

Employment Alert

Crime does not pay...

In a recent case, a tribunal's decision was upheld that an employee was not entitled to be paid his wages for the period he was on remand in prison.

Burns v Santander UK plc

Mr. Burns was employed as a Branch Manager. On 8 February 2009 he was arrested and charged with 13 criminal offences. He was remanded in custody the following day until his trial on 17 August 2009, after which he was convicted of one offence of assault (and acquitted of all remaining charges). He was released on bail and subsequently sentenced by way of non-custodial penalties.

Shortly after being remanded, the employer wrote to Mr. Burns, advising him that he would not be paid whilst he was on remand and unable to work. He was, therefore, without any pay from 9 February 2009 until his release (pending sentence) on 17 August 2009. Mr. Burns was

subsequently dismissed and he submitted claims for unfair dismissal, unlawful deduction from wages and holiday pay. In relation to his wages claim, the issue turned on what was "properly payable" to Mr. Burns during the period he

was in custody (within the meaning of section 13(3) of the Employment Rights Act 1996). In upholding the tribunal's judgment that there was no unlawful deduction of wages whilst he was residing at her majesty's pleasure, they rejected the proposition that Mr. Burns was entitled to be paid because he was ready and willing to work but was prevented from doing so, not through his own design, but because of the court's decision to remand him in prison.

The Employment Appeals Tribunal (EAT) said that the crucial question was whether by his own voluntary actions, Mr. Burn's had wholly (or in part) contributed to the state of affairs, and in this case the tribunal was entitled to find that being remanded in prison was an "avoidable impediment" and it could, therefore, be implied that he was not entitled to be paid during his detention.

Comment

If you are faced with an employee who is unable to work due to being remanded in custody (or in other circumstances, where they are unable to perform their duties mainly due to their own actions) before stopping their pay, you need to check the terms of the individual's contract relating to pay. You also need to consider the circumstances in each individual case, before deciding to stop pay.



If you have any comments or queries, please contact your HR representative or alternatively email HR Direct at info@hrdirect.org.uk or call **07812 073379**.

