



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs O Oluwi  
**Respondent:** Post Office Limited  
**Heard at:** East London Hearing Centre (By Telephone)  
**On:** Monday 23 August 2021  
**Before:** Employment Judge Russell

**Representation**  
**Claimant:** In Person  
**Respondent:** Mr C Ludlow (Counsel)

## JUDGMENT

**The claim of unauthorised deductions from wages fails and is dismissed.**

## REASONS

1. By a claim form presented to the Tribunal on 12 April 2021, the Claimant complains that she has been underpaid in respect of sickness absence taken between 19 January and 17 February 2021. The Respondent denies any underpayment and says that it complied with its contractual obligations in full.

2. I heard evidence from the Claimant on her own behalf. For the Respondent, I heard evidence from Mr Muhammed Affan (Shift Manager) and Ms Amanda Taylor (Payroll Manager). I was provided with an agreed bundle of documents and read those pages to which I was taken in evidence.

### Law

3. The Employment Rights Act 1996 (“ERA”) s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker’s contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

4. A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

5. I must first consider whether there has in fact been any deduction, in other words what amount was due to the Claimant under the terms of her contract. In the event that I conclude that a lesser sum was paid, I must consider whether the provisions of the contract amounted to a relevant provision authorizing such deduction.

### **Findings of Fact and Conclusions**

6. The Claimant's contract of employment is dated 12 March 2014. Clause 7 of the contract deals with sickness absence and sick pay, it provides that: **"if you are absent through sickness or injury you may be entitled to sick pay. For entitlements please refer to the Personnel Manual on the advice and guidance Intranet Site"**.

7. The relevant policy governing sick pay at the material time provided that following 12 months of continuous service an employee will be entitled to full sick pay for a six-month period. However, it also provides that no sick pay will be paid when the employee has been absent for a total of 12 months, with or without, pay in a rolling period of the preceding 48 months.

8. The Claimant's case is that the policy does not apply as it was not brought to her attention until February 2021. I have had regard to the document control record, and I am satisfied that this policy became effective from 28 April 2012, prior to the commencement of the Claimant's employment, with revisions in March 2019 and January 2020. Whilst I accept that the Claimant may not have accessed the document on the Intranet, I am satisfied that it was properly incorporated into her contract of employment and that it is therefore applicable.

9. There is an issue as to whether or not the dates marked as absent for the Claimant were truly sickness absences for the purpose of the calculation of absence levels within the 48-month rolling period. In her statement, Ms Taylor has provided a table setting out the dates of sickness absence recorded on the Respondent's system. The Claimant challenges two of those entries. The first is a one-day absence on 8 January 2018 and the other is a 14-day period from 23 April 2020 to 6 May 2020. During the course of evidence, it also became clear that the Claimant was challenging as incorrectly recorded her absence from 28 January 2021 to 10 February 2021 when she was required to self-isolate for reasons connected with Covid-19.

10. Dealing first with 8 January 2018, the return to work form was signed and dated by Mr Mowla, a manager employed by the Respondent. It was not signed by the Claimant (unlike other such forms). On balance, I am satisfied that this was properly recorded as sickness absence as Mr Ludlow submits: it is a contemporaneous document and although it has not been signed there is no evidence of any good reason why Mr Mowla would have created an inaccurate return to work form in January 2018 when the dispute that arose in 2021 could not reasonably have been anticipated. It is a credible and reliable document and even if not signed in accordance with the procedure it is evidence of actual sickness absence upon which the Respondent is entitled to rely when applying its sick pay policy.

11. The Claimant's case is that her 14-day absence from 23 April 2020 to 6 May 2020 should have been disregarded as it was Covid-19 related and that the Respondent had

improperly treated it as non-Covid related. The return to work form is signed by both the Claimant and Mr Affan. It records the reason for absence as throat pain and some respiratory difficulties, without any mention of Covid-19. I accept the Claimant's evidence that in April 2020 it was not possible to access testing for Covid-19 or evidence of infection in the same way as now applies. As a result, there is no evidence to show that whether the throat pain and respiratory difficulties were caused by Covid-19 or by some other virus.

12. The Respondent provided guidance in dealing with Covid-19 related absence which was updated on 9 April 2020. There was also a guide for Senior Managers with regard to how Covid-19 related absence should be treated. The frequently asked questions start at page 119. Under the heading "**how do I record sickness and self-isolation**" in force at the time of this period of absence, it states that if the employee is too sick to work and linked to a positive diagnosis of Covid-19 then the absence should be recorded as sick leave and the employee is entitled to company sick pay from day one. By contrast, if the symptoms are mild and the employee is fit to work, then they should work from home for 7 days if possible. If working from home is not possible in these circumstances, the absence should be recorded as paid special leave. There was no requirement to disregard all Covid-19 related absence.

13. In evidence, the Claimant fairly accepted that she was too sick to work between 23 April 2020 to 6 May 2020. She is clearly conscientious and hardworking, and I accept her evidence that if she were fit enough to work, she would have attended for work. The reason for her absence was sickness and, applying the guidance in force at the time, it did not matter whether the cause was Covid-related or not. The Claimant was too sick to work and the absence was properly recorded as sick leave even under the application of the Covid-19 policy. There was therefore no requirement to disregard those dates when calculating for later sick pay purposes whether the Claimant had been absent for a total of 12 months, with or without, pay in a rolling period of the preceding 48 months.

14. I turn finally to the period of self-isolation in January 2021. The relevant internal Covid-19 related pay policy and guidance in place at the time was that where an employee was living with someone who is showing symptoms but they do not have symptoms themselves, they should work from home for 14-days where possible. If it was not possible to work from home for 14 days, the employee would be entitled to special leave. I conclude that the policy makes clear that the employee must be fit enough to work from home during the 14 day isolation period if the absence is to be recorded as paid special leave rather than sickness absence. In other words, even if not explicit, properly construed the policy did not require the Claimant to be paid if during a period of time in which she was already signed off work due to sickness, she was also required to self-isolate. The Claimant had been signed off work from 21 August 2020 and did not return to work until 17 February 2021. In the circumstances, the policy did not require the Respondent to pay the Claimant her wages for the period of self-isolation or to disregard .

15. For those reasons, I am satisfied that the Respondent has paid the Claimant the sums to which she was contractually due and that there has been no unauthorised deduction from wages.

16. The Claimant continues to be employed by the Respondent and clearly holds a deep-seated sense that her return to work and entitlement to sick pay from January 2021 have not been handled well. I make no finding as to whether or not she is correct in her

assessment but simply note that this is an ongoing employment relationship and the parties may consider it sensible to hold a meeting between the Claimant and Mr Affan, with a member of HR and a companion for the Claimant present, to discuss the communication issues which seem to have arisen and to agree a positive way of future working to ensure that the relationship of trust and confidence is maintained.

17. For the reasons I have given the claim fails and is dismissed.

**Employment Judge Russell  
Dated: 17 December 2021**