



EMPLOYMENT TRIBUNALS

Claimant: Mr N Hanafy

Respondent: Metroline Travel Ltd

Heard at: Watford, by CVP **On:** 11 January 2023

Before: Employment Judge Maxwell
Mrs L Thompson
Mr S Woodward

Appearances

For the claimant: in person

For the respondent: Ms Nicolaou, Solicitor

JUDGMENT

With respect to his successful claim for unlawful deductions, the Claimant is entitled to be paid the gross amount of £1,017.03.

REASONS

1. In addition to the documentary and witness evidence we received on the last occasion, today we were provided with:
 - 1.1 a short bundle of documents relevant to remedy;
 - 1.2 a witness statement from Lauren Jervis, the Respondent's Assistant Payroll Manager.

Facts

2. Ms Jervis affirmed the truth of her witness statement and when the Claimant was invited to cross-examine her, it transpired he had no questions. Mr Hanafy did not disagree with her calculation, he did however wish to make a statement about the financial and emotional hardship he suffered by reason of this underpayment.

3. We accepted the evidence given by Ms Jervis and her calculation of the shortfall due to the Claimant, as set out in her witness statement between paragraphs 3 and 6, namely £1,017.03 gross.
4. In answer to questions from the Tribunal, Ms Jervis explained that the net sum it had calculated as being due to the Claimant of £736 was paid to him yesterday but the deductions for tax and National Insurance had not yet been processed. The Respondent intends to set the Claimant back upon its payroll system and generate a payslip in this regard, at which stage it will then account to HMRC for the balance.

Submissions

5. Before hearing from the parties, the Judge indicated a preliminary view on two matters:
 - 5.1 whilst the Claimant may have suffered emotional and financial hardship as a result of this underpayment, that was not something for which compensation could be awarded as a remedy for unlawful deductions;
 - 5.2 in the ordinary course, where a Claimant had been paid the correct amount through the Respondent's payroll system, with any sums deducted for tax and National Insurance having been sent to HMRC, then no order for remedy would be made but the present situation represented something of a halfway house.
6. The Claimant made representations about the emotional and financial hardship he had suffered. He explained that he had needed to receive this pay when it was due. Its absence had caused him real difficulty with regular outgoings for basic necessities such as rent, food and medicine. He said the Respondent did not tolerate mistakes by its employees and, therefore, its own mistake should not be tolerated and he deserved to be compensated. Mr Hanafy did, however, recognise these representations may not be relevant given the Judge's earlier indication.
7. Ms Nicolaou accepted the Claimant had suffered financial hardship because of this underpayment and she apologised for that on behalf the Respondent. She said the situation had now been rectified, the sum due to the Claimant paid and this would be dealt with through the Respondent's payroll, at which point tax and National Insurance would be accounted for.

Conclusion

8. The Claimant received less than was properly payable for the relevant period in the gross sum of £1,017.03.
9. Yesterday, £736 was paid to the Claimant by way of a BACS transfer.
10. The gross sum due has not, however, been processed through the Respondent's payroll, no account has yet been made to HMRC for tax and National Insurance with respect to the balance, namely £281.03.

11. In these circumstances it is appropriate that we give judgement for the Claimant on his unlawful deductions claim in the gross sum of £1,017.03.
12. Importantly, however, this judgement may be satisfied by the Respondent paying to the Claimant what it calculates is the net sum due (which it has already done) and accounting to HMRC for tax and National Insurance (which it intends to do in the next payroll run) on the balance. Furthermore, if the Claimant believes that too much has been deducted (because his liability for tax and National Insurance should be based on his current circumstances, as opposed to those in 2017 when he was still working) then he can apply to the Revenue for a refund.

EJ Maxwell

Date: 11 January 2023

Sent to the parties on:

16/2/2023

For the Tribunal Office:

NG.