



THE EMPLOYMENT TRIBUNALS

Claimant: Mitchell Brown

Respondent: M Bryan Groundworks Ltd

JUDGMENT ON RECONSIDERATION

Upon a reconsideration of the Judgment given to the parties orally on 9 February 2020 on the Tribunal's own initiative under Rule 73 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 (and without a hearing) such Judgment is varied at paragraph 3 herein:

3. The Claimant's claim under s.13 Employment rights act for unlawful deduction from wages is well founded. The Respondent is ordered to pay to the Claimant the net sum of **£84.12** this being £74.88 for furlough pay plus £9.24 in respect of Employer's pension contributions. This is a net award and the Respondent shall be liable to the Inland Revenue for any payments of tax and national insurance thereon.

REASONS

1. At the conclusion of the hearing I gave the Judgment and reasons for it orally. The Claimant then requested written reasons for the judgment. In preparing those reasons I concluded that I had erred in my judgment in the calculation of the Claimant's unlawful deduction from wages claim. Consequently, in accordance with rule 73 of the Employment Tribunals Rules of Procedure 2013 I have reconsidered the judgment under my own motion.
2. The Respondent submitted that the Claimant had accepted in his ET1 that his salary was £589.50 gross and £450 net. The Claimant was asked in evidence if he accepted that his salary had increased so that his net take home pay was £450, and he confirmed this to be correct.
3. The Claimant initially agreed that his weekly salary amounted to £589.50 gross and £450 net and these sums were included in his ET1.

4. In evidence the Claimant was directly asked if his weekly salary had been increased to £450 net and he confirmed this to be correct.
5. If this were correct, his furlough payment would equate to the sums as set in the amended payslips at pages 42 to 45 of the bundle.
6. On that basis I found that the Claimant was not in fact due any payment in relation to his furlough as according to those figures he had been overpaid.
7. However, in reconsideration of this Judgment it became clear to me that I had misunderstood the Claimant's answer to this question. The Claimant's answer related to the period in 2017 in which the Claimant did receive a pay rise to a net weekly pay of £450.
8. The Claimant however clearly received further pay rise in May 2018. This Claimant's bank statements supported this and demonstrated that the Claimant was in receipt of an average net weekly salary at £489.12.
9. The Respondent's accountant accepted that if the Claimant's average weekly wage was found to be £489.12 then he agreed that the Claimant had been underpaid his furlough.
10. The gross figure produced by the Claimant of £658 is accepted as the Claimant's average gross weekly pay and that this sum should have been used by the Respondent in calculating the Claimant's furlough.
11. Using this figure I calculated the sums the Claimant should have received, including 3% Employer's pension contributions, as set out in the table below.

Furlough days	RTI information showing 3% Employer's pension contribution	Actual Net furlough paid	Gross furlough based on Claimant's claim (80% of £658)	Net furlough based on Claimant's claim	3% Employer's pension contribution on Claimant's claim
week of 01/05/20	14.06	391.00	526.40	404.93	15.79
week of 24/04/20	14.06	391.00	526.40	404.93	15.79
week of 17/04/20	14.06	391.00	526.40	404.93	15.79
week of 14/04/20	14.06	391.00	526.40	404.93	15.79
week of 03/04/20	14.14	391.00	526.40	404.93	15.79
24 & 25 March 20	5.66	156.40	210.56	161.63	6.32
TOTAL	76.04	2,111.40	2,842.56	2,186.28	85.28

12. The first column shows the amount of Employer pension contribution the Respondent's accountant confirmed was submitted to HMRC, taken from the spreadsheet he produced at page 46 of the bundle.
13. The second column shows the actual net sum received by the Claimant as furlough wages.
14. Columns 3 to 5 show the gross and net sums and the 3% employer contribution due to the Claimant for the furlough period based on a gross average salary of £658.
15. The total net sum due to the Claimant is £2,186.28. The total net sum the Claimant received was £2,111.40.
16. The total Employer's pensions contributions due to the Claimant was £85.28, however the RTI submission show £76.04 was paid.
17. Accordingly, the Claimant was underpaid furlough in the total net sum of £74.88 and pension contribution at £9.24.

Summary

18. The Claimant's claim of unlawful deduction from wages is well founded and the Respondent is ordered to pay to the Claimant:
 - 18.1. Pay in respect of underpaid furlough wages in the sum of **£74.88**. This is a net award and the Respondent shall be liable to the Inland Revenue for any payments of tax and national insurance thereon; and,
 - 18.2. Pay in respect of Employer's pension contributions in the sum of **£9.24**.

EMPLOYMENT JUDGE NEWBURN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 28 April 2021**

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