



EMPLOYMENT TRIBUNALS

Claimant: Mr A Pajpani

Respondent: (1) Alexander Mann Solutions Limited
(2) United Kingdom Health Security Agency
(3) DNS Umbrella Limited

Heard at: Watford (via CVP) **On:** 24 March 2023

Before: Employment Judge S Connolly

Representation

Claimant: In person

Third Respondent: Mr Forrester (Solicitor)

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The Third Respondent made an unlawful deduction from the Claimant's wages by deducting Employer's National Insurance contributions and the Apprenticeship Levy during his assignment from 2 March 2021 until 27 May 2022.
2. The Third Respondent is ordered to pay to the Claimant the sum of the sum of £29,885.12.
3. The Third Respondent shall be entitled to make deductions for income tax and Employee's National insurance before payment.

REASONS

Claims and Issues

1. The Claimant was engaged on an assignment for the Second Respondent between 2 March 2021 and 27 May 2022.
2. As part of this process, he entered into an employment contract with the Third Respondent, an umbrella company, and this was signed by the claimant on 5 March 2021.
3. The Third Respondent made deductions to the sums payable to the Claimant for Employer's National Insurance and the Apprenticeship Levy. This amounted to a

sum of £513.49 per week during the assignment. These sums were calculated by the Claimant and the Third Respondent agreed that the sums were accurate.

4. The Claimant claims Unauthorised Deduction from Wages pursuant to Section 13 of the Employment Rights Act 1996
5. The Third Respondent's position in the ET3 was that these deductions were authorised as they were required to be deducted by law. At the hearing, the Third Respondent advanced an additional argument that the deductions were authorised by the Claimant's contract.
6. The Tribunal discussed with the parties the Legal Issues to be considered in determining the case. These can be summarised as follows:
 - a. Was the claim presented in time?
 - b. Was the Claimant an employee or a worker entitled him to bring this claim?
 - c. Is the claim in respect of wages?
 - d. Has the employer made a deduction?
 - e. If the wages were deducted, was the deduction authorised or exempt?
 - f. What payment, if any, is owed?

Procedure, documents and evidence heard

7. The hearing was conducted via video. There were no technical issues during the hearing.
8. At the outset of the hearing, the Tribunal heard applications on behalf of the First Respondent and Second Respondent requesting that the Claimant's claims against them should be struck out as these Respondents had no contractual relationship with the Claimant and had made no deductions from his wages. The Tribunal granted these applications, and the hearing went ahead to consider the Claimant's claim against the Third Respondent.
9. The Claimant represented himself. The Third Respondent was represented by Mr Forrester.
10. I had the benefit of a Bundle of documents. The Claimant provided a witness statement and gave evidence in person. Mr Agarwal (Senior Tax Manager) provided a witness statement and gave evidence in person on behalf of the Third Respondent.

Fact Finding

11. The Claimant was engaged on an assignment for the Second Respondent between 2 March 2021 and 27 May 2022.
12. As part of this process, he entered into an employment contract with the Third Respondent, an umbrella company, and this was signed by the claimant on 5 March 2021 after some negotiation between the parties.
13. The Third Respondent made deductions to the sums payable to the Claimant for Employer's National Insurance and the Apprenticeship Levy. This amounted to a sum of £513.49 per week during the assignment. This sum was calculated by the Claimant and the Third Respondent agreed that the sums were accurate.
14. The Claimant was aware that these sums were being deducted and indeed chased the Third Respondent on a number of occasions inquiring about how the Apprenticeship Levy was being spent.

15. The Claimant was later advised by his accountant about the potential for these deductions to be challenged as unlawful. The Claimant initially raised the issue with all three Respondents, but it was not resolved.
16. The Claimant contacted ACAS on 20 May 2022 and, following completion of the ACAS Early Conciliation process, submitted his ET1 on 6 July 2022.
17. The key documents referred to by the parties were as set out below:
 - a. The Claimant's Contract of Employment with the Third Respondent, signed by the Claimant on 5 March 2021 ("Contract of Employment") – page 146 of the Bundle;
 - b. Email from the First Respondent dated 23 February 2021 summarising the terms of the Claimant's compensation in relation to his assignment (First Respondent Email") – page 199 of the Bundle; and
 - c. Key Information Document provided to the Claimant by the Third Respondent before the commencement of his assignment on 2 March 2021 ("Key Information Document") – page 167 of the Bundle.
18. The Claimant accepted that he signed the Contract of Employment and that he received the First Respondent email and the Key Information Document.
19. Clause 3.11 of the Contract of Employment stated: "We will make all necessary deductions from your salary as required by law".
20. The material section of the First Respondent email has a heading labelled "Rate" and this stated "£800 per day on an umbrella company basis". The term "on an umbrella company basis" was not specifically defined anywhere in documents presented to the Tribunal.
21. The material sections of the Key Information Document are as follows:
 - a. Under the heading: "Intermediary or Umbrella Company Pay Information" it states: "The money earned on your assignments will be transferred to the umbrella company as part of their income. They will then pay you your wage. All the deductions made which impact your wage are listed below."
 - b. In the sections below, there was a heading "Deductions from umbrella income required by law" and a list which included "Apprenticeship Levy" and "Employers National Insurance (NIERS)"
 - c. The Key Information Document also included an example calculation which included deductions.
22. In his evidence, the Claimant accepted that the Apprenticeship Levy and Employer's National Insurance were lawful – but that they should not have been deducted from his wages. Mr Forrester appeared to suggest that the Claimant accepted that these were lawful deductions. However, the Tribunal does not accept that this was the Claimant's evidence. The Claimant was very clear that whilst they may have been legitimate payments that an employer needed to make, these deductions could not be lawfully made from an employee's wages and that they should not have been deducted from his.
23. The Claimant did not take advice on his engagement with the Third Respondent and said that he said that he did not understand what being paid "on an umbrella company basis" meant. He said that this was not defined anywhere in any of the documentation between any between him or any of the Respondents. The Third Respondent suggested to the Claimant that this was a usual umbrella company model and it was plain from the documents provided what this meant and what

deductions were going to be made. Mr Agarwal suggested that umbrella income received by Third Respondent should be distinguished from the wages payable to the Claimant, which is paid after deductions from the umbrella income.

24. The Tribunal accepts the Claimant's evidence that he did not know that the term "on an umbrella company basis" meant that deductions for Apprenticeship Levy and Employer's National Insurance would be made from his agreed rate.

The Law

Unauthorised Deduction from Wages

25. Section 13(1) provides the right for a worker not to suffer an unauthorised deduction from wages:

13Right 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.

26. Section 23 of the Employment Rights Act 1996 provides a worker with the right to bring a complaint to the Employment Tribunal:

23Complaints to employment tribunal.

(1)A worker may present a complaint to an employment tribunal—

(a)that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b)that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c)that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d)that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

27. Section 27 provides a definition of wages for the purposes of these claims.

Conclusions

General

- a. Was the claim presented in time?

28. The Claimant was engaged on an assignment for the Second Respondent

between 2 March 2021 and 27 May 2022. The Claimant contacted ACAS on 20 May 2022 and, following completion of the ACAS Early Conciliation process, submitted his ET1 on 6 July 2022. The claim was therefore presented in time.

- b. Was the Claimant an employee or a worker entitling him to bring this claim?
- 29. The Claimant had a contract of employment with the Third Respondent. As an employee, he is entitled to bring these claims.
- c. Is the claim in respect of wages?
- 30. The parties made no submissions to suggest that the claim was not in respect of wages. The Claimant's claim was in relation to deduction from an agreed rate for work to be undertaken by him. The Tribunal therefore concludes that the claim is in respect of wages for the purposes section 27 of the Employment Rights Act 1996.
- d. Has the employer made a deduction?
- 31. It was accepted by the Third Respondent that the alleged deductions had been made and the Tribunal concludes that the Third Respondent did make a deduction
- e. Was the deduction authorised or exempt?
- 32. This was the key area of dispute between the parties and is addressed below.

Claimant's Submissions:

- 33. The Claimant accepted that deductions for Apprenticeship Levy and Employer's National Insurance contributions were made. However, he submits that these are unlawful deductions from his wages. He said that this was raised by his accountant as an incidental part of a wider discussion and that initially the Claimant dismissed his accountant's views.
- 34. The Claimant accepted that he signed the Contract of Employment and that he received the First Respondent email and the Key Information Document. However, he did not accept that the position was clear. He said that he did not take advice on his engagement with an umbrella company but said that he did not understand what being paid "on an umbrella company basis" meant. He submitted that this term was not defined anywhere in any of the documentation between any between him or any of the Respondents.
- 35. The Claimant said that references in the documents to Apprenticeship Levy and Employer's National Insurance deductions being "required by law" are untrue at best and were designed to mislead individuals into thinking these were permitted. He said that this was terminology designed by the Third Respondent to avoid their obligations. He accepted that employees should be responsible for income tax and Employee's National Insurance contributions.
- 36. The Claimant said that deductions for Apprenticeship Levy and Employers National Insurance contributions are prohibited by the Social Security Contributions and Benefits Act 1992. He wasn't able to point me to any relevant section, so I have not attached significant weight to this argument.
- 37. The claimant referred the Tribunal to 2 cases: *P Weldon v 6 Cats UK* 2410288/2019 and *Mr Blakely v On-site Heritage Solutions* EAT UAEAT013417/DA

38. The *Weldon* case is a short form judgement which does not have written reasons or detailed analysis of the arguments. The Tribunal has therefore not attached any weight to this document.
39. *Blakely* is an EAT case which does refer to a similar situation. However, the dispute in that matter was focused on whether the claimant was an employee or a worker of the parties and that issue was not in dispute here. The Tribunal has therefore not attached significant weight to this case.

Third Respondent's submissions:

40. In relation to whether the deductions are authorised by statute, Mr Forrester submitted that this is a clear case where the deductions have a statutory basis and this is not a case like training fees, for example, where there is a debate. He submitted that the Claimant has accepted that the deductions are lawful but that they shouldn't be made from his daily rate. Mr Forrester made a brief reference to the deductions for Apprenticeship Levy being authorised by the Finance Act 2016 but did not elaborate on this argument. Mr Forrester added that the Claimant has only submitted his claim because he doesn't like paying so much tax.
41. In relation to whether the deductions are authorised by the contractual documents, Mr Forrester submitted that the documents were very clear:
- a. He referred to clause 3.11 of the Contract of Employment which stated that: "We will make all necessary deductions from your salary as required by law". It was also emphasised that the Claimant negotiated some terms of the Contract of Employment before signing it on 5 March 2021.
 - b. Mr Forrester referenced the First Respondent Email and submitted that the sentence "£800 per day on an umbrella company basis" also made it clear that the deductions would be made.
 - c. Mr Forrester also referred to the Key Information Document. He said the relevant sections were clear and set out the deductions that would be made under the arrangement with the Claimant and that this included deductions for Apprenticeship Levy and Employer's National Insurance.
42. Mr Forrester submitted that the combination of these documents made it as clear as day that deductions for Apprenticeship Levy and Employers National Insurance would be made and that this position was clear to the Claimant before he commenced his engagement. It was added that the Claimant was well aware that these deductions were being made and this was evidenced by the Claimant chasing the Third Respondent on several occasions to ensure that the Apprenticeship Levy was being properly spent.

Are these deductions authorised by virtue of a statutory provision?

43. The Third Respondent has not provided evidence or detailed argument to support why these deductions are permitted or required by statute. The Third Respondent referred briefly to the Finance Act 2016 as authority for deductions in relation to the Apprenticeship Levy but the Tribunal does not accept that the Finance Act 2016 gives such authority to deduct the Apprenticeship Levy from payments payable to employees or workers.
44. The Third Respondent has also referred to clause 3.11 of the Contract of Employment and the fact that Apprenticeship Levy and Employer's National Insurance are not disputed as legitimate deductions. The Tribunal accepts that Apprenticeship Levy and Employer's National Insurance are legitimate payments

that an Employer may have to make but it does not follow that it is authorised to be deducted from payments to employees or workers.

45. Therefore, the Tribunal does not accept that deductions for Apprenticeship Levy and Employer's National Insurance are lawful deductions authorised by a statutory provision.

Are these deductions authorised by a provision in the Claimant's Contract?

46. The Third Respondent argues that the deductions are clearly authorised by the Contract of Employment, the First Respondent Email and the Key Information Document, all of which were provided to the Claimant before his assignment commenced on 2 March 2021. The Third Respondent did not submit that the First Respondent Email or the Key Information Document formed part of the Contract of Employment.

47. Clause 3.11 of the Contract of Employment only refers to deductions required by law, so it does not assist with this argument. The Tribunal accepts that the other documents provide some helpful detail which support the Third Respondent's case. This includes the key sections set out above. The Key Information Document does set out that deductions will be made, and the Tribunal accepts that the deductions made from the Claimant's wages were broadly on the basis of the documents provided and the example set out.

48. However, the Tribunal does not accept that the position in relation to deductions or the contractual authority to do so was made sufficiently clear to the Claimant. In particular, the Tribunal accepts the Claimant's evidence that the reference to being paid "on an umbrella company basis" was unclear and did not give the Claimant sufficient information about the deductions that would be made to his wages.

49. The Tribunal does accept that the Claimant was aware once the deductions were actually made but the Tribunal does not consider that this prevents the claimant from submitting a statutory claim under Section 13 of the Employment Rights Act 1996 for unauthorised deductions given that there was no contractual basis for them. His claim was submitted in time.

50. The Tribunal has considered the ambiguity in the various documents in relation to the deductions that would be made, in particular the Third Respondent's reliance on the statement that the Claimant would be paid "on an umbrella company basis". The Tribunal considers that this ambiguity should be construed against the Third Respondent under the well- established "contra proferentem" rule of construction in contract law. This provides that any ambiguity in a provision should be resolved against the party who seeks to rely on it. In this case, the Third Respondent has not done enough to make the basis of the deductions clear to the Claimant.

- f. What payment, if any, is owed?

51. The Third Respondent deducted the sum of £513.49 per week in relation to Apprenticeship Levy and Employer's National Insurance Contributions throughout the Claimant's assignment (from 2 March 2021 to 27 May 2022). On this basis, the Claimant is owed the sum of £29,885.12.

S Connolly

Employment Judge S Connolly

3 May 2023

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

23 May 2023

GDJ
FOR THE TRIBUNAL OFFICE