



EMPLOYMENT TRIBUNALS

Claimant: CARA PHELPS

Respondent: THE MIDCOUNTIES CO-OPERATIVE SOCIETY

Heard at: Exeter (by VHS) **On:** 21 November 2022

Before: Employment Judge Oldroyd (sitting alone)

Appearances

For the Claimant: Miss Phelps (in person)

For the Respondent: Mr Curtis (of Counsel)

WRITTEN REASONS

Introduction

1. In these proceedings, commenced by ET1 dated 15 June 2022, the Claimant seeks to recover an unauthorised deduction of wages in the sum of £295.36. The Claimant says that the deduction was made at the end of her employment with the Respondent.
2. The Respondent denies the claim on the basis that it was contractually and so lawfully entitled to make the deduction.
3. The Claimant represented herself. The Respondent was represented by Mr Curtis of Counsel.
4. The Claimant did not produce a witness statement but she gave oral evidence. The Respondent relied upon the witness evidence of Stephanie Delargy, an employee of the Respondent and a Chartered Accountant who, since July 2020, has been responsible for the Respondent's payroll.

5. The parties produced a bundle that principally contained the Claimant's payslips and explanations of them.

The facts

6. The Claimant commenced her employment with the Respondent on 27 October 2007. The Claimant was a Customer Service Assistant at the Respondent's food store at Dockham Road, Cinderford, Gloucester.
7. The Claimant was initially contracted to work 16 hours. Importantly, and as from 31 October 2021, the Claimant reduced her hours by 19% and agreed to work 13 hours each week.
8. Upon serving written notice, the Claimant's employment came to an end on 17 March 2022.
9. On 8 April 2022, the Claimant received her last payslip. According to that payslip:
 - a. The Claimant worked for 39 hours at a rate of £9.23 and so equivalent to £359.97; and
 - b. The Respondent made a deduction of £57.94 being an adjustment in relation to holiday pay (about which no complaint is made).
10. On the basis of 9(a) and 9(b), the Claimant was expecting to receive wages of £302.03.
11. In fact, the Respondent made a further deduction of wages in the sum of £295.36. Consequently, the Claimant was only paid £6.67. This deduction was described in the payslip as a "Basic Weeks Adjustment". It is this deduction that the Claimant objects to and that she says was unlawful.
12. On behalf of the Respondent, Ms Delargy described the reasons for the deduction in some detail in her witness statement and by reference to the bundle. To this end, Ms Delargy described the the Respondent's payroll process in the following way:
 - a. The Respondent made payments to its employees every 4 weeks.
 - b. Each payment was intended to relate to work carried out by the employee in the 4 week period prior to the date of the payslip.
 - c. The payslip, however, was prepared two weeks before it was issued (referred to as the "payroll cut off date"). This meant that:
 - i. the first two weeks pay was always based upon the *actual* hours worked by an employee in the payroll period; but
 - ii. the second two weeks was an based upon an *estimate* of the hours that the employee was likely to work. These estimated hours were referred to by the Respondent as "basic wages". To the extent that there was an over or under estimate of basic wages, an adjustment was made in the following payslip and pay was accordingly increased or else decreased. Any increase or decrease in pay would be identified on the payslip as a "basic weeks adjustment".

- d. Ordinarily, so called basic wages were estimated by reference to an employee's contractually agreed hours. However, Ms Delargy explained that there was an exception to this and that this exception applied to the Claimant. Ms Delargy explained that as the Claimant's contractually agreed hours had decreased by less than 25% on 31 October 2021 (from 16 hours to 13 hours each week), the Claimant continued to be paid her basic wages based upon an estimate of her working 16 hours per week.
13. When this payroll process is then applied to the Claimant's final payslip of 8 April 2022, Miss Delargy explained the deduction that came to be made in her witness statement in these terms:

"For [the Claimant's] final pay payment on 8th April 2022, payroll 'cut off' date was 26th March 2022. On 8th April 2022 [the Claimant's] pay was processed as:

- (i) *Adjustments which firstly meant that two weeks assumed basic pay of £295.36 (£9.23 x 16 hours x 2 weeks) for the period 27th February 2022 to 12th March 2022 was deducted. This is the "Basic Weeks Adjustment" shown as - £295.36 on Cara's payslip (page 31). This was then replaced by pay for the actual hours worked by Cara which was £239.98 (£9.23 x 13 hours x 2 weeks) leaving a payment of minus £55.38 (Page 73)*
- (ii) *Actual pay for hours worked in two weeks between 12th March 2022 and 20th March 2022. [The Claimant] left employment on 17th March 2022 and therefore before this period ended. She worked 13 hours in this period which amounted to £119.99 (£9.23 x 13 hours) from which £57.94 was deducted as a result of Cara taking more holidays than accrued. This left a total of £62.05 which, when the negative pay of £55.38 due to adjustments was deducted, left a final payment of £6.67 as shown on the payslip of 8th April 2022 (Page 73).*
- (iii) *No projected basic pay was due for the next period as Cara's employment had terminated."*

14. A useful table, setting out how the Claimant's wages were calculated, appears at page 40 of the bundle and Ms Delargy was able to explain her statement in greater detail by reference to that table.

The law & the issue

15. Section 13 ERA 1996 enshrines the right of a worker not to suffer an unlawful deduction from wages. A deduction that is made pursuant to a relevant provision of a contract is regarded as being authorised.

16. This being so, the only issue to be determined in these proceedings is whether the deduction that was made was one which the Respondent was contractually entitled to make.

Findings

17. I fully understand why the Claimant believed that an unauthorised deduction from her wages had been made. After all, the Claimant received a payment of just over £6 for 39 hours of work owing to a deduction that was referred to as a “basic wages deduction”, but without further explanation (at that time). Indeed, it was accepted on behalf of the Respondent that the payslip was “confusing”.

18. However, Ms Delargy in her Statement and oral evidence was able to explain that the deduction that was made was one that the Respondent was entitled to make pursuant to the terms of the Claimant’s contract.

19. This being so, I am satisfied that the deduction that was made was authorised and the claim is accordingly dismissed.

Employment Judge Oldroyd

Date: 07 March 2023

Reasons sent to the parties: 21 March 2023

For the Tribunal