



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113707/2021

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Held in Glasgow on 14 and 15 July 2022

Employment Judge L Doherty

10 **Mrs Wendy Kerr**

**Claimant
In Person**

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Teleperformance

**Respondent
Represented by:
Ms Lundy - Internal
Advisor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

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- (1) the claim under Section 23 of the Employment Rights Act 1996 in respect of unlawful deductions from wages is not well founded and is dismissed;
 - (2) the claim under Regulation 16 of the Working Time Regulations 1998 in respect of non-payment of holiday pay is not well founded and is dismissed.

REASONS

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1. This was a final hearing to consider the claimant's claim of unlawful deduction of wages, and failure to pay holiday pay. The claimant appeared on her own behalf, and the respondent's represented were by Ms Lundy, an internal adviser.

The claims

2. At the outset of the hearing some time was spent trying to identify the claims the claimant makes. These were identified, with reference to a document produced by the claimant summarising her claims, as follows:
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- (A) Non-payment of 2 days holiday pay for the 22, 23 September 2021, and non-payment of wages for 24 September 2021. The respondents' position is that this was paid.
- (B) An unauthorised deduction from wages of £400.94 in October 2021. The respondents' position is that this was not an unauthorised deduction but an adjustment to wages due to sickness absence
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- (C) Non-payment of bereavement allowance which had been agreed for the period from 22 October for 5 days. It is accepted it was agreed that claimant would be paid this. It is the respondents' position that it was paid.
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- (D) Non-payment of holiday pay for 1 week from 1 to 5 November The respondents agree that the claimant had holiday leave Their position is that that she was paid for the holiday leave.
- (E) Non-payment of salary due for November. It is claimant's position that she was due to be paid a salary at the contractual rate of pay, as opposed to statutory sick pay for November. The claimant accepts that she was absent due to ill-health for the month of November. The respondent's position that the claimant was entitled to statutory sick pay only for the period during which she was not fit for work.
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- (F) Unpaid wages for 3 to 10 December 2021 in the sum of £356.40. It is the respondents' position that the claimant returned to work on 6 December and was on a phased return of half days for 2 weeks. They deny any sums are due.
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3. The issues for the Tribunal were whether the respondents had made any unauthorised deductions from the claimant's wages in terms of section 13 of the Employment Rights Act 1996 (the ERA) or had failed to pay the claimant holiday leave to which she was entitled under regulation 16 of the Working Time Regulations 1998 (the Regulations).
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4. The claimant gave evidence on her own behalf. For the respondents' evidence was given by Lisa O'Neil a Team Leader and Admin Manager, and by Andrew McNeilly, Assistant Call Centre Manager.
5. Parties lodged a joint bundle of documents, which was prepared by the respondents. Issues had arisen at an earlier hearing before Employment Judge Gall from documents produced by the claimant. EJ Gall issued orders on the 26th of May 2022 dealing with the production of the bundle for the final hearing. The claimant was ordered to provide to the respondents with any additional documents which she wished to have included in the bundle, which were in addition to documents already in the bundle prepared by the respondents for an earlier hearing fixed for 27 April (which did not proceed).
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6. The respondents produced the joint bundle which had been sent to the claimant, further to this order. No points were taken prior to the commencement of this hearing by the claimant to the effect that the respondent had failed to include relevant documents within the bundle. It was the joint bundle produced by the respondents the purposes of this hearing which the Tribunal had before it.
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7. The claimant was also ordered to produce a schedule of loss. The claimant did not produce a schedule as such, but she did provide a written document which in part sought to identify and quantify the claims she was making. This was the document the Tribunal used in attempting to identify the claims.
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Findings in Fact

8. From the material before it the Tribunal made the following findings in facts material to the issues it had to determine.

9. The claimant, whose date of birth is 25/05/75, is employed by the respondents as a Customer Services Advisor. She is employed under a written contract of employment which is produced at pages 48 to 58 of the bundle. The claimant's contracted hours of work are 37.5 hours per week, which she works over a 7 day shift pattern, working 5 days per week. Her gross rate of pay is agreed at £8.91 per hour.
10. The claimant's contract provides at clause 7 provides:
- 7.1 *In the event of your absence for whatever reason you should contact your manager or other designated representative in accordance with local procedures on the first day of the absence no later than 30 minutes before your normal start time to explain the reason for your absence and the likely duration*
- 7.2 *If the absence is due to sickness a self-certificate form for the first 7 consecutive calendar days of your absence may be required.*
- 7.3 *A medical certificate signed by your doctor explaining the reason for the absence must be handed or sent to your manager if you are absent for any period of 8 consecutive calendar days or more. Subsequently you must supply us with consecutive doctors' medical certificates, in a timely manner, to cover the remaining period of your absence.*
- 7.4 *Any failure to comply with the notification requirements could affect entitlement to sick pay and may lead to disciplinary action.*
- 7.5 *You will be entitled to receive SSP in accordance with qualifying days only if you are eligible and comply with the statutory rules.*
11. The respondents do not pay company sick pay. On occasion the respondents pay full pay to an employee who is unable to work due to ill health. The decision to pay full pay is made by assessment on a case by case basis, and it is not the general rule that anything other than SSP is paid to an employee who has been medically certified as unable to work due to ill health. On one occasion the claimant was paid full pay when she was absent from work due to stress.

12. There was no agreement between by the respondents to the effect they would pay the claimant full pay in October or November 2021 when she was certified as unfit to work by her GP due to stress.

13. The claimant's contract also contains the following clause 6:

5 ***Remuneration***

England and Northern Ireland

Your pay will be calculated based on the number of hours that you have worked during a set period known as the "adjustment period". You will be paid on a monthly basis. You will receive a welcome email at the start of your employment which will provide further details on how your pay is calculated.

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Scotland

You will receive a fixed annual salary paid in 12 monthly instalments. Any adjustments to your pay, such as payments for overtime, will be made during the adjustment period. You will receive a welcome email at the start of your employment which will provide further details on how adjustments to your pay will be calculated.

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All roles

The Company reserves the right at any time during your employment, or in any event of termination to deduct from your salary any overpayment made and/or monies owed to the Company by you including but not limited to any outstanding training costs where a repayment agreement is in place, loans, advances, relocation allowances and the cost of repairing any damage or losses to the company or its property caused by you."

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14. The claimant had received her contract of employment and was aware of the provisions in it with regard to clawback of overpayment wages by way of deductions from salary.

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15. The claimant was paid on a monthly basis and received wage slips each month. The claimants wage slips for September, October and December

show her total gross pay for the month, calculated on the basis of her weekly pay x 52 weeks divided by 12 months (i.e., £8.91 x 37.5=£334.13 per week x 52 =£17,375.5 divided by 12 months=£1,447.88).

- 5 16. The wage slips also shows the total amount of SSP Paid in a month, and adjustments to pay to reflect hours in that month which have not been worked, and for which payment at the contractual hourly rate of pay was not due, because of unpaid leave, or unpaid sickness absence.
- 10 17. The pay period is the calendar month, however if there is an adjustment to pay as a result of events after the 14th of the month up until the end of the month (e.g. non-payment of wages due to absence after the 14 of the month), then this is reflected in the following months' pay and pay slip. In practical terms this means that an employee who is absent on sick leave after the 14 of the moth, and only entitled to PPS, is in fact paid their full rate of pay for that sickness period. The wages they are paid for that sickness period are then deducted from the following months pay.
- 15 18. The claimant received payment of the wages detailed on her pay slips for the months of September through to December 2021.

September 2021

- 20 19. The claimant had the following periods of sickness absence in September 2021:
- 15/09/09 to 21/09/21 (37.5 hours)
 - 29/09/21 (7.5 hours)
- 25 20. The claimant had two periods of authorised absence taken as unpaid leave in September as follows:
- 27/09/21 (3 hours)
 - 28/09/21 (3.5 hours).
21. The claimant was paid her gross salary for September (£1,447.88) subject to two deductions amounting to a total of £447.25 , which reflected recovery of

wages paid during periods of sick leave which occurred in the pay adjustment period prior to 14 September.

22. The claimant took annual leave on the 22, 23, of September 2021, for which she was paid. She worked on the 24 of September, for which she was paid.

5 *October 2021*

23. The claimant had the following periods of unpaid sickness absence in October 2021:

- 8/10/21 (7.5 hours)
- 11 to 14 October (30 hours).
- 15 to 30th October.

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24. The claimant had one authorised unpaid absence in October:

- 4/10/21 (0.5 hours)

25. The claimant's salary for October (£1,447.88 gross) was subject to a number of reductions.

- 15 26. The respondents reduced the claimant's salary in October to reflect the sickness absence she had in September after 14 September. The claimant had been paid in full during these periods of sickness absence in September as they occurred after the cut off for the pay adjustment period for September.

- 20 27. That reductions from October's salary reflected sickness absence which the claimant had had from 15 September to 21 September (37.5 hours) plus 29th September (7.5 hours). The total number of hours and pay deducted for sickness absence which occurred in September from October's salary was 45 (37.5 + 7.5) hours x £8.91 = £400.95.

- 25 28. Two deductions were made from October's salary for authorised unpaid leave taken in September (28/29 September -6.5 hours in total (i.e. £8.91 x 6.5 = £57.92).

29. The respondents also adjusted the claimants pay in October to reflect the fact that she had sickness absence on 8 October; and had sickness absence from 11 until 14 October (i.e. 5 days in total). The hours by which pay was reduced in this respect was 7.5 hours x 5 days = 37.5 hours. The total deduction from pay in October to reflect sickness absence in October which occurred prior to the cut off for the pay adjustment period for October was 37.5 hours x £8.91 =£334.13.
30. There was also a reduction to October's salary to reflect 0.5 hours absence on 4th October taken as authorised unpaid leave (£4.46).
31. All of these deductions are shown on the claimant's wage slip for October.
32. The claimant continued to be absent due to ill health for the period from 15 October until the end of that month and was not contractually entitled to be paid for that period, other than SSP, in terms of her contract of employment.
33. The claimant's mother very sadly died and in these circumstances the respondents agreed with the claimant that she would receive 5 days paid compassionate leave from 22 October. This was paid.
34. The respondents did agree that the claimant should be paid anything other than SSP for her periods of absence in October or November, other than this compassionate leave.
- 20 *November*
35. The claimant was entitled to 5 days holiday from 1 to 5 November. This amounted to 5 days' pay which was a total of £334.13 gross pay. The claimant was paid this.
36. Thereafter the claimant was only paid SSP for the remainder of November. The respondents did not agree to pay the claimant her full salary for the period during which she was medically certified as unable to work in November because of her ill health which was caused by stress.

37. The respondents reduced the claimant's November pay by £100.95 to reflect part of the sickness absence which she had in October after 14 October, and for which she had been paid at the full rate of pay in October.

38. The claimant was absent on sick leave in November, and other than payment of her holiday leave, was only entitled to SSP. Her wage slip for November shows payment of her salary for 5 days at £334.13 (holiday pay); SSP paid; and a deduction of £100.95, which was recovered in respect of a payment of wages made to her in October for a period after 14 October when she was absent on sick leave and only entitled to SSP.

10 *December*

39. The claimant returned to work at some point in early December. She had a fit note certifying her as unfit for work until 10 December but returned earlier than that and worked for two weeks on a phased return to work basis, working half a day. She was not paid for the half days she did not work during her phased return.

Grievance

40. The claimant lodged a grievance which was in part about non-payment SSP for 3 days in September. The grievance was dealt with by Mr McNeilly, who having investigated matters concluded the claimant should be paid for 3 days SSP following a Covid related illness.

Note on Evidence

41. There was a considerable amount of evidence which was not in dispute. The terms and conditions under which the claimant was employed; the fact that as a general principle the respondents were entitled to recover pay paid to the claimant for hours she did not work due to authorised absence or sick leave; her hours of work; her 5 day week; her rate of pay; the pay period (monthly); the fact that there was an adjustment period for wages with a cut off on the 14th of each month till the end of the month; the fact that the claimant had received the payment of the wages detailed in her pay slips for the months in question; the fact that the claimant had taken holiday leave on

November; the fact that the claimant had been granted 5 days paid bereavement leave in September 2021; and that fact that the claimant returned to work in December 20121 on a phased return basis were she worked and was paid for half days for a period of 2 weeks, were all undisputed.

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42. The Tribunal found the respondent's witnesses to be credible and reliable. Ms O'Neill gave evidence about how the respondents payroll operated, including the dates of the adjustment period for wages. She gave evidence about the enquiries she made with payroll when the claimant had queried her wages and payslips in 2021. Ms O'Neill also gave a credible explanation of how the claimant was paid, and what was reflected in the claimant's wage slips.

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43. The Tribunal also heard from Mr McNeilly. He gave credible evidence as to the claimant's contractual terms and conditions relating to pay, including that the respondents could agree on occasion to pay full pay to an employee who is absent from work due to ill health, but that is not a contractual entitlement and the respondents look at matters on a case by case basis. He gave convincing evidence to the effect that there was no agreement to pay the claimant full pay for her periods of sickness absence in October and November 2021.

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44. Mr McNeilly dealt with a grievance lodged by the claimant, which included complaints the claimant has felt unsupported. To the extent that his evidence about the grievance was relevant the tribunal found him to be a credible and reliable, however he also gave evidence related to matters which were not relevant for the Tribunal to consider in that part of claimant's grievance was about the level of support which she had been given by the respondents.

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45. The claims before this tribunal are purely monetary claims relating to non-payment of wages and holiday pay, and therefore it was not relevant for the tribunal to consider the degree to which the claimant felt she was unsupported by the respondents. That is the case even although part of the claimant's submission was that she should have been paid full pay for her periods of absence, because her absence was caused or contributed to by the action or

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inaction of the respondents. The Tribunal has no jurisdiction to deal with a common law claim of negligence.

46. The Tribunal did not form the impression that the claimant in any way set out to deliberately mislead. Indeed, it had a great deal of sympathy for the claimant in her attempts to understand the information in her payslips. The respondents wage slips were far from straightforward to follow. In her submissions Ms Lundy acknowledged that one of the things that she would be taking back to the respondents from this hearing was the need for more clarity in the information contained in the payslips.
47. The confusion occasioned by information supplied by the respondents was compounded in that the claimant received a letter on 5 July 2022, (which she lodged as a production on the first day of the hearing), which suggested that she was due to repay the respondents for a period of sick leave for which she had been paid for but had not worked. Ms Lundy wrote to the claimant and the Tribunal on 18 July, after the hearing had finished, confirming that this letter contained an error, and the information contained in it was not correct. She confirmed that the claimant was not due to make any repayments to the respondents.
48. It was a feature of this case that the claimant did not comprehend the information contained in the payslips and was not satisfied that the information in pay her slips, emails which she received when she queried her wages, and what is said in the respondents' letter of 5 July 2022, was consistent. That position is would appear was correct as far as the letter of 5 July is concerned, and it was no doubt very unhelpful to the claimant's understanding of matters to have received this letter. If the respondents now require to confirm to external agencies that repayment has been made by the claimant of these sums, then it is expected that they will now do so without delay. The claimant mentioned on a number of occasions in the Hearing that the respondents had not passed on correct information to an external agency.
49. These factors however do not impact on the factual position with regard to how much the claimant was paid, how much she was entitled to be paid, and

the legal basis of the claim. Nor is it the function of the Tribunal to provide an explanation of the claimant's wage slips to her. The Tribunal's task is to determine if there has been an unauthorised deduction from the claimant's wages or a failure to pay holiday pay which should have been paid.

5 50. Albeit however the Tribunal did not consider the claimant was in any way
deliberately misleading, it did not always find her evidence reliable. This
impression was contributed to in that the claimant's position in evidence
differed on occasions to the position which she had adopted identifying issues
in the case. An example of this is that in identifying the issues, which were
10 taken from her own document quantifying her loss, the claimant identified that
her issue was about non-payment of annual leave days taken over 2 days
in September and one day when she worked (which was in itself a change
from her document in terms of dates, and the fact that the claimant identified
one of the days as a working day as opposed to holiday). What emerged from
15 her of questioning was in fact that she appeared to have an issue about non-
payment of SSP. The Tribunal has no jurisdiction to consider a complaint
about non-payment of SSP. Another example is that the claimant identified as
an issue non-payment of her contractual rate of pay in November when she
was absent. But her questioning and Submissions expanded to include non-
20 payment of wages during her sickness absence in October

51. The claimant accepted that she was employed under the contract of
employment that was produced in the bundle, and she confirmed in evidence
that this was her contract of employment. She gave evidence to the effect that
there was a cut-off date for pay adjustments and that she was familiar with
25 the respondents practice of clawing back or recovering pay which had been
paid for periods of authorised unpaid leave, or sickness absence, by way of
making deductions from salary. In cross examination the claimant suggested
to Mr McNeilly that she did not have a copy of the contract, however the
Tribunal did not take from that the claimant had never received a copy of her
30 contract or was unfamiliar with its terms, given her evidence identifying the
contract and how the contract operated with reference to pay. The Tribunal

concluded that the claimant had be given her contract and was aware of its terms.

52. One of the issues which the Tribunal did have to determine was whether the claimant was entitled to full pay in October and November 2021 when was absent on sick leave due to stress. It was the claimant's position that she was entitled to full pay, on the basis that she had been paid full pay on a previous occasion when she was absent due to stress. Her position was that and she and she had provided medical evidence to prove she was medically unfit for work and was entitled to be paid, as she had been before when she was off with stress.

53. Mr McNeilly's evidence was that there was no such entitlement. The claimant's contract of employment provided for payment of SSP only, and although the respondents could consider matters on a case-by-case basis and decide to pay an absent employee, this was not the norm. The fact that the claimant had received full pay on a previous occasion when she was absent with stress did not give rise to an entitlement to full pay when she was absent in October and November, and there was no agreement on the part of the respondents to pay this.

54. The Tribunal was satisfied on the basis of this evidence, and the terms of the claimant's contract of employment at clause 7, that this was the case. The claimant led no evidence to support the conclusion had been an agreement that she would be paid in full in October and November when she was absent with stress, beyond her evidence she had on one previous occasion been paid when she was absent with stress. Payment on one unspecified previous occasion was an insufficient basis upon which to conclude that there was an agreement that the claimant would be paid her full wages for October/November 2021. The Tribunal therefore did not conclude that there was an agreement that the claimant would be paid in full for periods of absence in October and November 2021.

Submissions

55. Both parties made oral submissions which are dealt with in the Note on Evidence and Deliberations where relevant.

Deliberations

5 56. The Tribunal considered the relevant statutory provisions.

57. Section 13 of the Employment Rights Act 1996 (the ERA) provides:

(1) *An employer shall not make a deduction from wages of a worker employed by him unless—*

10 (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

(2) *In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

15 (a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

20 (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

58. The right to be receive paid holiday leave derives from Regulation 13 of the Working Time Directive 1998.

59. Regulation 16 (1) provides:

25 1) *A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13, at the rate of a week's pay in respect of each week of leave.*

60. The claimant has the burden of proof in establishing non-payment of both elements of her claim.

The Claims

(a) *September 2021*

5 61. The claimants claim is for two days holiday pay for 22, 23 September and one day's work on 24 September 2021, which she says were unpaid.

62. The Tribunal was satisfied that the claimant was paid for her annual leave taken on 22, 23, September, and for 24 September when she worked. Had there been a deduction in respect of those days this would have shown up in
10 October's payslip, as the dates were after the cut-off date for pay adjustments. There were adjustments to October's pay slip, as indicated in the findings in fact, but they were all accounted for as a result the claimant's sickness or authorised absences in September/ October.

63. The Tribunal therefore did not conclude that the respondents had failed to pay
15 the claimant for holiday leave taken or days worked in September 2021 and had made an unauthorised deduction from her wages in respect of that.

64. The Tribunal notes that the claimant questioned Mr McNeilly about non-payment of SSP in September 2021, in particular about a failure to pay for the first three days of absence arising for Covid related reasons. The Tribunal has
20 no jurisdiction consider non-payment of SSP.

(b) *October 2021*

(i) *Unauthorised deductions of wages of £400.94*

65. This claim is in respect of an alleged unauthorised deduction from wages of £400.94 in October 2021.

25 66. The Tribunal was satisfied that the respondents made a deduction of £400.94 from the claimant's October salary, as set out in the findings in fact.

67. The claimant's salary for October (£1,447.88 gross) was reduced to reflect payment of her wages made to her during her the sickness absence in

September after 14 September 2012. The claimant had been paid her salary in full for her period of sickness absence in September which occurred after 14 September, as it occurred after the cut off for the pay adjustment period.

5 68. That reductions from October's salary reflected a recovery of wages paid during a period of sickness absence (when the claimant was only entitled to SSP) from 15 September to 21 September (37.5 hours) plus 29 September (7.5 hours). The total number of hours and pay deducted from October's salary for sickness absence which occurred in September was 45 (37.5 +7.5) hours x £8.91 = £400.95.

10 69. The Tribunal was satisfied that clause 6 of the claimant's contract of the employment provided the respondents with a contractual right to make deductions of overpayment of wages, and that this had been intimated to the claimant in her written contract, and further that the claimant was aware that this was the respondents' practice. The effect of that conclusion is that the
15 deduction of wages paid during a period when the claimant was only entitled to receive SSP, and had no contractual entitlement to the wages which she had received for her period of sickness absence, fell within the category of deductions permissible under Section 13 of the ERA.

20 70. The Tribunal was satisfied that the respondents were permitted in terms of the claimant's contract to make deductions from her salary in respects of overpayments of pay. In this instance that reflected payment of wages for periods post 14 September when she had been absent on sick leave.

71. It was not suggested that that the claimant had not been absent on these dates.

25 72. The Tribunal was not satisfied that there had been unauthorised d deduction from the claimant's wages in October of £ 400.94.

(ii) *Non-payment of Bereavement Allowance*

30 73. There is a second element to the claims for October. That relates to alleged non-payment of bereavement allowance which had been agreed for 5 days from 22 October. It is accepted it was agreed that claimant would be paid this.

74. The claimant was paid her gross salary for the month of October subject to the deductions set out above in the findings in fact. Those deductions did not include a deduction of 5 days' pay from 22 October.
75. The period during which the bereavement allowance was paid fell after 14 October (the cut off for pay adjustments), however the deductions from November's salary did not include a deduction of 5 days' pay to cover 5 days from 22 October.
76. The respondents reduced the claimant's November pay by £100.95 to reflect payment of wages made to the claimant during part of the sickness absence which she had after 14 October. The claimant was absent on sick leave from 15 October until the end of October, which is a period of some three weeks. During this period, she had been paid full pay. The respondents were entitled to exercise a clawback of these wages (subject to their agreement to pay compassionate leave). A weeks pay is £334.13 and therefore the deduction of £100.95 made in November was insufficient to cover 5 days' pay from 22 October, plus two weeks sick leave. It follows from this that the claimant was paid 5 days compassionate leave. The Tribunal was not taken in evidence to any other deductions from wages which indicated that they claimant had not in fact been paid her compassionate leave.
77. The Tribunal therefore did not conclude that the respondents had made an unauthorised deduction from the claimant's pay in respect of bereavement allowance for 5 days which it had agreed it would pay in October 2021. *(c) November 2021*
78. This relates to alleged non -payment holiday pay for 5 days for the period from 1 to 5 November.
79. There is also a claim that the claimant should have received full pay for her period of sickness absence in November.
80. The Tribunal was satisfied that the claimant had been paid for her holiday leave. It was not in dispute that she was absent due to ill health for the whole of November. For the reasons which are given above the Tribunal was

satisfied that the claimant was only entitled to SSP during this period of absence. She was therefore only entitled to SSP in November, other than during her period of holiday leave from 1 to 5 November. The claimant's wage slip reflects that she was paid the sum of £334.13, which equates to 5 days holiday pay, therefore the tribunal was not satisfied that there had been a failure on the part of the respondents to pay the claimant holiday pay to which she was entitled in terms of the Working Time Regulations.

(e) *December 2021*

81. The claimant did not specify the amount of this claim. When discussing the issues at the outset of the hearing she suggested there was a failure to pay her on her return to work which was either on the 2 or 3 December. While the claimant disagreed in cross examination that she had not returned until 6 December, she accepted that she returned on a phased return basis during which she only worked half days and was only entitled to be paid for half days.

82. Given the tribunal's overall impression of the claimant's reliability, the fact that she did accept she was not entitled to full pay during her phased return in December, her failure to identify clearly that date which she said she returned, and her failure to quantify the amount which she was entitled to be paid for the month of December with reference to hours or days that she said she worked, the Tribunal was not persuaded there had been a failure on the part of the respondents to pay the claimant wages which were due to her. In reaching this conclusion the tribunal have regard to the fact that the burden of proof rests with the claimant to establish her claim. In the absence of clear evidence from the claimant as to the basis of her claim, the Tribunal was not persuaded that she had discharged the burden of proof which rests upon her and therefore it did not uphold the claim in respect of non-payment of wages in December 2021.

Conclusion

83. The effect of the Tribunals conclusions is that none of the claims succeed and the claims are dismissed.

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Employment Judge: L Doherty
Date of Judgment: 21 July 2022
Entered in register: 22 July 2022
and copied to parties

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