



EMPLOYMENT TRIBUNALS

Appellant: Mr B Higgins
Mr G Tunstall

Respondent: The Commissioners for HM Revenue and Customs

Heard at: Manchester Employment Tribunal (by CVP)

On: 14 September 2021

Before: Employment Judge Dunlop

Representation

Claimant: Ms K Apps (Counsel)

Respondent: Mr R Ryan (Counsel)

PRELIMINARY HEARING JUDGMENT

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was a video hearing, using the tribunal's Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable in the circumstances of the covid-19 pandemic and all issues could be determined in a remote hearing.

1. The appeal was brought in the name of "Waterloo and Taunton Conservative Club." As the club is an unincorporated association, the name of the appellant was changed, with the agreement of the parties, to that of two of its officers, Mr Higgins and Mr Tunstall.
2. A preliminary issue was agreed between the parties and Tribunal in the following terms: whether the payment of £3,608.02 to Mr and Mrs Shepley on or around 15 August 2017 can reduce the amount of underpayment in respect of any pay reference period prior to that date under sections 17(5) and 17(6) National Minimum Wage Act 1998.
3. The Judgement of the Tribunal is that, in the circumstances of this case, ss17(5) and/or 17(6) operate in the way contended for by the appellant. This means that the payment made on 15 August 2017 operates to reduce the amount of underpayments which fall to be set out in the Notice of

Underpayment which is under appeal and may (until such point as the sums are extinguished) be applied to any pay reference period in respect of which and underpayment has been identified, not simply to the final pay reference period as contended for by the respondent.

4. The matter will now proceed to a final hearing and the parties will be provided with a separate notice of hearing and Case Management Order.

Employment Judge Dunlop

Date: 14 September 2021

SENT TO THE PARTIES ON

20 September 2021

FOR EMPLOYMENT TRIBUNALS

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.