



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Allam

**Respondents:** Whitbread Group Plc

**Heard at:** London South Employment Tribunal (by CVP)

**On:** 27 August 2024

**Before:** Employment Judge Murdoch

## Representation

Claimant: In person

Respondent: Mr Campbell-Drummond

# REASONS

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## Introduction

1. It was agreed between the parties that:
  - a. The claimant was employed by the respondent from 10 June 2014 to 23 October 2023.
  - b. The claimant's role was as a restaurant manager.
  - c. The claimant was suspended on full pay from 14 April 2023 pending the outcome of an investigation of gross misconduct. The allegation concerned giving away the respondent's stock to her partner and other guests without taking payment.
  - d. The claimant was invited to attend an investigation meeting on 17 April 2023. The claimant did not attend due to sickness.
  - e. The claimant's sick leave period was between 17 April and 23 October 2023.
  - f. The claimant was paid statutory sick pay during this time period, but she believes she was entitled to the company's enhanced sick pay, and claims unauthorised deductions from wages accordingly.

## **The hearing**

2. As for documents, the hearing bundle was 170 pages long and both parties had a copy of the bundle electronically. The claimant did not have a physical copy of it. She did not have a computer or a printer, and as she was using her phone to attend the virtual hearing, she was unable to refer to specific pages within the electronic bundle. I therefore asked the respondent's representative to read out loud any quotes from documents that he was referring to contained in the bundle. I also noted to the claimant that any reference to page numbers was for me, and not for her, as we understood that she was unable to use her phone to access the bundle whilst simultaneously using it for the hearing.
3. I also admitted a new piece of evidence in the form of a photograph of a one-page handwritten document from the claimant, which set out her calculations for alleged monies owed. I admitted this as I believed it to be relevant and in the interests of justice to do so.
4. I heard the claim on 27 August 2024. The claimant represented herself and gave sworn evidence. I took her claim form as her evidence in chief, which she confirmed under oath to be true and accurate. The respondent was represented by Mr Campbell-Drummond, solicitor for the respondent. The respondent produced a witness statement from Mr Faulkner (respondent's General Manager) but did not tender him for oral evidence. The respondent's representative acknowledged that I would therefore not be able to attach significant weight to this witness statement. The respondent cross-examined the claimant and both parties gave closing submissions. I then adjourned briefly and gave oral judgment.

## **Issue for the Tribunal to decide**

5. I agreed with the parties that the only issue for me to decide in this hearing was:
  - a. Was there an unauthorised deduction in wages in respect of the non-payment of the company's sick pay policy?
6. I explained to the claimant that compensation for mental health problems was not available under this wages claim, and she said she understood.
7. I agreed with the parties that the claimant was seeking the gross payment of £8,748, which is the difference between what the claimant was paid during the relevant period of absence and what the claimant believes she was owed had the company paid her their enhanced sick pay policy.
8. The respondent's position was that their enhanced sick pay policy was discretionary and that they were entitled to instead pay the claimant statutory sick pay during the relevant period of sickness. The respondent accepted that there had made mistakes on the claimant's payslips since she went on sick leave, which involved overpayments and then clawing the payments back. The claimant was understandably upset, frustrated and confused by the respondent's administrative errors in this regard, as this sort of error has significant impacts on people's lives. The respondent

stated that they had in fact accidentally overpaid the claimant £1,832 but that they were content to waive this alleged overpayment. It is perhaps worth noting that the respondent did not have the option to counterclaim this sum of money in any event, as the claimant had not brought a breach of contract claim.

## **The law**

9. Section 27(1) Employment Rights Act 1996 defines 'wages' as any sums payable to the worker in connection with their employment.
10. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make unauthorised deductions from the wages of a worker.
11. The provisions of section 13 of the Employment Rights Act 1996, to the extent relevant to this claim, state:
  - a. 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.
12. Section 13(3) provides that a deduction occurs where the total amount of wages paid to the worker on any occasion is less than the amount properly payable to the worker on that occasion.
13. Under Section 27(1) of the ERA 'wages' means any sums payable to the worker in connection with their employment including any fee, bonus, commission, holiday pay or other emolument referable to employment and to statutory sick pay.
14. The right to statutory sick pay was introduced in 1983 and entitles qualifying employees to a minimum level of pay from their employer during sickness absence. It is paid at a flat rate and for a maximum of 28 weeks. Employees are not entitled to statutory sick pay for the first 3 days that they are off sick but after that they can get £116.75 a week for up to 28 weeks.
15. Under the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) sections 151 and 155, an employer is liable to pay statutory sick pay to any qualifying employee who is unfit for work.

## **Findings of fact and conclusions**

### *Relevant contracts and policies*

16. There are three relevant documents here: the claimant's employment contract, the respondent's sickness policy and the respondent's disciplinary guidance document.

17. The claimant's **employment contract** at section 8.3 states as follows:

"Eligibility for payment of Company Sick Pay is discretionary and set out in the Outlet Manager Handbook."

18. The respondent's **sickness policy** states as follows:

"Your line manager... will also consider whether you are eligible for Company Sick Pay (CSP) or Statutory Sick Pay (SSP), which will depend on your role within the business and is entirely at your line managers discretion."

19. The sickness policy goes on to say that:

"You may be entitled to discretionary Company Sick Pay, which is full pay for a set period of time... but please be aware that eligibility for company sick pay is at the discretion of your line manager... If applicable, you will not be eligible for CSP (and will be paid SSP) if you... become absent at any stage of the performance management process, redundancy consultation, suspension, investigation, disciplinary or appeal procedures."

20. The respondent also has a **disciplinary guidance document** for managers. In the section on pay during suspension, it states as follows:

- a. "If a suspended team member provides a sick note or tells you they are too poorly to come to work, swap their pay to sick pay for the period that they are unwell."

### The incident

21. On 12 April 2023 the claimant was observed on CCTV by Mr Faulkner, General Manager, giving drinks to her partner and guests without taking payment. As a result, Mr Faulkner decided to suspend the claimant on full pay immediately on 14 April 2023 pending an investigation. The claimant was then invited to an initial investigation meeting on 17 April 2023 with Mr Faulkner. On 17 April 2023, prior to the scheduled investigation meeting, the claimant produced a doctor's note and commenced a period of sick leave.

22. Subsequently Mr Faulkner made the decision to pay the claimant statutory sick pay in accordance with the claimant's employment contract, the respondent's sickness policy and the respondent's disciplinary guidance for managers.

### Conclusion

23. The respondent's enhanced company sick pay is discretionary. The respondent's policies clearly state that whether an employee is eligible for company sick pay or statutory sick pay is entirely at the line manager's discretion. The guidance for managers specifically states that an employee will not be eligible for company sick pay, and will instead be

paid statutory sick pay, if they are absent at any stage of a suspension or investigation.

24. The respondent took the view that the claimant was therefore not entitled to enhanced company sick pay as her sickness absence commenced after she was suspended and on the same day as the initial investigatory meeting was due to take place.
25. The claimant had worked for the respondent for approximately nine years, and her suspension and sick leave was handled by someone she did not have a pre-existing relationship with. She felt she had been treated badly by her employer. She felt that her hard work for the respondent over many years had not been taken into account when the decision was made not to award her the respondent's enhanced company sick pay.
26. I cannot, and will not, substitute my own view for that of the respondent on this matter. The respondent was entitled to take the view that it did, namely that its discretionary company sick pay policy was not due in this case. The respondent was obligated to pay the claimant statutory sick pay, which the parties agreed had been done during the relevant period of sick leave.

### Summary

27. The complaint of unauthorised deductions from pay in respect of non-payment of the respondent's company sick pay is not well-founded and is dismissed.

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Employment Judge Murdoch

Date 2 September 2024