



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss V Carrahar

**Respondent:** Jayco Recruitment Limited

**Heard at:** via Cloud Video Platform **On:** 20<sup>th</sup> January 2022

**Before:** Employment Judge AE PITT

## Representation

Claimant: In person

Respondent: Mr J Coates, Director

# JUDGMENT

1. The claimant suffered an unlawful deduction from wages.
2. The respondent shall pay her the sum of £118:46.
3. The respondent shall also pay the claimant the sum of £1557.14 in relation to mortgage interest payments.
4. The respondent shall pay the claimant the sum of £1675.60

# REASONS

1. The claimant Miss V Carrahar, date of birth, was employed by the respondent as a Finance Manager. She resigned from her position on 17<sup>th</sup> September 2021. She brings a claim for unlawful deductions from wages pursuant to Section 13 Employment Rights Act 1996.

2. I had before me a number of documents which included the claimant's original contract, her resignation letter, correspondence from the respondent, the claimant's payslips and a letter from the claimant's mortgage company.

3. The claim having been presented on 17<sup>th</sup> November 2021, the respondent failed to lodge a defence within the required 28 days. An application for reconsideration of that decision was refused. The respondent is only able to participate in these proceedings in relation to matters of the remedy.

## The Issues

4. The following issues were considered: -
- i. What was the sum due to the claimant as her final salary?
  - ii. This will include consideration of the number of days holiday pay outstanding.
  - iii. Did the respondent pay that sum?
  - iv. If not, did the respondent have a lawful reason under section 13 Employment Rights Act 1996 to withhold the payment?
  - v. If not, can the claimant claim for interest accruing on her mortgage account?

#### The Law

5. I took account of:-  
Section 13 Employment Rights Act 1996 which gives a worker the right not to suffer a deduction from wages unless there is a clause in the worker's contract which permits it, or the worker had signified his consent in working before the deduction was made.

Section 24(2) employment Rights Act 1996 gives the Tribunal the power to order an employer to pay such amount as the Tribunal considers appropriate in all the circumstances to compensate a worker for any financial loss sustained by the worker, which is attributable to the matter complained of.

#### The Facts

6. The claimant was initially employed under a contract, which I have seen, which has standard terms in relation to pay, benefits and holidays. Under this contract, the claimant was entitled to 29 days holiday. She was required to give one weeks' notice of termination of her employment if she had not passed her probation.

7. The claimant was paid a monthly salary on the last working day of each month, although she received her payslip prior to that date. The claimant left her employment on 17th September 2021, having resigned the preceding week. Her salary was to be paid to her bank account on 30<sup>th</sup> September 2021. Prior to that, she received a payslip which showed her gross salary was £1525.03. in addition, she was to be paid for six days holidays £703.86. Her net salary was £1797.73

8. This whole figure was deducted from her salary because the respondent maintained it had made advances to her of that sum and was reclaiming it. I accepted the claimant's evidence that any 'advances' paid to her were payments made for working at weekends.

9. During the next days and weeks, the claimant contacted both the HR Department and Mr Courts himself regarding these deductions. In relation to the holiday pay, she refers to the letter she received setting out the breakdown, which referred to 7 days holiday pay.

10. The claimant says that she was given a new contract in April 2021. Mr Courts accepts that new contracts were issued but that the respondent never abided to because he had never received a signed copy from the claimant. If the

claimant had signed the contract, she was entitled to a further 8.1 days holiday. The new contract also had different terms in relation to her notice period. The claimant cannot recall these, and I have not seen the document. It appears under the new contract if she had worked less than six months, she must give four weeks' notice if she'd worked more than six months 12 weeks' notice. At the time that the resignation letter was sent, and a response received, the respondent was clearly working on the basis that the claimant was subject to her original contract, which gave her 29 days holidays, including bank holidays and public holidays. This documentation would equate to her having seven days of holidays available to her at the termination of the contract for which she had neither taken nor been paid for.

11. The claimant gave, and the respondent accepted her resignation with a period of one week's notice. It wasn't until mid-October 2021 that the respondent challenged the notice period.

12. The respondent has now paid the sum requested by the claimant in her claim form of £847. Mr Courts took legal advice and paid the sum outstanding because he was not entitled to withhold it. The claim, however, has not been withdrawn because the holiday pay remains outstanding.

13. I have considered the issue of the number of days holiday pay as a deduction. The claimant makes a claim for an additional 8.1 days. This is not referred to in the ET1 at all, and in the correspondence between the parties prior to the ET1 being issued the claimant refers to only seven days for which she was not paid.

14. Whilst I can accept the claimant's evidence that you just know what your holidays are, I also take account of the fact that the claimant never claimed for the additional days in the ET1, nor in the correspondence with the respondent nor in her witness statement.

15. The claimant received her last payslip with the figures for holiday pay upon it, but she never raised it as an error. On the basis that the claimant has never referred to the holiday claim before today as being 8.1 days, I do not accept that that is the sum she is owed. In particular, I noted she has been able to calculate the figure correctly without the knowledge of the contract itself, but she has failed to raise this with the respondent at any time before today nor in her ET1 presented on 17<sup>th</sup> November 2021. I find it difficult to accept that in that period since issuing her ET1, she realised she was owed an additional eight days, especially as she does have the contract upon which she relies. I concluded there was only one day's holiday pay which was not paid based on the information contained in the letter the claimant received from the respondent.

16. I concluded that there had been an unlawful deduction from the claimant's last pay in the sum of £847 and one day's holiday pay of £118.46. the respondent owes the claimant the outstanding sum of £118.46.

17. The claimant also asks that the Tribunal consider paying the interest on her mortgage. The claimant has a mortgage; an instalment fell due on 1<sup>st</sup> October 2021, the day after her wages should have been paid into her bank account. She was unable to pay the sum of £439.96. As a result, she was in arrears with her mortgage and interest was accruing. She came to an agreement with her mortgage

company in mid-December 2021 to repay £85 per month to discharge the debt. I have seen correspondence from the mortgage company which shows they are charging her £14.69 per day interest on the outstanding sum. The claimant claims for 106 days interest; this is on the basis that having received payment from the respondent, she could have settled the debt by the 106<sup>th</sup> day. I considered whether it was appropriate to extend the number of days of interest on the basis the claimant was unsure what the payment was for. However, I concluded she had the means to settle the debt and should have done so. I concluded she was entitled to £1557.14 in relation to her interest payments.

18. I make a declaration that there was an unlawful deduction from the claimant's wages in some of £847. This sum has now been paid. I will make a declaration that there was an unlawful deduction from the claimant's wages in relation to one day holiday pay in the sum of £118.46. The respondent shall also pay the claimant the interest on her mortgage of £1557.14

Employment Judge AE Pitt

8<sup>th</sup> February 2022