



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Kun Qin

**Respondent:** Servizon Limited

**Heard at:** by CVP from the Central London Tribunal **On:** 10 January 2024

**Before:** Employment Judge Woodhead

## Appearances

For the Claimant: Representing herself

For the Respondent: Not in attendance

## JUDGMENT WITH REASONS

The judgment of the Tribunal is as follows:

### Wages

1. The complaint of unauthorised deductions from wages is well-founded. The Respondent made unauthorised deductions from the Claimant's wages in the period of her employment between 17 April 2023 and 16 June 2023 (the "**Employment Period**") in that it did not account to HMRC for the income tax and national insurance deducted from the Claimant's gross pay.
2. The Respondent shall pay the Claimant £2,419.17 gross, being the amount by which the pay received by the Claimant from the Respondent fell short of the gross pay she was due from the Respondent during Employment Period. The Claimant is responsible for the payment to HMRC of any income tax or employee National Insurance due in respect of her gross pay for her Employment Period.

### Written Itemised Pay Statements

3. The Respondent failed to give the Claimant written itemised pay statements as required by Section 8 Employment Rights Act 1996 for the Employment Period. Pursuant to Section 26 of the Employment Rights Act 1996 no further payment is due to the Claimant in this regard as a result of the award referenced in paragraph 2 of this judgment.

## THE HEARING

4. The Respondent failed to attend the hearing on 10 January 2024.
5. The Claimant presented a number of documents to the Tribunal including her bank statements for the relevant period, her contract of employment and some limited correspondence. The claim was listed for a hearing of two days but we concluded the hearing by 12:20 on 10 January 2024.
6. The Claimant affirmed her evidence to the Tribunal.

## FINDINGS OF FACT

7. Having considered all the evidence, I find the following facts on a balance of probabilities.
8. The Claimant's first day of employment with the Respondent was 17 April 2023. She was employed as a Senior Accountant. The Claimant's last day of employment was 16 June 2023.
9. The Claimant's contract of employment provided for gross annual remuneration of £50,000 and for 25 days paid holiday per annum together with eight paid public holidays.
10. There were 45 working days during the Claimant's period of employment and her gross entitlement to pay for a working day was £192.30 ( $\frac{£50,000}{260}$  working days in the year). Her entitlement to gross pay for the total period of her employment was therefore £8,653.85 ( $£192.30 \times 45$ ).
11. The Claimant took public holiday that fell during her employment but took no other holiday. I saw correspondence indicating that the Respondent did not dispute that holiday pay was due to the Claimant. The Claimant, at the conclusion of her employment, had accrued 4.33 days of untaken holiday ( $(45 \text{ days worked} / 260 \text{ working days in a year}) \times 25 \text{ days annual entitlement}$ ). At her daily rate of pay the Claimant was therefore entitled to £832.69 gross ( $4.33 \times £192.30$ ) in holiday pay.
12. The total gross amount that the Claimant should have received during her employment was therefore: £9,486.54 ( $£8,653.85 + £832.69$ ).
13. The total amount of pay actually received by the Claimant into her bank account was £7,067.37 ( $£1636.24$  (28 April 2023) +  $£2,952.08$  (30 May 2023) +  $£2,479.05$  (12 July 2023)).
14. The Respondent failed to account to HMRC for employee national insurance and income tax on the Claimant's earnings and this was confirmed to the Claimant by HMRC by telephone. The Respondent failed to issue the Claimant with itemised pay statements.
15. The Claimant contacted ACAS on 5 July 2023 and they issued their certificate by email on 16 August 2023. The Claimant issued her claim on 15 September

2023. The Respondent did not file a response to the claim.

## THE LAW

16. The relevant provisions of the Employment Rights Act 1996 (“**the ERA**”) are as follows:

### **8 Itemised pay statement**

(1) *A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*

(2) *The statement shall contain particulars of—*

(a) *the gross amount of the wages or salary,*

(b) *the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*

(c) *the net amount of wages or salary payable, ...*

[...]

### **11 References to employment tribunals**

(1) *Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.*

[...]

(4) *An employment tribunal shall not consider a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—*

(a) *before the end of the period of three months beginning with the date on which the employment ceased, or*

(b) *within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.*

[...]

(6) *Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) also applies for the purposes of subsection (4)(a).*

### **12 Determination of references**

(1) *Where, on a reference under section 11(1), an employment tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 1 or 4, the employer shall be deemed to have given to the worker a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.*

*[...]*

(3) *Where on a reference under section 11 an employment tribunal finds—*  
*(a) that an employer has failed to give a worker any pay statement in accordance with section 8, or*

*[...]*

*the tribunal shall make a declaration to that effect.*

(4) *Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made (from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.*

(5) *For the purposes of subsection (4) a deduction is an unnotified deduction if it is made without the employer giving the worker, in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by section 8 or 9.*

### **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.*

[...]

#### **14 Excepted deductions**

[...]

(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.*

[...]

#### **23 Complaints to employment tribunals**

(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)),*

[...]

(2) *Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

(a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

(b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

(3) *Where a complaint is brought under this section in respect of—*

(a) *a series of deductions or payments, or*

(b) *a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

(3A) *Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).*

[...]

## **24 Determination of complaints**

(1) *Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*

(a) *in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,*

[...]

(2) *Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*

[...]

## **26 Complaints and other remedies**

*Section 23 does not affect the jurisdiction of an [employment tribunal] to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an [employment tribunal] to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.*

[...]

## **27 Meaning of “wages” etc**

(1) *In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—*

(a) *any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,*

[...]

*but excluding any payments within subsection (2).*

[...]

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(4) *In this Part “gross amount”, in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.*

## ANALYSIS AND CONCLUSIONS

17. The Respondent did not account to HMRC for employee national insurance and income tax on the Claimant's earnings and therefore the shortfall in the amounts received by the Claimant into her bank account as against her gross pay entitlement cannot have constituted lawful deductions under Section 13 (1) of the ERA (as a required or authorised deduction by virtue of a statutory provision or a relevant provision of the worker's contract or otherwise permitted under that provision) nor could they have been excepted deductions under Section 14 of the ERA.
18. Consequently on each of the dates on which the Respondent made payments to the Claimant the total amount of wages paid to the Claimant was less than the total amount of the wages properly payable and as such the amount by which it was less than the amount properly payable was an unlawful deduction under Section 13 of the ERA.
19. The difference between the amount of pay received by the Claimant (£7,067.37) and the gross amount of pay due to her (£9,486.54) is £2,419.17 and consequently is the amount of the unlawful deduction from wages suffered by the Claimant. Consequently an award is made in favour of the Claimant in respect of this sum.
20. The Respondent breached Section 8 of the ERA in failing to provide the Claimant with any itemised pay statement. In consideration of the monetary award made to the Claimant, under Section 26 of the ERA, no further sum is due to the Claimant in respect of this failure.

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**Employment Judge Woodhead**

Date 10 January 2024

Sent to the parties on:

10/01/2024

For the Tribunals Office

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>