



# THE EMPLOYMENT TRIBUNALS

**Claimant**                      **Mr Peter Flanagan**

**Respondent**                **CBRE GWS LIMITED**

**EMPLOYMENT JUDGE:**   **Mr J Tayler**

## JUDGMENT

The Judgment of the Tribunal is that the Respondent did not make unlawful deductions from the Claimant's wages.

## REASONS

### Introduction

1. By a Claim Form submitted to the Employment Tribunal on 28 September 2018 the Claimant brought a complaint of unlawful deduction from wages.
2. There has been extensive delay in determining this matter, principally because the Claimant has not been well enough to attend a hearing. On 5 March 2020 the Claimant provided written consent for the matter to be determined on the papers. Thereafter there was some further delay caused by altered working practices during the Coronavirus Pandemic.
3. I was provided with a bundle of documents, witness statements from the Claimant and Rosie Hutton, HR Advisor, and Sarah La Roche, Head of People – Central Services; and written submissions (including replies). The matter has been made more difficult for the Claimant to understand as the Respondent has given a variety of inconsistent explanation of how it has calculated the deductions from his wages. However, on reviewing the totality of the evidence now available the position is clear.

### Findings of fact

4. The Claimant is employed by the Respondent as Shift Team Engineer. His continuous employment commenced on 2 January 2002. The Claimant was initially employed by EMCOR. The Claimant's employment transferred to Johnson Controls Limited pursuant to Transfer of Undertakings (Protection of Employment) Regulations 1981 on 1 July 2010. The Claimant's current contract of employment was entered into with Johnson Controls Limited on 3 September 2015. The contract includes the following provisions:

- 6.2 Your salary will be paid monthly by BACS transfer on the 25th of the relevant month or the nearest working day before the 25th for that month. The method of calculating a day's pay will be 1/260th of your basic annual salary.

**22. Deductions from Salary**

For the purposes of the Employment Rights Act 1996, you hereby authorise the Company to deduct from your remuneration any amounts due from you to the Company including without limitation, any over-payments, loans or sums advanced to you by the Company. You will be informed, prior to any deductions being made, of the amount(s) outstanding and the rate of deduction.

- 14.1 Sick pay entitlement will be as follows, for any twelve month rolling period, commencing on start date:

Years of Service	Full Pay
0 – 6 months	Nil
7 – 12 months	4 weeks
13 – 36 months	8 weeks
37 – 48 months	13 weeks
Over 48 months	18 weeks

5. The name of the Respondent changed to CBRE GWS Limited on 3 September 2015. The Claimant's contract of employment remained in force.
6. At the relevant time the Claimant's gross annual salary was £36,259.93 paid in equal monthly instalments of £3,021.67 (page 57). In addition, the Claimant received allowances of £714.47 per calendar month.
7. The Claimant commenced a period of sick leave On 30 August 2017, which is continuing.
8. Under the terms of the contract of employment the Claimant was entitled to receive full pay for the first 18 weeks of sickness absence, to 2 January 2018, inclusive of SSP. Thereafter the Claimant was entitled to receive SSP.
9. For the initial periods of absence the Claimant submitted Fit Notes on time. The Claimant did not initially submit a fit note to cover the period from 28 December 2017. It was not submitted until 11 January 2018. That was after the cut-off date for January 2020 payroll as a result of which the Claimant was paid in full for January. In total the Claimant was overpaid for 21 days from 3 January 2018 to 31 January 2018. The overpayment was of £2,928.69, calculated by dividing annual salary (excluding allowances), 36,259.93, by 260 as provided for in clause 2.6 of the contract of employment, then multiplying by 21.
10. On 21 February 2018 Ms Hutton wrote to the Claimant and stated:

You have been absent from work due to sickness since the 30<sup>th</sup> August 2017. Your Company sick pay entitlement is 18 weeks full pay which has now been exhausted as of the 2nd January 2018. You are still entitled to statutory sick pay only which you will receive on your normal pay day in February 2018.

I need to bring to your attention that due to the fact that your fit note covering the 28/12/2018 – 28/02/2018 was not supplied until 11/01/2018 it was not received in time for pay roll and therefore you were overpaid in the month of January 2018. The outstanding balance is £2,214.52. This will be recouped over the preceding months through your allowances.

11. The letter caused confusion as it referred to overpayment being £2,214.51 whereas it was, in fact, £2,928.69 (the sum given in the letter was the amount remaining after the first deduction) and referred to recoupment from “preceding”, whereas it meant subsequent months.
12. After the overpayment was made a decision was taken to continue paying the Claimant his allowance from which the overpayment could be recouped. The Respondent was not obliged to continue paying the allowances.
13. The payment were recouped as follows:
  - 13.1 The first deduction of £714.17 was made from the Claimant’s wages on 23 February 2018. (which reduced the outstanding amount to £2,214.51 as referred to in Ms Hutton’s letter of 21 February 2018.
  - 13.2 The second deduction of £714.17 was made from the Claimant’s wages on 23 March 2018.
  - 13.3 The third deduction of £714.17 was made from the Claimant’s wages on 25 April 2018.
  - 13.4 The fourth deduction of £714.17 was made from the Claimant’s wages on 25 May 2018.
  - 13.5 The fifth deduction of £ 72.01 was made from the Claimant’s wages on 25 June 2018.

### **The Law**

14. Section 13 of the Employment Rights Act 1996 (“ERA”) provides a general right not to suffer unauthorised deductions from wages.
15. However, a deduction is not unauthorised if it is authorised by a relevant provision of the worker’s contract; s 13(1)(a) ERA. A relevant provision of the worker’s contract includes one that is in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question: s 13(2)(a) ERA.
16. Section 14(1)(a) provides that Section 13 does not apply to a deduction from a worker’s wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages.

### **Analysis**

17. Despite the confusion caused by the correspondence in this matter the simple answer to this case is that the Respondent was entitled to make the deduction as it was to recoup an overpayment of wages and so section 13 was excluded by operation of section 14 ERA.
18. In addition, at least in respect of all but the first and last of the deductions, the deduction was in accordance with the terms of his contract of employment as

the Claimant was given advance notification that the deduction was to be made and that it would be in the sum of his allowances. The use of the word preceding was a slip and the claimant must have been aware after seeing the first payslip with the sum of his allowance deducted that the sums were to be deducted from the subsequent month's payment. In the case of the first deduction the letter did not give advance notice as it referred to the total sum to be recouped as being that after the first deduction had been made. The sum of the final deduction was not specified in the letter informing the Claimant that the deductions were to be made.

19. However, that does not affect my principal conclusion that section 13 was disapplied by section 14 ERA, because the deductions were all to recoup overpaid wages. Accordingly, the claim must fail.
20. The Claimant alleged that he was not paid for his the Bank Holiday on 1 January 2018. That is incorrect. The overpayment that was recouped was in respect of the period commencing on 3 January 2018.

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Employment Judge Tayler

23 June 2020

Judgment and Reasons sent to the parties on:

23/06/2020

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For the Tribunal Office