



EMPLOYMENT TRIBUNALS

Claimant: Ms C Stephenson

Respondent: Progressive Care Limited

FINAL HEARING

Heard at: Midlands East / Nottingham (in public; partly by telephone & CVP)

On: 25 (by telephone) & (partly by CVP) 26 to 29 January 2021

Before: Employment Judge Camp

Appearances

For the claimant: in person

For the respondent: Mr A Johnston, counsel

JUDGMENT

- (1) The claimant's unfair dismissal claim fails.
- (2) The claimant's breach of contract claim for car mileage expenses fails.
- (3) The respondent made unauthorised deductions from the claimant's wages in the sum of £262.26 and must pay that sum to the claimant. The claimant has already paid tax and national insurance on that sum and the respondent must pay it to the claimant without further deductions. In accordance with section 25(4) of the Employment Rights Act 1996, the respondent may not seek to recover that sum from the claimant or to off-set it against other sums due to the claimant.
- (4) When these proceedings were begun, the respondent was in breach of its duty to the claimant under section 4(1) of the Employment Rights Act 1996 and, in accordance with section 38 of the Employment Act 2002, the claimant is awarded, and the respondent must pay her, a further sum of £1016, being 2 weeks' pay.
- (5) The total sum the respondent must pay the claimant is: **£1,278.26**
- (6) Full reasons for this decision were given orally. Written reasons will not be provided unless asked for by a written request presented by any party within 14 days of the sending of the written record of the decision.

ADDENDUM

Neither side has asked for written reasons. However, although the arithmetical calculations producing the figure of £262.26 were explained in the reasons given orally, the respondent, through counsel, has asked for them to be provided with the written Judgment. This is, as I [the Employment Judge] understand it, to avoid the need for the respondent to request written reasons. The arithmetic is set out below.

C's final pay slip: £3884.61 before deductions. Covered 1 month (£2500) & 2 working days (£230.77) rather than 1 month. Included holiday pay (£576.92) & PILON (£576.92). Deductions: tax & NI of £959.14; student loan repayment of £212; R's deductions from wages totalling £1765.87. Net pay to C: £947.60

Pay reference period for national minimum wage purposes = 1 month. C's pay before deductions referable to that period = £2500. Number of hours worked in that period = 215

Q. What was the total paid for the hours worked in the pay reference period (including tax and national insurance and the student loan repayment; and taking off the respondent's deductions)?

Tax & NI on £3884.61 = £959.14. Assuming the same proportions, tax and NI on £2500 was: $(959.14 \div 3884.61) \times £2500 = £617.27$

£212 student loan paid in relation to 1 month and 2 working days. R paid £115.3846 per working day, which means (on the basis that £2500 was paid for a working month), it calculated a working month as being $21 \frac{2}{3}$ working days ($2500 \div 115.3846 = 21 \frac{2}{3}$). Accordingly, £212 was paid for $23 \frac{2}{3}$ working days, meaning that the amount paid in relation to the pay reference period was: $(21 \frac{2}{3} \div 23 \frac{2}{3}) \times £212 = £194.08$

Amount of £947.60 net pay referable to £2500 gross = $(2500 \div 3884.61) \times £947.60 = £609.84$

Therefore: total paid in respect of C's 215 hours in her final month= £609.84 net pay + £194.08 student loan repayment + £617.27 tax and NI = £1421.19

Minimum amount to be paid on R's own figures = £1683.45. Shortfall = £262.26.

EMPLOYMENT JUDGE CAMP

29 January 2021

SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE