



EMPLOYMENT TRIBUNALS

Claimant: Bea Barbara Roman

Respondent: Compass Group UK & Ireland

Heard at: London Central (CVP) **On:** 28 November 2022

Before: Tribunal Judge Peer acting as an Employment Judge

Representation

Claimant: In person

Respondent: Mr James Byrne of the respondent

JUDGMENT

1. The name of the respondent is amended to Compass Group UK & Ireland.
2. The respondent did not make any unauthorised deductions from the claimant's wages and the claim is dismissed.

REASONS

1. A request for written reasons having been made in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013 at the hearing where reasons for the above judgment were given orally, the Tribunal provides the following:

The hearing

2. The claimant, Bea Barbara Roman, represented herself at the hearing.
3. The respondent was represented by Mr James Byrne, HR of the respondent.
4. The hearing was listed as a final hearing with a time allocation of two hours to determine the claimant's claim of unauthorised deductions from wages.
5. I had before me a paginated bundle indexed to 78 pages including the claim

and response, claimant's contract of employment, copy documents including copy emails, payslips and bank statement of the claimant. The respondent provided detailed written submissions.

6. The claimant accepted that the name of the respondent be amended to reflect her employer rather than the parent company as respondent. The respondent's name was therefore amended to Compass Group UK & Ireland.
7. The claimant accepted, having reviewed the written submissions of the respondent, that the sums recovered as overpayments were overpayments and did not represent unauthorised deductions from wages. The claimant submitted that the way in which this had been done without notification was not right. The claimant told me that she had been seeking an explanation as to the amounts recovered and shown on her payslip and considered that full explanation was only forthcoming with the respondent's written submissions. I explained the legal tests for an unauthorised deduction of wages claim to the claimant and the limits of the tribunal's jurisdiction to claims brought before the tribunal as she was not legally represented. Notwithstanding discussion and her acceptance that the respondent had recovered overpayments, the claimant did not wish to withdraw her claim and I therefore gave judgment orally as requested and now provide written reasons as requested.

Findings of fact

8. The claimant was employed by the respondent as a catering supervisor between 7 February 2021 and 25 September 2022. The claimant took maternity leave between 9 September 2021 and 8 June 2022.
9. The respondent placed the claimant on a permanent contract of employment with effect from 1 October 2021 noting continuous service from 7 February 2021. The respondent altered arrangements for payment of wages from weekly to monthly payments. The respondent recorded the claimant as working 30 hours per week based on average hours worked although the claimant's arrangement on return from maternity leave was to work 15 hours a week. The contract of employment sets out a contractual right to deduct overpayments from wages.
10. In bringing her claim, the claimant alleged that there had been unauthorised deductions from wages of £874.25 as per her payslip dated 1 August 2022, £1,273.88 as per her payslip dated 1 September 2022, £499 as per her 1 September 2022 payslip and £372.60 as per her 30 September 2022 payslip.
11. The claimant's payslip dated 1 November 2021 records a payment made to the claimant of £1597.26 for work done in October 2021. The claimant did not work during October 2021 as she was on maternity leave.
12. Due to administrative errors of the respondent, the claimant was treated as working during October 2021 and in addition was not set up on the new system until 14 October 2021. Therefore, the payslip reflected pay of 63 hours between 1 October 2021 and 13 October 2021 and 67.49 hours of

pay for the remainder of the month on the new monthly pay system assuming 30 hours per week. The total pay reflected 130.49 hours.

13. The steps taken by the respondent in relation to the recovery of overpayment are, in part given the administrative errors made, somewhat complex and arguably confusing without explanation.
14. After making the payment for October 2021, the respondent inputted 78 hours maternity leave into its system. A deduction of 78 hours therefore appeared on the claimant's payslip for 1 December 2021 and although monies were not recovered at that point the deduction was erroneous as it should have been for 67.49 hours. Thereafter the respondent identified the additional overpayment of 63 hours.
15. The respondent then erroneously deducted an additional 34.49 hours on the basis of a calculation that 175.49 hours had been overpaid totalling £2,148.13 and this was recorded on the 23 December 2021 payslip.
16. At this point the claimant had therefore received an overpayment of £1597.26 and payslips itemising deductions totalling £2,148.13. The deductions were not made and no overpayments was actually recovered until after the claimant returned to work on 1 June 2022.
17. The claimant was paid in full for work done during June 2022 as per the 1 July 2022 payslip which records net salary payment of £972.09.
18. A deduction of £874.25 was made from the claimant's wages as per the 1 August 2022 payslip in part recovery of the overpayment.
19. The claimant contacted her line manager about this deduction and he queried this with the respondent's payroll. It was at this point that the administrative errors were identified and that the claimant had only been overpaid by 130.49 hours and not 175.49 hours. The line manager also stated that the claimant was due payment for 60 hours for October 2021 and thus the hours to be recovered were recalculated as 70.49 amounting to £862.93 in total.
20. The respondent therefore cancelled out the remaining overpayment recovery of £1,273.88 on the basis that it was erroneous. The claimant was therefore to receive £11.32 being the difference between the £874.25 recovered and the £862.93 overpayment. In the meantime, the respondent had made a separate payment to the claimant of £499 which is shown as received by the claimant on her bank statement on 11 August 2022 to reflect a net payment for the 60 hours.
21. The payslip for 1 September 2022 itemises the gross amount of £734.40 for this 60 hours work together with recovery of the BACS payment of £499. The claimant was however not due payment for this 60 hours. The 60 hours was thus itemised twice being reflected as the £734.40 and encompassed in the cancellation of the remaining overpayment on the 1 September 2022 payslip. The respondent did recover once by way of the itemised £499 recovery. The respondent does not seek to recover the remaining overpayment.

22. The deduction made of £874.25 as per the 1 August 2022 payslip was reimbursement of overpayment of wages.
23. The claimant was paid for 122.96 hours work in August as shown on her 1 September 2022 payslip. The claimant took four days of annual leave during August. The claimant's payslip for 30 September 2022 shows a deduction of 30 hours. The 30 September 2022 payslip also shows payment of 30 hours of holiday pay. This is a reclassification of amounts paid for August 2022 not an actual deduction of any amount.
24. ACAS conciliation was entered into on 8 August 2022 and concluded on 19 September 2022. The claimant presented her claim form to the tribunal on 5 October 2022. The respondent's response was filed in time.

The law

25. A 'worker' is defined by section 230(3) of the Employment Rights Act 1996 (the Act) as "an individual who has entered into or works under (or, where the employment has ceased, worked under)- (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."
26. Section 13(1)(a) of the Act provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by virtue of a statutory provision or a relevant provision of the worker's contract.
27. Section 14(1)(a) of the Act provides that section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages.
28. Section 23 of the Act gives a worker a right to complain to an employment tribunal that they have suffered an unauthorised deduction from wages. A complaint must be brought before the end of the period of three months beginning with the date of the payment of wages from which the deduction was made or, where the complaint is brought in respect of a series of deductions, the date of the last deduction in the series. If the claim is not brought within the three month period, the tribunal may consider the claim if it is satisfied that it was not reasonably practicable for the complaint to be brought within the three month period and that the complaint is presented within such further period as the tribunal considers reasonable.
29. The normal time limit is extended by section 270B of the Employment Rights Act 1996 to take account of the obligation to enter into early conciliation facilitated by ACAS and applies in every case to 'stop the clock' during the conciliation period. An additional extension applies in certain circumstances, where the limitation date calculated under section 207B(3) falls within the period one month after the end of conciliation.

Conclusions and analysis

30. There is no dispute that the claimant satisfies the condition of being a worker in order to bring a claim of unauthorised deductions from wages. The claimant was engaged under a contract of employment by the respondent.
31. The respondent does not dispute that the claims are brought in time. There was no discussion about time limits at the hearing. However, arguably the complaint relating to the alleged deduction on 30 September 2022 is not covered by the conciliation entered into as follows.
32. The first deduction complained of relates to an amount taken from wages as per the 1 August 2022 payslip. ACAS was contacted on 8 August 2022 and the claim presented within the primary three month limitation period on 5 October 2022. I note that the second deduction complained of as made on 1 September 2022 is after ACAS was contacted although before the end of the conciliation period and is both related and the cause of action is the same so can reasonably be regarded as encompassed by conciliation.
33. The deduction complained of as made on 30 September 2022 falls outside the ACAS conciliation period and it is therefore not clear how it can have been canvassed within conciliation. On that basis, arguably there is no jurisdiction for me to entertain the complaint as related to the alleged deduction on 30 September 2022. The claimant could technically still bring such a complaint within time and would need to show a deduction from wages was made and was unauthorised in order to succeed. I have however made findings above based on the evidence available to me and drawn a conclusion in relation to this evidence in the circumstances.
34. The respondent deducted £874.25 from the claimant's wages for July 2022 as recorded in her payslip dated 1 August 2022. The amount deducted as per my findings above was attributable to an overpayment of wages itemised on her 1 November 2021 payslip. Section 14(1)(a) of the Act provides that section 13 does not apply where the purpose of the deduction was reimbursement of an overpayment of wages. The deduction was for the purpose of reimbursement of an overpayment of wages. Accordingly, the respondent did not make any unauthorised deduction from wages on 1 August 2022.
35. The claimant complains that the amount of £499 was deducted from wages due on 1 September 2022. The amount deducted as per my findings above related to an overpayment of wages and was for the purpose of reimbursement of an overpayment of wages. Overall, the respondent has not been fully reimbursed for the overpayment of wages although does not seek further recovery. Accordingly, the respondent did not make any unauthorised deductions from wages on 1 September 2022.
36. The claimant complains that the amount of £372.60 was deducted from her wages on 30 September 2022. The payslip does itemise a deduction of 30 basic hours. The payslip also itemises a payment of 30 hours holiday pay. This was not an actual deduction. The respondent explains that this was a reclassification of 30 hours pay as holiday pay for the month of August. The respondent did not make any actual deductions from wages on 30 September 2022. If there is no deduction from wages, a claim for

unauthorised deduction from wages cannot succeed.

37. The respondent did not make any unauthorised deductions from the claimant's wages and her claim for unauthorised deductions from wages is dismissed.

Tribunal Judge Peer acting as an Employment Judge

Date 28 November 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

28/11/2022

FOR THE TRIBUNAL OFFICE