

THE INDUSTRIAL TRIBUNALS

CASE REF: 299/20

CLAIMANT: Diane Mullan

RESPONDENT:

1. Screen Clinical Limited
2. Michael O'Neill

JUDGMENT

The tribunal issued an oral judgment at the end of the hearing awarding the claimant the sum of £1,556.26, comprising £810.00 in respect of an unauthorised deduction from earnings and £746.26 in respect of unpaid holiday leave.

CONSTITUTION OF TRIBUNAL

Vice President: Mr N Kelly

Members: Mr A Barron
Mrs F Cummins

APPEARANCES:

The claimant appeared in person and was unrepresented.

Mr Michael O'Neill appeared on behalf of both respondents.

1. The tribunal dismissed the claim against the second-named respondent and the case proceeded solely against the first-named respondent because it was a matter of contract and nothing else.
2. The judgment was delivered orally.
3. The claim comprised three issues ie deductions from the final salary payment, unpaid holiday pay and pay slips.
4. Pay slips had been provided and were no longer an issue.
5. There were two deductions from the final pay. One was a deduction of £300.00 in respect of the pharmaceutical retention fee which is the annual practising fee payable in respect of pharmacists. The second was a deduction of £810.00 in respect of the cost of a diabetes training course undertaken by the claimant.

6. After hearing the parties the tribunal accepts that it was an implied term of the contract that any part of the calendar period covered by the pharmaceutical retention fee which was left unused after the resignation of an employee would be repaid to the employer. That would be standard practice and would have been understood by both parties. Therefore the tribunal concludes that the employer was correct to make that deduction of £300.00 from the final payment.
7. The tribunal concludes that there was no contractual provision and no consent, either oral or written, which would have allowed the deduction of £810.00 from the final payment in respect of the diabetes training course. It is standard practice in any industry that if an employee undertakes training at the expense of the employer and, if the employer wishes to retain the power to recoup that payment in the event of an early resignation, that that employee should be required to sign a document indicating that they consent to such deduction if they resigned within a certain calendar period from the date of the training course. No such document was signed by the claimant in the present case.
8. The tribunal therefore concluded that the deduction of £810.00 was an unlawful deduction and/or a breach of contract.
9. In relation to holiday pay, both parties have made significant errors in relation to their calculations. The employer proceeded on the basis that the employee was entitled to only 25 days leave per calendar year and also proceeded on the basis that he was entitled to insist on completed months only being used for such calculations. Both propositions were incorrect.
10. The figures paid in relation to holiday pay were not clear from the papers and the tribunal rose for 30 minutes to allow the parties to identify the payment of holiday pay throughout the calendar year 2019. After a 30 minute break, the parties confirmed that a total of 18 days had been paid in that calendar year at a daily rate of £161.53. That totalled an amount of £2,907.54.
11. As a matter of contract, and not of statutory entitlement, the claimant was entitled to one additional day in that calendar year 2019 which had been carried over from 2018. That comprised a total entitlement of 29 days. Multiplying that entitlement by the daily rate of £161.53, the total holiday pay entitlement for the entire year was £4,684.37.
12. The claimant had worked for 0.78 of that calendar year. Applying that fraction to the entire entitlement for the complete year, the entitlement for the part of the year worked by the claimant for holiday pay was £3,653.80.
13. Subtracting what was paid from the claimant's entitlement, the shortfall is £746.26 and that is directed to be paid by the remaining respondent.
14. The claimant is therefore entitled to payment in respect of an unauthorised deduction from wages of £810.00 and is also entitled to payment of holiday pay in the sum of £746.26, comprising a total of £1,556.26.

15. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Vice President:

Date and place of hearing: 5 January 2021, Belfast.

This judgment was entered in the register and issued to the parties on: