



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Kenan McGrath

**Respondent:** Behold.AI Technologies Ltd

**Heard at:** London South Croydon

**On:** 1 November 2024

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

## Representation

**Claimant:** in person

**Respondent:** did not attend, was not represented

# JUDGMENT

The **Judgment** of the Employment Tribunal is as follows:

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the periods July to December 2023 and January and February 2024.
2. The respondent shall pay the claimant the sum of £33,920.36, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

# REASONS

- 1) The claimant presented a claim form to the Employment Tribunal on 3 April 2024. This was following a period of early conciliation between 29 February and 4 March 2024. The claim is brought against his ex-employer, the respondent, in which he seeks wages for the period November & December 2023 and January & February 2024 as well as pension contributions for the period July to December 2023 and January & February 2024.

- 2) The claim is brought under section 13 of the Employment Rights Act 1996 which deals with the right not to suffer unauthorised deductions from wages.
- 3) The respondent presented a response to the claim on 3 May 2024. Whilst the respondent ticked a box indicating that the claim was defended, the narrative simply indicated that it would provide further details when the claim was further particularised. However, it was clear from the claim form what exactly the claimant was claiming and why.
- 4) Notice of today's hearing was originally sent to the parties by letter dated 10 May 2024. It was initially listed as a two-hour in-person hearing starting at 10 am at the Ashford hearing centre. However this was subsequently changed to a Cloud Video Platform hearing.
- 5) In addition, the notice of hearing attached a number of case management orders which included a requirement for the claimant to send the respondent a document setting out how much he was claiming, how it had been calculated and documents in support, and subsequently for the respondent to send the claimant copies any other relevant documents and evidence.
- 6) By letter dated 11 July 2024, the Tribunal wrote to the respondent on the instruction of Employment Judge Evans explaining that the claim appeared to be factually straightforward and required it to provide additional information of its defence as to whether it was accepted that the claimant was owed the wages and pension contributions claimed and, if not, why not. The respondent was given until 1 August 2024 in which to respond.
- 7) There was also a query within the letter as to whether or not there were other claimants to a multiple claim, as indicated by the claimant in his claim form. However this subsequently proved not to be the case.
- 8) The respondent did not provide the additional information as to the substantive claim but instead provided two witness statements, one dated 31 July 2024 and the other dated 22 October 2024 both from Mr Simon Sughthan Rasalingham, its Chief Executive Officer and an exhibit in support of at least the first of these.
- 9) I have to say on reading these documents they have no relevance to the claim before the Tribunal and do not put forward any details of the basis on which either the respondent accepts or denies the claim. The closest reference to anything approaching relevance is at paragraph 23 of the first witness statement which refers to "cash flow problems". However, this in itself does not address the issues that the respondent was ordered to provide by Employment Judge Evans.
- 10) At some point, the hearing was converted to one to be held by CVP and the parties were sent joining details.
- 11) By an email sent yesterday at 4:55 pm the administration advised the parties that due to lack of judicial resources there would be some delay in finding another Judge to deal with the case. The email further advised that the

administration would be in contact this morning once they had received further information and the parties were to keep a lookout for updated emails.

- 12) I was able to pick the case up and advised the administration to let the parties know that I would start at 12.30 pm. This was communicated to the parties in an email sent at 12.12 pm. At 12:35 pm we received an email from the respondent's Chief Operating Officer requesting an adjournment due to "our CEO being unavailable at this time".
- 13) By 12.30 pm only the claimant was present in the CVP hearing room and I commenced the hearing at 12:50 pm.
- 14) I was conscious of the following. The original hearing had only been listed with a time estimate of two hours. The respondent had not provided further information requested by Employment Judge Evans and had sent back irrelevant witness statements which did not deal with the issue. No explanation was offered for the CEO's non-attendance (save perhaps the implicit explanation being that it was now outside the 10 to 12 time slot), no evidence was offered in support of the reason for the non-attendance and no one attended the hearing, which of course would still go ahead unless the adjournment request was granted.
- 15) Further, I did not understand why the Chief Operating Officer, who the claimant explained to me is the Chief Executive Officer's brother (and I was able to determine from the Companies House website that they are both directors of the respondent company), could not attend the hearing either to present the request for an adjournment or indeed to represent the respondent company.
- 16) I was also conscious of the fact that the claimant had provided no evidence in support of his claim although he was able to provide me with a copy of a payslip dated 31 October 2023 and he confirmed that his entitlement to salary was the same each month and similarly the deductions in respect of his NEST Pension were the same each month.
- 17) Taking these factors into account and weighing up the prejudice to each party, I formed the view that the prejudice to the claimant would be greater in adjourning the hearing and putting it off to some further date as opposed to proceeding with the case in which the respondent had in effect put forward no explanation or evidence as to whether it accepted that the claimant is owed the amounts claimed or not. I formed the view that the most proportionate and fair manner was to proceed with the hearing.
- 18) A claim under section 13 of the Employment Rights Act 1996 requires me to determine what is properly payable to the claimant, what was actually paid to him, whether there is a shortfall between the two and if so whether the respondent has lawful reasons on which to deduct (or not pay) the shortfall.
- 19) Having heard evidence from the claimant as to his entitlement to salary and seen a copy of the payslip dated 31 October 2023, I am satisfied that what was properly payable to the claimant for each of the months of November and December 2023 and January and February 2024 was the gross sum of £8333.33 and this was not paid to him.

- 20) In addition, I am satisfied that the claimant is entitled to the sum of £146.76 in respect of contributions that should have been made for the previous four months of July to October 2023 which were shown as deductions from his wages but were not paid over to the NEST Pension Scheme.
- 21) These deductions in effect continued through the months of November & December 2023 and January & February 2024 but are included in the overall non-payment of monthly salary for each of those months.
- 22) Whilst the claimant has sought to recover the amounts of the employers' pension contributions which were not paid to the NEST Pension Scheme, these fall outside the Tribunal's jurisdiction. They are excluded from the definition of wages within section 27(2)(c) of the Employment Rights Act 1996 and in any event are not deductions made from the Claimant's wages. They amount to a matter that the claimant need to take up further with the relevant authorities, most likely NEST or The Pensions Regulator.
- 23) I therefore find that the claimant has suffered unlawful deductions from his wages and I make the following awards:
  - a. £587.04 unlawful deduction from wages in respect of employee pension contributions for the months of July 2 October 2023;
  - b. £33,333.32 unlawful deduction in respect of wages for November and December 2023 January and February 2024.
- 24) This comes to a total of £33,920.36 gross, the Claimant being responsible for any liability to tax or National Insurance.

Employment Judge Tsamados  
29 November 2024

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