



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. S Spencer

**Respondent:** Royal Mail Group Ltd

**Heard at:** Nottingham

**On:** 28 February 2020

**Before:** Employment Judge K Ayre

## Representation

Claimant: In Person

Respondent: Mr. I Hartley, Solicitor

# JUDGMENT

1. The Tribunal does not have jurisdiction to hear a claim based on estoppel.
2. The claim for unlawful deduction from wages fails and is dismissed.

# REASONS

## Background

1. By claim form dated 17 November 2019 the claimant brought a claim for unlawful deduction from wages. The claim is resisted by the respondent.
2. The claim relates to deductions that the respondent made from the claimant's wages to recover overpayments that were made to the claimant. In summary, the claim relates to the respondent's attempts to recover from the claimant overpayments of a driving allowance which the claimant used to receive because he used to drive 'MGV' vehicles in the course of his employment.

## The Proceedings

3. At the outset of the hearing today I was presented with a statement for the claimant, headed 'Skeleton Argument', a witness statement from a Mr. Brian Flindall on behalf of the respondent and a bundle of documents running to 107 pages that had been prepared by the respondent. I asked the claimant

whether there were any additional documents that he wanted to rely upon and he told me that there were not. Both parties told me that they had seen the other party's statement.

4. The claimant, in paragraph 6 of his Skeleton Argument "*accepts that he was in receipt of an unintentional overpayment of contracted salary and does not dispute that overpayment. This claim has been instigated under that Common Law Estoppel and not the Employment Rights Act 1996.*" He then goes on to state, in paragraph 7 of his Skeleton argument that the respondent does not have authority to made deductions from his salary without prior consent due to the doctrine of estoppel.
5. In light of the contents of the claimant's Skeleton Argument in which he appeared to be accepting that the deductions from his wages were in respect of an overpayment made to him, I asked him whether there was anything in Mr. Flindall's witness statement that the claimant considered to be factually incorrect. The claimant told me that he was not aware of any factual inaccuracies in Mr. Flindall's statement. He also told me that it was not in dispute that there had been an overpayment to him, and that he did not dispute the amount that the respondent said it had overpaid him and was seeking to recover through a series of deductions from his wages.
6. I referred the claimant to sections 13(4) and 14(1) of the Employment Rights Act 1996 ("**the ERA**") and provided the claimant and Mr. Hartley with printed copies of sections 13 and 14 of the ERA.
7. I then invited both parties to address me on the question of whether the Tribunal has jurisdiction to consider claims based on the doctrine of estoppel.

#### Claimant's submissions

8. The claimant argued that the doctrine of estoppel applies to his case because: -
  - a. The employer, by continuing to pay the MGV allowance had done something to lead him to believe that the money was rightfully his.
  - b. He had not claimed the money, but rather it had been paid to him.
  - c. He had changed his position in reliance on the money, having spent it in good faith over a period of time.
  - d. The overpayment was not his fault.
  - e. Of the timescales in the case. The issue had first come to light in August 2018 and at that point the respondent made a deduction from his weekly pay. The claimant challenged the deduction and it was refunded to him. 6 weeks later the same thing happened, and this pattern repeated until October 2019 when the respondent began making deductions of £35 each week from his pay.
9. When asked if he could point to any authority for the proposition that the Tribunal has jurisdiction to hear claims based on estoppel, the claimant was

unable to do so.

Respondent's submissions

10. Mr. Hartley submitted, on behalf of the respondent, that the claim was misconceived. He pointed out that the Tribunal is a creature of statute, and that estoppel is a common law principle rather than a statutory one. In any event, he argued, estoppel is a defence to a claim – a shield not a sword.
11. Mr. Hartley also submitted that the Tribunal does not have jurisdiction to hear a claim for breach of contract by the respondent, as he is still employed by the respondent. The Tribunal, in his view, has no option but to dismiss the claim.

**Findings of fact**

12. I make the following findings of fact based on the contents of the claimant's Skeleton Argument and the witness statement of Mr. Brian Flindall with the claimant accepts is accurate.
13. The claimant is employed by the respondent as an Operational Postal Grade. As part of his duties the claimant used to drive a 3.5 to 7.5 tonne vehicle referred to as an 'MGV'. The vehicles were withdrawn from service and the claimant ceased to drive them in April 2014.
14. Drivers of MGVs received a driving allowance. When the MGVs were withdrawn from service, employees who used to drive them continued to receive the driving allowance for a three year period, in accordance with pay protection arrangements in place under the respondent's 'Managing the Surplus Framework'.
15. As the claimant stopped driving MGVs in April 2014 he was entitled to continue to receive the driving allowance until April 2017 under the pay protection arrangements.
16. By mistake, the respondent continued to pay the claimant the driving allowance until August 2018.
17. When the respondent realised its mistake, it sought to recover the overpayments from the claimant through a series of deductions from the claimant's pay. The claimant is paid weekly and since 20 October 2019 the respondent has been deducting £35 a week from the claimant's pay. The final deduction is due to be made on 5 July 2020.
18. The total sum that the respondent is seeking to recover from the claimant is £1,353, a sum which the claimant accepts he was overpaid and that he is reimbursing the respondent through the weekly deductions.

**The Law**

19. The relevant law is set out in sections 13 and 14 of the ERA. Section 13 sets out the right of workers not to have unlawful deductions made from

their wages. Section 13(3) states that: -

*“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.*

20. Section 13(4) of the ERA provides that: -

*“Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.”*

21. Section 14 of the ERA deals with excepted deductions which do not fall within the protection granted by section 13. In particular, section 14(1) states that: -

*“(1) 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 –*

*(a) An overpayment of wages...”*

## **Conclusions**

22. Both parties in this case agree that the respondent overpaid the claimant by £1,353 net. Both parties also agree that the deductions which the respondent is making from the claimant’s wages, and which are the subject matter of this claim, are being made with a view to reimbursing the respondent for this overpayment.

23. In light of this, and of the provisions of sections 13(3) and 14(1) of the ERA, the deductions which the respondent is making are not unlawful. Whilst I have every sympathy for the claimant, who finds himself in this position through absolutely no fault of his own, there can be no other conclusion in this case, other than that the claim for unlawful deduction from wages must fail and be dismissed.

24. I have considered carefully the arguments raised by the claimant in relation to estoppel. Unfortunately, however, they do not help the claimant. The Tribunal can only hear claims that Parliament has given it the power to hear. Parliament has not given it jurisdiction to hear claims based on estoppel.

25. Even if I am wrong on that, the doctrine of estoppel cannot, in any event, be used as the basis for bringing a claim, but rather it is as potential defence to a claim.

26. The Tribunal does not therefore have jurisdiction to hear a claim based on estoppel. The claim for unlawful deduction from wages fails and is dismissed.

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Employment Judge Ayre

Date: 28 February 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE