



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Kinyenze

Respondent: Saanie Medical Services Limited

Heard at: Cardiff (via CVP)

On: 19 March 2025

Before: Employment Judge Leith

Representation

Claimant: In person

Respondent: Ms Young (Legal Advocate)

JUDGMENT

1. The complaint of failure to pay accrued but untaken annual leave on termination of employment succeeds. The Respondent must pay the Claimant the (gross) sum of **£1,207.50**, being the value of the accrued but untaken annual leave.
2. The complaint of unauthorised deduction from wages fails and is dismissed.

REASONS

Claims and issues

1. The claimant claims unauthorised deduction from wages and failure to pay accrue but untaken holiday pay.
2. I discussed the issues with the parties at the start of the hearing. There were four parts to the Claimant's claim:
 - 2.1. Pay for 26 and 27 September 2024 (on which the Claimant worked a 12 hour shift each day). The Claimant's case is that she was not paid for those days; the Respondent's case was that she was.
 - 2.2. Payment for lunch breaks throughout her employment, which the Claimant calculated at £2,049.50. The Claimant's case was that she was entitled to a paid 60 minute lunch break; Respondent's case was that the Claimant transferred onto a different contract with effect

from 15 November 2023, and under that contract she was no longer entitled to a paid lunch break.

- 2.3. Deductions totalling £400 made from the Claimant's pay in June, July and August 2024. The Claimant's case was that the Respondents was not authorised to make those deductions; the Respondent's case is that the deductions were authorised by the Claimant in repayment of monies the Respondent had lent to the Claimant.
- 2.4. Payment for accrued but untaken annual leave. The Claimant's case is that she was owed 14 days accrued but untaken annual leave, totalling £2,137.50. The Respondent's case was that the accrued annual leave figure was lower, £1,276.50, and that the Respondent had deducted monies owed to it by the Claimant from that payment.

Procedure, documents and evidence heard

3. I heard evidence from the Claimant, and on behalf of the Respondent from Andrew Saidu, the Managing Director. Both gave their evidence by way of pre-prepared witness statements, on which they were cross-examined. I also had before me a bundle of 164 pages.
4. At the conclusion of the evidence I heard submissions from Ms Young and from the Claimant. The hearing was listed for 2 hours starting at 10am. The evidence and submissions concluded at approximately 11:45. I indicated that I would be in a position to give the parties an oral decision at 12:30; both parties agreed to return at that time. Unfortunately, at around 12:20, there was a fire alarm and the Tribunal building was evacuated. I was able to get a message to the parties that I would be unable to log back into the hearing to give an oral judgment as planned, and that I would instead reserve my decision. I apologise to the parties for being unable to deliver this decision orally, and for the consequent delay in receiving it.

Law

Unauthorised deduction from wages

5. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. A deduction occurs where the total amount of wages paid on any occasion by an employer to worker is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions).
6. Section 13(6) provides that written consent to a deduction cannot be retrospective – so consent can only be valid when it is given before the event which gives rise to the deduction.

7. Any ambiguity in respect of consent given to a deduction will generally be construed against the employer, as the party who seeks to rely on it (this called is the “contra proferentum” rule).
8. Section 25(4) provides that sums wrongly deducted cannot be recovered by any other means.
9. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to section 23. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.
10. In order to determine what wages are “properly payable”, the Tribunal may need to interpret the contract of employment (*Agarwal v Cardiff University and anor* [2019] ICR 433).

Holiday pay

11. Regulation 13 of the Working Time Regulations 1998 provides that workers are entitled to four weeks of paid annual leave per year. Regulation 13A provides for an additional entitlement of 1.6 weeks of paid annual leave per year.
12. For the purpose of both regulations 13 and 13A, the leave year starts on the anniversary of the first day of the worker’s employment, unless a relevant agreement provides otherwise.
13. Regulation 14 applies where a worker’s employment terminates during the course of his leave year. Regulation 14(2) provides that, where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave. The method for calculating the payment is set out in regulation 14(3):

“(3) The payment due under paragraph (2) shall be –

- (a) Such sum as may be provided for the purposes of this regulation in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula

$$(A \times B) - C$$

Where –

A is the period of leave to which the worker is entitled and regulation 13 and regulation 13A

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date."

14. The definition of "relevant agreement" is set out in regulation 2 as follows:

"relevant agreement", in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer"

15. Regulation 16 sets out the calculation of the payment due in respect of a period of leave. It provides that a week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications. There is no statutory cap on a week's pay for this purpose.

Factual findings

16. I make the following findings on balance of probabilities.

17. The Respondent engages health workers for the NHS and the private sector.

18. The Claimant commenced employment with the Respondent on 6 October 2023. She was employed initially within the Respondent's Domiciliary Care Unit. Her contract for that role provided that she would be paid £10.90 per hour, plus a mileage/travel pay of £2.10 per hour (a total of £13 per hour). Her contract provide that she would receive a 60 minute paid lunch break every day [39].

19. In the early part of her employment, the Claimant expressed unhappiness with the hours she was working. She indicated that she wanted to work more hours. She was therefore transferred to the Respondent's Agency Unit.

20. The Respondent's evidence was that the Claimant was then issued with a new contract of employment, for the terms applicable to the Agency Unit [42]. Under that contract the Claimant received a 60 minute unpaid lunch break every day [43]. She was paid a salary of £22,425, monthly in arrears, based on a 37.5 hour working week. The version of the contract in evidence before me purported to be signed by the Claimant on 16 November 2023. The Claimant's evidence was that she had never seen or signed that contract.

21. Both versions of the contract provided that the Respondent's holiday year ran from 1 April to 31 March, and that the Claimant was entitled to 5.6 weeks annual leave per year.

22. The contract was supplemented by an Employee Handbook, which the Claimant signed to acknowledge she had read. The Handbook had a page headed "Summary of our rights to deduct", which said this:

"WE RESERVE THE RIGHT TO RECOUP ANY LOSSES THE COMPANY INCURS IN THE CIRCUMSTANCES LISTED BELOW FROM YOUR WAGES OR ANY OTHER MONIES OWING TO YOU (E.G. COMMISSION, BONUSES, ACCRUED HOLIDAY PAY AT TERMINATION OF EMPLOYMENT)."

23. The circumstances referred to were:

- 23.1. An overpayment of wages;
- 23.2. If the Claimant arrived at work more than an hour late without notification, such that her duties had to be covered or dispersed to other staff;
- 23.3. If the Claimant attended work while under the influence of alcohol or illegal drugs;
- 23.4. If the Respondent suffered any loss or damage to property or stock or equipment, or loss fine or cost, due to the Claimant's failure to follow rules or procedures, deliberate vandalism or unreasonable carelessness or neglect; and
- 23.5. If the Claimant failed to return the Respondent's property on termination of employment.

24. The contract itself provided that the Respondent could make deductions from the Claimant's wages in respect of:

- 24.1. Income tax and National Insurance; and
- 24.2. On termination, if the Claimant had taken more holiday than her accrued entitlement, the balance could be deducted.

25. The handbook provided that annual leave could not normally be carried over from one leave year to the next.

26. The Claimant's evidence was that she and Mr Saidu knew each other personally prior to the Claimant starting work for the Respondent.

27. Mr Saidu's evidence was that at the start of the Claimant's employment, she asked for a loan of £2,000 to reimburse her previous employer towards the cost of visa sponsorship. His evidence was that she told him that she would repay it via deductions from wages. The Claimant's evidence was that Mr Saidu made the offer to loan her £2,000, and said "don't worry too much you will give it back whenever you are stable".

28. The sum of £2,000 was transferred from the Respondent's business bank account to the Claimant on 5 October 2023. There was no written agreement regarding the loan, and no written agreement to make deductions from the Claimant's pay to repay the loan.

29. The Claimant's bank statement showed that on 6 October 2023 she made a payment to a "Mr A Songu Saidu" of £1,000. Her evidence was that she had not needed the full £2,000, and so she had sought to return some of it to Mr Saidu. Her evidence was that Mr Saidu told her to repay it to his daughter's bank account, and that that was what the payment was for. Mr Saidu's evidence was that that was not a repayment of any part of the loan, and he understood that the Claimant made a payment to his daughter because she was making arrangements to rent a house from her for some friends.
30. Mr Saidu's evidence was that over the following months he would ask the Claimant if she was ready to start repaying the loan by way of deductions from her salary, and she would request that the deductions be deferred.
31. On 1 February 2024, the Claimant sent Mr Saidu a WhatsApp message requesting a further loan in respect of the cost of flights. Within that message, she said this: "You can deduct me £500 every month".
32. On 18 February 2024 the Claimant again requested a further loan. The Respondent transferred £800 to the Claimant on 19 February 2024 [109]. Once again, this came from the Respondent's business bank account.
33. On 20 March 2024, the Claimant asked for a further loan [76-77]. She noted in her message to Mr Saidu that at that point she owed £2,081. She calculated that as being £1,000 plus £781 plus £300. It was not clear how she arrived at those figures. The Claimant was not loaned any further money at that time.
34. Mr Saidu's evidence was that towards the end of March 2024, the Claimant asked if the monthly deduction/loan repayment she had agreed could be deferred because she was behind with her overdraft. The Respondent therefore did not make any deduction from the Claimant's wages for that month, or the following months. Mr Saidu's evidence was that the only sums deducted were £100 in August 2024, and £200 in September 2024. The Claimant's evidence was that deductions were made from June 2024 onwards.
35. The Claimant resigned her employment on 20 September 2024. This apparently followed a conversation where she had asked to transition to part-time hours, but had been told she could not do so as her Certificate of Sponsorship required her to work 37.5 hours per week [75]. She was informed that her last working day would 20 October 2024. In the event, the last day she worked for the Respondent was 27 September 2024.
36. The Claimant's payslips from November 2023 onwards were in evidence before me. They did not show any deductions in respect of loan repayments. But they could be matched up against the payments actually made by the Respondent from its bank account statements (which were also in evidence before me) – they showed as follows:

Month	Net on payslip	Sum actually paid	Deduction
November 2023	£2,010.98	£2,010.98	
December 2023	£1,829.44	£1,829.44	
January 2024	£1,865.65	£1,865.65	
February 2024	£1,426.23		
March 2024	£1,044.50	£1,044.50	
April 2024	£1,785.28	£1,785.28	
May 2024	£1,467.14	£1,467.14	
June 2024	£2,043.26	£1,843.26 (over two instalments - £1,543.26, then £300)	£200
July 2024	£1,458.20	£1,358.20	£100
August 2024	£1,940.41	£1,840.41	£100
September 2024	£1,435.84	£1,235.84	£200
			TOTAL - £600

37. The Claimant's payslip for November 2023 showed the Claimant was paid at the rate of £13 per hour for some hours worked, and £11 per hour for some hours worked. The remaining payslips showed the Claimant paid what was described as "salary", at a rate of £11 per hour until March 2024, and £11.50 per hour thereafter. The exception was the payslip for January 2024, which showed the Claimant paid at £10.90 per hour, plus "mileage" at £2.10 per hour.

38. The Claimant was not paid for any accrued but untaken annual leave in her final pay. The Respondent's case was that this was because the outstanding sums loaned to the Claimant were deducted from the annual leave, leaving no payment.

39. Mr Saidu's evidence was that:

39.1. In the 2023/24 leave year, the Claimant accrued 11.5 days holiday and took 6.5 days, leaving 5 days outstanding, which could not be carried over and was consequently lost.

39.2. In the 2024/25 leave year, the Claimant accrued 111 hours.

40. The claimant notified ACAS under the early conciliation process of a potential claim on 15 November 2024 and the ACAS Early Conciliation Certificate was issued on 13 December 2024. The claim was presented on 30 December 2024.

Conclusions

41. I start by dealing with the overarching question of the parties to the loans to the Claimant. The Claimant's case was that the loans were made to her by Mr Saidu personally, and not by the Respondent. I find that the various loans made to the Claimant were made by the Respondent. I reach that conclusion because:

41.1. The payments were made from the Respondent's bank account – the same account from which the Claimant's wages were paid; and

41.2. The Claimant's assertion that the loans were from Mr Saidu personally were inconsistent with her offer to repay the further loan she sought in February 2024 by way of a deduction from her wages.

42. I find that the sum of £1,000 paid by the Claimant to "Mr A Songu Saidu" on 6 September 2023 was not a repayment of part of the sum loaned by the Respondent to the Claimant. It would in my judgment have made no sense for a loan from the Respondent company to be refunded to another member of the Mr Saidu's family. If the Claimant had wanted to repay part of the sum loaned to her, I consider it is overwhelmingly more likely that she would simply have transferred the money back to the account from which the loan was made.

43. It follows then that I find that the Respondent made two loans to the Claimant:

43.1. £2,000 on 5 October 2023.

43.2. £800 on 19 February 2024.

44. There were no terms set out in writing for the length or repayment of those loans. I do find, however, that the Claimant agreed in writing to repay the rate of £500 per month as condition of the further loan being advanced in February 2024.

45. Turning then to the four parts of the Claimant's claim:

Pay for 26 and 27 September 2024

46. The Claimant was salaried, based on her working an average of 37.5 hours per week. It was not clear why the Claimant believed that she had not been paid for 26 and 27 September 2024. Her payslip appeared to show that she was paid for the month of September 2024, albeit that £200 was deducted from the sum actually paid to her after her pay was calculated. I consider on balance that the most likely explanation is that that £200 deduction is the reason why the Claimant considered that she had not been paid for 26 and 27 September 2024.

47. I find that the Claimant was paid for 26 and 27 September 2024, although I deal with the £200 deduction below.

Lunch payments

48. The Claimant's evidence was that she had not signed the November 2023 contract of employment, and that the signature placed on it was (in effect) fraudulent. I consider that it is more likely than not that the Claimant did sign it, but simply forgot that she had done so. I reach that conclusion because:

48.1. The Claimant was thereafter paid in the way set out in the November 2023 contract, in that her pay was described as "Salary" and she did not receive a mileage allowance. The only exception was January 2024, where she was paid in the way provided for in the previous contract – I consider that that month was most likely an error, and it highlights the differing way the Claimant was paid under the "new contract".

48.2. The Claimant did not complain about being paid in that way or suggest that she was being paid incorrectly at any point between November 2023 and the end of her employment. Nor does she suggest that within these proceedings.

49. It follows that I conclude that from 15 November 2023 onwards, the Claimant had no right to be paid for lunch breaks.

50. There was no evidence before me regarding whether the Claimant was paid for her lunchbreaks prior to 15 November 2023. But any claim in respect of paid lunchbreaks prior to November 2023 would be very considerably out of time – the latest such a claim could have been brought would have been the end of February 2024 (three months after her November 2023 pay). There was nothing on the evidence before me to suggest that it would not have been reasonably practicable for the Claimant to bring a claim about that period within the primary time limit. So even if I had found that there was a deduction from her wages in respect of the period prior to November 2023, I would have concluded that I did not have jurisdiction to consider the claim.

Deductions from pay

51. I have found that deductions were made totalling £600, across June, July, August and September 2024.

52. The Respondent relies upon the Claimant's WhatsApp message of 1 February 2024 as giving it authorisation to deduct monies from the Claimant's pay in repayment of the sums loaned to her. I consider that that message was an unambiguous authorisation to the Respondent to deduct up to £500 per month from the Claimant's pay in respect of the subsequent loan.

53. I do not consider the fact that the Respondent did not immediately make a deduction negates that authorisation. Nor do I consider that the fact that the Respondent deducted less than £500 in the months in which they did make

a deduction negated the authorisation. That is consistent with the first deduction, made in June 2023. The Respondent initially deducted the full £500, before paying the Claimant a further £300 (and taking the sum deducted down to £200). It was a common thread through Mr Saini's evidence that the Claimant asked for more time to repay the sums she had been loaned. That is also consistent with the Claimant's WhatsApp messages seeking further loans.

54. What the Respondent effectively did in June 2023, and then in the following months, was to act more generously to the Claimant than it was required to, by deducting less than the sum it was authorised to deduct. It cannot, in my judgment, be right that the Respondent would be denied the right to continue to make deductions merely because it had taken a lower sum than the maximum she had permitted it to take.
55. For completeness, I also do not consider that the Claimant's authorisation permitted the Respondent to roll up or accumulate the under-deductions, so as to deduct more than £500 in any given month.
56. I consider that the Claimant's intention in giving the Respondent the authority in February 2024 to deduct monies from her pay was that it would include the sum originally loaned as well as the new loan she was seeking. However the effect of section 13(6) is that it could only have authorised the Respondent to make deductions from the subsequent loan of £800, not the earlier loan of £2,000 (because that pre-dated the authorisation). It follows then that the maximum that the Respondent could deduct in any given month was the lesser of:

- 56.1. £500; and
- 56.2. Whatever was left outstanding of the second loan of £800.

57. I prefer the evidence of the bank statements and payslips to the evidence of Mr Saidu. I consider it is most likely that Mr Saidu was mistaken when he said that only a total of £300 had been deducted. I find that £600 was deducted across four months (June to September 2024). The four deductions totalled £600, and no individual deduction was greater than £500. It follows that I conclude that those deductions were all authorised by the Claimant, so they did not constitute an unauthorised deduction from the Claimant's wages.

Holiday pay

58. Turning finally to holiday pay, the Claimant's final leave year ran from 1 April 2024. Her contract did not permit her to carry over any untaken leave from the previous leave year. There was no evidence before me that she was exceptionally given permission to do so.
59. In her final leave year, she worked from 1 April 2024 to 30 September 2024. That is exactly 6 months, or half of the annual leave year. So she accrued 2.8 weeks annual leave (half of the annual entitlement).

60. Based on her salary of £22,425, her weekly pay was £431.25. that is also consistent with the sum of £11.50 per hour shown on her payslips, as £11.50 per hour for 37.5 hours per week is £431.25. So the value of her accrued but untaken leave was £1,207.50. The Respondent calculated the accrued annual leave as 111 hours, which they calculated the value of as £1,276.50. But since this is a claim under the Working Time Regulations, I must apply the formula in the Regulations.

61. There is no provision within the Working Time Regulations allowing for deduction to be made from accrued but untaken annual leave. The Claimant is entitled to that money; the Respondent was not entitled to make deduction from it. So I award the Claimant that sum in respect of accrued but untaken annual leave.

62. For completeness, I should say that if I had considered that the Claimant had some contractual right to the more generous annual leave sum calculated by the Respondent, such that she could bring a claim of unauthorised deduction for wages in respect of that sum, I would have held that the Respondent was entitled to make a deduction of £200 from it (being the outstanding balance of the £800 loan made after the Claimant consented to deductions). That would have left the sum as £1,076.50, which would have been a less favourable result for the Claimant. She is entitled to the more favourable sum calculated under the Working Time Regulations, so that is what I have awarded.

Employment Judge Leith

8 April 2025
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

28 April 2025

Kacey O'Brien
FOR THE TRIBUNAL OFFICE

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