Case No: 2304342/2019

EMPLOYMENT TRIBUNALS

Claimant: Mr John Craig

Respondent: Abellio Limited

Heard at: London South **On:** 26 October 2020

Before: Employment Judge Fowell

Representation:

Claimant: In person

Respondent Mr A Lord instructed by Backhouse Jones Solicitors

JUDGMENT ON RECONSIDERATION

1. The claimant was not unfairly dismissed.
2. The claimant was not dismissed in breach of contract.
3. The respondent made an unauthorised deduction from the claimant's wages in the total sum of £122.40.
4. There was no failure by the respondent to provide itemised pay statements.

REASONS

Background

1. This matter was heard on 26 October 2020 and Judgment was sent to the parties on 6 November 2020. The outcome was to dismiss all of the complaints save one. I found that the respondent made an unauthorised deduction from Mr Craig's wages in the total sum of £1,851.54.
2. That decision prompted an application for a reconsideration of the judgment by letter dated 19 November 2020. No response has been received from the claimant in response to that application and so I must proceed to deal with it.
3. As noted in the previous Judgment, about 750 pages of documentary evidence in the case, which had been listed for a two day hearing, mainly to deal with the

complaint of constructive dismissal. That hearing was then compressed into one day due to lack of tribunal time, and so there was little opportunity to address and consider the additional complaints.

4. The basis of the award for unlawful deduction from wages was for a period of sickness absence prior to Mr Craig's resignation. The total arrears were calculated by the company in the sum of £6,144.04, and he resigned when this was not paid on the promised date. I went on to find that the delay was not a fundamental breach of contract. I noted that it was paid a few days later, but concluded that it was not the correct amount. The basis of that view was that the respondent had moved from one sick pay policy, which provided a flat daily amount for drivers like Mr Craig, paid at a fixed level for 13 weeks, then a reduced level for another 13 weeks, to another which provided for 13 weeks' full *pay* followed by 13 week's half pay. For someone like Mr Craig, working a full week over four longer days, the fixed-rate policy was unfair, and I took the view that the calculation of his appropriate rate of pay under the current sick pay policy was intended to, and ought in fairness, to reflect those longer hours.

5. That view was incorrect. The letter from the respondent's solicitors dated 19 November explains:

    a. pay levels were agreed with the relevant trade unions annually, and even after the introduction of the new sick pay policy there was a fixed, agreed amount of pay for each day's sickness absence - £85.26 (page 103B);

    b. Mr Craig's contract of employment, read with the company sick pay entitlement table at page 79, shows that this was the appropriate amount in his case;

    c. His claim form (ET1) did not challenge the figure of £6,144.04 or the basis of the calculation.

6. In short, the company had always applied this flat-rate approach and this was the correct measure under the contract. Having been referred to those documents I accept that that is the case. Accordingly there was no unlawful deduction from wages in respect of his sick pay.

7. There remains only the unlawful deduction from wages in respect of the bonus payment, in the sum of **£122.40,** for the reasons already given.

Employment Judge Fowell

Date 26 November 2020