

**NUT wins case over excessive pay deduction for strike**

The High Court today (Wednesday 10 March) ruled that Kent County Council acted unlawfully in deducting almost twice as much as it was entitled to from a teacher's salary over a one-day strike.

The decision in a test case taken by the NUT on behalf of Ms Abigail Smith, a Kent teacher, ensures that every teacher in Kent will be repaid the excess amount deducted from their salary cheques in March last year. For a newly qualified teacher Kent's action resulted in a deduction of £97.30 instead of £51.98.

It also ensures that no similar deductions can be made by any of the more than 170 education authorities in England and Wales.

Doug McAvoy, NUT General Secretary, said: "Teachers accept that if they go on strike a deduction will be made from their salary. But that deduction must be in line with their conditions of employment. It must be no more than that. Kent attempted to punish teachers for taking lawful strike action at a much higher rate than it was entitled to. The Union will not stand by and allow any employer to act in this way."

In March 2002, thousands of NUT members in London and the South East of England went on strike over London and fringe area allowances. They knew that they would not be paid for the day.

There is a long standing agreement with teachers' employers on how any such deduction should be calculated. It is spelled out in what is known as the Burgundy Book and incorporated into every teacher's employment contract. It says:

"...where authorised unpaid leave of absence or unauthorised absence (e.g. strike action) occurs deductions of salary shall be calculated at a daily or part daily rate based on the day's salary being 1/365<sup>th</sup> of a year for each day of the period of absence."

For some local education authority leaders would like to be more punitive. They prefer to believe that teachers only work for 195 days a year, the number of days they are required to be in school, and that the deduction should therefore be 1/195<sup>th</sup> of the annual salary.

Eleven of the LEAs, in which teachers took action in March 2002, threatened to withhold close to double the agreed deduction. Solicitor's letters went to all the authorities concerned and a number of governing bodies.

All but one backed down. Kent County Council did not. The Union supported a member Abigail Smith as a test case in reclaiming the difference between 1/195<sup>th</sup> and 1/365<sup>th</sup>.

Kent's case was that the contract agreed with Abigail should be set aside by the School Teachers' Pay and Conditions Document, the statutory instrument governing teachers' employment. For Kent it was of no importance that the agreement in the Burgundy Book had been clarified and updated as recently as 2000.

They lost. Teachers in Kent whose suffered the excessive deduction will have half the deduction reinstated. Teachers throughout England Wales gain - because the Court has ruled that the Burgundy Book is not a relatively superficial addition to the unnegotiated, imposed set of statutory rules governing teachers' pay and conditions.

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PR.15/04