



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Ghada Al-Naimi

**Respondent:** Buildmaster Construction Services Ltd

**Heard at:** London South Croydon, in public, by CVP

**On:** 11 October 2022

**Before:** Employment Judge Tsamados (sitting alone)

## Representation

Claimant: In person

Respondent: Mr T Hussain, Litigation Consultant

# RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

The Claimant has suffered unauthorised deductions from her wages and is awarded the sum of £9,750 gross payable by the Respondent.

# REASONS

## Background

1. The Claimant, Mrs Ghada Al-Naimi presented a Claim to the Employment Tribunal on 24 May 2022 following a period of Early Conciliation between 29 March and 9 May 2022. This raised a complaint of unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996. The Respondent denies the Claim.
2. The Claim is against her ex-employer, a limited company of which she was at the time the Company Secretary and her husband Mr Ahmad Al-Naimi is the sole Director. Mr Al-Naimi appeared today and gave evidence on behalf of the Respondent limited company.

3. It is fair to say that there is certainly a degree of ill-feeling and hostility between them arising from their ongoing divorce and financial settlement proceedings. Indeed, I had to set out clearly the parameters of this hearing and steer the parties away from extraneous matters.

### **Preliminary matters**

4. This case has been listed for 2 hours because it involves a relatively straight forward wages claim. The Respondent belatedly sought a postponement request and a relisting for one day given the alleged complexity of the matter. The Claimant objected to this. Through my clerk I responded by email directing that the hearing will go ahead as listed and if appropriate converted to a case management hearing.
5. In any event, on reading the file prior to the hearing, whilst it did seem to me that the matter was not complex as the Respondent asserted, I detected a number of preliminary matters that needed to be dealt with before hearing the case.
6. The Respondent had been granted an extension of time in which to present its Response. The application was sent by email to the Employment Tribunal and the Claimant. However, the Claimant denied receipt. She wrote to the Tribunal at that time challenging the decision to extend time on the basis that she had not been given any opportunity to object. I explained that was the case, she was quite right to raise the matter and the process would be that I would set aside that decision and consider it after hearing representations from both parties. However, I pointed out that the rules relating to time limits and Responses were not as stringent as the rules relating to Claims and so it was likely that I would grant the extension request. The Claimant said that this was a side issue and there was no point pressing it now and that she wished to simply proceed with hearing her Claim. I thanked her for taking a pragmatic view.
7. The Claimant also indicated in correspondence that she wished to amend her claim to include complaints of discrimination and harassment arising from her subsequent suspension from work on 17 September 2022. I explained that if she wished to do so, we could not go ahead today but would have to adjourn for her to set out the details of the amendment that she required, the Tribunal would then have to hold a further hearing to decide whether to accept the amendment or not and the full hearing would then be listed before a Tribunal panel of three on a date likely to be in 2023. The Claimant again stated that this was a side issue and she did not wish to take up time dealing with it. I again thanked her for her pragmatism.

### **Case preparation**

8. It is fair to say that the Claimant complied with the standard case management orders and the Respondent did not. The Respondent belatedly provided its documents yesterday evening in a bundle of approximately 100 pages, which were mostly bank/credit card statements and pay-slips, and in addition a witness statement from Mr Al-Naimi. The Claimant told me that

she had not been able to consider them. I stated that when I adjourn to read them myself, she would have time in which to do so. The Claimant was content to continue on this basis. I adjourned to read the documents and witness statements.

### **The issues**

9. On resumption I explained the issues to the parties as follows. The Claimant's suspension from work and the allegations of gross misconduct made by Mr Al-Naimi within his witness statement were not relevant to the issues I had to decide.
10. The Claim is about alleged unauthorised deductions from the Claimant's wages between 1 October 2021 and 24 May 2022 when the Claim Form was presented plus any consequent financial losses.
11. The issues I had to determine were relatively straight forward: what was the agreement as to payment of wages; was it varied; what was the pay date; what is owed? More formally: what was properly payable to the Claimant, what was she paid, was there any shortfall between the two and did that amount to an unauthorised deduction from wages?

### **The hearing**

12. The hearing was conducted by Cloud Video Platform ("CVP") and was listed for 2 hours.
13. The Respondent did not renew its postponement request and the case proceeded.
14. There was insufficient time in which I could reach a decision and so I reserved Judgment.

### **The evidence**

15. I had the following documents before me: the Claim and Response; the Claimant's bundle of documents running to 74 pages which included her witness statement (which I will refer to as "C" followed by the appropriate page number where necessary); the Respondent's bundle running to 137 pages (which I will refer to as "R" followed by the appropriate page number where necessary); Mr Al-Naimi's pay-slips dated 28 February 2021 and 31 March 2021; and Mr Al-Naimi's witness statement consisting of 5 pages.
16. I heard evidence from the Claimant and Mr Al-Naimi on behalf of the Respondent by way of written evidence and in oral testimony.
17. At the end of the evidence I heard oral submissions from both parties which I do not propose to set out in this Judgment but have taken into account fully in reaching my decision.

### **My findings**

18. I decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that I failed to consider it.
19. I have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties. Indeed, the majority of the evidence presented to me both in testimony and in documents was irrelevant.
20. The Claimant was employed by the Respondent as Company Secretary from 10 July 2002 onwards. She is the wife of Mr Al-Naimi, who is the sole Director of the Respondent company. She does not have a written contract of employment or a statement of terms and conditions of employment as required by sections 1 and 4 of the Employment Rights Act 1996.
21. The Claimant and Mr Al-Naimi commenced divorce proceedings in October 2020 and whilst this was placed on hold for a short attempt at reconciliation, the proceedings recommenced in October 2021. As I have said, there is a high level of acrimony between the parties which I have chosen not to record here simply because it is not relevant to the issues that I have to determine.
22. The Claimant was paid monthly in arrears on the last day of the month. I referred to the pay slips for the relevant period at C42-48. The Claimant's position is that for the period of time that this Claim is concerned about her basic salary was agreed to be £2,400 per month gross and that from October 2021 onwards it was paid at a reduced amount without her agreement. She believes that this is retributory action by Mr Al-Naimi as a result of the divorce proceedings. Equally, Mr Al-Naimi believes that the Claimant has brought her Claim for this same reason. However, this is not a relevant consideration for the matter before me.
23. The total amount she should have received as salary during the period in question is £2,400 multiplied by 8 months = £19,200.
24. The salary she received during the period in question is as follows:

2021

October	£1050
November	£1050
December	Not provided but the Claimant's received payment of £1050

2022

January	£1050
February	£1050
March	£1400
April	£1400
May	£1400

Total                    £9,450

25. The most the short fall in the Claimant's wages can be for the relevant period is therefore £19,200 minus £9,450 = £9,750.
26. The Respondent's position is that the Claimant's wages varied according to the hours that she worked. However, the pay slips reveal that apart from a short period of time between October 2020 and March 2021 and in September 2021, her salary remained static. Whilst the Claimant said that she had complained about reductions in her salary prior to the period that the Claim covers and that as a result she was put on Furlough, these are not matters relevant to the matter before me. The Claimant asserted that her basic salary at the material time was £2,400 and the Respondent did not dispute this. Its position, through Mr Al-Naimi is that the Claimant verbally agreed to the reduction in her salary as a result of the reduction in work during the height of the Covid-19 pandemic.
27. The Respondent therefore avers that the Claimant has not suffered any unauthorised deductions from her wages.
28. I was not provided with any documents indicating that the Claimant had, prior to the reduction in her salary, signified in writing her agreement or consent to the reductions or any written documents indicating that her entitlement to salary had been varied. Indeed, both parties agreed that there was nothing in writing as to the variation of salary.

### **Relevant law**

29. Unauthorised deductions from wages are governed by Part II of the Employment Rights Act 1996 ("ERA"). Section 13 ERA prevents an employer from making any deduction from the wages of workers unless it is:
  - a) authorised by statute. This enables the employer to deduct from wages the PAYE tax and National Insurance payments as required by law or payments following a court order;
  - b) authorised by a "relevant provision in the contract". There is no requirement that the term of the contract should be in writing, and the term in question can be an implied rather than express term. However, it is necessary for the employer to have notified the worker in writing of the existence of the term before making the deduction; or
  - c) previously agreed in writing by the worker that the deduction may be made.
30. Where the total amount of any wages that are paid by an employer to a worker is less than the total amount of the wages that are properly payable to the worker on that occasion, the amount of the deficiency will be treated as a deduction made by the employer from the worker's wages.
31. Under section 23 ERA, a worker can make a claim to the Employment Tribunal asking for a declaration that the employer has made unauthorised deductions and an order that the employer repay the sums deducted. To

decide whether there has been an unauthorised deduction, the Tribunal will have to consider the facts and, if necessary, decide what the contract meant. The Tribunal claim must be made within three months of the date of the deduction or, if the worker has made a payment to the employer, of the date when the payment was made, subject to allowance for the period of time that the matter is being dealt with by ACAS under the Early Conciliation process.

32. Under section 23(3) ERA, if the employer made a series of deductions, the time limit runs from the last deduction. In this situation, a claim could be made for deductions going back more than three months, eg for an ongoing reduction of wages which has not been agreed.
33. The Employment Appeal Tribunal (“EAT”) has said that there cannot be more than three months between each deduction in a series (in Bear Scotland Ltd and others v Fulton and others; Hertel (UK) Ltd v Woods and others; Amec Group Ltd v Law and others [2015] IRLR 15, EAT; confirmed by a later EAT in the same case, Fulton & Baxter v Bear Scotland Ltd).
34. However, the Northern Ireland Court of Appeal (“NICA”) in Chief Constable of the Police Service of Northern Ireland and Northern Ireland Policing Board v Agnew and others [2019] NICA 32 has disagreed and whilst its Judgment is only a persuasive authority, it is difficult to see how the wording of the legislation supports the Employment Appeal Tribunal’s view. Whilst NICA Judgments are not binding in England, Wales and Scotland, but are persuasive.

### **My conclusions**

35. Turning to the matter before me and considering my above findings of fact. What was properly payable to the Claimant was £2,400 per month gross. During October 2021 to May 2022 she received less than was properly payable and the reason for those deductions does not fall within section 13 of the Employment Rights Act 1996 as set out above.
36. In the circumstances, the reduction of the Claimant’s wages during October 2021 to May 2022 amounts to a series of unauthorised deductions and I award her the sum of £9,750 gross payable by the Respondent.

Employment Judge Tsamados  
21 November 2022

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