



EMPLOYMENT TRIBUNALS

Claimants:

2413591/2020 Mr Chetan Sangani
2413592/2020 Ms Helen Mackay
2413593/2020 Mr Zuned Hakim
2413594/2020 Mr Eugene Toh
2413595/2020 Mr Neeraj Aluja (Ahuja)
2413596/2020 Mr David Selvan
2413597/2020 Mr Abdul Yasen
2413598/2020 Mr Riad Adam
2413599/2020 Mr Jayant Nadkarni
2413600/2020 Ms Caroline Lever
2413602/2020 Mr Karthikeyen Iyengar

Respondent: Mersey and West Lancashire Teaching Hospitals NHS Trust
(formerly Southport and Ormskirk Hospitals NHS Trust)

Heard at: Liverpool

On: 23 November 2023

Before: Employment Judge Aspinall

Representation

Claimant: Mr Isaacs, Counsel

Respondent: Ms Keogh, Counsel

RESERVED JUDGMENT

1. The claimants brought complaints for unauthorised deductions which were heard on 15,16 and 17 August 2022 and the decision reserved. Before the decision was promulgated the respondent conceded liability for amounts as set out in the schedules of loss at that time.

2. Accordingly, the Tribunal declares that:

1. The eleven claimants' complaints of unauthorised deductions from wages under Section 13 Employment Rights Act 1996 are well founded and succeed.

A consent order determining liability and remedy in part is attached.

The following nine of the eleven claimants also sought to recover consequential losses under Section 24(2) ERA 96.

2. The claims for consequential loss are not well founded, for the reasons set out below, and fail.

2413591/2020	Mr Chetan Sangani
2413592/2020	Ms Helen Mackay
2413593/2020	Mr Zuned Hakim
2413594/2020	Mr Eugene Toh
2413595/2020	Mr Neeraj Aluja (Ahuja)
2413596/2020	Mr David Selvan
2413598/2020	Mr Riad Adam
2413599/2020	Mr Jayant Nadkarni
2413602/2020	Mr Karthikeyen Iyengar

REASONS

Background

1. The claimants are consultant and specialist orthopaedic doctors and surgeons at the respondent trust. The Trust wanted to introduce a new way of working called Consultant of the Week (CoW). The claimants say that this increased their working hours, measured in units of programmed activities or PA's, and therefore their entitlement to pay. The respondent did not pay them in respect of the additional PA's. It objected to the way in which the orthopaedic department had timetabled CoW, saying that it ought to have been done in a cost neutral way as had been done in other departments but that the orthopaedic department had done it in a way that increased PA's and that this amounted to a unilateral attempt to vary the contracts and was ineffective. It said there were no increased PA wages due to the claimants.

2. The respondent accepted that the litigation was causing workplace disharmony and conceded liability for the amounts claimed as unauthorised deductions and has made or will make those payments.

3. Nine claimants said that they had suffered losses consequent upon the failures to pay the additional units at the relevant time. Those complaints came to final remedy hearing on 23 November 2023.

The Hearing

Documents

4. The Tribunal had the original final hearing bundle together with a remedy bundle, draft Consent Order and written submissions from each side on the consequential loss point.

Oral evidence

5. The Tribunal had written statements from Mr Sangani, Mr Selvan, Mr Toh, Dr Mackay, Mr Nadkarni, Mr Iyengar, Mr Ahuja, Mr Adam and Mr Hakim.

6. It heard oral evidence from Dr Mackay, Mr Hakim and Mr Nadkarni.

The List of Issues

7. The List of Issues had been prepared for the final liability hearing. The relevant item on the list for consequential loss was as follows:

1. What sum, if any, does the Tribunal consider appropriate to compensate each of the nine claimants for any financial loss sustained which was attributable to the matter complained of, pursuant to s. 24(2) ERA?

Relevant Law

8. Section 24 provides:

- (1) **Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer —**
 - (a) **in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,**
 - (b) ...
 - (c) ...
 - (d) ...
- (2) **Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.**

9. The relevant provision in this case is at subsection 2. Subsection 2 was added by section 7 of the Employment Act 2008 to the Employment Rights Act 1996. The preamble to the Employment Act 2008 reads:

An Act to make provision about the procedure for the resolution of employment disputes; to provide for compensation for financial loss in cases of unlawful underpayment or non-payment;

10. The Employment Act 2008 also added, at section 163 of the Employment Rights Act 1996, provision for compensation for financial loss sustained for non-payment of redundancy payment:

- (5) **Where a tribunal determines under subsection (1) that an employee has a right to a redundancy payment it may order the employer to pay to the worker such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of**

the redundancy payment.

11. The same language is used at Section 163 as for Section 24(2).

12. The parties' representatives agreed that there did not appear to have been a reported case in which financial loss under section 24 had been awarded. Harvey on Industrial Relations and Law commented that section 24:

"...is no doubt designed to cover such items as bank and interest charges incurred as a result of the employer's failure to pay wages. However, the wording is wide enough to cover any financial loss that can be shown to be causatively linked to the employer's failure if the tribunal considers it appropriate (there being no requirement that the loss be reasonably foreseeable)."

13. Section 26 provides

Section 23 does not affect the jurisdiction of an [employment tribunal] to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an [employment tribunal] to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

14. The Employment Tribunal Remedies Handbook provides:

The usual principles of mitigation will likely apply to any award under Section 24(2) but the award for repayment of deductions need not be mitigated.

Submissions

The claim for additional compensation for specific losses

15. The claimants' representative submitted that the specific losses of each claimant can be shown to be attributable to the non-payment of wages at the relevant time and ought to be compensated.

16. The respondent's representative submitted that section 24(2) contains a two stage test; the first being to establish financial loss and the second the exercise of discretion on the basis of what is appropriate.

17. The respondent's representative also submitted that the claimants would be under a duty to take reasonable steps to mitigate consequential loss. The respondent submits that the claimants have provided wholly insufficient evidence of financial loss.

Submissions on the claim for interest as financial loss

18. The claimant's representative submitted that the language of Section 24 could include interest and cited Attrill v Dresdener Leinwort [2012] EWHC 1468 QB on the point of pre judgment interest in the civil courts. The High Court said that the rate was at the discretion of the court and the purpose of interest is to

compensate the recipient for being deprived of money that he should have received. A broad brush approach is to be taken to determine what is just and appropriate. The HC seemed to accept that an appropriate rate would be the cost of borrowing at the relevant time. The Tribunal notes that this was a HC case being decided on contractual principles and not under ERA wages provisions.

19. Mr Isaacs also referred the Tribunal to Carrasco v Johnson [2018] EWCA Civ 87 in which the Court of Appeal commented on appropriate rates of interest in different kinds of cases and to Henderson & Jones Ltd v David Jason Ross and others [2023] EWHC 1585 where it was stated that the purpose of an interest award is to compensate parties for the loss of their money.

20. The respondent submitted that there is no statutory regime for interest on awards of unlawful deductions despite the existence of interest regimes elsewhere in employment statutes for example in relation to discrimination awards.

21. Neither side made any submission in relation to section 26.

Application of the Law

The test in Section 24

22. The Tribunal accepts the respondent's submission that section 24(2) contains a two stage test. It is clear from the language of the statute that the Tribunal may award:

“...such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

23. The Tribunal directed itself to ask:

- Is there financial loss?
- What is the relevant deduction or series of deductions relied on?
- Is the loss attributable to the deduction?
- What are the circumstances of the deduction, the loss and the wider circumstances of this case?
- Has the claimant mitigated that loss?
- Is it appropriate in the circumstances to make an order?

24. The Tribunal's jurisdiction in the exercise of discretion is wide and provided not exercised unreasonably will not be interfered with on appeal. In Beynon v Scadden 1999 IRLR 700 EAT Lindsay J stated, in relation to the exercise of discretion on costs:

“The proper test for the employment tribunal was not whether its order accorded with this authority or that but ultimately, whether it was just to have exercised as it did the power conferred upon it. The EAT must not consider whether we would have ordered as the employment judge did but instead ask ourselves whether the employment tribunal took into account matters which it should not have done, or failed to take into account that which it should have done or whether in some other way it came to a conclusion to which no other employment tribunal, properly directing itself, could have arrived.”

25. There is no authority on which matters are to be taken into account on Section 24(2) nor on the replicated language in section 163.

26. In the exercise of discretion generally the Tribunal has regard to the overriding objective in Rule 2 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

Interest on unlawful deductions

27. The claims for interest on the amounts of the unlawful deductions fail. The Tribunal accepts the respondent’s submission that there is no statutory regime for interest on unlawful deduction and that a claim for interest on the amount of the deduction must fail.

28. The claimants say that it must be right that not having your wages on time puts you to cost and that a broad brush approach should be adopted and an interest rate applied. The Tribunal rejects that submission. The Tribunal does not have jurisdiction to award interest on unauthorised deductions. Statutory provision is made for interest for example on discrimination injury to feelings awards but not, for example, on public interest disclosure detriment awards for injury to feelings. Because a regime exists elsewhere it does not give the Tribunal authority to award interest where no regime exists. There was an opportunity when the legislation was made to have provided for interest on deductions and parliament made no provision.

29. For this reason, none of the claimants seeking interest on the amount of the deduction can succeed.

Financial loss attributable to unlawful deduction

30. Unlawful deductions deprive individuals of wages for work they have done. There can be a cost to having been deprived of your wages. For example, an employee may be forced to take a loan to pay his living expenses. He may have had to borrow, for example £ 600 at 15% interest so that he would owe £ 690.00, £ 90.00 of that would be because he did not have his wages on time. Section 24(2) would enable that worker to claim as consequential loss the interest he had had to pay on a loan to meet his expenses.

31. The Tribunal accepts the commentary in the Remedies Handbook and the submission of the respondent that the usual principles of mitigation would apply to financial loss. For example, the employee would be expected to have found a fair rate of borrowing and may have failed to mitigate if he took a loan at 15% when he

could have used his overdraft at, for example 5% so that he would then have had a financial loss of £ 30 because he had not had his wages on time.

What is financial loss?

32. The Tribunal had regard to the words of the statute and the commentary in Harvey. Section 24(2) was added to the Employment Rights Act to allow for loss attributable to the unlawful deduction, such as in the scenario outlined above; the person who when deprived of his wages on time has to incur other costs to meet his liabilities.

33. An employee may have chosen to use his wages to reduce debt and not having had his wages on time meant he lost the opportunity to reduce his debt so that he continues to incur interest on his debt at a higher rate. Unless he could show he had been reducing debt *before* the non payment and had to resume payments at a higher level *after* the non payment he would be unlikely to be able to show that he had a financial loss *attributable to* the non payment of his wages.

34. An employee may use his wages to invest and earn money for him. If he does not have his wages on time, he cannot invest them (or a proportionate part of them) so cannot earn the money that he would have earned if he had had his wages on time. The Tribunal accepts that this too *may* be a financial loss that could be recoverable under section 24(2) for example if an employee had a pattern of regularly investing £ 100 a month of his disposable income in a fixed rate bond but non payment of his wages, or part thereof, on time meant that he did not have enough disposable income that month to pay into his bond so suspended his payment for that month and at the end of the term had less growth than he would have had if his contribution had been paid on time, he may be able to recover the lost growth on the proportionate part not invested.

35. Each of these scenarios will of course require evidence. The claimant would have to prove the financial loss.

36. The Tribunal accepts the commentary in Harvey that the provision may extend to encompass any financial loss that can be causatively linked but that causative link, in the words of the statute, *attributable to*, must be proven. And the duty to mitigate exists so that the employee might be expected to have used what available wages he had to have reduced debt as a priority over other non essential expenditure, or to have reduced debt incurring higher interest rates as a priority over debt at lower interest rates or, for example, to adjust his investment portfolio so as to maximise gains elsewhere to mitigate against losses from not having had as much of his wages available to earn money for him as he would have had if there had been no unlawful deduction.

Findings of fact and application of law in each of the complaints

Mr Sangani's claim

37. The Tribunal did not hear oral evidence from Mr Sangani but read his

witness statement. His witness statement said he was:

“...unable to invest my salary at the time and receive interest payments and or make additional payments on existing debts and therefore pay less interest on those debts overall.”

38. The total amount of his unlawful deduction over the period March 2019 to May 2020 was £9661.91. He claims interest at 8% as financial loss being the interest he says he would have earned on the money if it had been paid to him in time. His claim is for £ 1160.04. He has adduced no evidence of his financial position generally. His representative submitted that he would have invested the money. The Tribunal could not assess the likelihood of Mr Sangani having used this money for investment rather than expenditure. He does not say what account he held that would have earned him 8% or what other investment he already had into which he would have paid that money. He does not adduce any evidence to show that he had a realistic expectation of saving the money and earning 8% interest on it at that time. £9661.91 over 36 months being the period from first unlawful deduction to payment is approximately £268.36 per month. This Tribunal finds, in the absence of evidence to the contrary, that in all likelihood that amount would have flowed into and out of his current account covering his normal day to day expenditure along with the rest of his salary.

39. Mr Sangani does not say what he did with the lump sum he received on 27 September 2022. That means the Tribunal has not been able to use that information to form a view as to whether or not he would have been likely to invest or spend it, and if invest cannot see what would have happened to those investments since the dates of the underpayments so that if for example, invested but not cashed out, any gains may since September 2022 have in any event been lost in the financial climate post September 2022. His contention is that if he had been paid on time he would have earned 8% on that money. He has not provided sufficient evidence to establish that to have been the case.

40. The Tribunal makes no award under section 24(2) because Mr Sangani has not established financial loss.

Ms Mckay's claim

41. The Tribunal heard oral evidence from Ms Mackay. She claimed financial loss in two regards i) lost opportunity to reduce mortgage debt and ii) accountant's fees incurred in the sum of £200 and she claims (iii) interest on the deduction itself. Interest on the deduction complaint fails for the reason set out above.

42. The Tribunal considered her financial loss complaints. Ms Mackay had two properties and gave oral evidence that she would have used her wages if paid on time to overpay her domestic mortgage (as she had done on a Barclays buy to let mortgage she had on another property) with Nationwide. She argued that if she had overpaid she would have saved approximately £100 per month being £ 3600 in total for the relevant period. She has not produced figures or documentary evidence to show how that would have worked.

43. The Tribunal does not accept her argument that the monies would have been used to overpay the domestic mortgage. She had no history of overpaying on her domestic property prior to the deduction. When she received the lump sum payment of the unlawfully deducted amounts Ms Mackay used it not to overpay mortgage but to clear credit card debt. The Tribunal accepts her oral evidence that debt reduction was her priority. The credit card debt had been incurred to cover the cost of training courses to further her career. She did not argue that she had had to incur that debt because of the unlawful deductions, or that she could not reduce it sooner because of the unlawful deduction. Her credit card debt was incurring interest at a higher rate than her domestic mortgage rate. The Tribunal finds that it is more likely that she would have used the money to fund her training and or reduce her credit card debt than to over pay her domestic mortgage. The Tribunal therefore finds that the lost chance to have her mortgage payments reduced on her domestic property was not attributable to the unauthorised deduction but the decision she would have made, and made in September 2022, to clear credit debts before overpaying a mortgage.

44. In respect of the fees incurred to engage an accountant to assist in her calculations for herself and others on remedy the Tribunal finds that the decision to engage an accountant was not attributable to the unlawful deduction. Ms Mackay chose for herself and her colleagues to get accountancy support. This element of her complaint is akin to attempt to recover the costs in the form of disbursements incurred in litigation and is does not fall within Section 24(2).

Mr Hakim's claim

45. The Tribunal heard oral evidence from Mr Hakim as to his investments. He claims lost opportunity to have invested and earned £ 3750.76. Mr Hakim had a Stocks and Shares ISA and had invested in it regularly before the deductions were made. He had a pattern of investing. The Tribunal accepts his oral evidence that if he had received the amounts at the time he would have invested all of them, being additional PA's and his outgoings having been met by his other wages, in that ISA. Mr Hakim did indeed invest his lump sum in his ISA when it was paid to him on 27 September 2022.

46. Within his ISA there were different investments. He gave oral evidence that his money would have gone into a part of the investment called S&P index tracker. He says the tracker grew and he lost the growth on the non invested deductions.

47. Mitigation is relevant here. When Mr Hakim knew that he had been underpaid a duty arose for him to mitigate the impact of not investing at that time, perhaps by readjusting his investments to maximise gains elsewhere. The Tribunal had no evidence that he had done this. Further, when he had the deduction paid in a lump sum, he had more to invest at one date than he would otherwise have done on one date and depending on the value of the markets on that date he may have been better or worse off by investing a higher amount later than if he had invested pro rata if no deduction had been made. Actuarial comparisons would have been necessary in evidence to prove loss and to prove

that the loss was attributable to the deduction and to show that the duty to mitigate had been performed.

48. The Tribunal had to consider, if they had been proven which they were not, was it appropriate to award those losses. The Tribunal considered that the losses rest on the growth in the fund and asked Mr Hakim had he cashed out. He has not and would not have cashed out as these are long term investments. The Tribunal finds that whilst he would have invested and there was a period of growth from which he may have benefitted, the economic climate since that time has been such that those gains may have been lost, and as he did not cash out, he cannot say that he lost other than the notional value of investments and cannot say that he lost as a result of a missed opportunity to invest. Mr Hakim's claim is a claim for lost opportunity and fails as he has not proven loss, not shown that he mitigated and if they had been proven the Tribunal would not have found it appropriate in the circumstances of a long-term investment to make an award when the values in that investment were fluctuating.

Mr Toh

49. Mr Toh seeks 8% interest on the unlawful deductions. His total deductions were £ 17, 536.23 and he claims £ 2105.46. His claim for interest on unlawful deduction fails for the reason set out above. The Tribunal went on to consider if it could award him financial loss attributable to the deduction.

50. He has adduced no evidence of his financial position generally so that the Tribunal could assess the likelihood of him using this money for investment rather than expenditure. He does not say what account he held that would have earned him 8% or what other investment he already had into which he would have paid that money. He does not detail for example a stocks and shares ISA or adduce any evidence to show that he had a realistic expectation of earning that money at that time. He does not say what he did with the lump sum he received on 27 September 2022. That means the Tribunal has not been able to assess whether or not he would have been likely to invest or spend it, and if invested the Tribunal cannot see what would have happened to those investments since the dates of the underpayments so that if for example, invested but not cashed out, any notional gains may since September 2022 have in any event been lost.

51. The Tribunal makes no award under section 24(2) because Mr Toh has not established financial loss.

Mr Ahuja

52. Mr Ahuja's total deduction was £ 23,753.68 and he claims that he would have invested in his Cash ISA and has suffered lost interest in the amounts of £891.23.

53. Mr Ahuja did not give evidence and there was insufficient documentary evidence to substantiate the facts of him having invested and the loss calculation.

54. The Tribunal makes no award under section 24(2) because Mr Ahuja has not established financial loss.

Mr Adam

55. Mr Adam's total deduction was £12,512.01. He claims 5% as financial loss £ 938.90 being the gain he would have earned on the money if it had been paid to him in time. His claim for interest on unlawful deduction fails for reason set out above. The Tribunal went on to consider if it could award him financial loss attributable to the deduction.

56. He has adduced no evidence of his financial position generally so that the Tribunal could not assess the likelihood of him using this money for investment rather than expenditure. He does not say what account he held that would have earned him 5% or what other investment he already had into which he would have paid that money. He does not detail for example a stocks and shares ISA or adduce any evidence to show that he had a realistic expectation of earning that money at that time. He does not say what he did with the lump sum he received on 27 September 2022. That means the Tribunal has not been able to assess whether or not he would have been likely to invest or spend it, and if invest cannot see what would have happened to those investments since the dates of the underpayments so that if for example, invested but not cashed out, any gains may since September 2022 have in any event been lost.

57. The Tribunal makes no award under section 24(2) as Mr Adam has not established financial loss.

Mr Nadkarni

58. The Tribunal heard oral evidence from Mr Nadkarni. He had a total deduction of £23,644.90. In his witness statement and in his Counsel's skeleton argument he claimed 8% interest being £ 2838.88 but that position changed on oath. His claim for interest on unlawful deduction fails for the reason set out above. The Tribunal went on to consider if it could award him financial loss attributable to the deduction.

59. The Tribunal finds he was a reliable and honest witness who did not seek to overclaim. He said he would have used the money in his bank account as part of his normal income and most probably spent it in assisting his daughter to repay debts. That is what he used the money for when the lump sum came in. At best he argued that he would have lost 1-2 % interest on the amounts for the short period they would have rested in his account. He had not produced calculations of those losses. He has not proven financial loss.

60. The Tribunal makes no award under section 24(2) as Mr Nadkarni has not established financial loss.

Mr Iyengar

61. Mr Iyengar had a total deduction of £2417.55. He seeks 8% interest being £290.26. His claim for interest on unlawful deduction fails for the reason set out above. The Tribunal went on to consider if it could award him financial loss attributable to the deduction.

62. He has adduced no evidence of his financial position generally so that the Tribunal could not assess the likelihood of him using this money for investment rather than expenditure. He does not say what account he held that would have earned him 8% or what other investment he already had into which he would have paid that money. He does not detail for example a stocks and shares ISA or adduce any evidence to show that he had a realistic expectation of earning that money at that time. He does not say what he did with the lump sum he received on 27 September 2022. That means the Tribunal has not been able to assess whether or not he would have been likely to invest or spend it, and if invest cannot see what would have happened to those investments since the dates of the underpayments so that if for example, invested but not cashed out, any gains may since September 2022 have in any event been lost.

63. The Tribunal makes no award under section 24(2) as Mr Iyengar has not established financial loss.

Mr Selvan

64. Mr Selvan had a total deduction of £ 20,567.78. He says he would have reduced his mortgage debt so that his monthly payments would have reduced. His lost reduction is £ 3888. He has adduced no evidence of his financial position generally so that the Tribunal could not assess the likelihood of him using this money for mortgage reduction. The Tribunal had no evidence of any prior pattern of mortgage reduction.

65. The Tribunal makes no award under section 24(20). Mr Selvan has not established financial loss.

Comment on the application of section 26

66. None of the claimants established financial loss under section 24(2). If they had then section 26 would have become relevant. It provides, that the aggregate amounts of any awards under section 12(4) (*the provision that allows a tribunal to award the amount of any unnotified deductions*) and under section 24 in respect of a particular deduction shall not exceed the amount of the deduction. The words of section 24 are reproduced here for ease of reference

Section 23 does not affect the jurisdiction of an [employment tribunal] to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an [employment tribunal] to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

67. It seems to the Tribunal that section 26 may have been intended to prevent double recovery of the same unlawfully deducted amount under Section 12(4) and section 24.

68. However, one interpretation is that section 26 says that the aggregate amount in this case would have been the amount awarded under section 12(4) *nil* plus the amount awarded under Section 24 (1) *the individual amounts for each claimant in the Consent Order* PLUS the amount awarded under Section 24(2) *any consequential loss* and that those aggregate of any amounts ordered **shall not exceed the amount of the deduction**.

69. That interpretation would have precluded any award for consequential loss at all. The Tribunal would have ordered the amount of the deduction by its Consent Judgment so could not then order a further amount for consequential loss in excess of the amount of the deduction. It seems to the Tribunal that cannot be right.

70. It seems to the Tribunal that section 26 might have been intended to relate only to section 24(1) and that when Section 24(2) was added by the Employment Act 2008, section 26 was not amended to say section 24(1) and to carve out the consequential loss from the prohibition on double recovery and from in effect capping the total amount recoverable under Section 24 at the value of the deduction.

71. If the claimants in this case had succeeded in establishing financial loss then the Tribunal would have reverted to the parties for submissions on the Section 26 point. In the event that was not necessary and the Tribunal has indulged in the speculation at paragraphs 66 – 70, with no disrespect to the parties nor any higher courts that may consider this point, in the hope that it assists the parties to assess their positions should the unsuccessful claimants seek any further redress.

Conclusion

72. Financial loss must be proven. There must be established a link (*attributable to*) between not having had wages on time and a loss (whether in charges incurred or growth lost). Those need to be substantiated and then a duty to mitigate arises.

73. None of the amounts claimed met the requirements of establishing financial loss so these complaints fail on their facts for want of proof of loss.

74. If loss had been proven the Tribunal would have gone on, having considered mitigation, to consider whether it was appropriate in all the circumstances to make an award. It was not necessary to consider exercise of the discretion but if it had been the Tribunal would have been unlikely to make awards for lost opportunity to grow investments or lost opportunity to reduce debt in these cases because in the circumstances, the claimants (other than Mr Hakim) had not been able to show pre-existing patterns of investment or debt reduction that had been halted by the unauthorised deduction. Mr Hakim, even if he had established loss would have been found to have failed to mitigate by making adjustments to his other investments to mitigate against losses from non-investment of deductions.

75. The Tribunal considers that Section 24(2) exists to assist those who have been caused a loss by their employer not paying them their wages on time. None of the claimants established loss attributable to the deduction. The claims fail.

Employment Judge Aspinall

Date 2 February 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

13 February 2024

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>