



## EMPLOYMENT TRIBUNALS BETWEEN

**Claimant**

Mrs H Luxton

**AND**

**Respondent**

Western Welsh

Community Care Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Haverfordwest

**ON** 28 March 2017

**EMPLOYMENT JUDGE** NW Beard

### Representation

**For the Claimant:** In Person

**For the Respondent:** No Appearance

## JUDGMENT

**The judgment of the tribunal is that:-**

1. The claimant's claim of unlawful deduction of wages is well founded.
2. The respondent is ordered to pay to the claimant compensation on the above claims as calculated below.
3. The respondent is ordered to pay to the claimant the sum of £390.00 costs in respect of tribunal fees incurred by the claimant.

<b>Unlawful Deduction of Wages</b>	
Earnings 16/09/2016 to 28/10/2016	£1720.32 gross
Less sums paid	(£1050.00 gross)
Unpaid wages	£670.32
Unpaid mileage expenses	£ 67.90
<i>Sub Total</i>	<i>£738.22</i>
<b>Compensatory Award</b>	
Loss of earnings from new employment	£633.60
Interest on Loans	£280.00

Bank Charges	£ 40.00
<i>Sub Total</i>	<i>£953.60</i>
<b>Total Award</b>	<b>£1691.82</b>

## REASONS

### Preliminaries

1. The claimant represented herself the respondent was not represented. The claimant presented a number of documents at the hearing and gave oral evidence. The claimant claimed that the respondent had unlawfully deducted wages, she also contended that she had suffered consequential loss as a result. The respondent denied all claims in an ET3 response but presented no evidence either oral or written to the tribunal. There was however a letter to the claimant dated 1 December 2016 which set out the respondent's case. This letter accepts an underpayment but disputes the amounts claimed by the claimant. The parties agree that the claimant is owed £67.90 for mileage expenses and that during the course of her employment the claimant was paid a total of £1050.00.

### The Facts

2. The claimant commenced employment with the respondent as a care assistant on 16 September 2016, that employment ended on 28 October 2016 the claimant was due to be paid for both September and October on that latter date. The claimant was paid the sum of £900 on 28 October 2016, this was not based on a calculation of her earnings but on the basis of an estimate. The claimant was then paid a further £150 on the 7 November 2016 again based on estimates (the claimant has had no payslip for this sum). The claimant calculated that the total sum earned in the relevant period was £1720.32 (gross) including holiday pay. The respondent's letter indicates its calculation that the claimant only provides a net figure as its total of £1376.86. I accepted the claimant's evidence as to the gross figure including holiday pay as it coincided to a great extent with the photocopies of timesheets I had seen covering the period up to the 21 October 2016.
3. The claimant also told me that she had had to take out a loan of £400 in order to meet bills and that the loan, from a payday lender cost her £280 in interest, I had no reason not to accept this evidence. In addition to this the claimant was not immediately able to take up alternative employment which was available because she was unable to meet childcare costs; this lost her £633.60 in earnings. Finally due to unpaid direct debits the claimant incurred bank default charges of £40.00. Again I accepted the claimant's evidence in this regard.

## The Law

4. Section 13 of the Employment Rights Act 1996, so far as is relevant, 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, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

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*(3) 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.*

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5. Section 24 provides:

*(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*

*(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,*

*(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*

6. Section 25 provides:

*(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*

*(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13;*

## Analysis

7. Given the claimant's evidence which I accepted the claimant was not paid the gross sum of £1720.32 on the 28 October 2016 when payment was due; she was paid £900.00 leaving a shortfall of £820.32. However, the respondent is to be given credit for payment of £150 made on the 7 November leaving a gross sum of £670.32 unpaid (the claimant is required to account for her own tax and national insurance on the award). I consider that the respondent should pay that sum to the claimant and order the respondent to do so. The

Case Number: 1600959/2016

claimant has also suffered consequential losses as outlined in the facts above being: £280 in loan interest; £633.60 in lost earnings and bank default charges of £40.00 which sum I order the respondent to pay to the claimant. This results in a total compensatory award of £1691.82, which sum I order the respondent to pay to the claimant.

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Employment Judge Beard

**Dated: 9 May 2017**

Judgment sent to Parties on  
11 May 2017

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