



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Rajarvari

**Respondent:** KZ Catering Ltd

**Heard at:** London South, in public, by CVP

**On:** 2 October 2023

**Before:** Employment Judge Tsamados (sitting alone)

## Representation

**Claimant:** In person (with his wife in attendance)

**Respondent:** Mr D James, Solicitor

## REASONS

These reasons are provided at the request of the respondent.

1. The claimant has brought a claim of unauthorised deduction from wages. This is governed by section 13 of the Employment Rights Act 1996.
2. Unfortunately, the claimant is in reality seeking his unpaid wages both prior to and after the date that the Tribunal received his claim form and in addition raises matters that do not form part of that claim and over which the Tribunal has no powers to deal with.
3. The claim that he has brought can only relate to unauthorised deductions from wages that occurred in the past. That is prior to the date he presented his claim, which was 8 February 2023. This means any underpayment of his wages at less than the amounts that were lawfully payable to him and what he actually received, and there being no legal authorisation not to pay these amounts.
4. The claimant's position is that he raised matters of concern about his working conditions on 18 January 2023 and was sent home. He was subsequently certified unfit to work due to shoulder pains initially by a self certificate and then by his GP but was not paid his wages. The claimant believes that the tribunal has the power to award him his lost wages up-to-date whilst he was off sick, his inability to work had been caused by his working conditions.
5. I explained that I can only deal with past underpayments of wages occurring before the date his claim was received, I have no power to deal with any underpayments of wages occurring after that date and I certainly have no power to deal with what in reality was either an industrial injury or personal injury claim. I cannot deal with what might be an ongoing breach of contract

claim because the claimant is still employed by the respondent. I told him that with regard to those matters he would need to seek advice and that they could only be brought in the County Court.

6. Turning to the matter I can deal with, I heard unsworn evidence from the claimant and Mr James responded by reference to the documents in the bundle. From this I make the following findings relevant to the matter before me.
7. The claimant started working for the respondent on 11 October 2001 as a Cook. His employment is still continuing. The respondent operates franchised outlets of KFC. The claimant worked at the KFC in Croydon. I was referred to his contract of employment in the bundle ("B") at page 47.
8. The claimant is paid fortnightly in arrears. Under his contract of employment at clause 10 (at B48) he was entitled to payment of statutory sick pay for periods of sickness absence and, at the Respondent's discretionary, contractual sick pay. The respondent's position is that the claimant was paid statutory sick pay and it did not exercise any discretion to pay contractual sick pay.
9. The claimant last worked, either being sent home or going home, on 18 January 2023 (there is no need to make a finding on this because it is not relevant). He then presented a statutory sick pay self certificate from 22 January 2023 indicating that his absence was due to arm and shoulder pain (B111). He then presented a statement of fitness for work for the period 30 January to 27 February 2023 indicating that he was absent from work due to shoulder pain (B112).
10. His payslips for the relevant period allowing for payment two weeks in arrears are for the period ending 10 February 2023 (which would cover 2 weeks worked from 27 January) and the period ending 27 January 2023 (which would cover 2 weeks worked from 13 January). Both are at B99. It is apparent from the earlier payslips that the claimant worked in the region of 30 hours and was paid £9.50 per hour. There is a slight variation as to the number of hours worked each period but it is apparent that the claimant got paid in the region of £290 to £300 net per fortnight.
11. The payslip for the period ending 27 January 2023 indicates that the claimant was paid in full for 30.52 hours. The payslip for the period ending 10 February 2023 shows that the claimant was paid for 0.12 hours worked and the remainder is sick pay. He received the net figure of £296.79. I do not know how the sick pay was calculated and in the absence of any evidence from either party, notably the claimant on whom the burden of proof lies, I accept that it is correct.
12. The claimant's position is that he was entitled to be paid his full wages and did not accept the contradiction of presenting GP certificates saying he was unfit to work and yet expecting to be provided with work and paid in full. From what he said, he believes that the respondent knew he was ready to return to work but offered him no work and/or he should be paid because his

shoulder pains were caused by his working conditions. But I make no finding on this as it is not relevant.

13. It appeared to me that focusing on the relevant matters that the claimant has not been paid any less than he was entitled to be paid either as his normal wages or as sick pay. There is nothing to indicate that he has any greater entitlement than that.
14. I therefore find that his claim of unauthorised deduction from wages for the period 18 January to 8 February 2023 fails.
15. I would strongly urge the claimant to seek further advice before taking any further action if he does intend to bring any further claims either in the Tribunal or the County Court.

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Employment Judge Tsamados  
Date: 1 November 2023

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