



# EMPLOYMENT TRIBUNALS

**Claimant:** Lisa Nutt

**Respondent:** Meggitt Aerospace Ltd

**Heard at:** Birmingham

**On:** 23<sup>rd</sup> January 2021

**Before:** Employment Judge Steward

## **Representation**

Claimant: In Person

Respondent: Ms Holliday (EEF Ltd)

# JUDGMENT

The claimants claim for Unauthorised Deduction from Wages fails and is dismissed.

# REASONS

## ***Background***

1. The Claimant was a contract manager employed by the Respondent. She was made redundant on the 31.7.20. She claims that she should have received her furlough pay for July 2020. Therefore she claims the respondent has made an unlawful deduction from her wages pursuant to S.13 of the Employment Rights Act 1996. Acas was notified under the early conciliation procedure and the appropriate certificate was issued. The ET1 was received on the 6.10.20 and an ET3 and grounds of resistance in response on the 20.11.2020.

## ***Claims and issues***

2. The Claimant had brought claims for redundancy, notice pay, holiday pay and unauthorised deduction from wages. At the start of the hearing it was agreed between the parties that all the claims had been resolved apart from the claim that an unauthorised deduction had been made from the claimants wages. This was the only issue that required determination.

***Procedure Documents and Evidence***

3. The Tribunal considered the bundle of approximately 105 pages and various additional emails. The Tribunal heard evidence from the claimant and Mr Vigers on behalf of the respondent. The claimant and the respondent had the opportunity to set out their respective positions and were subject to cross examination. They both made closing submissions.

***Fact Findings***

4. The claimant started her employment on the 10.10.2016 and was made redundant on the 31.7.2020.
5. The Claimant had been furloughed since 3<sup>rd</sup> April 2020 until the termination of her employment, receiving 80% of her normal monthly salary in accordance with the Coronavirus Job Retention Scheme ("CJRS"). The Respondent agreed to top up to 100% pay for all employees for the first three weeks of furlough. It also did not apply the £2,500 monthly cap. This meant that the Claimant was on full pay but furloughed for the three- week period 6/4 to 24/4.
6. The Respondent's pay date was the 15<sup>th</sup> of each month (or the nearest working day beforehand) and its employees are paid two weeks in arrears and two weeks in hand.
7. Because of the differences between the Respondent's payroll dates and the CJRS claim periods, this meant that CJRS was calculated one month in arrears and created an anomaly in the monthly pay received by employees. The Respondent resolved this anomaly by means of a "furlough pay offset" which was clearly stated on employees' payslips.
8. Therefore the claimant was paid her basic pay each month (approx. £2875) and her 80% furlough pay from the previous month (approx. £2300) There was then a 'furlough pay offset' also for the previous month to avoid any double accounting.( a minus figure of £2875)
9. In the claimants final pay/pay slip records the fact that she worked no actual hours for the month of August so received no actual basic pay. She did however receive her 80% furlough for the previous month and the 'furlough pay offset' also for the previous month. This therefore left a net shortfall.
10. The respondents state that they had clearly explained the operation of this scheme in written correspondence to the claimant. They also say they had kept her informed of any potential changes to the scheme. This was generally set out in the bundle in a series of letters/emails etc. I accept that respondents did explain the operation of the scheme in the way they said.
11. The claimant says that she was promised the final July furlough pay as part of her settlement in August. She says she was promised this during

the consultation period from another member of the respondents staff. This is disputed by the respondents. The claimant did not call that individual as a witness and there was no reference to this promise in the bundle of documents. The respondent had been clear how they implemented the scheme and sought to explain the scheme to the respondent though a series of emails contained within the bundle. I therefore prefer the evidence of the respondent on this point. The claimant therefore sought the sum of her July furlough payment £2300.

### ***The Law***

12. The claimant relies on S.13 (1) of the Employment Rights Act 1996 namely that the respondents have made an unlawful deduction in wages. The respondents rely on S.14 (1)(a) namely that this was an excepted deduction being an overpayment of wages.

13. It is for the claimant to prove her claim on the balance of probabilities.

### ***Conclusions***

14. I found the respondents explanation of the way they implemented furlough and the furlough pay offset scheme clear. They had explained the way the scheme would operate to the claimant at its outset. They also sought to explain how the 'pay offset' worked and why she was not entitled to the July furlough payment.

15. It is clear that the claimant did in fact receive her July furlough pay in her final pay/on her final pay slip. She did not though take into account that the respondents had to also implement the furlough pay offset. As she worked no actual hours in August she received no actual basic pay. This therefore caused a shortfall.

16. I find that the claimant has misunderstood how the scheme operated. She has interpreted the furlough scheme in such a way that she thought she would actually keep her final furlough payment. If that was the case then she would have kept it throughout the whole period of April to July which she didn't. I do not accept that the claimant was promised her July furlough pay as an additional sum. She has adduced no evidence of this on what would be an important point. This contention does not fit the way the respondent operated its pay roll scheme from the period of 3.4.2020 until the 31.7.2020

17. It is the claimant who brings the case and it's the claimant who must prove it on the balance of probability. I find that she has not. I find that the claimant was paid the correct amount on the termination of her employment. There has not been an unlawful deduction of wages pursuant to S.13(1) Employment Rights Act 1996 and accordingly the claimants case is dismissed.

*A*

---

Employment Judge Steward

*∴ ∴* 23.1.21

---

Date