Browne Jacobson

Holiday pay claims: A series of deductions

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The Supreme Court has issued its **Judgment** in Chief Constable of the Police Service of Northern Ireland and another v Agnew and others. This case concerns claims for underpayment of holiday and, in particular, how far back underpayments could be claimed. Although this case did address an issue specific to police officers in Northern Ireland, it also has wider implications for holiday pay claims (and in fact other unlawful deduction from wages claims) within Great Britain as Supreme Court decisions are binding across the whole of the UK.

Claims for underpayment of holiday do not need to be made for each single deduction – they can be based upon a series of deductions. A series in this context has no particular legal meaning – it is a question of fact as to whether deductions are sufficient similar to link together, and whether there is the necessary degree of repetition. However, there has been a difference in approach taken in Northern Ireland than in Great Britain as to whether a gap in a series of deductions of more than three months effectively breaks that series. The Supreme Court has upheld the decision of the Court of Appeal in Northern Ireland (CoA) by finding that a gap of more than three months does not necessarily break the series – allowing a gap to automatically break the series could produce unfair results and impose a "wholly unnecessary" burden on employees where individual deductions may well be small but collectively are substantial.

In Agnew, the underpayment of holiday arose due to holiday pay calculations being based on "basic pay" rather than "normal pay". The Supreme Court held that where holiday pay had been calculated using the same method – based on basic pay – then a correct (or lawful) payment would not break the series of deductions. The Supreme Court also agreed with the CoA that there was no requirement as a matter of law to take leave derived from different sources in a particular order – it was not the case that leave derived from EU law (4 weeks) needed to be taken first and that "additional" domestic leave (1.6 weeks) or contractual leave followed.

Whilst the decision in Agnew provides a degree of consistency across the UK and makes it easier for employees to rely on a series of deductions to bring linked claims, the implications within Great Britain are still tempered by the "two-year backstop", which limit unlawful deductions from wages claims to a period of two years prior to commencement of the proceedings. There is no such limit within Northern Ireland; the Supreme Court referred to the value of these particular claims being estimated to be £30 million. Those with live holiday pay claims where a series of deductions is being relied upon will need to consider the implications of this decision carefully, particularly in respect of any alleged breaks in the series of deductions.

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