EMPLOYMENT TRIBUNALS

Claimant: **Mr. Ashley Woods**

Respondent: **Michael Gallagher t/a GCS Group**

Heard at: **Via Cloud Video Platform (Midlands East Region)**

On: **17th April 2023**

Before: **Employment Judge Heap**

Representation
Claimant: **In Person**
Respondent: **Mr. Y Mahmood – Litigation Consultant**

This has been a remote hearing which has been consented to by the parties. A face to face hearing was not held because no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The complaint of unpaid notice pay is dismissed on withdrawal by the Claimant.

2. The complaint of unpaid holiday pay is dismissed on withdrawal by the Claimant.

3. The Respondent made an unauthorised deduction from wages in respect of unpaid statutory sick pay. No further sum is due to the Claimant given a payment made on 15th April 2023 which satisfied that complaint.

4. The Respondent made an unauthorised deduction from the Claimant's wages upon the termination of his employment and they are Ordered to pay to the Claimant the sum of **£1,769.00** made up as follows:

    a. £627.00 in respect of the sum which was unlawfully deducted; and
    b. £1,142.00 in respect of an adjustment under Section 38 Employment Act 2002.

5. No adjustment is made under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992.

REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Ashley Woods (hereinafter referred to as "The Claimant") against his now former employer, Michael Gallagher t/a GCS Group (hereinafter referred to as "The Respondent") presented by way of a Claim Form received by the Employment Tribunal on 9th January 2023 following a period of early conciliation which took place between 15th November to 27th December 2022.

2. Within that Claim Form it was sent out that the Claimant was advancing complaints about unpaid notice pay, unpaid holiday pay and unauthorised deductions from wages. The Claimant confirmed at the outset of the hearing that the box for notice pay had been ticked in error as it is common ground that he left without giving any notice and equally there was no claim in relation to unpaid holiday pay. It was agreed that both of those complaints could be dismissed on withdrawal. Insofar as the complaint of unauthorised deductions from wages was concerned, this fell into two parts. The first was in respect of non-payment of statutory sick pay ("SSP") in the sum of £99.35 for the period 22nd to 26th August 2022 and the second was in respect of the sum of £635.25 for work done in the Claimant's final week of employment between 31st October 2022 and 4th November 2022.

3. Before dealing with any evidence, I discussed with the parties the issues in respect of the remaining complaints. After doing so, there was in fact little that remained in terms of factual dispute.

4. In respect of the complaint about unpaid SSP the Respondent recently made a payment to the Claimant in the sum of £39.74 which was for two days of SSP. The Respondent's position in respect of the other three days is that those were waiting days and accordingly the Claimant was not entitled to payment for them. The Claimant did not agree that the first three days were waiting days although he did not make any representations as to why that was said not to be the case. He accepted that if the Respondent was correct about that, however, then the sum paid to him was correct and that he had received it.

5. That left the deduction of £635.25. It is not in dispute that a deduction was made from the Claimant's final wages. The final wage slip features in the bundle at page 36 and shows a deduction of £627.00. The Claimant agreed at the hearing that that sum is the correct one rather than the estimate previously set out of £635.25.

6. The Respondent's position was that they were entitled to make the deduction because the Claimant had overtaken his accrued holiday entitlement and the payment for that holiday therefore amounted to an overpayment of wages. The Respondent therefore contended that the deduction was an excepted deduction under Section 14(1)(a) Employment Rights Act 1996.

7. I raised with Mr. Mahmood whether he had considered the decision of the Employment Appeal Tribunal ("EAT") in **Hill v Chapell EAT 1250/01** which appeared to place the Respondent's case in some difficulties. I adjourned the

hearing to enable the parties to consider that decision and for any necessary instructions to be taken.

8. Mr. Mahmood accepted after that adjournment that that decision caused the Respondent difficulties and made an application to amend the Response to bring a new point that three days of leave that the Claimant had taken had not been authorised by the Respondent. That was a new point and so it was not disputed that an application to amend the Response would be required. I heard from both parties as to the application. I refused it with reasons given orally at the time. Neither party has asked that those reasons be included in this decision and so I say no more about them.

9. At Mr. Mahmood's request there was an additional adjournment to allow him to take further instructions from the Respondent given that part of his amendment application concerned the fact that if it was refused then they would have no defence to the claim. After that adjournment Mr. Mahmood indicated that the Respondent maintained the defence that the deduction was made in connection with an overpayment and was therefore lawful. He was not able, however, to square that with the decision in **Hill** or to distinguish it in any way from this claim. He indicated at that stage that the Respondent had no alternative but to concede that an unauthorised deduction had been made but that the Respondent would request written reasons. When it was discussed that no decision on the point had been made for which reasons could be given nor would there be if the issue was conceded by the Respondent the position changed and Mr. Mahmood resiled from that concession. Irrespective of the decision in **Hill** it therefore continued to be the Respondent's case that Section 14(1)(a) Employment Rights Act 1996 applied and that that legislation must override any decision made by the Employment Appeal Tribunal.

10. There were two further points which arose. The first of those was a point identified by Mr. Mahmood in the Respondent's skeleton argument as to an adjustment under Section 38 Employment Act 2002. In this regard, it is not in dispute that the Respondent failed to provide the Claimant with a statement of main terms and conditions of employment. However, it is the Respondent's position as I understand it from the submissions of Mr. Mahmood that no adjustment should be made because the Respondent provided a letter to the Claimant incorporating the main terms of employment and there was also a verbal agreement between the parties.

11. Finally, the Claimant also seeks an adjustment to any compensation awarded in the sum of 25% for a failure to comply with the ACAS Code of Practice on Grievance and Disciplinary Procedures ("The ACAS Code"). It is not in dispute that the Claimant wrote to the Respondent raising a complaint about the deduction that he had been told would be made from his wages. It is also not in dispute that the Respondent did not invite the Claimant to a meeting to discuss the issue and provided only a written response. That response did not offer the Claimant a right of appeal if he was dissatisfied with the decision made about his complaint.

12. The position of the Respondent is that there should be no adjustment because they were following legal advice as to how to respond, a written response was provided and the Claimant did not engage with the request that was made for further information.

THE HEARING

13. The claim was listed for two hours of hearing time and it was conducted by Cloud Video Platform ("CVP"). Although there were some minor technical difficulties those were able to be overcome and I am satisfied that we were able to have an effective hearing.

14. Shortly before the hearing the Respondent had revised the hearing bundle to add further documents. The Claimant had a copy of the revised bundle and had no objections to the additional inclusions. I had read that bundle in totality in advance of the hearing and have taken the documents into account where relevant and necessary.

15. The hearing was only listed for 2 hours and by the end of submissions only a short time remained. In view of that and the indication that, whatever my decision was, the Respondent would ask for written reasons it was agreed that Judgment would be reserved.

WITNESSES

16. The parties had prepared witness statements and I had already read those before the hearing commenced. The statements were from the Claimant and from Mr. Michael Gallagher and Mr. Tim Lake of the Respondent.

17. Given that there was no real dispute on the facts and this was largely a matter for submissions, I expressed a view that I did not need to hear evidence from the Claimant or, indeed, from the Respondent's witnesses save as for a limited point as to the way in which a letter from the Claimant was dealt with and whether the ACAS Code had been complied with. Mr. Mahmood indicated that Mr. Gallagher wanted to give evidence in all events in order to clarify certain matters. That evidence largely went beyond what was required to deal with the ACAS Code issue and mainly consisted of Mr. Gallagher's opinion on whether he was entitled to make a deduction from the Claimant's wages but he can nevertheless be assured that I have taken into account all that he has said.

THE LAW

18. Before turning to my findings of fact, I remind myself of the law which I am required to apply to those facts as I have found them to be.

Unauthorised deduction from wages – Section 13 Employment Rights Act 1996

19. Section 13 Employment Right Act 1996 provides for the protection of wages of a worker as follows:-

"***13 Right not to suffer unauthorised deductions.***

(1) 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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

20. It follows from that that if there is a deduction made from the wages of a worker from that which is properly payable to them, that will be an unauthorised deduction from wages unless the provisions of Section 13 are satisfied by the employer or, otherwise, if the deduction is an excepted deduction within the meaning of Section 14 Employment Rights Act 1996.

21. Section 14 Employment Rights Act 1996 provides as follows:

    "14 Excepted deductions.

    (1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

    (a) an overpayment of wages, or

    (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker.

    (2) Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

    (3) 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.

    (4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

    (a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

    (b) otherwise with the prior agreement or consent of the worker signified in writing, and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

    (5) Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

    (6) Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer".

22. One of the excepted deductions is therefore where it is made to reimburse an overpayment of wages. That issue in the context of holiday pay was considered by the Employment Appeal Tribunal in **Hill v Chapell EAT 1250/01** where determination was made as to whether an employer, by virtue of the protection of wages provisions in the Employment Rights Act 1996, could 'claw back' holiday pay on termination in the absence of a relevant agreement[1]. The pertinent part of the decision in **Hill** said this:

    "In our judgment the position is as follows. The Appellant was entitled 25 to and did receive wages for the 15 days holiday taken during her employment.

[1] The Respondent confirmed via Mr. Mahmood that there was no reliance on any suggestion that there was a relevant agreement in this case.

Credit for the extra 5 days holiday pay will only arise where there is express provision made in a relevant agreement. In those circumstances an exception is made under Section 13(1) ERA; the deduction of excess holiday pay from his/her final wage entitlement is authorised by a relevant provision of the workers contract and/or he has previously signified in writing his agreement or consent (by the relevant agreement) to the making of the deduction. Section 14(1) ERA is immaterial whether or not there is a relevant agreement. There is no "overpayment" of holiday pay. The worker is entitled to paid holiday, up to 20 days per annum, under Regulation 16(1). It is only where there is a relevant agreement providing for credit to be given to the employer for excess holiday taken that Regulation 14(4) permits the employer to recover the excess payment in accordance with Section 13(1) ERA.

We cannot accept that there is to be implied a term of the contract allowing for the deduction of excess holiday pay in circumstances where such an implied term is inconsistent with the statutory scheme of the regulations and Part II ERA.

The result may seem inequitable. Under Regulation 14, a worker who has taken less than his proportionate entitlement to leave in the 15 holiday year is entitled to pay in lieu of the "lost" holiday without more. Regulation 14(2). The employer cannot recover excess holiday pay absent a relevant agreement covering the position. However this is nothing new; it is entirely consistent with the effect of Section 13(1) ERA; see for example Potter v. Hunt Contracts Ltd [1992] ICR 337".

Adjustments under Section 38 Employment Act 2002

23. Section 38 Employment Rights Act 1996 provides as follows:

"Failure to give statement of employment particulars etc.

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(2) If in the case of proceedings to which this section applies—

(a)the employment tribunal finds in favour of the worker, but makes no award to him in respect of the claim to which the proceedings relate, and

(b)when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change or (in the case of a claim by an worker) under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday),

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b)when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by an worker) under section 41B or 41C of that Act,

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4)In subsections (2) and (3)—

(a)references to the minimum amount are to an amount equal to two weeks' pay, and

(b)references to the higher amount are to an amount equal to four weeks' pay.

(5)The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6)The amount of a week's pay of an a worker shall—

(a)be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and

(b)not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

(6A)The provisions referred to in subsection (6) shall apply for the purposes of that subsection—

(a)as if a reference to an employee were a reference to a worker; and

(b)as if a reference to an employee's contract of employment were a reference to a worker's contract of employment or other worker's contract.

(7) For the purposes of Chapter 2 of Part 14 of the Employment Rights Act 1996 as applied by subsection (6), the calculation date shall be taken to be—

(a)if the worker was employed by the employer on the date the proceedings were begun, that date, and

(b)if he was not, in the case of an employee, the effective date of termination as defined by section 97 of that Act or in the case of all other workers the date on which the termination takes effect.

(8) The Secretary of State may by order—

(a) amend Schedule 5 for the purpose of—

(i) adding a jurisdiction to the list in that Schedule, or

(ii) removing a jurisdiction from that list;

(b) make provision, in relation to a jurisdiction listed in Schedule 5, for this section not to apply to proceedings relating to claims of a description specified in the order;

(c) make provision for this section to apply, with or without modifications, as if—

(i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and

(ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes".

Uplift – Section 207A Trade Union & Labour Relations (Consolidation) Act 1992

24. Section 207A of the Trade Union and Labour Relations Consolidation Act 1992 deals with adjustments for a failure to comply with the ACAS Code and the relevant part provides as follows:

"(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions 25 listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%".

FINDINGS OF FACT

25. Given the lack of factual dispute in respect of this claim my findings of fact are necessarily brief.

26. The Claimant was employed by the Respondent as an Engineering Workshop Foreman earning £627.00 gross per week. The Claimant worked a five day working week.

27. After the Claimant had been offered employment with the Respondent Mr. Gallagher wrote a short letter of confirmation dated 4th June 2021. That letter set out the Claimant's place of employment, hours and days of work, holiday entitlement, rate of pay, sick pay and that he would be paid weekly. No

statement of initial employment particulars was and was, however, ever issued to the Claimant.

28. The Claimant resigned from employment with the Respondent on 4th November 2022. Although the relationship appears to have begun amicably it seems to have somewhat soured and by the point that the Claimant left employment it was agreed between the parties that it was preferable on both sides that he did not work his notice period.

29. On or after the termination of the Claimant's employment the Respondent wrote to him indicating that he had overtaken his annual leave entitlement, providing a breakdown and indicating that 4.47 days annual leave was due to the Respondent as a result. The letter further indicated that any SSP that was due to the Claimant would be sorted out, although that did not in fact happen until shortly before this hearing.

30. The Claimant replied to say that there was no legal basis for the Respondent to withhold his wages, that he had sought legal advice to that effect, that he expected to receive his full wages when they fell due and that if that did not occur he would commence Employment Tribunal proceedings.

31. The Respondent sought advice from Peninsula about the Claimant's letter. In accordance with that advice they wrote to the Claimant disputing that he was entitled to any further payment because he had overtaken his holiday entitlement. The Respondent queried why the Claimant believed that he was entitled to any further payment and why he had only raised the issue of SSP some time after the event. There was an indication that the SSP would be paid but that the Claimant should provide his bank details as the Respondent was uncomfortable paying money into a third party account. That was the account of the Claimant's partner into which his wages had been paid during the course of his employment.

32. The Claimant was subsequently paid on 11th November 2022. He was due to be paid the sum of £627.00. The entire amount of that payment was deducted by the Respondent.

33. The Claimant subsequently presented this claim which is now before me for determination.

<u>CONCLUSIONS</u>

34. I now turn to deal here with my conclusions in respect of each of the remaining complaints made by the Claimant.

35. I begin with the complaint about SSP. Originally, the Respondent contended that the Tribunal had no jurisdiction to entertain this part of the claim because that lay with HMRC. However, I do not need to determine that – nor a new point raised for the first time in Mr. Mahmood's skeleton argument that the Claimant had not complied with reporting requirements - because payment has now in fact been made in all events. Whilst the sum paid is less than the Claimant was claiming entitlement to, I am satisfied that the Claimant was only entitled to payment for the final two days of his sickness absence because Mr. Mahmood is correct that the first three days were waiting days for which there was no requirement for the

Respondent to make payment. There is no dispute that the sum paid to the Claimant was the correct payment for two days of SSP.

36. Given that that sum was not paid to the Claimant when it should have fallen due to be paid there was an unauthorised deduction from the Claimant's wages but no Order for any additional monies to be paid by the Respondent is made because they have already made the relevant payment shortly before the hearing.

37. I turn then to the complaint of unauthorised deductions from wages concerning the payment which was due to the Claimant on 11th November 2022. There is no dispute that there was an amount of £627.00 which was properly due to be paid to the Claimant on that date in respect of wages for his final week of work. There is also no dispute that that amount was deducted.

38. That leaves then the Respondent's defence that the deduction was an excepted deduction because it was made in respect of an overpayment. The problem with that defence, as already indicated above, is the decision in **Hill**. Mr. Mahmood cannot distinguish that case from this one and the only submission made is that Section 14 Employment Rights Act must trump the decision of the EAT. There is an inherent difficulty with that position. Firstly, the EAT specifically considered Section 14 and secondly, even if I disagreed with the decision in **Hill** (and incidentally I do not) it is nevertheless binding on me and I am bound to follow it.

39. It follows that the payment of holiday pay to the Claimant was just that – a payment – and not an overpayment and so the Respondent cannot avail themselves of the defence under Section 14(1)(a) Employment Rights Act. It therefore also follows that in making the deduction, the Respondent made an unauthorised deduction from the Claimant's wages.

40. Whilst I recognise that the Respondent has a considerable strength of feeling that the Claimant is not owed any further payment – a matter which was very clear from the evidence of Mr. Gallagher – I am bound to apply the law and not what the Respondent may consider the moral position to be. Had the Respondent had a relevant agreement in place which allowed a clawback of overtaken holiday pay the position would have been very different but that was not the case and a belief that they had a moral entitlement to make the deduction is not enough.

41. Having determined that complaint in favour of the Claimant I am obligated under Section 38 Employment Act 2002 to make an adjustment to the sum awarded. I say obligated because it is clear from Section 38(3) that a Tribunal **must** (my emphasis) award two week's pay and it may make an award of the higher amount of 4 weeks' pay if it considers it to be just and equitable to do so. That is unless there are any exceptional circumstances which make it unjust or inequitable to do so. Although Mr. Mahmood has made a commendable attempt to seek to dissuade me from making any adjustment, to any extent that his submissions were intended to suggest that there were exceptional circumstances I am not at all persuaded that there were.

42. It was well within the Respondent's gift to have issued an appropriate statement of initial employment particulars.

43. The letter that was provided by the Respondent was not compliant with the requirements of Section 1 Employment Rights Act in a number of ways. Particularly, it did not provide the date on which employment was to begin and so did not comply with the requirements of Section 1(3)(b), it did not set out sufficient detail for accrued holiday pay to be calculated on termination of employment so that it did not comply with the requirements of Section 1(4)(d)(i) and it did not set out details of the pension arrangements applicable to the Claimant and so did not comply with Section 1(4)(d)(iii). It is not an answer to say that there was an oral discussion about the terms of employment because it is plain from Section 1 that the entitlement is to a written statement not a combination of written and oral agreement.

44. That said, the fact that the Respondent did set out in their letter to the Claimant a number of what might be said to be the more key terms of his employment and the fact that they are not a large employer with any form of dedicated Human Resources ("HR") function are such that it is appropriate only to adjust the award by two weeks pay and it is not just and equitable to award the higher amount. The amount of each of those weeks pay is not the Claimant's usual rate of remuneration but is limited to the cap on a weeks pay in force at the time which in this case was £571.00 per week.

45. Finally, I turn to the question of whether there should be any adjustment to the award in respect of any failure to comply with the ACAS Code. It is common ground that following the Claimant's letter the Respondent did not invite him to a meeting and did not offer a right of appeal against the decision taken by Mr. Gallagher. However, any failure to do that must be an unreasonable failure so as to attract an adjustment.

46. I am not satisfied that the failure to deal with matters in the way set out in the ACAS Code was in these circumstances unreasonable on the part of the Respondent. That is firstly because it is plain that the Respondent does not have any real HR experience. They instead relied on advice received from Peninsula as to how to deal with the issues raised by the Claimant. Moreover, it is not immediately plain that the Claimant's letter should have been viewed as being a grievance. It came as a reply to the letter from Mr. Gallagher in response to an issue that had not yet taken place. It was essentially a shot across the bows that Mr. Gallagher should not make a deduction from the Claimant's final wages which had not at that stage been paid or he would commence Employment Tribunal proceedings. The letter was not ignored and was the subject of a response from Mr. Gallagher, including requests for further information which the Claimant did not engage with. For all those reasons I am satisfied that there was not an unreasonable failure to follow the ACAS Code such that compensation should not be adjusted under Section 207A Trade Union & Labour Relations (Consolidation) Act.

47. However, even had I reached a different conclusion and found that there was an unreasonable failure I would not have made an adjustment in all events because I would have to have determined that it was just and equitable to do so. In these circumstances, it would not be because the Claimant did have a response and given his lack of engagement thereafter it is not clear what benefit holding a meeting or offering a right of appeal would have served. It is clear that these proceedings would not have been avoided because the Respondent was being advised that they were entitled to make the deduction from the Claimant's wages.

48. For all of these reasons, I decline to make any adjustment to the sum Ordered to be paid by the Respondent under Section 207A Trade Union & Labour Relations (Consolidation) Act.

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Employment Judge Heap

Date: 20th April 2023

Note:

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.