



# EMPLOYMENT TRIBUNALS

**Claimant:** Alexandra Poppleton

**Respondent:** Cognisco Ltd

**Heard at:** Norwich (by cvp) **On:** 26 March 2021

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person

**Respondent:** Not in attendance or represented: sent submissions

## JUDGMENT

1. The Respondent made unlawful deductions from the pay of the Claimant.
2. The Respondent is ordered to pay £1,775.86 to the Claimant.

## REASONS

1. The Claimant had asked for an adjournment, which had been refused. The Respondent emailed the Tribunal to ask that the claim be struck out as not being actively pursued, should the Claimant not attend. The Respondent's solicitor also stated that they had taken no action concerning documentation or witness statements, because the Claimant had taken no step to progress the matter. They said that if she did attend they relied upon the grounds of resistance contained in the ET3. The Claimant did attend. There was documentation within the Tribunal file with which I was supplied before the hearing. It encompassed everything required to deal with the issues. The documentation all came from the Respondent and so there was nothing about which they did not know. I decided to proceed in the absence of the Respondent. I took evidence from the Claimant, on affirmation, and considered the documents. The principal documents were the February 2020 payslip and contract of employment, and the ET1 and ET3.

2. The Claimant was CEO of the Respondent. The Respondent gave 3 months' notice to terminate the employment of the Claimant, which expired on 24 February 2020.
3. From the final pay the Respondent deducted £1500, being the cost of a course the Claimant took from 20 September 2019 to 06 December 2019 at Cranfield University.
4. The Claimant also says that the pay for the 24 days of February was miscalculated, and the shortfall was a further unlawful deduction.
5. The Claimant's contract of employment contains a provision for repayment of course fees incurred during the last 6 months, but only "if you give notice voluntarily". Ms Poppleton did not give notice. It was the Respondent which gave notice to end the contract. There is no provision for repayment of course fees (or anything else) if the Respondent gives notice.
6. It follows that the deduction of £1,500 was unlawful, for Ms Poppleton had not signified in writing her agreement or consent to the making of the deduction (which is required by S13 of the Employment Rights Act 1996 before any deduction from wages is lawful).
7. The Respondent calculated pay to 24 February 2020 by reference to the number of working days in February 2020. That was 20 days, of which 16 fell before 24<sup>th</sup>.
8. Ms Poppleton says that this is incorrect: it should, she says, be 24/29<sup>ths</sup> of her monthly pay (February 2020 being a leap year).
9. There is a 3<sup>rd</sup> possibility, that of a day's pay being 1/365<sup>th</sup> of annual pay. This was not contended for by Ms Poppleton. It would have meant a larger deduction (because the daily rate would be smaller, and the deduction of 5 days would be correspondingly smaller than using the number of days in February).
10. The Respondent deducted £2,000. The deduction using 24/29<sup>ths</sup> would mean an additional £275.86. (16/20<sup>ths</sup> is a 20% deduction: 24/29<sup>ths</sup> is a deduction of 17.24%, and so is a lower figure).
11. The Respondent was incorrect in using the number of working days not the number of actual days: Taylor v. East Midlands Offender Employment [2000] UKEAT 1287\_99\_2007 and Hartley & Ors v King Edward VI College [2017] UKSC 39 (paragraph 30 onwards).
12. The Respondent has not had the opportunity to comment upon the possibility that the deduction was greater than claimed by the Claimant, and so I limit the claim to that pleaded (with the consent of the Claimant).
13. Therefore the Respondent made an additional unlawful deduction of £275.86.
14. I make a declaration to that effect, and order the Respondent to pay to the Claimant the sum of £1,775.86.

Employment Judge Housego

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Date 26 March 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

..... 14 April 2021.....

.....THY.....  
FOR THE TRIBUNAL OFFICE