



# EMPLOYMENT TRIBUNALS

**Claimant:** Teresa Kerr

**Respondent:** (1) X Markets Group Limited  
(2) X Markets Securities Limited

**Heard at:** London South Employment Tribunal, via CVP

**On:** 24 May 2022

**Before:** Employment Judge Apted

## Representation

Claimant: Litigant in person  
Respondent: Did not attend. Not represented.

**JUDGMENT** having been sent to the parties on **25 August 2022** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

On 21 September 2020, the claimant brought a claim for unlawful deduction of wages under section 13 of the Employment Rights Act 1996, against the respondent - X Markets Group Ltd.

The respondent did not respond to that claim. The claim was listed on the 24 May 2022 for a final hearing.

In preparation for the hearing, the Tribunal was in possession of the following documents:

- a. Form ET/1.
- b. Amendment to ET/1
- c. Contract of employment dated the 14 August 2017.
- d. A document headed 'Salary monies and disbursements owed to Teresa Kerr by X Markets Group as at 31 Dec 2018.'
- e. A document headed 'Total Work Hours Log and Wages Owed.'
- f. Timeline of events.

- g. Work hours Log 2019.
- h. Work hours Log 2020
- i. Signed letter from respondent dated 18 January 2019.

During the course of the hearing, I heard oral evidence from the claimant which I noted in my record of proceedings.

**Application to amend:**

Out the outset of the hearing, the claimant made an application to amend her claim to add the second respondent – X Markets Securities Ltd. I granted that application on the basis that the first respondent accepted that the claimant had previously been employed by the second respondent and that the second respondent owed the claimant money.

The Tribunal clarified the claimant's claims as a claim for the unlawful deduction of wages between 30 May 2016 and 30 June 2020. This amounted to non-payment of her salary along with other payments which were £200 per month for transport costs when in London and her accountancy subscription costs.

The background to the claim is as follows:

The claimant was employed by the first respondent on the 14 August 2017 as a Financial Controller. Prior to that, she had been employed by the second respondent since the 28 May 2016.

Her contract of employment with the first respondent stated said that she would be paid £40,000 per annum, her annual chartered accountancy subscriptions would be paid along with £200 per month for transport costs when in London. The claimant told the Tribunal that her salary with the second respondent had previously also been £40,000 per annum, although the other items (namely transport costs and subscription fees) were not included.

**The Law:**

Section 13 Employment Rights Act 1996 reads 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.

Section 27(1) Employment Rights Act 1996 defines 'wages' as 'any sums payable to the worker in connection with his employment'. This includes 'any fee, bonus, commission, holiday pay or other emolument referable to the employment' (s27(1)(a)).

Certain payments by employers to workers are specifically excluded from the definition of wages by section 27(2) and (5) Employment Rights Act 1996, meaning that a worker cannot seek recovery of such payments by bringing an unlawful deduction from wages claim under section 13. These are:

- any payment by way of an advance under an agreement for a loan or by way of an advance of wages — section 27(2)(a)
- any payment in respect of expenses incurred by the worker in carrying out his or her employment — section 27(2)(b).

**Findings and conclusions:**

The claimant gave unchallenged evidence that she had not been paid since the 30 June 2020, save that on some occasions the respondent did pay the claimant some monies. Based upon her contract of employment, the claimant has calculated that sum to be £88,645 net. The claimant had already deducted from that sum, the monies that the first or second respondent had paid. However, the claimant has included within that figure the sum of £4,300 for transport when in London and accountancy subscription fees.

In my judgment, under section 27 Employment Rights Act 1996, I find that the transport allowance and accountancy subscription fees would not be defined as wages. The claimant is therefore unable to bring a claim for these.

I find that the money which the claimant should have been paid, is less than the money that she was paid. I therefore find that there has been a deduction of her wages. I find that deduction was not authorized or required by statute or a provision in the claimant's contract and I also find that the claimant had not given her prior written consent to the deduction.

The claimant's claim for unlawful deduction of wages under section 13 Employment Rights Act 1996 is well founded and is allowed.

The first and or second respondent is ordered to pay to the claimant the net sum of £84,345.

**Employment Judge Apted**

Date: 30 September 2022