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EMPLOYMENT TRIBUNALS

Claimant: Miss J Daniel

Respondent: Dew Group Africa Ltd

Heard at: East London Hearing Centre **On:** 13 July 2021

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Johannes de Wet, director of Respondent

JUDGMENT

1. The Respondent made unlawful deductions from the wages of the Claimant contrary to S13 of the Employment Rights Act 1996.
2. The Respondent is ordered to pay to the Claimant **£14,550.16**.

REASONS

1. The Claimant worked for the Respondent from the beginning of May 2020, until her resignation on 18 February 2020. While the email of resignation said that she gave one week's notice, the Claimant spent the week being trained at the firm she joined immediately after leaving the Respondent, and I accept the Respondent's submission that this was not working a period of notice.
2. The Claimant set out the money she received from the Respondent (or from Mr de Wet personally) by providing copy bank statements. She provided copies of all the payslips she had received. Mr de Wet accepted that these were the payslips provided, and that the money paid to the Claimant was as the Claimant said.
3. Mr de Wet accepted that throughout the whole of the Claimant's employment there had been no payments made to HMRC for income tax or national insurance, that the pension contributions deducted from pay had not been paid to the pension provider, and that money deducted for student

loan repayment had not been paid over to the student loans company. He accepted that the July payslip showed a figure £961.12 more than was actually paid. He could not now remember why this deduction had been made. Accordingly, he accepted that none of the money deducted had been used for the stated purpose.

4. It follows that the payslips are not accurate in any way save for the gross figure of £3,000 a month.
5. Mr de Wet said that the first two people he had used for the payroll had failed him, and only the third, who prepared the P45, was accurate.
6. Mr der Wet said that the company had suffered financial problems which accounted for the absence of payments in some months. He said that the Claimant had signed a contract committing her to repay costs of training (but it was not produced) and in the ET3 which he had prepared he demanded £12,000 (whether in respect of costs incurred by the Respondent in training the Claimant or otherwise was not clear). That claim by the Respondent is not relevant to this claim, of unlawful deduction from wages contrary to S13 of the Employment Rights Act 1996.
7. The Respondent did not submit that any part of the claim was out of time. In any event I decide that this was a series of deductions.
8. The Respondent asserts that the Claimant did not give one month's notice of leaving employment, and that (in a way not comprehensible) this impacts on her claim. First, it does not, for this was not a breach of contract claim, and so there can be no counterclaim even if this was correct. Secondly, the Claimant was entitled to resign without notice, and treat herself as constructively dismissed (S95(1)(c) of the Employment Rights Act 1996). Not paying salary to this level is plainly a fundamental breach of contract by the employer, which entitled the Claimant to resign without giving notice (whatever the contract may say).
9. In the light of the admissions made, I decided to enter judgment for the Claimant at £3,000 a month for the 9½ months from the beginning of May 2019 to mid-February 2020 (£28,500), less all money received from the Respondent and Mr de Wet. That will not absolve the Respondent from accounting to HMRC for employer's national insurance contributions (which at 11% on £28,500 is £3,135). It will be for the Claimant to deal with HMRC, the student loans company and the pension provider should she recover the amount of this judgment.
10. The calculation is in the table below (from the Respondent save for those identified as from Mr de Wet):

28 May 2020 (Mr de Wet)	500.00
18 June 2020	2,550.00
13 July 2020	2,400.00
31 July 2020	1,258.32

25 August 2020	2,146.12
02 November 2020 (Mr de Wet)	1,000.00
18 December 2020	2,000.00
21 January 2021	2,095.40
Total	13,949.84

11. The amount of the judgment is therefore £28,500.00 less £13,949.84 = **£14,550.16.**

Employment Judge Housego

13 July 2021