



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Doga  
**Respondent:** Maccorp UK Ltd  
**Heard at:** London Central Employment Tribunal (in public; by video)  
**On:** 27 July 2020  
**Before:** Employment Judge Quill (sitting alone; by video)

## Appearances

For the claimant: In person  
For the respondent: Ms S Lalli, employee of the Respondent

This was a remote hearing with the consent of the parties. The form of remote hearing was [V: audio fully (all remote)]. A face to face hearing was not held because it was not practicable. I received documents electronically, the contents of which I have recorded. The decisions made are described below.

## RESERVED JUDGMENT

- (1) The complaint of unauthorised deduction from wages is well-founded.
- (2) The Respondent is ordered to pay the Claimant the gross sum of £793.05 (subject only to such PAYE deductions – if any – that are required by law), which all relates to earnings prior to her termination date and all falls within the tax year 19/20.

## REASONS

### Introduction

1. ACAS early conciliation was between 9 March 2020 and 2 April 2020. Notwithstanding minor differences in names or addresses, a claim was presented on 3 April 2020. The correct name of the Claimant's employer is Maccorp UK Ltd.

2. The Respondent's business is currency exchange and the Claimant worked as a cashier, taking payment from customers and giving them cash in the requested currency.

### **The Claims**

3. The claims are of unauthorised deduction from wages.

### **The Issues**

4. What wages (as defined by section 27 of the Employment Rights Act 1996) were properly payable to the Claimant on each of her pay dates?
5. What, if any, deductions (as defined in section 13 of the Employment Rights Act) were made from her salary on each of those dates?
6. If there were any deductions made, was the complaint in relation to that deduction presented outside the relevant time limits (as defined by section 23 of the Employment Rights Act 1996)
7. In relation to those complaints (if any) which are in time:
  - 7.1 Was the deduction an excepted deduction (as defined by section 14 of the Employment Rights Act 1996)
  - 7.2 Did the deduction satisfy the requirements of section 13(1)(a) and/or section 13(1)(b) of the Employment Rights Act 1996?
  - 7.3 Was the Claimant in "retail employment" as defined in section 17(2) and 17(3) of the Employment Rights Act 1996 and were there any deductions falling within the definition in section 17(4) of that Act? If so, in each case, did the deduction satisfy the requirements of sections 18 to 22 of the Employment Rights Act 1996? In particular:
    - 7.3.1 For each pay day, what sum is one-tenth of the gross amount of the wages payable to the Claimant on that day?
    - 7.3.2 What and when was the Claimant's "final instalment of wages" as defined by section 22 of the Employment Rights Act 1996?
8. If any complaint of unauthorised deduction from wages is well-founded, what remedy should be awarded?

### **The Evidence**

9. There was one jpg submitted by the Claimant. This was page 2 of her offer letter and was therefore (part of) a document which I received from the Respondent. The majority of the documents used during the hearing were, therefore, the pdf attachments to Ms Lalli's email of 24 July 2020 (which was copied to the Claimant).
10. Neither side had produced any written witness statement, and nor was there any schedule of loss.

11. The Claimant gave oral evidence on oath, and answered questions posed by me and by Ms Lalli.

### **The Hearing**

12. The hearing took place in public by video (Cloud Video Platform). Only the Claimant and Ms Lalli attended. Only the Claimant gave evidence. Neither side sought a postponement either to collate more evidence or for any other reason. I drew the parties' attention to the fact that the Form ET3 appeared to contain less information than Ms Lalli might have intended to include; the text in several boxes seemed to be interrupted in mid-flow. There were two occasions when Ms Lalli lost connection briefly, and on each of those occasions Ms Doga and I waited for her to rejoin, and I ascertained what was the last thing that she had heard, and the hearing resumed from that point.

### **The findings of fact**

13. The Claimant started work for the Respondent on 1 November 2019. The Respondent terminated her employment with immediate effect on 17 March 2020. The dismissal letter acknowledged that the Claimant was entitled to 1 week's notice and stated that she would be paid in lieu of that notice entitlement.
14. In October 2019, Ms Lelli and the Claimant and both signed an offer letter (the letter bearing the date 23 October 2019) to indicate offer and acceptance respectively of a conditional offer of employment. The conditions (satisfactory references and other checks) were met.
15. The offer letter did not refer to, or incorporate, any other documents. The Respondent did not issue another document as a written contract of employment, or as a statement of terms and conditions.
16. The offer letter was a 2 page document. The Respondent had a 7 page template for contracts for "Trainee Foreign Exchange Cashier". However, that template was not issued (unaltered) to the Claimant and she was not aware of its contents. The sentences included in the template, but omitted from the offer letter issued to the Claimant included:
  - 16.1 "*There are no collective agreements affecting your terms and conditions of employment.*" and
  - 16.2 "*The Company has the right to deduct from your pay, or otherwise to require repayment by other means, any sum which you owe to the Company including, without limitation, any overpayment of pay or expenses, loans made to you by the Company, or any other item identified in this Statement and/or the Employee Handbook as being repayable by you to the Company.*" and
  - 16.3 "*I acknowledge receipt of this Statement and my own copy of the Employee Handbook and confirm that I have read the Statement and the Employee Handbook which set out the principal rules, policies and procedures relating to my employment.*" and

- 16.4 *“I understand that a permanent copy of the Employee Handbook is kept in every office.”*
17. The Claimant was not provided with an “Employee Handbook” either for her exclusive personal use, or as a shared document. No document of that description was presented at the tribunal hearing.
18. The offer letter stated “your terms and conditions of employment are confirmed as follows” and then set out various provisions. The Claimant was an employee between 1 November 2019 and 17 March 2020. Her job title was Trainee Foreign Exchange Cashier and she reported to Serena Lelli, International Operations Manager. She worked to the terms and conditions set out in the offer letter. The salary was £16,009.50 per year. She could potentially be required to work at several of the Respondent’s offices and she did, in fact, work at more than one. The hours of work were 37.5 hours per week, plus additional paid time when required. The leave year ran 1 January to 31 December and the leave entitlement was 210 hours per year, not including entitlement in relation to bank holidays. The Claimant did not have a fixed pattern of work. She worked shifts which were notified to her in advance. Some weeks she worked on 5 days, and others on 6 days. 37.5 hours was the average number of hours per week, and she did not work exactly 37.5 hours every week. There was to be a 6 month probation period. During the probation period, the notice entitlement was to 1 week’s notice.
19. Because the Claimant was paid monthly, in 12 (approximately) equal instalments, her salary entitlement each month was to £1334.12 or £1334.13 gross. It was recorded in her payslips as £1334.125.
20. Both the standard template (not used in the Claimant’s case) and the specific offer letter sent to the Claimant were produced by Ms Lelli. Ms Lelli was aware of the differences between the template and the document issued to the Claimant. Most of the wording found in the offer letter is also found in the template. It was not Ms Lelli’s intention, on 23 October 2019, to send the Claimant a bespoke version of the full 7 page contractual template; she deliberately chose to send a 2 page offer letter which omitted much of the information from the template.
21. The Respondent uses an Operations Manual. The only version supplied during the hearing was the 2020 version. I therefore do not know how – if at all – it differs from the one that the Respondent was using in 2019, when the Claimant started employment.
22. The 2020 version of the Operations Manual contains the following introduction.
- This manual contains operating company rules that govern the conduct of all personnel involved in counter service and should be used in conjunction with the employee manual and the anti-money laundering manual. It consists of information that will be frequently updated and sent to staff. Updates may be new information or supplementary. All employees are required to comply with the recommendations in this manual and any updates that will be sent from time to time. All employees are obliged to observe the company’s regulations and rules of conduct contained in this document.*

23. The Respondent has not proved that the 2019 version of the Operations Manual contained a similar introduction. I was not provided with a copy of any employee manual.
24. The Claimant had access to some of the information contained in the 2020 version Operations Manual during her employment and received some training from the Respondent. She did not actually have the 2020 version of the document itself. It was not suggested to the Claimant, before or during her employment, that the Operations Manual was a contractually binding document or that it contained any contractually binding terms and conditions, either as to pay, deductions, or anything else. By working for the Respondent, the Claimant was not agreeing to be bound by the entirety of the Operations Manual (either the 2019 version or the 2020 version) or to any specific propositions contained in the document.
25. The 2020 version of the document includes the following passages (amongst others) at “10.8 Cash Errors”.
  - 25.1 *“In the case of cash errors, the sales consultant is personally responsible for deficits: in fact the operations manager must monitor carefully the cash errors of each sales consultant, assessing how often and why they occur. This process does not exclude the right of the company to assess the possible negligence of each sales consultant.”* and
  - 25.2 *“If there are any cash shortages or stock deficiencies the company will utilise its discretion to make any reasonable deduction from wages. This will comply with the legislation and protection for individuals in retail work, which make it illegal for an employer to deduct more than 10 per cent from the gross amount of any payment of wages (except the final payment on termination of employment) if the deduction is made because of cash shortages or stock deficiencies.”* and
  - 25.3 *“The following are considered as cash errors: ... cash deficits (change and no change) ... incorrect banking / branching or carrying out a sale transaction resulting in loss of spread ... bank charges relating to CC transactions whereby the receipt does not include the signature of the customer and all the required information, or when the sales consultant has not followed the relevant procedure (see credit cards) ...acceptance of counterfeit cash.”*
26. In January 2020, the Respondent wrote to the Claimant about 2 till errors which both occurred on 6 January 2020. In each case, the customer had paid by credit card, but the Claimant had not keyed in the correct amount, so that when the customer authorised (by PIN) the credit card payment, the amount that was authorised by the customer was different to the actual value of the transaction.
  - 26.1 In one case, there was an error of 2 pence in the Respondent’s favour (£18.40 collected by the Claimant, instead of £18.38);
  - 26.2 In the other case, there was an error of £518.59 in the customer’s favour (£57.60 collected by the Claimant, instead of £576.19)
  - 26.3 Therefore, the net discrepancy was that the Respondent had received £518.57 less than it ought to have received.

27. The Claimant accepts that she was the cashier who made each of these errors. On 16 January 2020, Ms Lelli, on behalf of the Respondent, supplied a letter to the Claimant which described the errors just mentioned. It stated that the Respondent could not recover the discrepancy from the customer or the card company. It stated that the error was due to mistyping by the Claimant, not due to a fault in the Respondent's systems or procedures. It stated: "*Due to the amount of the mistake, I can offer you the option of paying this mistake in 2 installment: 259.28 GBP to be deducted on January payroll 259.29 GBP to be deducted on February payroll*"
28. The letter did not offer any other alternative and asked for a reply within 5 days. Having discussed the matter, and not been offered any other alternative, the Claimant signed and returned the letter. The Claimant believed that she was liable to reimburse the Respondent for the errors, and she was content to do so. The Claimant was not happy with the proposed schedule for the repayment but signed the letter because she believed that she had no choice other than to do so. The Claimant was not aware that the 2020 version of the Operations Manual referred to a deduction being no more than 10% of gross pay, and to (in general terms) the fact that legislation affects the deductions that employers are able to make.
29. At some later date, the Respondent formed the view that the Claimant had accepted some bank notes which were forgeries and that she had exchanged those for currency. The Respondent formed the view that it had suffered a loss which it could not recover from the person who had used these (allegedly) forged bank notes and that its losses should be quantified at £898.38.
30. In March 2020, while on leave, the Claimant became stranded in Paris due to Coronavirus restrictions. The Respondent (Ms Lalli) arranged for a meeting to take place via video call to discuss the Claimant's probation. That meeting took place on 17 March 2020, and, during the meeting, the Claimant was informed that her employment was being terminated. The termination took place within the probation period and was as a result of the probation review.
31. A letter confirming the termination was sent by email the same day. The letter confirmed that termination was with immediate effect (from 17 March 2020) and that there was an entitlement to one week's payment in lieu. The letter added:
- Your P45 will be sent to you shortly and you will be paid the following:*
- (a) All pay up to and including the date of termination of your employment;*
- (b) Notice pay*
- (c) Accrued holiday pay (if applicable)*
- Till mistakes, sick days, AWOL and late arrivals (if any) will be deducted from your payroll.*
32. On 17 March 2020, there was a discussion about the fact that Ms Lalli believed that the Claimant had committed an error in relation to acceptance of forged banknotes. However, the sum in question had not yet been quantified by the Respondent (or, at least, Ms Lalli did not have that information). On 26 March 2020, the Claimant chased for an update from the Respondent as to its position in

relation to the sums that it was allegedly entitled to recover because of (alleged) forgeries. On 6 April 2020, the Claimant received (as an attachment to an email) the only written notification of the sum in question and that letter said (in part)

*as you know, the total amount you owe Maccorp UK LTD at 17.03.2020 (your final working day) was 898,38 GBP.*

*On your final payroll you have already had a deduction of 133,00 GBP, leaving the outstanding amount of 765,38 GBP.*

33. The letter also made some other comments. It is not necessary or appropriate for me consider whether those comments are binding, or to make any other findings about the remainder of the letter. Suffice it to say that (based on the evidence presented to me) the 6 April document was the first and only written notification specifying a sum in relation to the alleged forgery issue.
34. The Claimant's pay was as follows:
- 34.1 For November 2019, she was paid the gross sum of £1334.13 (representing one twelfth of her annual salary) and an adjustment in her favour of £184.73 gross. Other than for PAYE and pension, there were no deductions, and no complaint is made in relation to this month. The pay date was 28 November 2019.
- 34.2 For December 2019, she was paid the gross sum of £1334.13 (representing one twelfth of her annual salary). As well as for PAYE, there was a deduction of £6.89 for "till error". Other than a dispute about whether that the deduction has been properly accounted for for PAYE purposes, no complaint is made in relation to this month. The pay date was 31 December 2019.
- 34.3 For January 2020,
- 34.3.1 the Respondent did not acknowledge liability to pay the gross sum of £1334.13 (representing one twelfth of her annual salary). Instead, it calculated her wages as being that sum less £377.66 (46 hours at £8.21 per hour) due to absence and repayment of salary advance. The Claimant accepts that salary adjustment was properly made. Therefore, for this month, she was paid the gross sum of £956.47.
- 34.3.2 As well as for PAYE and employee's pension contribution, there was a deduction of £259.29 for "till error". There is a dispute about whether that the deduction has been properly accounted for for PAYE purposes. There is also a complaint about the whether the deduction was authorised. The pay date was 31 January 2020.
- 34.4 For February 2020,
- 34.4.1 the Respondent did not acknowledge liability to pay the gross sum of £1334.13 (representing one twelfth of her annual salary). Instead, it calculated her wages as being that sum less £45.16 (5.5 hours at £8.21 per hour) for unpaid leave and less £123.15 (15 hours at £8.21 per hour) for unpaid sick leave. The Claimant accepts that she did take that leave,

and she did take that sickness absence, and that she was not entitled to be paid for either. Therefore, for this month, she was paid the gross sum of £1165.82.

34.4.2 As well as for PAYE and employee's pension contribution, there was a deduction of £412.27 for "till error". There is a dispute about whether that the deduction has been properly accounted for for PAYE purposes. There is also a complaint about the whether the deduction was authorised. The pay date was 29 February 2020.

34.5 For March 2020,

34.5.1 For the partial month (1 to 17 March 2020), the Respondent asserted that the Claimant was entitled to £1334.13 minus £923.63. That is £410.50. No explanation of that assertion was provided to the Claimant at the time. No explanation was provided during the hearing, other than an assertion from Ms Lalli that it took into account the shift patterns. No evidence about the shift patterns, or how this type of calculation was usually done was provided.

34.5.2 There was a deduction of £65.68 from the gross sum in relation to 8 hours (at £8.21 per hour) of holiday taken over and above the proper holiday entitlement for the part year. The Claimant makes no complaint about that. Given that the Claimant was stranded in Paris, I infer that the 8 hours that were over and above entitlement were time off actually in March itself.

34.5.3 The calculation of one week's pay in lieu was  $37.5 \times £8.21$ , being £307.88.

34.5.4 There was a credit given for PAYE (ie an addition not a deduction). As well as employee's pension contribution, there was a deduction of £133.00 for "till error".

## **The Law**

35. Part II of the Employment Rights Act 1996 (sections 13 to 27) deals with "Protection of Wages". The sections mentioned below are all references to that Act.

36. Section 13 (alongside the exceptions set out in Section 14) deals with the right not to have unauthorised deductions made from wages. Other than deductions authorised by statute (which is not an issue in this case, other than in relation to the Claimant's assertions that the till errors ought to have been deducted prior to PAYE calculations), for a deduction to be authorised it must either:

36.1 Be one which is authorised by the contract of employment (with either the term itself being part of a written agreement, or else the term itself being something which the Respondent has explained to the Claimant in writing, before the date of the deduction) or

36.2 Be one which the employee has agreed to in writing (such agreement occurring after the date of the specific event which is said to be the reason for the deduction, but before the deduction itself.



37. As per section 13(3), a shortfall (other than one due to computation error) in the sums properly payable to the worker is to be regarded as a deduction even if the employer does not refer to it as a deduction.
38. Sections 15, 16 and 20 are not directly relevant in the circumstances of this case but regulate the circumstances in which an employer can receive a payment from an employee.
39. Section 17 reads as follows:

**17.— Introductory.**

(1) In the following provisions of this Part—

“*cash shortage*” means a deficit arising in relation to amounts received in connection with retail transactions, and

“*stock deficiency*” means a stock deficiency arising in the course of retail transactions.

(2) In the following provisions of this Part “*retail employment*”, in relation to a worker, means employment involving (whether or not on a regular basis)—

(a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or

(b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities.

(3) References in this section to a “*retail transaction*” are to the sale or supply of goods or the supply of services (including financial services).

(4) References in the following provisions of this Part to a deduction made from wages of a worker in retail employment, or to a payment received from such a worker by his employer, on account of a cash shortage or stock deficiency include references to a deduction or payment so made or received on account of—

(a) any dishonesty or other conduct on the part of the worker which resulted in any such shortage or deficiency, or

(b) any other event in respect of which he (whether or not together with any other workers) has any contractual liability and which so resulted, in each case whether or not the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency.

(5) References in the following provisions of this Part to the recovery from a worker of an amount in respect of a cash shortage or stock deficiency accordingly include references to the recovery from him of an amount in respect of any such conduct or event as is mentioned in subsection (4)(a) or (b).

(6) In the following provisions of this Part “*pay day*”, in relation to a worker, means a day on which wages are payable to the worker.

40. Section 18(1) imposes additional restrictions on deductions which are otherwise authorised under section 13(1), and where “*the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, a deduction or deductions from wages payable to the worker on a pay day*”. The aggregate amount of such deductions must be no more than 10% of “*the gross amount of the wages payable to the worker on that day*”.
41. By virtue of section 22(2), the restrictions of section 18(1) do not apply to a payment which is the final instalment of wages. The requirements of section 13 still apply in relation to deductions made from the “final instalment of wages” as defined by section 21(1).

42. Given the timing of the Early Conciliation, and the presentation of the claim form, and the time limits set out in Section 23, any complaints in relation to deductions occurring on or after 10 December 2019 are in time.
43. Where an employee has signed a document to agree to a deduction, it is necessary to consider whether that consent is valid or else ineffective due to duress or another reason. In *Laird v AK Stoddart Ltd [2001] IRLR 591*, the EAT indicated that a tribunal should be slow to conclude that apparent consent is ineffective:  
  
*"If an employee agrees to a contractual variation even under protest, he can be said to affirm it if he continues in the workplace. What is required to avoid such a conclusion in that situation is a lack of consent which may be evidenced either by a refusal to accept the position or by succumbing to some form of duress or pressure. Merely to sign under protest is not enough... If the appellant signed the contract and was thus consenting, albeit under protest, then he has agreed to the variation. He will have to establish that his signature was appended under such duress as amounts to vitiation of consent."*
44. Although that passage was from a case dealing with variation of contract, the same principles apply to a written authorisation for a deduction.
45. In *Fairfield Ltd v Skinner [1993] IRLR 4, [1992] ICR 836*, the EAT agreed with a tribunal that it is potentially necessary for a tribunal to do more than simply note that the employer has asserted that the deduction was made for a specific reason. Where there is alleged to be a factual basis for the deductions to be made, a tribunal should conduct a fact finding exercise to determine if, in fact, the sums deducted did fall within the contractual terms relied on.
46. A payment in lieu of notice does not fall within the definition of wages within section 27. This is so regardless of whether the employment contract authorised the employer to make payment in lieu of notice or not.

### **Analysis and conclusions**

47. In this case, the employer's right to make deductions for errors in keying in the amount for a credit/debit card transaction was not authorised by a term in the Claimant's contract. The offer letter (of 23 October 2019) contained no such terms. The Claimant was not issued with a contract based on the 7 page template. I have not been shown any version of an employee handbook. I have been shown a 2020 version of the Operations Manual, but I am not satisfied that this particular document was provided to the Claimant and I am not satisfied that the Claimant was informed that any version of the Operations Manual might contain information which the Respondent regarded as a term of her contract.
48. Furthermore, and in any event, the Respondent did not act in accordance with the provisions in the 2020 Operations Manual. That document purported to authorise deductions of up to 10% of gross salary (other than for final salary payment) for cash shortages. However, the Respondent sought to make deductions far in excess of that.
49. The Claimant did agree to the Respondent's making deductions from her wages for (a) a sum of £6.89 in December 2019 and (b) an aggregate of £518.57 for an error which occurred in January, the deductions to be £259.28 in January 2020

and £259.29 in February 2020. I have not seen the Claimant's written agreement to such deductions, but it is common ground that it was given. (I am aware of the Claimant's email of 16 January 2020 at 14:17, but the parties both refer to the Claimant later signing to signify agreement, and I do not have that.) Although the Claimant signed because she believed that she had no other option, she continued to work for the Respondent after doing so, and after the deductions were made. In my judgment, her consent was not invalid or ineffective.

50. The transactions which the Claimant performed when exchanging currency were "retail transaction[s]" within the meaning of section 17(3) the Employment Rights Act 1996. The Claimant was in "retail employment" as per section 17(2). The keying errors which led to the incorrect amounts being deducted from customers' cards led to "cash shortages" within the meaning of section 17(1). The handing over of genuine currency in return for forged bank notes would be within the definition of a "cash shortage" and/or a "stock deficiency". Thus when the Respondent sought to make deductions for these reasons (what it described as "till errors" on its payslips), it was obliged to meet the requirements of section 18(1) as well as those of section 13 of the Employment Rights Act 1996 in relation to deductions made on the following pay dates:

50.1 31 December 2019

50.2 31 January 2020

50.3 28 February 2020

51. The date of the "final instalment of wages" (as defined in section 22) was 31 March 2020. The payment made on that date was both for the period 1 to 17 March 2020 and also for the payment in lieu of notice.
52. In this case, the employer's right to make deductions for the Claimant's allegedly accepting allegedly forged bank note errors was not authorised by a term in the Claimant's contract. The offer letter (of 23 October 2019) contained no such terms. The Claimant was not issued with a contract based on the 7 page template. I have not been shown any version of an employee handbook. I have been shown a 2020 version of the Operations Manual, but I am not satisfied that this particular document was provided to the Claimant and I am not satisfied that the Claimant was informed that any version of the Operations Manual might contain information which the Respondent regarded as a term of her contract.
53. I am not satisfied that the Claimant agreed in writing to any deductions for forged bank notes (or to any deductions other than the £6.89 and £518.57 mentioned above). The Respondent has produced no evidence that she did so. Furthermore, other than in relation to the £518.57 error in January, the Respondent has produced no evidence that it notified the Claimant in writing about its reasons for asserting the right to make deductions. [I am aware of the 6 April 2020 letter, which was sent after deductions had already been made, and which contained nothing other than an assertion that the sum of £898.38 was owing, and an assertion that the Claimant already knew this; this latter assertion is not supported by the contemporaneous emails between 17 March and 6 April. For these reasons, I do not need to decide if the 6 April letter was without prejudice or a settlement offer.]

54. The Respondent produced no evidence to the hearing about any transactions in which the Claimant accepted (allegedly) forged bank notes. There was no evidence that she was the cashier on duty at the time, or of the face value of the forged notes or the value of the currency supplied to the customer in exchange. There was no evidence about the date of the alleged transaction(s), or about whether it was said to be a single instance or whether £898.38 was said to be an aggregate based on several occasions.
55. The contract referred to annual salary of £16009.50 payable monthly and also to an obligation to work 37.5 hours per week. No hourly rate of pay was specified. I note that the payslips use £8.21 per hour for certain calculations. I also note that  $37.5 \times 52 \times £8.21$  equals £16009.50 exactly.
56. The contract does not contain an express clause specifying how payments for part of a month will be calculated. I am not persuaded that there was any custom and practice justifying the particular methodology which the Respondent purported to adopt in March. In any event, at the hearing, the Respondent was unable to explain that methodology to me either in principle, or by reference to the specific facts and figures applicable to the Claimant. The Claimant did not have a fixed pattern of work and did not work only Mondays to Fridays. In my judgment, a proper construction of the contract is that that the Claimant was entitled to a pro rata payment for the 17 days of March and that – in the absence of any express provision – the appropriate contractual calculation is £16009.50 divided by 366 (for leap year) multiplied by 17. Therefore, for the period 1 March to 17 March, the gross sum properly payable as wages (prior to deductions) was £743.61. The Respondent paid a gross sum of £410.50 for that period and **there was therefore a deduction of £333.11 (gross)**. This was not authorised.
57. I note that, as written on the payslip there was a deduction (a “salary adjustment”) of £923.63 to the sum of £1334.13 which would have been payable had the Claimant worked the whole month of March. The written contract contained no written term that the Respondent had the right to make deductions from a final partial month by reference to the specific shift pattern the Claimant had worked in the part of the month up to the termination date. Furthermore and in any event, no evidence of the Claimant’s shifts for March was provided (either the shifts actually worked between 1 and 17 March; or the shifts taken as annual leave in that period; or the shifts scheduled for 18 to 31 March). The Respondent made a separate deduction (of 8 hours) for holiday used in excess of entitlement, and there is no challenge to that. I have mentioned the correct method for determining what was properly payable for the period 1 to 17 March in the preceding paragraph. I have no other comments to make in relation to the figure of £923.63 other than to note that it equates exactly to 3 weeks’ gross pay and that I am satisfied that this is not a computational error by the Respondent; it is the result of failing to properly comply with its contractual obligation to pay for the period of 1 to 17 March 2020.
58. So, month by month, my conclusions are as follows.
59. There was no unauthorised deduction in November or December 2019. The £6.89 was appropriately deducted from the net sums after PAYE deductions.

60. In January 2020, the gross sum properly payable to the Claimant, after the agreed adjustment of 46 hours' pay, was of £956.47. One tenth of that sum was £95.64 (and £95.65 is more than one tenth). Therefore, the maximum amount that could be deducted on 31 January 2020 for the keying error of 6 January 2020 was £95.64. The Respondent actually deducted £259.29 because of that keying error. Therefore, there was an unauthorised deduction of (£259.29 minus £95.64) **£163.65 on that pay day.**
61. In February, the gross sum properly payable to the Claimant, after the adjustments for absence, was £1165.82. One tenth of that is £116.58. The Respondent actually deducted £412.87 for "till error". Of that sum, £259.28 was the balance in relation to the 6 January 2020 and the remainder is a sum which was – in any event - not authorised in accordance with section 13(1). Therefore, there was an unauthorised deduction of (£412.87 minus £116.58) **£296.29 on that pay day**
62. In March, there is no restriction imposed by section 18(1) in relation to the deduction described as "till error" of £133. Following the keying error of 6 January 2020, the Claimant gave an authorisation, which complied with section 13(1) for the aggregate sum of £518.57. After £95.64 and £116.58 (for January and February respectively) is deducted, the balance is (£518.57 minus £95.64 minus £116.58) £306.35. Thus, the deduction of £133 for till error in March is an authorised deduction.
63. However, in March, as explained above, there was an unauthorised deduction of £333.11 (gross) because the Respondent failed to pay the proper sum for the Claimant's contractual entitlement to salary for the part month 1 to 17 March 2020.
64. Thus in total the unauthorised deductions were £163.65 plus £296.29 plus £333.11. The aggregate is £793.05.

---

**Employment Judge Quill**

Date: 27 November 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.27/11/2020.

.....  
FOR EMPLOYMENT TRIBUNALS -