



EMPLOYMENT TRIBUNALS

Claimant: Mr C. Moloney

Respondent: NetApp UK Limited

Heard at: Reading by CVP

On: 9 July 2026

Before: Employment Judge Chudleigh

Appearances

For the Claimant: in person

For the Respondent: Ms G. Hicks, counsel

REASONS

For judgment sent to the parties on 5 August 2026

Background

1. The Claimant claims that the Respondent made unauthorised deductions from his wages by withholding Employer National Insurance Contributions ("Employer NICs") on Restricted Stock Units ("RSUs") awarded to him during his employment. It was agreed between the parties that the awards were as follows:
 - 1.1 17 February 2022 – 1,050 RSUs awarded. Vesting commencement date: 15 February 2022. The award was scheduled to vest in three equal instalments of 350 RSUs on 15 February 2023, 15 February 2024 and 15 February 2025.
 - 1.2 1 July 2022 – 448 additional RSUs awarded. Vesting commencement date: 15 May 2022. The award was scheduled to vest at intervals between 15 May 2023 and 15 May 2026.
 - 1.3 13 July 2023 – 334 additional RSUs awarded. Vesting commencement date: 15 May 2023. The award was scheduled to vest at intervals between 15 May 2024 and 15 May 2027.
 - 1.4 1 July 2024 – 239 additional RSUs awarded. Vesting commencement date: 15 May 2024. The award was scheduled to vest at intervals between 15 May 2025 and 15 May 2028.

The issues

2. At the outset of the hearing the issues for the Tribunal were agreed with the parties to be as follows:
 - 2.1 Were the wages paid to the Claimant less than the wages he should have been paid because the Respondent withheld Employer NICs on RSUs awarded to him?
 - 2.2 Was any deduction:
 - 2.2.1 required or authorised to be made by virtue of a statutory provision or a relevant provision of the Claimant's contract (13(1)(a)), or
 - 2.2.2 had the Claimant previously signified in writing his agreement or consent to the making of the deduction (13(1)(b))?
 - 2.3 If the claim is successful, how much is the Claimant owed?
3. It was agreed by the Respondent that it made deductions from the Claimant's pay in respect of Employer NIC payable on the award of all RSUs to the Claimant. Accordingly, the issue at §2.1 above was made out.
4. It was further agreed that the issue at §2.3 above would be determined at a separate hearing if the claim were successful. Accordingly, the only matter for the Tribunal to determine was that outlined at §2.2 above.
5. In closing submissions, the Claimant argued that the deductions were not merely unauthorised; they were operated incorrectly through payroll. However, this was a separate argument from the pleaded unlawful deductions claim and was not a matter that was in issue before me.
6. At the outset of the hearing the Claimant applied to put extracts of conversations between himself and Mags Galbraith, Head of HR of the Respondent at the material time before the Tribunal. He said they showed that no one understood the issue of the deduction of Employer NICs from pay in respect of awards of RSUs. I allowed that application and read the document.
7. I heard evidence from the Claimant. For the Respondent, witness James Muetzel, Senior Director of Global Compensation did not attend to give evidence. I read his statement but took into account when considering the evidence that he had not been cross-examined. I had a bundle of documents containing 312 pages.

Findings of fact

8. I made the following findings of fact:
 - 8.1 The Respondent is part of the NetApp Inc. group ("NetApp"), which is based in California, USA.

- 8.2 The Claimant was employed by the Respondent as a Senior Compensation and Benefits Business Partner from 1 January 2022 to 18 November 2024.
- 8.3 The Respondent operates an employee incentive scheme whereby employees are given shares of RSUs. The RSUs vest on anniversaries of the grant date and, following each vesting date, the employee receives shares of NetApp common stock.
- 8.4 The Claimant's offer dated 27 September 2021 stated that the Respondent would "like to over [sic] you 1050 units over a 3 year period so you would get 350 units a year".
- 8.5 The contractual arrangements relating to the Claimant's RSUs were contained in a series of interlocking documents comprising the employment contract, the NetApp Inc. 2021 Equity Incentive Plan ("the Plan"), the Restricted Stock Unit Award Agreements, and the Joint Election.
- 8.6 The Claimant entered into a contract of employment on 29 September 2021. Clause 6.1 provided that, following commencement of employment, NetApp would recommend to its Board of Directors that the Claimant be granted 1,050 RSUs, expressly "subject to the terms and conditions of the NetApp, Inc. 2021 Equity Incentive Plan". The contract further provided that the RSUs would vest at the rate of one-third per year beginning on the first anniversary of the grant date and that, following each vesting date, the Claimant would receive shares of NetApp common stock "subject to tax withholding".
- 8.7 The Plan governed the award and administration of RSUs. Clause 10.1 provided that RSUs could be granted at the discretion of the Administrator. Clause 10.4 provided that payment of vested RSUs would be made at the times specified in the relevant Award Agreement and that the Administrator could settle vested RSUs in cash, shares or a combination of both.
- 8.8 The Plan also contained detailed tax withholding provisions. Clause 17.1 provided that, prior to the delivery of shares or cash pursuant to an award, the Company had the power and right to deduct, withhold, or require the participant to remit amounts sufficient to satisfy tax obligations, including social insurance contribution obligations. Clause 17.2 provided a number of methods by which those withholding obligations could be satisfied, including withholding shares or cash otherwise deliverable to the participant.
- 8.9 On 17 February 2022, the Claimant was granted his first RSU award. The Notice of Restricted Stock Unit Grant stated that the award was subject to the terms of the Plan and the Award Agreement. By clicking "Accept", the Claimant agreed to the terms of the Award Agreement, including Exhibits A and B.

- 8.10 Exhibit A incorporated the terms of the Plan and provided that each RSU represented the right to receive a share or a cash amount equal to the value of a share when vested. Section 7 of Exhibit A dealt with tax obligations. It provided that the ultimate liability for all tax and social insurance obligations connected with the RSUs remained the participant's sole responsibility. It further provided that the Service Recipient would withhold the amount required to satisfy those tax obligations.
- 8.11 Exhibit B contained additional provisions applicable to UK employees. Under the heading "Joint Election", the Claimant agreed, as a condition of participation in the Plan, to accept liability for secondary Class 1 National Insurance Contributions ("Employer NICs") arising in connection with the RSUs. He further agreed to enter into a joint election approved by HMRC transferring liability for Employer NICs to him and agreed that the Company could collect Employer NICs from him by any of the methods set out in section 7 of the Award Agreement.
- 8.12 Exhibit B also contained a "Tax and National Insurance Contributions Acknowledgment", under which the Claimant agreed that he was liable for all withholding obligations and agreed to indemnify the Company against any withholding obligations which it was required to pay or withhold on his behalf.
- 8.13 The contractual documentation also included an "Important Note on the Election to Transfer Employer NICs". This stated that, as a condition of participation in the Plan, the participant was required to enter into an election transferring any Employer NICs liability arising in connection with participation in the Plan. It further stated that, by accepting the RSU award, the participant accepted the transfer of Employer NICs liability and authorised the employer to recover amounts sufficient to cover that liability, including by deductions from salary.
- 8.14 The Joint Election Agreement itself provided that the Claimant and the Company jointly elected that the entire liability of the employer to pay Employer NICs arising on relevant employment income would be transferred to the Claimant. The agreement expressly recorded that, by signing the election or accepting the awards electronically, the Claimant would become personally liable for the Employer NICs liability covered by the election.
- 8.15 Clause 3.1 of the Joint Election Agreement authorised the Company to collect the Employer NICs liability from the Claimant by deduction from salary or any other payment payable to him after the relevant chargeable event.
- 8.16 Following the first grant, the Claimant received further RSU awards on 1 July 2022, 13 July 2023 and 1 July 2024. Each of those awards was stated to be subject to materially identical Award Agreements incorporating the same tax withholding, Employer NICs and Joint Election provisions.

The law

- 9 The claim concerns the statutory protection against unlawful deductions from wages contained in Part II of the Employment Rights Act 1996 ("ERA").
- 10 Section 13(1) ERA provides that an employer must not make a deduction from a worker's wages unless either: (a) the deduction is required or authorised by statute or by a relevant provision of the worker's contract; or (b) the worker has previously signified in writing his agreement or consent to the deduction.
- 11 Pursuant to section 13(2) ERA, a contractual provision will only constitute a "relevant provision" if it is 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.
- 12 Whether a contractual term authorises a deduction is determined by applying ordinary principles of contractual construction.
- 13 The term "wages" is defined broadly by section 27 ERA and includes sums payable in connection with employment, including bonuses and other employment-related emoluments.
- 14 The case also concerns National Insurance Contributions. Under the Social Security Contributions and Benefits Act 1992 ("SSCBA"), secondary Class 1 National Insurance Contributions (or Employer NICs) are ordinarily the legal liability of the employer.
- 15 As a general rule, paragraph 3A(1) of Schedule 1 to the SSCBA prohibits an employer from recovering Employer NICs from an employee, whether by deduction from earnings or otherwise. However, paragraph 3A(2) creates an exception where there is an agreement which permits the employer to recover all or part of the Employer NIC liability from the employee. In those circumstances, recovery of Employer NICs is lawful.
- 16 Accordingly, where an employer seeks to recover Employer NICs from an employee, the central legal question is whether there was a valid agreement authorising that recovery. If there was, the deduction may be lawful both under the SSCBA and under section 13 ERA. If there was no contractual authority or prior written consent, the deduction will ordinarily be unlawful.
- 17 In determining such a claim, the Tribunal's task is therefore to examine the relevant contractual and related documentation to determine whether the employee agreed, in advance of the deduction, that the employer could recover Employer NICs by deduction from salary, other payments due, or the proceeds of share awards. The

fact that Employer NICs are ordinarily the employer's liability does not itself prevent recovery where the statutory requirements for a valid agreement have been satisfied.

Submissions

- 18 The Claimant's case is that the Respondent made unlawful deductions from his wages by deducting sums representing Employer NICs from the value of RSUs awarded to him during his employment. He contends that, when he accepted the offer of employment in September 2021 and entered into his employment contract, he was informed of the salary, benefits and RSU award but was not informed that the Respondent operated a practice of passing Employer NIC liability to employees.
- 19 The Claimant's position is that he relied on the information provided to him at the recruitment stage and understood that Employer NICs were, as a matter of law, the responsibility of the employer. He says that neither the recruiter, the offer documentation nor the employment contract made any reference to deductions for Employer NICs from RSU income. Accordingly, he argues that he did not agree to such deductions when he accepted employment and that NetApp failed to provide clear and transparent information about this aspect of the RSU scheme.
- 20 The Claimant further contends that the Respondent has never adequately explained the legal basis on which the deductions were made. He maintains that he repeatedly sought clarification from payroll and HR but did not receive a satisfactory response. He also relies on conversations with the Payroll Manager and the UK Head of HR, both of whom he says agreed with his concerns about the deductions.
- 21 The Claimant also argues that the Joint Election relied upon by the Respondent was invalid because it was neither signed by him nor countersigned by the Respondent. Following the conclusion of oral submissions, he sent an email referring me to pages 100-101 of the bundle, which provide that, in the absence of a valid Joint Election, the Respondent could choose not to issue or deliver shares. The Claimant submits that, because the Respondent nevertheless issued the shares to him, the Joint Election cannot have been validly executed.
- 22 Further, he contends that his acceptance of the RSU documentation did not amount to a genuine choice because refusal to accept the relevant terms would have resulted in forfeiture of the RSU awards.
- 23 In summary, the Claimant's case is that the deductions for Employer NICs were unauthorised because he was not informed of, and did not agree to, the transfer of Employer NIC liability at the time he accepted the offer of employment and entered into his contract. He says that the Respondent's subsequent reliance on later RSU documentation and joint election arrangements cannot cure that defect. He further contends that the Joint Election was ineffective and that his purported acceptance of the RSU terms was not freely negotiated. Accordingly, he maintains that the deductions amounted to unlawful deductions from wages.
- 24 The Respondent's case is that the deductions complained of were lawful because the Claimant expressly agreed, in writing, to the transfer and recovery of Employer NICs in connection with the RSU scheme before any deductions were made.

- 25 The Respondent contends that the Claimant's employment contract did not confer an unconditional right to receive RSUs. Rather, it provided only that NetApp would recommend the grant of RSUs, and that any award would be subject to the terms and conditions of the NetApp 2021 Equity Incentive Plan. The contract also stated that any shares received on vesting would be subject to tax withholding.
- 26 The Respondent says that, after commencing employment, the Claimant was granted RSUs under a series of separate award agreements. When accepting those awards, the Claimant agreed to the terms of the Plan, the Award Agreements and, as a UK participant, a Joint Election relating to Employer NICs. Those documents provided that the Claimant would bear liability for Employer NICs arising in connection with the RSUs and authorised NetApp to recover those amounts, including by deduction from salary, other payments due, or the proceeds of share awards.
- 27 The Respondent therefore contends that the deductions were authorised by contractual provisions and the Claimant's written consent. It argues that the central issue is whether the deductions were authorised before they were made, not whether the Claimant was informed of the Employer NIC arrangements at the recruitment stage.
- 28 The Respondent further argues that the Claimant's complaint is based on a misunderstanding of the legal position. While Employer NICs are ordinarily the employer's liability, legislation permits an employer to recover that liability from an employee where there is a valid agreement to do so. The Respondent's case is that the relevant agreements were entered into when the Claimant accepted the RSU awards and associated documentation.
- 29 In summary, the Respondent's position is that the Claimant accepted the RSU scheme on terms that expressly transferred Employer NIC liability to him and authorised recovery of those amounts. Accordingly, the deductions were authorised.

Conclusions

- 30 The Claimant's claim succeeds only if the deductions for Employer NICs were not authorised by a relevant contractual provision or by his prior written agreement. Having considered the documentary evidence and the parties' submissions, I conclude that the deductions were authorised.
- 31 I accept the Claimant's evidence that, when he accepted the offer of employment and entered into his contract in September 2021, he was not specifically informed that Employer NIC liability in respect of RSUs would be transferred to him. However, that is not the legal test. The question is whether, before the deductions were made, the Claimant agreed in writing to the Respondent recovering Employer NICs from him.
- 32 In my judgment, he did. The employment contract expressly provided that any grant of RSUs would be subject to the terms and conditions of the NetApp 2021 Equity Incentive Plan and that shares received on vesting would be subject to tax withholding. The contract therefore contemplated that further terms would govern the RSU awards.

- 33 The Claimant subsequently accepted each of the RSU awards by clicking "Accept". In doing so, he agreed to the terms of the Plan, the Award Agreement, including Exhibits A and B, and the associated documentation. Those documents expressly provided that the Claimant would bear liability for Employer NICs arising in connection with the RSUs, the Respondent could recover those amounts from him and recovery could be effected by deduction from salary.
- 34 I reject the Claimant's argument that the deductions were unauthorised because he was not informed of the arrangements at the recruitment stage. Section 13 ERA requires that the deduction be authorised before it is made. It does not require that the relevant authorisation be contained in the original contract of employment or disclosed before employment commences.
- 35 I also reject the argument that the Joint Election was ineffective because it was not signed. The contractual documentation made clear that acceptance could be effected electronically and that, by accepting the awards through the online process, the Claimant agreed to be bound by the relevant terms. In any event, even if there were some defect in the Joint Election itself, the Plan, Award Agreement and the UK addendum independently contained clear provisions authorising recovery of Employer NICs and recording the Claimant's agreement to bear that liability.
- 36 Nor do I accept that the Claimant's agreement was invalid because refusal to accept the relevant terms would have resulted in forfeiture of the RSU awards. The Claimant was under no obligation to accept the awards. The fact that the awards were conditional upon acceptance of the relevant terms does not prevent those terms from being contractually binding once accepted.
- 37 I have considered the conversations relied upon by the Claimant involving the Payroll Manager and the Head of HR. Even if those conversations occurred as alleged, they do not alter the effect of the contractual documents or answer the statutory question before the Tribunal.
- 38 Accordingly, I find that the deductions complained of were authorised by relevant contractual provisions and/or by the Claimant's prior written agreement within the meaning of section 13(1)(a) and section 13(1)(b) ERA. The statutory exception in paragraph 3A(2) of Schedule 1 to the SSCBA was therefore engaged and recovery of Employer NICs was lawful.
- 39 For those reasons, the claim for unlawful deductions from wages is dismissed.

Approved by:

Employment Judge Chudleigh

14 August 2026

ORDER SENT TO THE PARTIES ON

OFFICIAL

Case Number: 6002166/2025

15 September 2026

FOR THE TRIBUNAL OFFICE