



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr U Steinbergs  
**Respondent:** Alder Meadow Limited

**Heard at:** Bristol                      **On:** 2 July 2020

**Before:** Employment Judge Oliver

**Representation**  
**Claimant:** In person  
**Respondent:** Mr P Sharma, Solicitor

**JUDGMENT** having been sent to the parties on 8 July 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. This was a claim for unauthorised deduction from wages. The claimant was claiming for two periods of unpaid wages totalling 31½ hours at £9.00 per hour, giving a total of £283.50. He was also claiming for loss of income in the sum of £2,649.15.
2. The respondent said it had made the payment of £283.50 to the claimant on 30 June 2020. The respondent also claimed costs against the claimant for continuing to pursue the rest of his claim.
3. The claimant claimed a preparation time order based on the behaviour of the respondent.

### Evidence

4. There was an agreed bundle of documents prepared by the respondent, which contained documents helpfully provided by both parties. I read the bundle and took it into account in making my decision. I did not hear any

formal witness evidence, but I took detailed submissions from both parties which referred to items in the bundle of documents.

### Facts

5. The claimant says he was not paid for two periods of work between July and September 2019. He raised this with the payroll supervisor in writing on 18 September, in an email which states that he was attaching his timesheets and a snapshot of his payslip. He chased for a response on 31 October and 1 November. The reply simply said that they were not able to respond until they fully investigated the query. The claimant had no further response, and the respondent did not ask the claimant for any more detail about what he was owed. The claimant was then off sick from work from 4 November.
6. There was no witness evidence from the respondent at the hearing, but the respondent's representative submitted that they had been unable to find the timesheets in order to verify the claimant's claim. It does not appear that the claimant was asked for the timesheets by the respondent at any point. From March onwards, the respondent was badly affected by the COVID- 19 crisis. Their business is running a care home for the elderly and so all administrative staff were working from home with no access to the office.
7. The ET1 was submitted on 17 December. This stated a claim for compensation as, "*unpaid wages for preparing this claim and a loss of income*". A schedule of loss on 24 March showed an item of £2,649.15, termed "loss of income", which was calculated on the basis of expected wages less statutory sick pay.
8. Payment of the unpaid wages claim was made by the respondent to the claimant on 30 June in the sum of £283.50. The claimant confirms this was received by him. On the same date the respondent's solicitors sent a letter to the claimant. This stated that they intended to claim costs if the claimant pursued his claim. The letter included an explanation that statutory sick pay had been paid in accordance with the claimant's contract, meaning his claim for loss of income was not correct.
9. The claimant replied on 1 July saying that he was claiming compensation for loss of earnings due to stress, and also a preparation time order as the respondent had acted vexatiously and unreasonably. The claimant did not seek legal advice at the time himself. He says that he believed he was able to claim this sum because it was directly caused by mismanagement of his claim by the respondent.

### Applicable law

10. Section 13 of the Employment Rights Act 1996 ("ERA") deals with unauthorised deduction from wages. There is a deduction if an amount paid to a worker is less than the amount "properly payable" on that occasion. This is an unauthorised deduction unless one of a number of exceptions applies, none of which apply in this case.

11. Under Section 24 ERA, if the claim is well founded, the Tribunal should make a declaration and order the employer to pay to the worker the amount of any deduction. Under section 25, that award should be reduced by any payment already made to the worker - *“An employer shall not under section 24 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker”* (section 25(3)).
12. Section 25(3) refers to the order for repayment by the Tribunal. It does not affect the fact they may still have an unauthorised deduction, because a deduction from wages is based on the time when the amount was properly payable.
13. Under Rules 75 and 76 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, *“A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that - (a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted”* (Rule 76(1)(a)). This is a two-stage test. The Tribunal must first decide whether a party or its representative has acted in this way. If so, it must go on to consider making a costs order, but may decide not to do so. In making that assessment, the Tribunal is to take into account the claimant’s means and ability to pay.

### **Conclusions - liability**

14. I have considered the documents in the bundle and the explanations from the claimant. I do find that there was unauthorised deduction from the claimant’s wages in the sum of £283.50. I accept the claimant worked additional shifts that were not paid for. This appears to be shown by the messages he provided about covering extra work for others, and the copy timesheets. The respondent also eventually decided to pay this sum to the claimant.
15. The respondent did not, however, make this payment until 30 June. I therefore make a declaration that there was an unauthorised deduction from the claimant’s wages, because this sum was not paid at the time it was properly payable. I do not make any order for payment in compensation because the full amount has already been paid by the respondent.
16. I also find there is no jurisdiction to consider the extra claim made by the claimant in the sum of £2,649.15, which was described as loss of income.
17. The claimant’s argument is that the respondent mismanaged the process, this caused him stress and led to him being off sick, and as a result he lost his full income because he was only being paid statutory sick pay. I do have sympathy with the claimant. He is making the point that this matter was not handled well by the respondent while he remained in employment. He raised the issue in mid-September, and by 1 November he was still being told it was under investigation. It appears there was no attempt to ask him for more

information, or explain what was being done to resolve the position. If the respondent had told the claimant at the time that they were unable to find the relevant timesheets, the claimant may have been able to assist by providing further copies or clarifying his claim.

18. I can see the basis for the claimant's argument that the matter was not managed well by the respondent. However, a deduction from wages claim is limited to sums actually deducted from a worker's wages, which were owed to that worker for work they had done. It does not cover this type of extra loss which is caused by the employer mismanaging a grievance about unpaid wages. This is not a type of claim that can be considered by this Tribunal. On that basis, I find that there was no further deduction from the claimant's wages, and he cannot make a claim for this additional alleged loss.

### **Costs applications**

19. The claimant has asked for a preparation time order, based on the behaviour of the respondent throughout the process, including only paying the wages owed two days before the hearing. An application for costs must be based on unreasonable behaviour during the proceedings, not behaviour before the proceedings started, and so I am not taking into account the background before the ET1 was issued.
20. Although the respondent says the timesheets were not legible, it does appear they accept the wages were due because they eventually paid the sums claimed. Potentially, this could have been done much earlier if they had asked the claimant for copies of the timesheets.
21. However, looked at overall, I don't find that this was unreasonable behaviour which would have avoided preparation by the claimant for this hearing. That is for two main reasons. Firstly, I accept that the COVID-19 crisis affected the respondent significantly from March 2020 onwards, and that made it difficult to deal with this matter because staff were working from home. Secondly, I find that the claimant was always intending to make this additional claim for "loss of income". That is what was pursued today. It appears to me that the claimant would have continued with that additional claim even if the respondent had paid the missing wages earlier in the process. I do find it disappointing that the respondent had not engaged with this matter earlier, and paid the sums they have now accepted were due only two days before the final hearing. But, in all the circumstances, I don't find that this was unreasonable conduct by the respondent and so I make no costs award.
22. The respondent claims costs for preparing for the final hearing from 1 July. This is the point at which the sums they say were owed to the claimant were paid, and they explained to the claimant that the remaining claim for "loss of income" was not something the Tribunal had jurisdiction to consider. The respondent says the claimant's conduct in pursuing this argument was unreasonable and vexatious, and they were put through needless costs of preparing and attending today's hearing because that claim could never succeed. The respondent says the claim was added later in an exaggerated schedule of loss, and there was also a change in terminology to describe it

late in the day. They say this was an attempt to inconvenience the respondent in the same way as the claimant had been inconvenienced.

23. The claimant says that he was always bringing this claim for loss of income, as shown in the ET1. He thought that he could bring this claim for income loss, due to mismanagement by the respondent which caused him to be off sick. He did not get legal advice on the letter sent by the respondent on 30 June but he talked to his wife who was representing him. This all happened only very shortly before today's hearing. He has limited means to pay any costs award, and no regular work due to COVID-19. He has taken out loans to support his family and pay the mortgage, and he could not afford to obtain any formal legal advice after receiving the respondent's letter.
24. I have considered this carefully. The respondent did give the claimant a clear warning in its letter of 30 June that there was no jurisdiction for this part of the claim and that they would seek costs if it continued. I have found at today's hearing there was no jurisdiction for this part of the claim. If it had been withdrawn at that point, the respondent may have avoided the costs of preparing and attending the hearing today.
25. However, this all happened only two days before the hearing, giving the claimant very limited time to consider the issue in circumstances where he had no legal representative and was unable to afford to seek legal advice. It was also clear from the schedule of loss in March that the claimant was making this claim. The respondent only addressed the issue of jurisdiction and raised costs on 30 June. I find that the claimant genuinely thought that this was a valid claim. I do not find that the claimant was deliberately being vexatious and/or doing this just to inconvenience the respondent - it was an element of his claim from the start.
26. Having considered all this in context, I find it was not unreasonable of the claimant to continue to pursue this argument at the hearing today. He genuinely thought this was a claim that he could make, and he was not acting vexatiously in doing so. He was unable to seek legal advice after having received the respondent's letter only two days before the hearing. I also would have found it was not appropriate to make a costs order in any event due to the claimant's difficult current financial situation.
27. That means I make a declaration that the claim for unauthorised deduction from wages was well founded, but there is no order for payment because the sum owed has now been paid to the claimant. I do not order either party to pay any costs to the other.

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Employment Judge H Oliver

Date: 8 August 2020

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