulars ought to have been included or referred to in the

statement so as to comply with section 8. Such references must be determined in accordance with Section 12.

15. Section 8 requires the statement to contain particulars of:

- 15.1. The gross amount of the wages or salary;
- 15.2. The amounts of any variable, and (subject to section 9 – standing statement of fixed deductions) any fixed, deductions from that gross amount and the purposes for which they are made;
- 15.3. The net amount of wages or salary payable; and
- 15.4. Where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

16. Under section 12, where a tribunal finds that an employer has failed to give an employee any pay statement in accordance with section 8, the tribunal shall make a declaration to that effect.

### **Conclusion**

17. The evidence presented showed on the balance of probabilities that the Respondent made unlawful deductions from the Claimant's wages as claimed in her ET1 totalling £3,907.18. These deductions fell in the tax years as follows:

- 17.1. 2017/2018    £1,784.28
- 17.2. 2018/2019    £2,010.71
- 17.3. 2019/2020    £112.19

18. The Tribunal accepted the Claimant's evidence that the Respondent failed to provide itemised pay statements in the periods identified in the Judgment.

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Employment Judge Pritchard

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Date: 22 May 2020  
**Corrected: 14 July 2020**

