



EMPLOYMENT TRIBUNALS

Claimant: Mr G Attah

Respondent: Royal Free London NHS Foundation Trust

Heard at: London Central

On: 15 December 2022

**Before: Tribunal Judge J E Plowright acting as an Employment Judge
(sitting alone)**

Appearances

For the Claimant: In person

For the Respondent: Ms Crawshay-Williams (Counsel)

JUDGMENT

1. The respondent's name is amended from 'Royal Free Hospital NHS Trust' to 'Royal Free London NHS Foundation Trust'.
2. The respondent made an unauthorised deduction from wages by failing to pay the claimant wages due to him and is ordered to pay the claimant the sum of £524.17.
3. The claim for breach of a duty of care as a result of negligence (also referred to as anxiety and stress/injury to feelings) is dismissed.

REASONS

Claims and Issues

1. The claimant worked as a Clinical Pathway Administrator for the respondent, which is a National Health Service Foundation Trust. The claimant has brought claims for unauthorised deduction of wages and anxiety and stress (which have also been referred to as negligence as a result of a breach of duty of care and injury to feelings).
2. The issues in the case are as follows:
 - 2.1 Did the respondent fail to pay the claimant wages that were lawfully owed to him?
 - 2.2 Is the claimant entitled to compensation for anxiety and stress (which have also been referred to as negligence as a result of a breach of duty of care and injury to feelings)?

Procedure/Procedure, documents and evidence heard

3. By consent, it was agreed that the respondent's name should be amended from 'Royal Free Hospital NHS Trust' to 'Royal Free London NHS Foundation Trust'.
4. In terms of documentation, I had before me a hearing bundle containing 63 pages, a witness statement of Ms T Mason-Hambidge and written submissions prepared by Ms Crawshay-Williams.
5. I heard evidence from Ms T Mason-Hambidge (Head of Payroll, Pensions and Management Advice Services), following which I heard submissions from Ms Crawshay-Williams and the claimant.
6. At the end of the hearing, I gave an oral judgement with reasons. The claimant requested written reasons.

The Facts

7. The claimant has been employed by the respondent as a Clinical Pathway Administrator since 01 January 2016 and remains employed by the respondent.
8. On 19 July 2022, Bedfordshire Magistrates' Court sent an Attachment of Earnings Order ("the July Order") in respect of the claimant to the respondent. The July Order was for the sum of £816 and set out that the respondent must make the deductions from the employee's earnings until paid.
9. The first deduction of £411.54 was made from the claimant's August pay and is referenced in his August 2022 payslip.
10. On 08 September 2022, the claimant emailed Ms T Mason-Hambidge stating that it was unlawful to deduct the money without informing him. Ms T Mason-Hambidge responded to that email explaining that the respondent would not usually send notifications in relation to court orders as the courts would also send

a copy of the order to the employee in question. In any event, on 14 September 2022, a copy of the July Order was sent to the claimant.

11. A second deduction of £404.46 was made from the claimant's September 2022 pay and is referenced in his September 2022 payslip.
12. On 20 September 2022, the respondent received a second attachment of earnings order ("the September Order") from HM Courts and Tribunal Service in the sum of £1,170. In the section headed 'Instruction for Employer' the following is stated:

"If you have an Attachment of Earnings Order already in place for the account reference shown, please treat this as an AMENDED ORDER. The balance on this order will be the full amount outstanding including the balance remaining from the original order"
13. The account reference for the September Order is the same account reference as the one on the July Order. The September order was therefore an amendment to the July Order.
14. A third deduction of £438.21 was made from the claimant's October 2022 pay and is referenced in his October 2022 payslip.
15. A fourth deduction of £439.97 was made from the claimant's November 2022 and is referenced in his November 2022 payslip.
16. On 13 December 2022, the respondent contacted HM Courts and Tribunal Services by telephone and were informed that the September Order was a replacement of the July Order.
17. The respondent has made arrangements to rectify the issue and will make a repayment of £524.17 to the claimant in his December 2022 pay.

The Law

Unauthorised Deduction of Wages

18. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by them unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
19. Section 1 of the Attachment of Earnings Act 1971 permits a magistrates' court to make an attachment of earnings order.
20. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

Anxiety and stress/Negligence/Injury to Feelings

21. The tribunal has no jurisdiction to hear a claim for anxiety and stress/injury to feelings, arising from a claim for unauthorised deduction of wages. Furthermore,

the tribunal has no jurisdiction to hear a claim for negligence arising out of a breach of duty of care owed to an employee.

Conclusions

Unauthorised Deduction of Wages

22. The respondent acknowledges that there has been an authorised deduction from the claimant's wages in the sum of £524.17.
23. The respondent had mistakenly treated the July Order and the September Order as though they were unrelated orders and therefore had believed that the claimant had to pay £816 and £1,170. In fact, the September Order replaced the July Order and so the total sum that the respondent was lawfully entitled to deduct from the claimant's wages was £1,170.
24. As a consequence of the respondent's error, there has been an unauthorised deduction from the claimant's wages in the sum of £524.17.

Anxiety and stress/Negligence/Injury to Feelings

25. In his Claim Form, the claimant makes reference to the anxiety and stress that the deductions from his wages caused him. Although I have no doubt that these deductions did cause him anxiety and stress the tribunal has no power to make an award of damages for anxiety and stress/injury to feelings arising from an unauthorised deduction of wages.
26. At the hearing, the claimant put his case in relation to this in a different way. He sought to rely upon a 'common law' power to award damages for negligence arising out of a breach of duty of care. This was the first time that he has expressed his claim in this way. However, the tribunals powers are limited and the tribunal has no jurisdiction to hear a claim for negligence arising out of a breach of duty of care.
27. Therefore, this aspect of the claim is dismissed.

Date: 20/12/22

Tribunal Judge J E Plowright acting as an Employment Judge

Sent to the parties on:

21/12/2022

For the Tribunal: