



EMPLOYMENT TRIBUNALS

Heard at: London South (by CVP) **On:** 5 January 2024

Claimant: Mr P Claydon

Respondent: Class Technology Solutions Ltd

Before: Employment Judge Ramsden

Representation:

Claimant In person

Respondent Mr D Soanes, Solicitor

JUDGMENT

The Claimant's complaint of unauthorised deduction from wages or, in the alternative, breach of contract, is dismissed.

REASONS

Agreed background

1. Much of the factual background to this claim is agreed between the parties.
2. The Claimant commenced employment with the Respondent on 1 November 2021, in the role of Senior IT Engineer. His contract of employment included the following provision about the requirement for the Respondent to give the Claimant notice to terminate his employment:

"During the first three months of your employment you are entitled to receive and must give one week's notice to terminate your employment. After three months you are entitled to receive and must give four weeks' notice until the end of your fifth year of continuous employment. Thereafter notice increases by one week for each year of continuous employment up to a maximum of 12 weeks after 12 years' continuous employment... The Company reserves the right to pay in lieu of notice."

3. From around May 2022, the Respondent became the subject of a deduction from earnings order (a **DEO**), effectively requiring the Respondent to make deductions

from the Claimant's earnings and pay the deducted sums to the Child Maintenance Service (the **CMS**).

4. In 2022, an amount was deducted from the Claimant's pay by the Respondent pursuant to a DEO, some aspect of which was erroneous. The Claimant followed-up with the CMS, and because the funds were still held by the Respondent at that time, the Respondent reimbursed the relevant amount to the Claimant. Text correspondence between the Claimant and the Managing Director of the Respondent, Neal Grayston, show that Mr Grayston texted the Claimant on 13 July 2022:

"Paul

We are sending money back to you by end of this week. We have an official letter now as well. Pleased it's sorted.

Neal".

5. On 30 May 2023, the Respondent's HR Manager, Pat Simpson, informed the Claimant that:

"we have another DEO request sent to finance dated 12 May – it missed pay cut off for May however we are going to have to comply with this legal instruction for June's pay. onwards If you feel its wrong then please liaise with the child maintenance team and they in turn will issue a new instruction to your employer."

6. A further email from Ms Simpson was sent to the Claimant on 30 May 2023, saying that, *"having just called the child maintenance department"*, she had been advised that:

"if we [i.e., the Respondent] fail to apply the required deductions, we are liable for £ 1000 fine each month. They say you [i.e., the Claimant] need to contact them urgently to sort out any issue you may have with this court order."

7. On 31 May 2023, Ms Simpson emailed the Claimant by way of follow-up:

"I wanted to check in with you to ensure you had made steps to resolve this issue with the child maintenance team? Pay cut off is usually around the 20th of the month so you have adequate time to move forward with this".

8. On 2 June 2023, a further DEO was sent by the CMS to the Respondent, requiring the Respondent to deduct a monthly amount from the Claimant's earnings of £1,260.41.

9. On 4 June 2023, the Claimant wrote to Simon Hunter of DWP, which email included:

"You are serving DEOs on my employer using wildly incorrect earnings amounts. Please note, you stated to the commons select committee that these notices have

no legal standing, so why are you committing fraud my misrepresentation by telling employers that they will be prosecuted if they don't comply with your threatening letters?"

The Claimant forwarded this email on to the Respondent on the same date.

10. On 5 June 2023, the Respondent was sent:
 - (a) a revised DEO requiring £1,260.41 to be deducted on a monthly basis from the sums paid to the Claimant;
 - (b) a second letter attaching a payment schedule under a DEO requiring £1,149.25 to be deducted (again on a monthly basis); and
 - (c) a different DEO, requiring £994.24 to be deducted (also on a monthly basis).

11. Also on 5 June 2023, Sheralee Grayston, a Director of the Respondent, emailed Ms Simpson (not copying the Claimant), which included:

"We need to have a discussion today, on handling the Paul situation tomorrow..."

*We will offer 3 months salary
on his departure, this is so he can get some help for his anger
management, un reasonable behaviour..."*

12. On 6 June 2023, the Respondent informed the Claimant in a face-to-face meeting held via Teams that it was terminating his employment with immediate effect, and that he would be paid in lieu of his notice period. The parties disagree as to what was said in this meeting:
 - (a) The Claimant says that the Respondent asked him to accept a change to his contractual terms to increase his notice period to three months; and
 - (b) The Respondent says that it said that it would pay him in lieu of his four-week notice period *and* pay him an additional sum as a goodwill gesture to increase the overall payment to him to amount to three months' wages.

13. A letter was sent to the Claimant by the Respondent (and signed by Ms Grayston on its behalf) dated 6 June 2023, which includes:

"Arrangements for final pay.

*Salary for the period to 6 June 2023.
Annual leave accrual 12 days, less 11 days taken, balance 1 day to be paid.
Payment in lieu of notice 3 months."*

14. The Claimant then attempted to contact the CMS to get the DEO revoked or rectified

to what he regarded as the correct amount.

15. The Claimant emailed Ms Simpson on 12 June 2023 to seek confirmation that the Respondent would not make any child maintenance deduction from the final payment. Ms Simpson replied:

"We have received three different instructions, all dated 5 June all quoting different monies to deduct, so I really do feel your pain Paul! Despite the date they only arrive late last week when I was off.

We are in the process and asking which amount/ which instruction we are to obey to avoid incurring a fine, I will advise accordingly."

16. The Claimant followed up with Ms Simpson later that day on his own communications with the CMS, attaching a screenshot of his CMS portal which identified the next payment in his current payment plan as being £296.56 due on 19 June 2023, and saying to Ms Simpson:

"You will likely get several more notices, going down down and down. We are less than half what I pay now, then they take 24%.."

17. Ms Simpson replied, also on 12 June 2023:

"Thank you, Paul, if they instruct before final pay gets sent @20th then I can make the changes for you ."

18. The Claimant emailed Ms Simpson again on 16 June 2023:

"I would like to ask, if I provide all my evidence to CTS [i.e., the Respondent] and all the chase I've made to the CMS, can you please forward this to your employer contract portal, that we are waiting a resolution, therefore the payment be out on hold?"

19. Ms Simpson replied on 19 June 2023:

"We tried twice last week, spent 2 hours trying to resolve it for you. I was aware you have a new screen shot suggesting they have lowered your monthly deduction, however CTS have not received any instructions since 5 June where we were obliged to deduct three different amounts, so as it stands we are obliged to deduct (we plan to apply the lowest amount of the three instructions that we have received), securing no further contact from the government department or a risk of fine for noncompliance..."

if I receive a new instruction before final payments are issued, I will move heaven and earth to get the new – hopefully, lower amount applied to your final salary."

20. On 22 June 2023, the Claimant emailed Ms Simpson: "Hi Pat, CMS are calling your

mobile. The DEOs are all cancelled.”

21. Ms Simpson replied 17 minutes later:

“Pay cut off has passed and the pay instruction have been sent to the bank... I tried very hard to get CMS on the phone and resolve this with time to meet pay cut off, as did you and we both knew we had a deadline... I hope you understand we in HR went out of our way to both adhere to all written instruction we received from a government body, whilst attempting to resolve matters for you, which we are not obliged to do but we tried to help you none the less, ultimately without any new written instruction we had to go with what we had.”

22. The Claimant has included in his bundle a copy of a call log produced by the CMS, which includes an entry for 22 June 2023:

“OTC [outgoing telephone call] to PP [the Claimant]’s employer to adv them to stop DEO as SO currently in place payroll adv as due to PP ceasing employment with them that his end of employment package has already been issued and any instruction to cancel DEO is too late...”

23. A payslip was produced, which appears in the Respondent’s Bundle. Not all of the payslip is visible, but it is clear that:

- (a) There were three identified components in that payslip: a sum labelled “Salary”, another “Holiday Pay” and a third, “PILON”; and
- (b) Deductions were made for tax, National Insurance contributions, pension contributions and “Child Maintenance”, the latter deduction amounting to £994.24 (the **CM Deduction**).

24. On 27 June 2023, the Claimant emailed Ms Simpson again:

“Yes, I’m aware it missed the cut off. The question is, if it’s still in CTS’s bank account, then it should be sent on to me and not withheld. This was done the last time a deduction was made but you still held the funds, which Neal arranged.

I can’t see any reason why this shouldn’t be possible this time ? I have put days of effort into getting the DEOs cancelled.”

25. Mr Grayston, who appears to have been sent the Claimant’s email by Ms Simpson, replied to the Claimant on the same day (27 June 2023), and that reply included the following:

“It is too late for us to do anything with regards to this. We still have received nothing in writing confirming That the DEOs have been cancelled. We have now outsourced payroll work and as Pat has communicated We have only taken action as we were required to do.”

26. ACAS Early Conciliation began on 19 June 2023, and ended on 28 June 2023.
27. The Claimant filed his Claim Form on 3 July 2023.
28. A CMS call log included in the Claimant's bundle indicates that on 1 August 2023 he telephoned the CMS again. That entry includes:

"PP [i.e., the Claimant] told us his employer collected £994.24 from his last pay - no payment received PP will need to send a copy pay slip to enable an investigation"

29. The Respondent filed its Response on 30 August 2023, resisting the Claimant's Claim. The Grounds of Resistance that was attached to that Response included:

"the money which the Respondent deducted from the Claimant's pay and paid to the Child Maintenance Service was not taken from wages which were properly or contractually due to the Claimant, but rather from an enhanced notice payment which the Respondent had offered to pay the Claimant as a gesture of goodwill (on top of his contractual entitlement) on the termination of his employment."

The claims

30. The Claimant Claim Form ticked a box in section 8.1 to identify his claim as one for notice pay. In the narrative section in 8.2 the Claimant wrote:

"The employer made a deduction from my pay to a third party without a court order or any evidence that debt existed. This is a breach of contract.

I have asked them to return the money, but they have refused.

The amount is : £994.24"

31. In section 9.2, about compensation he is seeking, the Claimant wrote:

"I require the amount deducted to be returned to me, plus £1000 of compensation for all the stress it has caused me. They have also ended my employment, which was related to this issue."

32. In the hearing, the Claimant clarified that:

- (a) He is not claiming that he was unfairly dismissed; and
- (b) He is claiming that an unauthorised deduction was made from his wages by the Respondent, or in the alternative, that it breached his contract of employment.

33. The Respondent's position, as set out in its Response and accompanying Grounds of Resistance, is that:

- (a) The Claimant's notice period was four weeks, and the Respondent had a contractual right to terminate his employment immediately and pay him in lieu of his notice period, which is a right it exercised on 6 June 2023;
- (b) The sum of £994.24 was deducted from an ex gratia payment paid to the Claimant, which was not "wages" for the purposes of the unlawful deduction from wages provisions in the Employment Rights Act 1996 (the **1996 Act**), and nor did the Claimant have a contractual entitlement to it, and on this basis his claim should be dismissed;
- (c) Alternatively, if the deduction was from "wages" for the purposes of the unauthorised deduction from wages provisions in the 1996 Act, that deduction was made lawfully pursuant to a DEO which had not been revoked by the time the payroll instruction was sent, and in any event a telephone call from the CMS was not sufficient to revoke a DEO.

The hearing

- 34. The Claimant represented himself, and gave evidence in support of his case. Mr Soanes represented the Respondent, and Ms Grayston gave evidence in support of the Respondent's resistance of the Claimant's claim.
- 35. Two bundles were provided to the Tribunal: a six-page bundle prepared by the Claimant, and a 130-page bundle prepared by the Respondent. Both bundles were referred to in the course of the hearing without objection from either party.
- 36. At times, the Claimant had technical difficulties, and he had to log-out and back into the CVP portal on a couple of occasions. The Claimant informed the Employment Judge when he could not hear something and the content was repeated so he heard it, and time was spent by the Employment Judge repeating what she thought the Claimant had said when the connection failed while he was speaking. By these means it was understood by both parties and the Employment Judge that:
 - (a) the Claimant heard all that was said in the hearing (whether initially or when it was repeated); and
 - (b) the Employment Judge and the Respondent heard all that the Claimant said in the hearing (whether initially or when it was repeated).

Findings of fact

- 37. There are two facts of significance which are not agreed by the parties.

First disputed fact: What was the Claimant's entitlement to notice from the Respondent to terminate his employment?

38. The Claimant says that, in the 6 June 2023 Teams meeting, he was asked by Ms Grayston whether he accepted the arrangements she described, which included (as recorded in the 6 June 2023 letter cited above) "*Payment in lieu of notice 3 months*". While he agrees that his written contract of employment required that he receive only four weeks' notice, he says that he did accept what Ms Grayston described on that call, which he says amounted to a variation of his contractual notice period to three months. He therefore contends that he had a contractual entitlement to the £12,500.01 payment made to him equating to three months' gross salary. This, he says, is consistent with the terms of the 6 June 2023 letter, and with the final payslip he received, which records the components of his pay as:

- (a) Salary, being salary for the days worked in the month of June 2023 to the 6th;
- (b) Payment in lieu of holiday; and
- (c) PILON.

There is no separate component in the payslip which is labelled as an ex gratia or "*goodwill*" payment.

39. The Respondent says that the Claimant was entitled to four weeks' notice, as per his written contract of employment (the relevant provision of which is cited above), and that there was no variation to that term in the Teams meeting on 6 June 2023. Rather, the Respondent says that it was sympathetic to the difficult financial position the Claimant was in, and that as a goodwill gesture it said it would make a more generous payment to him than he was entitled to. The Respondent agrees that the final payslip is unclear on this point, and says that the 6 June 2023 letter was summarising what was being paid to the Claimant without precision as to the legal basis for the payment.

40. The Tribunal finds that, despite the poor description in the 6 June 2023 letter and the Claimant's final payslip, the Respondent's position is far more credible. It is implausible that an employer dismissing an employee would increase his notice period as the Claimant suggests. The tone of the correspondence between the Claimant and each of Ms Simpson and Mr Grayston in relation to his DEOs and the various issues he was having with the CMS was sympathetic to the difficulties he was facing. It is far more likely that the Respondent chose to pay the Claimant more than he was contractually entitled to so as to try to end the relationship on good terms, rather than that it was doing that by increasing his contractual entitlement right at the moment of his departure.

41. Consequently the Tribunal concludes that the Respondent was, at the time of the Claimant's dismissal, obliged to give him four weeks' notice, and that contractual entitlement was not varied in the final 6 June 2023 meeting.

Second disputed fact: From which of the sums paid to the Claimant was the CM Deduction taken?

42. There were various elements in the sum of money paid to the Claimant in the final payment paid to him by the Respondent:
- (a) salary for the period he worked to 6 June 2023;
 - (b) a sum paid in lieu of his accrued but untaken holiday;
 - (c) a payment in lieu of his four-week notice period; and
 - (d) (in light of the finding in relation to the First disputed fact) an ex gratia or goodwill payment of £8,653.85.
43. The Claimant says the only element of his final pay to which the DEO could attach was element (a) above – the salary paid to him for the days he worked in June 2023, which was less than £800 (the exact figure is not legible on the copy included in the Respondent’s bundle), so less than the CM Deduction. Moreover he notes that the statutory scheme for DEOs provides for a certain level of protected earnings, with deductions under DEOs only relating to the excess above that level. He says that the salary payment element paid to him in the final payment was insufficient for any deduction to be required by any DEO, because it sat below the protected earnings immune from deductions under any DEO.
44. The Tribunal found the Respondent’s position confusing on which element(s) of the final payment it took the CM Deduction from. In its Grounds of Resistance it clearly states (as cited above) that the deduction was made from the *ex gratia element* of the payment made to the Claimant. Before the Tribunal, though, Mr Soanes appeared to modify that position (whilst he did not agree it amounted to a modification), saying that the CM Deduction was taken from the *total* sum paid to the Claimant.
45. The point is significant, because the Respondent posits, and the Tribunal has agreed, that there was an ex gratia element to the final payment (in the amount of £8,653.85), and by its very nature, an ex gratia payment is not a sum to which the Claimant would be contractually entitled, so if the CM Deduction was made from the ex gratia element, the Claimant’s breach of contract claim (at minimum) would fail.
46. The Respondent’s final payslip to the Claimant is regrettably unclear on this point, but the Tribunal finds that the CM Deduction was taken from the aggregate of:
- (a) salary for the period he worked to 6 June 2023;
 - (b) the sum paid in lieu of his accrued but untaken holiday; and
 - (c) the payment in lieu of his four-week notice period.

The Tribunal reaches this conclusion because the applicable DEO required £994.24 to be deducted monthly from the Claimant's earnings for DEO purposes, and (as set out in the legal section below) "earnings" for DEO purposes includes "wages or salary (including... other emoluments payable in addition to wages or salary or payable under a contract of service)", and (a), (b) and (c) fall within that description. There is no obvious head of "earnings" in the Regulations which includes the ex gratia payment paid to the Claimant.

47. Consequently the Tribunal finds that the CM Deduction was taken from the aggregate of the sum paid to the Claimant for the portion of June 2023 that he worked, the sum paid in lieu of his accrued but untaken holiday, and the sum paid in lieu of his four week notice period.

The law

Unauthorised deductions from wages

48. Section 13 of the 1996 Act provides:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract.."

49. Section 27 of the 1996 Act defines wages, and that includes, in subsection (a), "any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise".

Breach of contract

50. The contract of employment between any employee and employer has certain terms implied into it by law, including terms implied because of obligations imposed by legislation. One example of this is the statutory minimum notice provisions in section 86 of the 1996 Act, which override any contractual provision providing for a lesser period of notice to terminate an employment contract. Another is the fact that an employer is obliged by legislation to make deductions from sums payable to an employee in order to meet the employee's liability for income tax and its National Insurance Contributions.

The relevant law governing DEOs

51. The Child Support Act 1991 (the **1991 Act**) includes the following in section 31:

"(1) This section applies where any person ("the liable person") is liable to make payments of child support maintenance.

(2) The Secretary of State may make an order (“a deduction from earnings order”) against a liable person to secure the payment of any amount due under the maintenance assessment maintenance calculation in question...

(4) A deduction from earnings order—

(a) shall be expressed to be directed at a person (“the employer”) who has the liable person in his employment; and

(b) shall have effect from such date as may be specified in the order.

(5) A deduction from earnings order shall operate as an instruction to the employer to—

(a) make deductions from the liable person's earnings; and

(b) pay the amounts deducted to the Secretary of State...

(7) Where—

(a) a deduction from earnings order has been made; and

(b) a copy of the order has been served on the liable person's employer,

it shall be the duty of that employer to comply with the order...

(8) In this section and in section 32 “earnings” has such meaning as may be prescribed.”

52. Section 32 of the 1991 Act specifies that *“If any person fails to comply with the requirements of a deduction from earnings order, or with any regulation under this section which is designated for the purposes of this subsection, he shall be guilty of an offence.”*

53. The Child Support (Collection and Enforcement) Regulations 1992 (the **Regulations**) are made under the 1991 Act. Part III of the Regulations concerning DEOs contains the following:

In Regulation 8 (Interpretation of this Part): *“(3) Subject to paragraph (4), “earnings” are any sums payable to a person—*

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service)...”.

In Regulation 12 (Amount to be deducted by employer): “(1) *Subject to the provisions of this regulation, an employer who has been served with a copy of a deduction from earnings order in respect of a liable person in his employment shall, each pay-day, make a deduction from the net earnings of that liable person of an amount equal to the normal deduction rate.*”

In Regulation 18 (Power to vary deduction from earnings orders): “(1) *The Secretary of State may (whether on a review under regulation 17 or otherwise) vary a deduction from earnings order so as to—*

(a) include any amount which may be included in such an order or exclude or decrease any such amount;

(b) substitute a subsequent employer for the employer at whom the order was previously directed.

(2) The Secretary of State shall serve a copy of any deduction from earnings order, as varied, on the liable person's employer and on the liable person.”

In Regulation 20 (Discharge of deduction from earnings orders): “(1) *The Secretary of State may discharge a deduction from earnings order where it appears to him that—*

(a) no further payments are due under it; ...

(c) the order is defective; ...

(2) The Secretary of State shall give written notice of the discharge of the deduction from earnings order to the liable person and to the liable person's employer.”

In Regulation 21 (Lapse of deduction from earnings orders): “(1) *A deduction from earnings order shall lapse (except in relation to any deductions made or to be made in respect of the employment not yet paid to the Secretary of State) where the employer at whom it is directed ceases to have the liable person in his employment.*

(2) The order shall lapse from the pay-day coinciding with, or, if none, the pay-day following, the termination of the employment...”

In Regulation 22 (Appeals against deduction from earnings orders): “(1) *A liable person in respect of whom a deduction from earnings order has been made may appeal to the magistrates' court, or in Scotland the sheriff of the sheriffdom in which he resides...*

(4) Subject to paragraph (5) where the court or, as the case may be, the sheriff is satisfied that the appeal should be allowed the court, or sheriff, may—

(a) quash the deduction from earnings order; or

(b) specify which, if any, of the payments in question do not constitute earnings...".

Application to the facts here

The Claimant's unauthorised deduction from wages claim

54. It is abundantly clear that deductions made from wages by an employer pursuant a DEO are not unauthorised deductions for the purposes of section 13 of the 1996 Act – they are very clearly (pursuant to section 31 of the 1991 Act) deductions the employer is required to make “*by virtue of a statutory provision*”.
55. The critical question therefore becomes whether the DEO of 5 June 2023 was in place on the date that the Respondent paid the Claimant. In the Tribunal's view, the answer is clearly “yes”, for the following reasons.
56. Firstly, at the time the payroll instruction was sent by Ms Simpson to the Respondent's outsourced payroll provider (the deadline for which she had warned the Claimant of repeatedly, and of which he was very clearly aware), the Respondent had received nothing from the CMS to alter the position set out in whichever of the 5 June 2023 DEOs was applicable (which the Respondent deemed to be the one requiring the lowest deduction). The (applicable) DEO of 5 June 2023 gave the Respondent lawful authority – as per section 31 of the 1991 Act – to make a deduction from the Claimant's “earnings” for DEO purposes pursuant to its terms until it was clearly revoked. Indeed, the Respondent was *obliged* to do so, and would commit a criminal offence if it did not do so (section 32 of the 1991 Act).
57. Secondly, while the CMS telephoned the Respondent on 22 June 2023 (after the payroll instruction had been sent to the outsourced payroll provider), the obligation on the Respondent to make deductions pursuant to the DEO still applied until the DEO was revoked by the Secretary of State (pursuant to Regulation 20). (The Regulations specify other situations in which a DEO falls away, but none of those are applicable on these facts.) The Tribunal does not consider a telephone call sufficient to revoke a DEO, or to evidence its revocation - the Respondent remained obliged, pursuant to section 31 of the 1991 Act, to make the ordered deduction.
58. In light of the finding that the DEO issued to the Respondent on 5 June 2023 was in place, the CM Deduction was a lawful one. There were sufficient “earnings” to which the DEO attached (being salary payable for five days' work, salary in lieu of the Claimant's four week notice period, and a sum in lieu of his accrued but untaken holiday) for the value of the deduction. Given that a month's wages would ordinarily attract a deduction of £994.24, and the fact that the aggregate of those elements of the final payment would have exceeded a month's wages, it is clear that the amount deducted was properly £994.24.
59. Therefore the Claimant's primary claim that the Respondent made an unauthorised deduction from his wages fails.

The Claimant's breach of contract claim

60. The making of the CM Deduction was also not a breach of contract on the part of the Respondent, as the contract between the Claimant and the Respondent was subject to statutory obligations necessitating alteration to its terms. The making of the DEO requiring the Respondent to make deductions from the Claimant's earnings together with the impact of the legislation giving that DEO effect did necessitate that alteration, and meant that the CM Deduction was not a breach of contract by the Respondent.

Conclusion

61. The Claimant's claim, that he suffered an unauthorised deduction from wages or, in the alternative, a breach of contract, by the Respondent is not made out and is dismissed.

Employment Judge Ramsden
Date: 5 January 2024