



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Lune

**Respondent:** Metaverse Recruitment Limited

**Heard at:** Nottingham by CVP

**On:** 5 August 2022

**Before:** Employment Judge Cansick

## Representation

Claimant: In person

Respondent: No attendance

# RESERVED JUDGMENT

The claimant's claim that there was an unauthorised deduction of wages is well-founded. The respondent is ordered to pay to the claimant the gross sum of £1032.65, in respect of the amount of the unauthorised deduction.

# REASONS

## Claims and Issues

1. By a claim form received on 22 March 2022, the claimant made a claim for unauthorised deduction of wages. The respondent did not reply to the claim.
2. The issues in the case are as follows:
  - (i) Has an unauthorised deduction been made for work the claimant has undertaken? The claimant claims £534.60 for this.
  - (ii) Was the claimant entitled to payment on dates she was not given work? The claimant claims £801.90 for this.
  - (iii) Can the claimant claim for underpayments of Universal Credit resulting from the respondent incorrectly declaring her earnings to HMRC? The claim in respect of such is for £532.91.

## Procedure, Documents and Evidence

3. The claimant attended the hearing. The respondent did not. Before me was an undated statement, from the claimant, of 23 pages. Also provided by the claimant was a copy of the employment contract and copies of her bank statements. Embedded in the claimant's statement were a number of other documents, including payslips. The claimant adopted her statement in evidence.

## Findings of Fact

4. The claimant was employed by the respondent (then named Propello ATA Limited) as a Content Creation Assistant from 22 October 2021. The claimant, however, had all contact and worked day to day with Adamo Gaming Group Limited.
5. Pursuant to the contract of employment, the claimant's hourly pay was the minimum national wage, which at that time was £8.91 per hour.
6. The contract specified the claimant's normal working days were Monday to Friday and stated: *"You will be working 25 hours per week between the hours of 9am to 5pm unless otherwise discussed with your line manager, with a daily unpaid lunch break of one hour"*.
7. The claimant was not given work on Friday 22 October 2021 and began a two-week introductory training course on Monday 25 October 2021.
8. Following completing the introductory course the claimant did not work until 17 November 2021. She has been inducted into the Games Development Department of Adamo Gaming Group Limited on 16 November 2021. She gave evidence that it was not discussed with the respondent that she would not be paid for the days before she started working.
9. The respondent closed between 21 December 2021 and 3 January 2022 and the claimant did not work on those dates. The claimant was informed by the respondent to take holiday on these dates. She stated in evidence that she had already used her holiday allowance at this time.
10. Regarding holiday the claimant's contract of employment stated: *"We may require you to take holiday on specific days as notified to you"*. It also stated: *"Our holiday year begins on 1 January. You are entitled to 20 days annual leave per holiday year at your normal basic pay. You are also entitled to the usual public holidays in addition to this entitlement. In the holiday year(s) in which your employment starts and ends, one-twelfth of your holiday entitlement will accrue for each full month of employment"*.
11. The respondent terminated the claimant's contract on 19th January 2022, having given the seven days' notice required in the contract.
12. The claimant was not paid for the two weeks training she undertook at the start of the contract. She was also not paid for working on 29 and 30 November 2022.

13. The claimant was also not paid for the 22 October, 8 November to 12 November and 15 to 16 November 2021, being days where she was not allocated work. She was also not paid for the period she was told to take as holiday between 23 December 2021 and 3 January 2022.
14. After termination of the employment, the claimant states she received reduced payments of Universal Credit, resulting from the respondent giving incorrect information about her earnings to HMRC.

## Law

### Unauthorised deduction of wages

15. Part 2, sections 13 to 27B, Employment Rights Act 1996, sets out the statutory basis for a claim of unauthorised deduction from wages. Employment Rights Act 1996, section 13, provides in particular as follows:

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

(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—

(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

(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.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct

of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

16. “Wages” is widely defined. According to Employment Rights Act 1996, section 27(1), it includes *“any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise”*.

## **Conclusions**

### Has an unauthorised deduction been made for work the claimant has undertaken?

17. The claimant’s contract of employment detailed she was employed for 25 hours a week at the rate of £8.91 an hour. The claimant’s weekly pay was therefore £222.75. There is nothing in the contract stating the claimant would not be paid for training. Therefore, the claimant was entitled to £445.50.
18. The claimant is also entitled to be paid for the days she worked on the 29 and 30 November. Two-fifths of the claimant weekly pay is £89.10, to which she is entitled for these two days.
19. In respect of work undertaken the respondent deducted in total £534.60 from the claimant’s wages, without authorisation.

### Was the claimant entitled to payment on dates she was not given work?

20. This issue is divided into two parts. Firstly, the dates before the claimant started working with the Games Development Department, and secondly, the dates on which the claimant was instructed to take holiday.

#### *Dates before the claimant started working with the Games Development Department*

21. The contract was for 25 hours work a week. It does not state in the contract that the claimant will only be paid if she works those hours. It does though state: *“You will be working 25 hours per week between the hours of 9am to 5pm unless otherwise discussed with your line manager”*. Arguably this variation is only regarding the hours of work and not the total hours. In any event, the claimant gave evidence that there were no discussions that she would not be paid if not given work. The claimant was therefore entitled to be paid for 22 October, 8 to 12 November and 15 to 16 November 2021. This is a total of eight days (one week and three days) salary, being £364.40.

#### *Dates on which the claimant was instructed to take holiday*

22. Regarding the period, 23 December 2021 to 3 January 2022, where the claimant was told to take holiday, I note that the contract does allow the respondent to specify dates on which holiday should be taken. The contract

also states that holiday accrues at one-twelfth of yearly holiday entitlement for each full month of employment. The claimant gave evidence that she had already used her entitlement at this time. I find that the respondent was entitled to request the claimant take holiday and as the claimant had already used the paid holiday entitlement no payment of wages was due, save as detailed below.

23. The exception to the above finding is in respect of public holidays. The contract states that the claimant was entitled to the "usual public holidays" in addition to the paid holiday allowance. There were three public holidays falling in the relevant period. The claimant was entitled to three days salary (three-fifths of her weekly salary) for these dates, totaling £133.65.

24. In respect of days where the claimant was not given work the respondent deducted in total £498.05 from her wages, without authorisation.

Can the claimant claim for underpayments of Universal Credit resulting from the respondent incorrectly declaring her earnings to HMRC?

25. I have no jurisdiction to hear a claim for underpayments of Universal Credit.

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**Employment Judge Cansick**  
Date: 4 November 2022