**EMPLOYMENT TRIBUNALS**

**Claimant:** Mr P Quanborough

**Respondent:** Lidl Great Britain Limited

**Heard at:** **Watford Employment Tribunal by CVP**

**On:** **17 April 2023**

**Before:** **Employment Judge Annand**

**Representation**

Claimant: In person
Respondent: Mr Perry, Counsel

# RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal was withdrawn by the Claimant and is dismissed.

2. The Claimant's claim for sick pay was withdrawn by the Claimant and is dismissed.

3. The Claimant's claim for unauthorised deductions from wages for 'CO: payments', which were deducted from his pay for child support at the request of the Child Maintenance Service, is not well founded and fails.

4. The Claimant's claim for unauthorised deduction from wages, in respect of the payment of his wages from the Respondent throughout his employment is not well founded and fails.

5. The Claimant's claim for unauthorised deduction from wages regarding pension contributions is not well founded and fails.

6. The Claimant's claim for wrongful dismissal is not well founded and fails.

# REASONS

## Introduction

1. The Claimant was employed by the Respondent as a Warehouse Operative working in the Respondent's Peterborough Regional Distribution Centre. His employment commenced on 5 October 2021, and his employment ended on 11 March 2022 when he was dismissed without notice.

2. By claim form presented to the Tribunal on 20 May 2022, the Claimant brought claims of unfair dismissal, breach of contract, and unauthorised deductions from wages.

3. I heard the Claimant's claims on 17 April 2023 by CVP. I was provided with a bundle of 152 pages and two witness statements. The hearing was listed for 2 hours. It appeared unlikely that the hearing could be conducted within two hours, but the parties helpfully indicated at the outset that they would be available if the hearing were to overrun. We were able to hear the evidence of both witnesses, the Claimant and Ms Shona Murray for the Respondent, and hear both parties' submissions within 3 and a half hours, and I reserved my judgment.

4. At the start of the hearing, I had a discussion with the Claimant about his claims. In his claim form, the Claimant had indicated he wished to bring a claim of unfair dismissal. On 22 June 2022, the Claimant was sent a strike out warning letter by the Tribunal (p8-9). The letter set out that under section 108 of the Employment Rights Act 1996 claimants are not entitled to bring a complaint of unfair dismissal unless they were employed for two years or more except in certain specific circumstances. The letter noted that it appeared from the Claimant's form that he was employed for less than two years and therefore the Tribunal was proposing to strike out this aspect of his claim. The Claimant was told he had until 29 June 2022 to provide reasons in writing why his complaint of unfair dismissal should not be struck out. The Claimant confirmed at the hearing that he had not provided a response to the Tribunal by that date as he had taken advice and he accepted he could not bring a claim for unfair dismissal as he had not been employed for two years. There were no documents in the bundle which suggested that the claim had previously been struck out by the Tribunal. The Claimant indicated he was content to withdraw the claim for unfair dismissal and for it to be dismissed on withdrawal.

5. The Claimant also clarified he was no longer bringing a claim for unpaid sick pay. He confirmed that this aspect of his claim was withdrawn and agreed it could be dismissed on withdrawal.

6. The Claimant indicated he was pursuing a complaint of wrongful dismissal and unauthorised deductions from wages in respect of 1) deductions made from his wages for a 'CO: payment', 2) the failure of the Respondent to pay his wages over the period of his employment, and 3) deductions made from his wages for pension contributions.

## Issues for the Tribunal to decide

7. From the discussions held with the Claimant at the start of the hearing it was clear the issues to be decided were as follows:

   a) Unauthorised deduction from wages: Whether the Respondent made unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 by a) deducting payments for child maintenance at the request of the Child Maintenance Service, b) failing to pay the Claimant his wages throughout his employment, and c) making deductions from his wages for pension contributions.

   b) Breach of contract/wrongful dismissal: Whether the Respondent has shown the Claimant fundamentally breach his contract of employment by committing an act of gross misconduct entitling it to dismiss him without notice.

## Findings of fact

8. In 2019, before the Claimant started working for the Respondent, the Claimant was informed the Secretary of State for Work and Pensions had made an application to the Magistrates Court for a liability order requiring the Claimant to pay child maintenance in the amount of £1,762.15. The Claimant was sent a summons to appear in Norwich Magistrates Court on 3 April 2019 (p49). When asked during the Tribunal hearing what had happened at the hearing in April 2019, the Claimant said the Department for Work and Pensions ("DWP") had "gone after him three times", but on each occasion "it had been withdrawn".

9. On 23 March 2020, the Claimant was informed a hearing listed in Peterborough Court House for 30 June 2020 had been postponed due to the Covid 19 pandemic. The hearing related to a complaint for committal to prison, or for an order for disqualification from holding or obtaining a driving licence, for non-payment of child support and costs of £2,506.35 (p50).

10. The documents that the Claimant provided in the Tribunal bundle showed that on 8 September 2020, the complaint for committal to prison or for an order for disqualification from holding or obtaining a driving licence for non-payment of child support and costs of £2,506.35 was withdrawn by the DWP and the Claimant was informed that this complaint was no longer pursued by the DWP (p52-53). There was no documentation provided which suggested the application for a liability order had been withdrawn by the DWP.

11. On 5 October 2021, the Claimant started working for the Respondent. His Contract of Employment stated he was employed to work 37.5 hours per week for £10.30 per hour (p102-113). The Contract of Employment was between the Claimant and "Lidl Great Britain Limited."

12. The Claimant's Contract of Employment stated at clause 6.3, "For hourly paid employees the Company operates a time bank. Overtime is calculated on a monthly basis as the number of hours you work in excess of your Contracted weekly hours (overtime). Undertime arises when you work fewer hours than your Contracted weekly hours (undertime). If undertime occurs you will be paid for your Contracted weekly hours subject to Clauses 6.4 and 6.5 below. Overtime is paid in the following month subject to Clauses 6.3, 6.4 and 6.5." Clause 6.4 stated, "Your overtime or undertime in any one month is added or deducted from your time bank. Any undertime may be deducted from your monthly salary. The Company may require you to work off any undertime during your notice period and/or deduct any undertime from your final salary payment." (p104).

13. Clauses 10.1-10.6 of the Claimant's Contract of Employment related to the pension provisions. Clause 10.1 stated, "The Company currently has a Work Save Pension Plan ("Plan"). Subject to eligibility rules contained in Part I of the Pensions Act 2008 (Pension Scheme Membership for Jobholders), you may be enrolled into the plan automatically or you may elect to join the plan depending on your circumstances…" Clause 10.2 stated, "You may opt out of membership of the Plan. To do so, you should notify the Company as soon as possible that you do not wish to be enrolled in the Plan."

14. The Contract of Employment stated at clause 14.3 that employment may be terminated without notice in the case of gross misconduct (p108). Examples of gross misconduct included, at clause 14.5 (o), "unauthorised absence and/or failure to attend work or make contact with the Company for a period of three days or more."

15. When the Claimant started work, he was informed he would be automatically enrolled in the Respondent's pension scheme after three months, unless he opted out. In the bundle was an email, dated 20 October

2021, which set out that the Claimant would be auto enrolled on 31 December 2021 (p60). The Claimant said in his oral evidence that he had received this email when he started working for the Respondent. It had been contained within a pack of documents that he had been given when his employment commenced.

16. On 28 October 2021, the Claimant's payslip shows he was paid for 142.50 hours at a rate of £10.30 per hour. The gross amount of his pay was £1,467.75. The only deduction was for £80.49 for his employee National Insurance Contribution and therefore his net pay was £1,387.26 (p138). A document in the bundle (p69), produced by the Claimant, confirmed he had received a payment in this amount on 28 October 2021. According to this document, on his bank statement, the payment showed as being from "Lidl UK Ltd".

17. Ms Murray, the Respondent's Head of Payroll and Global Mobility, explained in her oral evidence that the Respondent uses the business name "Lidl Great Britain Limited", but that the company name had changed fairly recently. She explained that GB was a commonly used abbreviation for 'Great Britain', as was the use of 'Ltd' instead of 'Limited'. It was her evidence that the payments made to the Claimant for his wages came from the Respondent.

18. On 29 November 2021, the Claimant's payslip shows he was paid for 162.50 hours at a rate of £10.30 per hour. The gross amount of his pay was £1,673.75. The only deduction was £105.21 for his employee National Insurance Contribution and therefore his net pay was £1,568.54 (p140). Again, the document in the bundle, produced by the Claimant (p69) confirmed the Claimant had received this amount into his bank account from "Lidl UK Ltd".

19. On 7 December 2021, the Respondent's payroll department was sent a letter by the DWP's Child Maintenance Service's Employer Team (p114-117). The letter enclosed an employee child maintenance DEO (Deduction from Earnings Order) payment schedule (p118-126). In the letter it stated, "We must remind you that as an employer you have a legal responsibility to comply with this schedule – and action can be taken against you if you don't. For example, a court can fine you £500 for each DEO payment that is missed." (p115). Under the heading, "DEOs added since last month" the Claimant's name was listed. In a further document titled, DEO Payment Schedule, the Claimant's name and the amount of £94.79 were set out (p122).

20. On 21 December 2021, the Claimant's payslip shows he was paid for 162.50 hours at a rate of £10.30 per hour, which came to £1,673.75 (p143). He was also paid a number of overtime payments which increased the gross

total to £1,884.75. Three deductions are shown on the payslip. The first was for his employee National Insurance Contribution (£130.53), the second was for an Advance repayment (£1.09) and the third was for a "CO: Payment" for £94.79. The deductions amounted to £226.41, and his net pay was £1,658.34. With regards to the "CO: Payment", in his witness statement, the Claimant said at paragraph 3, "I asked the Lidl payroll manager what this was, and was told it was for a Court Order from the DWP authorising a deduction from the payslip for child maintenance."

21. On 21 December 2021, the Claimant stopped attending work. In cross examination the Claimant accepted this was not because he was unwell. He also accepted he had not provided any GP sick notes covering his absence from when it started on 21 December 2021. When asked why he was absent from work, in his oral evidence he explained it was not purely because he was unhappy about the deduction for the "CO: Payment", although that was part of it. He said the main reason was that he was not getting his wages as per his contract. He said, "there was a lot going on, but it was mainly due to a dispute about pay."

22. On 31 December 2021, the Claimant was auto enrolled into the Respondent's pension scheme.

23. In his oral evidence the Claimant said he had tried to opt out of the pension scheme. Initially he said he could not opt out as it was impossible to opt out of a company "which you do not know where is". The Claimant had explained in his witness statement, "I found out my Lidl employee pension has a trading name of "Benpal" but is currently untraceable. After researching up further I spoke to Legal and General. They state they are only holding the group pension money in the name of Benpal and is not in my personal account. Legal and General state further in this matter they are not the pension manager for Lidl's employee pensions. Legal and General compliance team finally researched up and found that Benpal is a brand name of "MERCER EMPLOYEE BENEFITS LIMITED", HMCH no: 00404370 and the FCA no: 114880, which is no longer authorised by the FCA since 2015. Therefore it is untraceable to locate my Lidl pension monies or the pension management company managing such pension. The FCA and the Pension Regulator are aware." When asked again whether he had opted out of his pension, he said he had tried to in the second week of December 2021, when he had asked his management where to go. His line management had said they would contact HR. The Claimant said he was unable to contact HR directly himself as they were located in an office which required a keycode to access it and he did not have the keycode and so could not see them in person.

24. Ms Murray explained in her oral evidence that Benpal was the name of the Respondent's previous third party benefits provider but that the Respondent

had moved to using Beneflex now. She explained that if employees wished to opt out of the pension scheme, they could log into the benefit platform and opt out online, or they could write to the Respondent, could call the payroll hotline, or contact HR either by email or by the HR hub.

25. On 5 January 2022, the Claimant emailed the Respondent's Data Protection team. He made a Subject Access Request requesting a copy of "the official genuine HMCTS Court Order" which authorised the Respondent to make the "CO: payment" deduction from his wages in his December 2021 payslip (p37). The Claimant wrote in the letter that the DWP had withdrawn its case against the Claimant (p37).

26. On 21 January 2022, the Claimant's payslip showed a minus figure of 37.50 hours, which came to -£386.25 (p146). The way the Respondent's payroll system is set up means that at the end of each month an employee receives their full contracted hours that month plus or minus any monies owed from the previous month. Therefore, in December, the Claimant received his December 2021 pay, but the adjustments to the December pay, for undertime or overtime, were made in January 2022. The January payslip showed some overtime payments (which totalled £100.53) and 15 hours of holiday pay. The total net pay was -£273.12. The payslip shows an employer pension contribution of £4.25 but no employee deduction. There was no further deduction shown for a "CO: Payment" in January 2022.

27. On 15 February 2022, the Respondent's Dan Surridge began an investigation regarding the Claimant's absence from work since 21 December 2021 (p83). The reason for the investigation was the concern that the Claimant was in breach of contract by failing to attend work.

28. On 22 February 2022, as a part of the investigation, Neil Walton provided a statement of events (p82). In the statement, Mr Walton noted he had telephoned the Claimant on a few occasions after he had stopped attending work in December due to illness. He said he spoke to the Claimant on 4 January 2022, and the Claimant had been very upset about the deduction made by the Respondent to his pay in December 2021. Mr Walton said he knew nothing about it and would pass it to personnel to try to sort out. Mr Walton wrote that the second time he called the Claimant, Mr Walton had told him that there was nothing that he could do as payroll was dealing with the issue and he explained the Claimant had to return to work. Mr Walton said the Claimant refused to attend work as the Respondent was falsely taking money out of his account. He said he asked twice, and the Claimant said he would not come back to work until the matter was resolved.

29. On 22 February 2022, Mr Surridge completed his investigation report (p83-85). In the report he noted the Claimant had stopped attending work on 21 December 2021. It was noted a letter had been sent to the Claimant on 21

January 2022 to try to arrange a welfare meeting, a further letter had been sent on 27 January 2022 to try to arrange a welfare meeting, and on 8 February 2022, a third letter had been sent to invite the Claimant to an investigation meeting on 15 February 2022. The Investigation report noted Mr Walton had been interviewed on 22 February 2022. In the 'uncontested facts' section of the report, Mr Surridge had noted, "EE has not attended work since 21.12.21. EE wants Lidl to resolve his concerns with child maintenance deductions. Lidl are obliged to make these child maintenance deductions." Under the 'facts established' section of the form, Mr Surridge had noted, "PZE records show that EE has not attended work since last shift of 21/12/2021. EE has provided no evidence of sickness. EE is now AWOL – regular contact has been made to confirm non-attendance." The report proposed the matter proceed to a disciplinary hearing.

30. On 23 February 2022, the Claimant wrote the Respondent a letter, titled "Letter before court claim" (p42-43). In the letter the Claimant suggested he may take action in the county court over the Respondent's failure to respond to his Subject Access Request. He again requested a copy of the HMCTS court order which permitted the Respondent to make a deduction from his wages.

31. On 24 February 2022, the Claimant was sent a letter from the Respondent's Martin Gregory, Acting ATMPA (p76-77). The letter noted that following an investigation meeting chaired by Daniel Surridge on 15 February 2022, which the Claimant had been invited to but had failed to attend, it had been decided that a disciplinary hearing would be held. The disciplinary hearing was to consider the allegation that the Claimant had not attended work since 21 December 2021, and had not provided any self-certification or a fit note from his GP. The letter noted the Claimant was potentially in breach of contract and the allegation was considered as potential gross misconduct. The disciplinary hearing was scheduled for 3 March 2022.

32. On 25 February 2022, the Claimant's payslip for February 2022 recorded that he had not worked any hours. No payment was made. There was no deduction for a "CO: payment" recorded (p148).

33. On 1 March 2022, the Claimant was sent a further letter from the Respondent's Martin Gregory (p73-74). The letter noted that the Claimant had provided proof that he had covid and had requested the disciplinary hearing date be moved. This request to move the hearing was agreed to, and the Claimant was informed the meeting had been rescheduled for 8 March 2022. The letter noted that it was hoped the Claimant would attend in person but that as an exception to the normal policy they were willing to offer him the option to attend by phone or on Teams.

34. On 1 March 2022, the Claimant was also sent a separate letter from the Respondent's Martin Gregory (p75). The letter noted that in the Claimant's emails he had raised several concerns and he felt he had a grievance about how his employment had been handled. The letter noted he had been invited to a grievance meeting, but the Claimant had requested this be changed due to the fact he had tested positive for covid. The letter noted the grievance meeting would be rescheduled for 8 March 2022.

35. On 2 March 2022, the Respondent's Sarah Whaley, who worked in recruitment, filled in a Meeting Note form setting out the details of a telephone call she said she had with the Claimant that day (p128-129). She said the Claimant had called to speak to Martyn Gregory but that he was out of the office on annual leave. She noted the Claimant proceeded to tell her about his dissatisfaction regarding how his complaint had been dealt with. Sarah Whaley noted that she had advised she could not help as that matter was being dealt with by HR. She noted the Claimant then became aggravated and said he wanted no more communication from the Respondent, including no more letters, emails, or phone calls. He noted matters were in the hands of his solicitors and that all communication would be via his solicitor.

36. On 11 March 2022, the Claimant was sent a letter from the Respondent's Jason Harrison, Team Manager, Recycling and Distribution (p66-67). The letter related to the disciplinary hearing held on 8 March 2022, which the Claimant did not attend. The disciplinary meeting had related to the allegation that the Claimant had failed to attend work since 21 December 2021 without the company's agreement and that he had not provided any self-certification or a fit note from his GP. In the letter, Mr Harrison stated he had taken into account the fact that the Claimant had notified Sarah Whaley, a colleague in the recruitment team, that he did not want any further contact from the Respondent, he was offered the opportunity to attend the meeting by a Teams call or a telephone call, and he did not attend. The letter notified the Claimant that Mr Harrison had concluded the Claimant was in breach of contract as he had not attended work since 21 December 2021, and he was summarily dismissed for gross misconduct. He was informed of his right to appeal.

37. On 21 March 2022, the Respondent's Sarah Whaley filled in a further Meeting Note form setting out the details of a telephone call she said she had with the Claimant that day (p133-134). She recorded that the Claimant had said that despite requesting no further communication from the Respondent, a further letter had been sent by recorded delivery. This had been delivered by Royal Mail to his neighbour. His neighbour was very angry about this and proceeded to "smash the Claimant's head in". This had resulted in a serious injury to the Claimant, and he had been hospitalised for 5 days. Sarah Whaley wrote that the Claimant had said that the

Respondent was responsible for this. She further noted that the Claimant disputed that the Respondent's dismissal letter had any legal standing as it came from Lidl GB which does not exist. It was noted the Claimant said as far as he was concerned, he was still working for the Respondent, and he would be claiming 6 weeks of sick pay as he was unable to work due to his injuries.

38. On 30 March 2022, the Claimant's payslip shows he was paid £817.50 for holiday pay (p150). A deduction was made for £32.70 for an employee pension contribution, and a deduction was made for £284.37 for "CO: Payment" (this being three times £94.79 and so covering the deductions for child maintenance payments for January, February and March 2022). The net payment made to the Claimant was £227.31.

39. The Claimant said in his evidence to the Tribunal that he had received this payment of £227.31 and had asked his bank to return the payment. He said this was because his bank statement showed the payment had been made to him by "Lidl UK Ltd", and his contract of employment was with "Lidl Great Britain Limited". Therefore, he felt he had not been paid by a company which was his actual employer, and he was concerned about the legality of being paid by a company which he did not believe was registered. Ms Murray said in her evidence she was not aware if the payment of £227.31 had been returned.

40. On 1 April 2022, the Claimant contacted ACAS for early conciliation purposes, and the certificate was discharged on 13 May 2022 (p22).

41. On 8 April 2022, the Respondent received a letter from the Child Maintenance Service (p135). The letter advised the Respondent that the DWP had cancelled the Deduction from Earnings Order for the Claimant and asked the Respondent not to make any further deductions. The letter did not suggest the previous deductions had been made in error.

42. In her oral evidence, Ms Murray explained that in her experience if there had been an issue with an employer wrongly being asked to make a deduction for a child maintenance payment then the DWP would rectify that with the employee directly. This was because usually, by the time the issue was raised, the money deducted from the employee's wage would already have been paid to the DWP. She said if an error had occurred, she believed it could be corrected by the DWP through tax credits or by way of a direct refund from the DWP to the employee. She was not aware of any occasion when an employer had been asked to rectify the matter by repaying the money deducted to the employee.

43. On 26 April 2022, the Claimant was sent a letter from Assistant Team Manager, Grant Green (p136-137). The letter related to the Claimant's

grievances and covered various matters. In respect of the "CO: payment" deduction, the letter noted, "A deduction order was received and actioned correctly by the payroll department. The deduction was coded on your payslip as 'CO' which is an abbreviation of 'Court Order' and this code is used internally to help to identify different pay elements." Further, the letter noted, "We apologise for any confusion caused by our internal pay element coding of CO, however I am satisfied that the payroll department received the correct paperwork to apply the deduction as instructed by the DWP Child Maintenance Service (CMS)." It was also noted that the Claimant was sent the documents in response to his Subject Access Request on 15 February 2022 by secure file transfer. This was sent by a link from the Data Protection Team. The letter also noted that the Claimant had advised the Respondent by phone on 19 January 2022 that he would not be attending a welfare meeting that had been arranged and had instead contacted ACAS. He also stated in an email on 28 January 2022 that he was open to attending a welfare meeting but not until he had been provided with the paperwork requested in his SAR and the payslip deduction issue had been resolved.

44. On 4 May 2022, the Information Commissioner's Office upheld the Claimant's complaint that the Respondent had failed to respond to his Subject Access Request within a month (p47-48).

45. On 15 May 2022, the Claimant wrote a further letter to the Respondent, again titled, "Letter before court claim" (p44-45). He again requested a copy of the HMCTS court order which permitted the Respondent to make deductions from his wages.

46. On 20 May 2022, the Claimant presented a claim form to the Employment Tribunal (p10-21). The Claimant claimed to be owed wages, including the money which he said had been wrongfully deducted by the Respondent, a refund of his pension and 80 hours of costs dealing with the matter, two weeks sick pay, and compensation for wrongful dismissal.

47. In the Respondent's response form, the Respondent claimed that it was required to make deductions from the Claimant's wages by the Child Maintenance Service. It denied the Claimant was owed notice pay as he was summarily dismissed for gross misconduct and/or fundamental breach of contract for failing to attend work.

48. On 7 June 2022, the Respondent's Data Protection Team wrote to the Claimant regarding his Subject Access Request (p58). It noted that the Claimant had requested by his Subject Access Request a "deduction of earnings order (DEO)" or a "liability order". The email confirmed that these documents did not exist but instead the Respondent provided copies of its communication with the Child Maintenance Service.

## The relevant law

## Unauthorised deduction from wages

49. Section 13(1) of the Employment Rights Act 1996 (ERA) states, "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." As a result, there are three types of authorised deduction: (i) Deductions made by virtue of a statutory provision: section 13(1)(a), (ii) Deductions made under a "relevant provision" of the worker's contract: section 13(1)(a), and (iii) Deductions to which the worker has previously signified his or her agreement in writing: section 13(1)(b).

50. Section 14 ERA 1996 sets out a number of "excepted deductions". Section 14(3) states, "Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority."

51. In *Patel v Marquette Partners (UK) Ltd* [2009] ICR 569, EAT, the Employment Appeal Tribunal (EAT) confirmed that the term 'determination' in section 14(3) is not directed exclusively to determinations made by HM Revenue and Customs in respect of unpaid tax under Regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003, but is apt to include all decisions by which a direction is given to an employer by a public authority.

52. It is for an employer to show that one of the exemptions in section 14 applies. If the employer establishes that the exemption applies, the Tribunal does not have jurisdiction to decide the legality of the deduction or whether the employer has deducted the correct amount because the deduction is authorised, and section 13 does not apply.

53. An employee cannot bring a claim for unauthorised deductions from wages in respect of employer pension contributions. This is because employer pension contributions do not fall within the definition of "wages". Under section 27(1)(a) ERA 1996, "wages" means any sums 'payable to the worker' in connection with their employment and does not mean contributions paid to a pension provider on the worker's behalf (*University of Sunderland v Drossou* [2017] IRLR 1087). It is however likely that employee pension contributions should be treated differently. Employee pension contributions are, with the employee's consent, deducted from the

gross salary that would otherwise be payable to the employee and instead paid to the pension provider. Therefore, if an employee withdrew his or her consent, then it is likely that the deduction would be "unauthorised".

54. The time limit for bringing a claim for unauthorised deductions from wages is three months beginning with the date of payment of the wages from which the deduction was made (section 23(2)(a) ERA) with an extension for early conciliation, unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Employment Tribunal considers reasonable. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series (section 23(3) ERA).

55. In *Bear Scotland Ltd and ors v Fulton and ors* (2015) IRLR 15, EAT, Mr Justice Langstaff held that a gap of more than three months between any two deductions will break the 'series' of deductions. While in *Smith v Pimlico Plumbers Ltd* (2022) IRLR 347, CA, the Court of Appeal expressed the "strong provisional view" that *Bear Scotland Ltd and ors v Fulton* is wrong on this point, that decision has not been overturned.

**Breach of contract/Wrongful dismissal**

56. A claim for wrongful dismissal is a common law action based on breach of contract. In *Enable Care and Home Support Ltd v Pearson EAT 0366/09*, the EAT stated that where the employee claimed wrongful dismissal, the tribunal is not concerned with the reasonableness of the employer's decision to dismiss but with the factual question: Was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract?

**Conclusions**

**(1) Unauthorised deduction from wages: The 'CO payment' deduction**

57. As set out above, a claim for unauthorised deduction from wages has a three month time limit, plus the extension for ACAS early conciliation. The Claimant contacted ACAS for early conciliation purposes on 1 April 2022 (p22). This means that events which occurred after 2 January 2022 are within time. While the deduction made on 21 December 2021 for a "CO: payment" is therefore out of time, the deduction made in March 2022 (which covered the payments for January, February, and March 2022) is within time. Although the deductions made for CO payments are "a series" of deductions, there was a break of more than three months between the deduction made on 21 December 2021 and 30 March 2022. Therefore, I am of the view that, following the *Bear Scotland* case, only the deduction made from the Claimant's wages on 30 March 2022 is within time.

58. The Claimant's claim for unauthorised deduction for wages in respect of the "CO: Payment" is based on the argument that the Respondent was not entitled to deduct these payments without having a copy of a court order. The Claimant noted at paragraph 10 of his witness statement, "If they had no Court Order then Lidl Great Britain Limited had no legal right to take money off myself within my wage slip stated as "CO Payment". Lidl should have shown myself proof of such authorisation, by providing myself with a copy of such Court Order."

59. The Respondent argued that the deductions made by the Respondent, at the request of the Child Maintenance Service, are "excepted deductions" under section 14(3) ERA 1996. The deductions were made "in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority." In other words, the Respondent says since a public authority, the DWP, requested the Respondent to make these deductions, the Claimant cannot bring a claim under section 13.

60. The Respondent provided the Tribunal with the correspondence from the DWP's Child Maintenance Service. The letter, dated 7 December 2021, noted, "We must remind you that as an employer you have a legal responsibility to comply with this schedule – and action can be taken against you if you don't. For example, a court can fine you £500 for each DEO payment that is missed." (p115). The letter also enclosed an employee child maintenance DEO payment schedule (p118-126).

61. Following the case of *Patel v Marquette Partners (UK) Ltd*, which confirmed that the term 'determination' is apt to include all decisions by which a direction is given to an employer by a public authority, I accept the Respondent's argument that the deductions made fall within section 14(3) ERA 1996. The deductions were made at the request of a public authority, the DWP's Child Maintenance Service, and were made in accordance with a relevant determination of that authority, as demonstrated by the letter and the Schedule from the Child Maintenance Service dated 7 December 2021. As a result, the Tribunal does not have jurisdiction to consider the Claimant's complaint for unauthorised deduction from wages regarding these deductions because section 13 does not apply to them.

62. The Claimant's claim for unauthorised deduction from wages in respect of the CO payments which were deducted from his wages fails and is dismissed.

**(2) Unauthorised deduction from wages: Wages**

63. The Claimant's claim for unauthorised deduction from wages in relation to his pay whilst employed by the Respondent is based on the argument that he has not been paid by 'Lidl Great Britain Limited', which he says is a company that is legitimately registered with Companies House. He has argued that the Respondent also used the titles, 'Lidl UK Ltd', 'Lidl Ltd', and 'Lidl GB Ltd', which he argues are not registered companies. The Claimant argues that as no company with the title 'Lidl UK Ltd' is registered, it was unlawful for the Respondent to have paid the Claimant his wages from a bank account titled 'Lidl UK Ltd'. He said he had returned the pay he received in March 2022 because he was concerned that he would be engaging in money laundering if he were to receive money from an unregistered company. In his closing submissions the Claimant explained he wanted the Tribunal to order that he be paid his wages, and that it was for the Respondent to claw back the other income already paid to him by 'Lidl UK Ltd'.

64. The Respondent's position is that the Claimant was employed by Lidl Great Britain Limited. The amounts shown on his payslips tallied with the amounts the Claimant accepted had been paid into his bank account. Therefore, the Claimant had been paid in full for the work he had done and there had been no deduction at all, and certainly not an unauthorised deduction. The Respondent argued in closing submissions that it did not matter if the payments to the Claimant had been made from an account with the name "Lidl UK Ltd". Mr Perry further noted that the fact that the Claimant had returned the payment in March 2022 for £227.31 was irrelevant, as the Respondent had not made a "deduction".

65. I accept the Respondent's argument. The Claimant was paid the amounts he was owed by the Respondent in accordance with his payslips. The money was paid to the Claimant by the Respondent. The fact that the payment showed as being from 'Lidl UK Ltd' on the Claimant's bank statement, rather than from 'Lidl Great Britain Limited' does not mean that he has not been paid. There has therefore been no "deduction". The fact that the Claimant chose to voluntarily return the payment made to him in March 2022 does not change the position. This was the Claimant's decision, and he did this of his own volition, but the Respondent did not 'deduct' an amount from the Claimant's wages. The Claimant's claim for unauthorised deductions from wages in respect of his wages from the Respondent throughout his employment fails.

**(3) Unauthorised deduction from wages: Pension payments**

66. As noted above, the Claimant cannot bring a claim for unlawful deduction from wages in respect of the contribution made by his employer on his behalf to a pension provider. That is because an employer contribution does not fall within the meaning of "wages". Therefore, this part of the Claimant's

complaint relates to one deduction for £32.70 made for the employee pension contribution to the Claimant's pay in March 2022.

67. The Claimant has raised two arguments regarding why he says his pension contribution should be returned to him. The first argument was set out in his witness statement. He wrote that he had discovered that the Lidl employee pension scheme had a trading name of 'Benpal' but that the company is "untraceable". The second argument, which was raised in his oral evidence, was that he had opted out of the Respondent's pension scheme.

68. In respect of the first argument, the Respondent explained that the third party pension provider that the Respondent now uses is called Beneflex. In response to the second argument, the Respondent argued that the Claimant was informed that he was being auto enrolled in the Respondent's pension scheme. This was set out in his contract of employment, which he signed. He was also notified in the email, dated 20 October 2021, which the Claimant was provided with when he started employment, and which indicated he would be enrolled on 31 December 2021. The Respondent asserts that as the Claimant did not opt out of the pension plan, the deduction was authorised, and therefore he does not have a valid claim for unauthorised deduction from wages.

69. I do not accept the Claimant's evidence that he had notified the Respondent of his wish to opt out of the pension scheme. He did not refer to this in his claim form to the Tribunal or his witness statement. Further, his oral evidence on this point was not consistent. At first, he said he could not opt out as it was impossible to opt out of a company "which you do not know where is". Later in his oral evidence, he said he had opted out. In response to a question asked of him, he said he had tried to opt out but that he did not have sufficient access to HR and so had raised it with his line manager.

70. There were no documents in the bundle which either showed the Claimant opting out in writing, or which referred to him having tried to opt out. Ms Murray explained in her evidence that there were numerous ways in which the Claimant could have opted out of the pension plan and a number of different ways in which he could have contacted the Respondent to do so. In the bundle there was numerous records of the Claimant's communication with the Respondent, including letters and emails which he had sent them. Notes had been made by Ms Whaley, who worked in recruitment, and his previous line manager, Mr Walton, regarding conversations the Claimant had with them by telephone. None of these documents referred to the Claimant's wish to opt out of his pension. They also demonstrated that the Claimant communicated with the Respondent using a variety of different methods. It is my view that if the Claimant had wished to opt out of the pension scheme at the time, he would have put this in writing or referred to

the fact that he had tried to opt out when he complained to the Respondent about other matters.

71. As I have found that the Claimant did not opt out of the pension scheme, I accept that the deduction made in March 2022 for his employee contribution was authorised by him under a relevant provision of his contract, and therefore the Claimant's claim fails.

**(4) Wrongful dismissal**

72. The Claimant accepted he was absent from work from 21 December 2021 to 11 March 2022 when he was dismissed without notice. He accepted in his oral evidence he was not absent over this period due to illness, and he accepted he had not provided a fit note from a GP. The Claimant's explanation for his absence was that he was unhappy with the Respondent, not just because of the deduction made to his December pay at the request of the Child Maintenance Service, but also because he was unhappy about issues related to his pay generally. The Claimant's absence from work therefore fell within the example given of gross misconduct as set out in clause 14.5 (o) of the Claimant's contract of employment. The Claimant's absence was an "unauthorised absence and/or failure to attend work or make contact with the Company for a period of three days or more." Under the terms of the Claimant's contract, the Respondent was entitled to dismiss the Claimant without notice for an act of gross misconduct.

73. The Claimant's argument was that the paperwork he had been sent from the Respondent regarding his dismissal had used a mixture of different company names, and not exclusively "Lidl Great Britain Limited" and so his dismissal was not valid, and therefore he was owed notice pay. The letters sent to the Claimant on 24 February 2022 and 1 March 2022 inviting him to various meetings were noted as being from "Lidl Great Britain Ltd" in the top right hand corner of each letter, although they were signed off, "Yours sincerely, For and on behalf of Lidl Great Britain Limited". The same was true for the letter sent to the Claimant on 11 March 2022 in which he was notified of his dismissal. I find the use of the abbreviation "Ltd" in the top right hand corner of the letters makes no difference to the validity of the dismissal. The letters conveyed to the Claimant that the Respondent was inviting him to take part in a disciplinary process, and subsequently that he was dismissed.

74. I find that the Claimant's absence from work from 21 December 2021 to 11 March 2022 was an unauthorised absence from work, and amounted to gross misconduct, which justified the Respondent terminating his contract without notice. For this reason, the Claimant's claim for wrongful dismissal fails.

Employment Judge Annand

Date: 27 April 2023

JUDGMENT SENT TO THE PARTIES ON

12 May 2023

FOR THE TRIBUNAL OFFICE

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