



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4109873/2021 (V)

Held on 12 November 2021 by CVP

Employment Judge B Campbell

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Ms D Stewart

**Claimant
Represented by
Self**

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Ness Tec Ltd

**Respondent
Not Represented
and No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the employment tribunal is that:

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1. The claimant did not receive any payment of wages for the months of July, August and November 2020, and March 2021 and as such in each of those months she suffered an unlawful deduction from her wages, and
2. The respondent is ordered to pay the claimant the sum of **£1,224.79** in compensation for non-payment of her wages for March 2021.

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REASONS

E.T. Z4 (WR)

Introduction

1. This claim arises out of the claimant's employment by the respondent, which began on 6 July 2012. Her employment is ongoing.
2. The claimant made a complaint of non-payment of arrears of pay within her claim form (ET1). Her claim is one of unlawful deduction from wages contrary to section 13 of the Employment Rights Act 1996 ('ERA').
3. The claimant represented herself at the hearing and gave evidence. The respondent did not attend and was not represented. It had been given adequate notice and opportunity to participate both before today's hearing and on the morning of the hearing itself.
4. A brief oral judgment was given on the day and as requested by the claimant written reasons are provided below.

LEGAL ISSUES

5. The legal questions before the tribunal were as follows:
 - 5.1. Did the respondent pay the claimant the wages she was entitled to for the months of July, August and November 2020, or March 2021?:
 - 5.2. If not, and therefore an unlawful deduction was made from her wages under section 13 ERA, when was each deduction made and is it within the tribunal's power to grant the claimant a remedy?;
 - 5.3. If and to the extent that the answer is yes, what remedy should the claimant be granted?

RELEVANT LAW

6. By virtue of section 13 ERA a worker is entitled not to have unauthorised deductions made from their wages. Therefore, subject to specific exceptions provided for in that part of the Act, there will have been an unauthorised

deduction if the worker is paid less than they have earned, depending on how their earnings are calculated, or not paid at all for their work. The date of the deduction is deemed to be either the day when less is paid to them than they have earned, or when they would normally have been paid but were not. A
5 complaint can be made about a series of deductions if the situation is repeated.

7. Examples of lawful deductions would include PAYE income tax properly deducted or a sum which the worker had explicitly consented to having deducted in advance by writing. Section 14(1) ERA expressly states that an employer may recover a previous overpayment from a worker's wages, and this will not be
10 treated as an unlawful deduction.

8. A worker who has suffered one or more unlawful deductions from their wages may submit a claim to the employment tribunal under section 23 ERA.

9. There are detailed requirements as to the timing of complaints to ensure that a tribunal can determine them. In short, if a claim is about a single deduction, the
15 claim process (initiated by way of commencement of Early Conciliation through ACAS) must begin within three months of the date the deduction was made. If the claim is about a series of deductions, the same steps must be taken within three months of the last deduction in the series.

10. Whether or not deductions form part of a series is for an employment tribunal to
20 consider and decide, based on factors such as the nature of each deduction and the frequency, or any pattern, of deductions. A potential series of deductions will be broken by a three month period in which none are made. This may mean that the earlier complaints are out of time and that the tribunal is therefore unable grant any remedy in respect of them.

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FINDINGS OF FACT

11. The following findings of fact were made as they are relevant to the issues in the claim.

12. The claimant is a current employee of the respondent. Her continuous service began on 6 July 2012. The respondent provides telecommunications services. The claimant's role is an Administrator and she performed a variety of duties such as invoicing and preparing customer accounts.
- 5 13. The claimant was placed on furlough under the UK Government's Coronavirus Job Retention Scheme ('CJRS') in or around late March 2020 and she has remained on furlough since that date, or at least until the scheme expired on 30 September 2021. She has not yet returned to work but has not resigned and nor has she been dismissed by the respondent.
- 10 14. The claimant worked 37 hours per week normally and was paid at an hourly rate. She regularly worked overtime and was paid at the same rate for that. Her pay would therefore vary from week to week or month to month.
- 15 15. The claimant was paid her wages monthly on the last Friday of each month. That was the arrangement up until she was placed on furlough.
- 15 16. The respondent paid the claimant 80% of her pay during the furlough period. She obtained monthly payslips from the respondent's accountants and does not take issue with the amounts calculated in them, including the figures stated for her gross monthly pay under the rules of the CJRS and the net figure which resulted for each month.
- 20 17. However, during the furlough period the respondent would frequently pay the claimant later than normal and she would at times not receive a particular month's salary until early in the following month.
18. By the time of this hearing the claimant maintained that she had received no pay at all for the months of July, August and November 2020, and March 2021.
- 25 19. The respondent had asserted that the claimant had received pay for some of those months as follows:
- 19.1. July 2020 – payment made in full on 6 July 2020;
- 19.2. August 2020 – it was accepted that no payment had been made;

19.3. November 2020 – payment made in full on 3 November 2020; and

19.4. March 2021 – payment made in full on 8 March 2021.

20. The claimant produced copies of her payslips for the four months above, as well as extracts from her personal bank account showing certain payments from the respondent to her.

21. Her oral evidence was that she had double-checked the respondent's assertions, and that they were inaccurate. She said that the above three alleged payments were made, but were her wages for the month before on each occasion and not the month of payment itself. Nor did she receive any wages early in the month after, i.e. August or December 2020 or April 2021. She therefore continued to be sure that she had not been paid for each of those months.

22. The claimant accepted that she had received her proper pay for every other month between March 2020 and September 2021.

Decision

23. On all of the evidence available it was possible to make a finding that the claimant had not received her monthly pay, calculated under the rules of the CJRS, for each of the four months claimed. The date of each deduction was the last Friday of the month in question, as that is when the claimant ought to have been paid.

24. Considering the timing of those deductions it is found that, even had each one combined to form a series of deductions, the gap between the November 2020 deduction and the March 2021 deduction was longer than three months, and therefore any series would have been broken.

25. The effect for the claimant is that this tribunal is bound by decisions of higher authorities, particularly the Employment Appeal Tribunal in the case of ***Bear Scotland Ltd v Fulton and another UKEATS/0047/13***. This prevents an award being made in respect of any non-payment of wages before an alleged series of deductions was broken by a three-month gap.

26. Therefore, it is only the claim in respect of wages for March 2021 which can now result in an award of compensation and an order from this tribunal that the respondent must pay the sum found to be due.

27. According to the claimant's payslip for March 2021 her net pay was £1,224.79
5 and therefore this is the amount the respondent is ordered to pay her.

	Employment Judge	B Campbell
	Date of Judgement	15 November 2021
10	Date sent to parties	15 November 2021