



EMPLOYMENT TRIBUNALS

Claimant: Ms Raine Marshall

Respondent: Lancashire & South Cumbria NHS Foundation Trust

HELD AT: Manchester Employment
Tribunal

ON: 27 February 2025

BEFORE: Employment Judge Ficklin

REPRESENTATION:

Claimant: In person

Respondent: Mr Stenson, counsel

REASONS

PREAMBLE

1. In an oral judgment delivered on 27 February 2025, I dismissed the claimant's claim for unpaid wages as not well-founded. I was asked for written reasons.

BACKGROUND

2. The respondent is a National Health Service (NHS) Trust. The claimant is employed as a Primary Care mental health nurse.

3. On 25 January 2024 the respondent received an Attachment of Earnings Order regarding the claimant dated 18 January 2024, pursuant to Regulation 37 of the Council Tax (Administration and Enforcement) Regulations 1992. The Order was in the sum of £744.59, for payment to Westmorland and Furness Council.

4. The respondent deducted £592.14 (plus a £1 fee) from her earnings in February 2024, and the remaining £152.45 (plus a £1 fee) in March 2024.

5. In a claim form received on 15 August 2024 following ACAS Early Conciliation on 31 July 2024, the claimant brought complaints of unpaid wages (unauthorised deduction) against Christopher Oliver, the Chief Executive of the Lancashire & South Cumbria NHS Foundation Trust. In correspondence before the hearing the parties agreed that the respondent be amended to the Lancashire & South Cumbria NHS Foundation Trust.

HEARING

6. There is an agreed bundle of 170 pages. I heard evidence from the claimant on her own behalf. For the respondent I heard from Damien Greenhalgh, Associate Director of Employee Services at Lancashire Teaching Hospitals NHS Foundation Trust (LTHT), who heads the team that dealt with the claimant's Attachment of Earnings Order.

LAW

7. Section 13 of the Employment Rights Act 1996 (ERA 1996) provides that a worker has the right not to suffer unauthorised deductions from wages. A deduction from wages cannot be made without the worker's written consent unless the employer is authorised by a statutory provision or by a relevant provision in the worker's contract.

8. The Employment Rights Act 1996 materially states:

13Right 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.

...

14Excepted 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.

9. The Council Tax (Administration and Enforcement) Regulations 1992 (Council Tax Regulations) materially state:

37.—(1) Where a liability order has been made and the debtor against whom it was made is an individual, the authority which applied for the order may make an order under this regulation to secure the payment of any outstanding sum which is or forms part of the amount in respect of which the liability order was made.

...

(3) The authority may serve a copy of the order on a person who appears to the authority to have the debtor in his employment; and a person on whom it is so served who has the debtor in his employment shall comply with it.

...

39.—(1) An employer who deducts and pays amounts under an attachment of earnings order may, on each occasion that he makes such a deduction, also deduct from the debtor's earnings the sum of one pound towards his administrative costs.

10. By virtue of section 23(1) of the Employment Rights Act 1996, "a worker may present a complaint to an employment tribunal...that his employer has made a deduction from his wages in contravention of section 13."

AGREED ISSUES

11. The issues were agreed between the parties, as set out in the agreed bundle:

Unauthorised deductions/Unpaid wages

1. Did the respondent make unauthorised deductions from the claimant's wages and if so, how much was deducted?
2. To answer this question the Tribunal must consider whether the respondent paid the claimant less than the sums "properly payable" under the claimant's contract of employment at the date he presented his claim. The Tribunal will have regard to any express or implied terms of the contract.
3. The Tribunal must make clear findings of fact as to the claimant's contractual entitlement to payments payable, with reference to the claimant's contract of employment, any other contemporaneous evidence and other relevant documentation. The Tribunal may have to have regard to the construction of the contract (see *Agarwal v Cardiff University & Another* [2019] ICR 433).
4. If the claimant is successful, how much is the unlawful deduction? Even if the claimant can succeed in his claim the respondent says the two-year backstop operates because of the Deduction from Wages (Limitation) Regulations 2014.

EVIDENCE AND FINDINGS

12. Having considered the oral and written evidence and submissions presented by the parties, I have made the following findings of the relevant facts having resolved conflicts in the evidence on the balance of probabilities. I will not rehearse all the evidence but incorporate the points made by the parties within the body of these reasons.

13. The Barrow-in-Furness Magistrates Court (the “Court”) made a Liability Order (“LO”) under Regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992 (the “Council Tax Regulations”) on 17 October 2022 against the claimant. She argues that the LO has no legal effect and that the Court had no power to make it, and so the respondent became complicit in this illegal attempt to seize her property when it deducted £744.59 from her earnings. The claimant argues that the Attachment of Earnings Order (the “Order”) is invalid and cannot be the basis for reducing her earnings, because such orders are administrative and not made by a court.

14. She also asserts that the Liability Order (“LO”) notice sent by the Court is not valid unless it is the original LO “signed in wet ink, by a judge”. And that there was no legal transfer of power when the Barrow-in-Furness Borough Council became the Westmoreland and Furness Council; also that Barrow Magistrates’ is not a ‘court of record’ and so has no ‘judicial weight’.

15. She said in evidence that Magna Carta prevents theft without law; an administrative order to take earnings violates constitutional safeguards. The claimant also says that she is not obligated to pay Council Tax because local government has no power to require her to do so.

16. She variously asserts other failings that render her free from the obligation to pay Council Tax and all the consequential enforcement processes invalid, including the Order enforced by the respondent.

17. Her witness statement dated 15 January 2025 states:
“my constitutional rights stemming from constitutional law, employment legislation and other primary legislation, superseded any secondary legislation that the council and employers are acting under.”

18. The claimant relied on two case authorities, *Leighton v Bristow & Sutor* [2024] RA 65, and *Kofa, R (On the Application Of) v Oldham Metropolitan Bolton Council* [2024] EWHC 685 (Admin).

19. *Leighton v Bristow & Sutor* was a case in which Mr Leighton brought a claim against an enforcement agency (Bristow & Sutor) that had been instructed by a local authority to pursue Council Tax liability. In that case HHJ Harrison, sitting as a judge of the High Court, found that the enforcement agency had been unable to show that they had authority to act because they lacked a physical liability order pertaining to Mr Leighton. That case hinged on paragraph 66 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007, which expressly pertains to enforcement agents. There is no authority for treating an employer as an enforcement agent under this paragraph. In any event, paragraph 66(4) states that the remedy in this situation is to the County Court or the High Court. The Employment Tribunal has no jurisdiction to hear such a claim.

20. *Kofa* is a judgment refusing judicial review. It does not bind any lower court. But even if it did, it rejects the claimant's premise that LOs are not properly made. Ms Kofa argued, in similar terms to the claimant, that the LO was not properly made, and that the Council Tax Regulations were not legally binding. In refusing permission, Mr Justice Fordham rejected these arguments as misconceived, as well as finding that Ms Kofa must make her arguments, such as they are, in the appropriate forum, ie the County Court. Nothing in *Kofa* is relevant to the Order being carried out by the respondent in this case.

21. Mr Greenhalgh gave evidence that the Order was dealt with in the same way as other Attachments of Earnings Orders. The NHS uses software called Employee Staff Record that calculates the deductions in accordance with the Council Tax Regulations. In his witness statement he set out how such an order is processed. He stated that the Liability Orders themselves are not sent to the NHS, only the Attachment of Earnings Orders. His understanding was that the NHS is obligated to comply with them and that, as he says in his witness statement, "they are mandatory, not discretionary." He confirmed his belief that the Order was correctly made.

22. It is clear to me that the deductions stemming from the Order were made under statutory provisions as per ERA 1996 s. 13(1)(a), and/or under the Council Tax Regulations 37 and 39. The claimant's argument that the deductions were not "statutory" within the meaning of s. 13(1)(a) of the ERA 1996 is based on a false idea of the legal power of statutory instruments, namely the Council Tax Regulations.

23. I am satisfied that the respondent was authorised, and indeed required, to make the two deductions in compliance with the Order. If there was any doubt, s. 14 ERA 1996 expressly states:

"Section 13 [ERA 1996] 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".

24. The rest of the claimant's arguments, including that that she is not liable for Council Tax, or that the Barrow-in-Furness Magistrates had no power to make the Order, are without merit but in any event the Employment Tribunal has no jurisdiction to hear them. The claimant cannot challenge the making of the Order itself, or the LO, in the Employment Tribunal, but must make those challenges in the appropriate venue ie to the Magistrates' or County Court as appropriate.

CONCLUSION

25. I find that the respondent did not make unauthorised deductions from the claimant's earnings within the meaning of the Employment Rights Act 1996. The claimant received the sums that were properly payable under the terms of her contract at all times, minus sums that her employer was required to deduct in compliance with statutory provisions. As far as it is possible to understand her argument, it is entirely misconceived.

26. The claimant's claims are not well-founded and are dismissed.

Employment Judge Ficklin

20 May 2025

REASONS SENT TO THE PARTIES ON

26 June 2025

FOR THE SECRETARY OF THE TRIBUNALS