



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106023/2024

Held in Glasgow via Cloud Video Platform (CVP) on 20 September 2024

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Employment Judge S Cowen

Mrs S Walker

**Claimant
Represented by
Mr D Waplington - Trade
Union Representative**

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South Lanarkshire Council

**Respondent
Represented by
Mr S O'Neill - Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Claimant's claim for unlawful deduction of wages succeeds.
- 20 2. The Respondent made an unlawful deduction from the Claimant's salary in the sum of £345.65, which must be paid to the Claimant.

REASONS

Introduction

1. This is a claim under s.13 Employment Rights Act 1996 for unlawful deduction
25 of wages. The Claimant asserts that she is owed money due to the miscalculation by the Respondent of her entitlement to sick pay. The Claimant asserts that a deduction has been made which was not authorised and which the Respondent should not have made.
2. The Tribunal was provided with an agreed bundle of document and heard
30 evidence from the Claimant and Mr Stephen Sloey, payroll manager for the Respondent.

Findings in fact

3. The Tribunal made the following findings in fact:

- 5 3.1. The Claimant worked for the Respondent as a teacher at Mount Cameron School. Her terms and conditions of employment, including sick pay provisions were contained within the SNCT Handbook, which are nationally agreed terms and conditions.
- 3.2. The Respondent is one of few councils which pay their employees on a lunar calendar basis. Employees are paid every 28 days, thus there are 13 payments made each calendar year.
- 10 3.3. The terms of the SNCT Handbook in relation to sick pay states at 11.1; *"Sick pay for teachers and associated professional will be based on a daily rate of 1/365th for each ay they qualify for sick pay.... An employee in receipt of 6 month full pay and 6 months half pay will receive 183 days' full pay and 182 days' half pay."*
- 15 3.4. According to paragraph 11.2: *"This is a precise calculation for sick pay but could cause potential issues as there will be carry forward of amounts or months where the sick pay amount is less than the 1/12th being paid. This is overcome by having offsetting amounts so as not to confuse employees. The main issue will be when an employee moves to half or no pay as shown in 11.3 below".*
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- 3.5. It was agreed between the parties that the Claimant was entitled to 6 months full pay and 6 months half pay as set out above.
- 25 3.6. The Claimant went off sick from work on 23 October 2023. She received full sick pay up to 3 April 2024, when she moved to half pay. At this point the Respondent sought to recoup what they considered to be an overpayment as the Claimant had been paid at the 1/365 rate during her sickness absence.

3.7. In the Claimant's April payslip dated 11 April 2024, the Respondent made a deduction of £345.65 which they considered to be the 'offset' amount between the two different payment basis.

5 3.8. Mr Sloey the Respondent's payroll manager stated that sick pay is not paid on 365 days, as it is not paid at weekends. He asserted that the spreadsheet which he had completed and shown to the Tribunal was accurate. He asserted that each payslip was overpaying the Claimant by paying her the 1/365 amount, but making the payments every 28 days. This is the amount which the Respondent recouped from the Claimant at
10 the point where her pay moved to half pay.

Law

4. S.13 Employment Rights Act 1996 states:

"Right not to suffer unauthorised deductions.

15 (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*

20 (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—*

25 (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.”

5 4.1. The Tribunal must consider the contract between the parties to decide the amount of wages which was properly payable to the Claimant. If the Tribunal decides that the contract allows for a deduction because there has been an agreed variation of contract, then the wages ‘properly payable’ will be the reduced wages due under the terms agreed.

10 4.2. Determining what wages are properly payable requires consideration of all the relevant terms of the contract, including any implied terms — Camden Primary Care Trust v Atchoe 2007 EWCA Civ 714, CA

Decision

15 5. The claim for unlawful deduction relates to an amount recouped from the Claimant’s salary in April 2024, when an overpayment to her salary was deducted. The Respondent asserted that this was the difference between salary calculated on a 1/365 basis (sick pay) and her usual pay on a 1/260 basis.

20 6. The Claimant’s contract includes the SNCT terms for calculation of sick pay. This entitles her to 183 days of full pay and 182 days of half pay. This amounts to 365 days (i.e a year of 7 days per week). Mr Sloey’s evidence that employees are not paid for weekends when off sick is clearly incorrect when one considers the Respondent’s policy.

25 7. When considering the Respondent’s calculations, the concept of there being an overpayment becomes illogical. The Respondent asserted that the Claimant was paid 1/365 per day for sick pay. This was paid every 28 days(lunar calendar payments). In order to ensure that the Claimant was paid for a whole year, the Respondent would have to make 13 payments, but would still require to pay the Claimant 1 day of salary. As $28 \times 13 = 364$. This is not accounted for in Mr Sloey’s spreadsheet.

8. The calculations of the relevant payslips in February and March 2024 are considered as follows.
9. The local payment arrangement is that the Claimant is paid every 28 days (i.e 13 payments per annum). Each of those payments amounts to 20/260 of her annual salary.
10. The Claimant's gross salary of £48,516 equates to a sick pay amount of £79.75 per day calculated on a 1/365 basis.
11. When calculated on a 1/260 basis the Claimant would be paid £111.96 per day, every 28 days.
12. The Claimant was paid $28 \times 79.75 = £2233$ per payslip.
13. Had this continued for all 13 payments in the year, the Claimant would have been unpaid for one day in the year.
14. The Claimant therefore ought to have been paid £6.13 per payslip more in order to account for the additional day over the course of the year.
15. The Claimant's payslips for February and March 2024 show that she was paid an additional £6.13 on each payslip as 'basic pay'. This was the balancing amount.
16. There was therefore no further adjustment of pay required for these months.
17. In relation to the January payslip, the Claimant's rate of pay increased on 1 January 2024. In December, her pay on the basis of the 1/260 calculation would have been £2226.03. The Claimant was paid occupational sick pay calculated on the 1/365 basis as £2217.43. The difference between the two calculations was provided as 'basic pay' of £8.60. This too, was a correct, balancing amount.
18. There was therefore no further adjustment of pay required for these months.
19. The Respondent's spreadsheet cannot be reconciled with the payslips as they do not account for the same number of days.

20. Whilst I have not been shown all the payslips referred to in the period 9 January 2023 to 14 March 2024, I accept that the calculations made by the Claimant in her evidence and set out above are correct and thus the calculations by the Respondent are mistaken.

5 21. I conclude that the Claimant was paid the correct amount of sick pay (including
small adjustment sums in January – March 2024). It was therefore
inappropriate and an unlawful deduction of wages to remove £345.65 from the
Claimant in April 2024. This was not an overpayment and the Respondent
should not have made this deduction. This money is owed by the Respondent
10 to the Claimant.

S Cowen

Employment Judge

09 December 2024

Date of Judgment

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20 **Date sent to parties**

09 December 2024