



Court of Appeal in Northern Ireland rules on the meaning of

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Case: *Chief Constable of Northern Ireland Police v Agnew* [2019] NICA 32

The Court of Appeal in Northern Ireland considered the meaning of "a series of deductions" under Northern Ireland's holiday pay legislation.* It held that a gap of three months or more in a series does not break the 'series'. Practically, this means backpay for miscalculated holiday pay could be claimed even when the employer has remedied the situation for a number of months or there is a significant gap between deductions over the years.

The facts of the case concern the holiday pay of police officers and other police staff which was calculated by reference only to basic pay, when holiday pay ought to be calculated by reference to 'normal' pay (which includes overtime and other allowances). Over 3,000 employees have been affected and lodged claims for unlawful deductions from wages, with some claims going as far back as 1996. The total value of the claims is around £30 million. If the employer had been successful in their argument that a gap of three months or more breaks "a series of deductions", they would have reduced their liability to about £300,000. It is likely therefore that this case will be appealed in the Supreme Court.

The Employment Appeal Tribunal in England has previously considered that a three-month gap breaks the chain of deductions, meaning that an employee cannot claim back any further once the series is broken (this was when considering legislation applicable in the rest of the United Kingdom - the Employment Rights Act 1996). Although not binding outside of Northern Ireland, this latest decision may prove persuasive if a further appeal were to be brought in Great Britain, as the Employment Rights Act 1996 is so similarly worded to the Northern Irish legislation.

Indeed, if an appeal is brought to the Supreme Court and it agrees with the decision of the Court of Appeal in Northern Ireland, it is almost inevitable that subordinate courts of the United Kingdom will apply the same meaning of "a series of deductions" to legislation applicable in Great Britain. However, the impact of this would be much softer on employers in Great Britain due to legislation which

restricts backpay claims to two years.

**For those not familiar with the jurisdictional peculiarities of the United Kingdom, Northern Ireland is a separate legal jurisdiction from England, Wales and Scotland (known collectively as 'Great Britain'), but it shares a final court of appeal (the Supreme Court) with the rest of the United Kingdom. Statute and common law is often similar in each of the jurisdictions of the United Kingdom, but there can be important differences.*