



EMPLOYMENT TRIBUNALS

Claimant: Lillian Turner
Respondent: Teen Support Services Ltd
Heard at: East London Employment Tribunal
On: 9 October 2023
Before: Employment Judge Mack

Representation

Claimant: In person
Respondent: Mr Nigel Henry (Barrister)

UPON APPLICATION made by letter dated 31 March 2023 to reconsider the judgment dated 10 March 2023 under rule 71 of the Employment Tribunals Rules of Procedure 2013, the claimant's application is successful, in that the award for unauthorised deductions from wages (annual leave) is varied. The award for unauthorised deductions from wages (sleep-in element) is confirmed.

JUDGMENT ON RECONSIDERATION

1. The respondent made unauthorised deductions from wages by failing to pay the claimant the sleep-in element of the Claimant's annual leave pay from 20 March 2020 to 18 October 2021 and is ordered to pay the claimant the sum of **£937.50**, being the total gross sum deducted.
2. The respondent made unauthorised deductions from wages by failing to pay the claimant annual leave from 20 March 2020 to 18 October 2021 and is ordered to pay to the claimant the sum of **£1,073.27**, being the total gross sum deducted.

REASONS

Background

1. This matter came before the Tribunal on 25 January 2023 to determine the Claimant's claim for unlawful dismissal and unauthorised deduction from wages.

2. Decisions as to liability were announced during the hearing on 25 January 2023. The Tribunal gave reasons for its decisions during this hearing and neither party requested written reasons.
3. Pursuant to a Case Management Order dated 27 January 2023, both parties provided the Tribunal with written representations on remedy. The Tribunal ordered the respondent to pay the claimant £937.50 for unpaid sleep-in allowances and £766.62 for unpaid annual leave. The claimant subsequently applied to the Tribunal for the Tribunal to reconsider its judgment on remedy.
4. By order of the Tribunal dated 9 August 2023 the matter duly came back before the Tribunal on 9 October 2023 for it to reconsider its judgment on remedy.

Representations

5. Both parties appeared and provided representations to the Tribunal as to the amounts that the respondent should pay to the claimant. During the course of the hearing the claimant withdrew her application for reconsideration in respect of the award for the sleep-in allowance. She pursued her application for reconsideration in respect of annual leave: she submitted that the amount for annual leave should be varied because the respondent paid her for 354 hours of holiday during the 2021/22 leave year, rather than her taking 384 hours of holiday during this leave year. The respondent accepted that the claimant was paid for 354 hours and had not taken 384 hours of leave.
6. Immediately before the Tribunal was to give its decision on the reconsideration application, the respondent informed the Tribunal - for the first time - that it was no longer able to deduct tax and National Insurance from the sums to be paid to the claimant. However, the respondent was unable to provide net figures for both the sleep-in and annual leave wages. The Tribunal therefore ordered the respondent to provide the Tribunal with the net amount of the 'sleep-in' allowance by 16 October 2023. The Tribunal also invited the claimant to provide the Tribunal with any representations she wished to make on the net amount of the 'sleep-in' allowance by 23 October 2023.
7. The respondent failed to comply with the order. The claimant provided further representations on 23 October 2023, submitting that any reduction of the award to reflect tax, in circumstances where the respondent is unable to pay tax, would amount to an unlawful deduction.

Decision

8. Having considered the submissions from both parties and the evidence to which it was referred during the hearing, the Tribunal has decided to:
 - a. Confirm the amount to be awarded in respect of the sleep-in allowance; and
 - b. Vary the amount to be awarded in respect of the unpaid annual leave.

9. Applying the approach to calculation that the Tribunal adopted in its original decision on remedy, substituting the figure '354' for '384', the varied award for annual leave is £1,073.27.
10. The Tribunal agrees with the submissions of the claimant that the award should be in respect of the gross sum deducted by the respondent. The claimant is responsible for any income tax or employee National Insurance contributions that may be payable on the sum awarded.

**Employment Judge Mack
Dated: 14 November 2023**