Case Number: 2401637/17

EMPLOYMENT TRIBUNALS

Claimant: Mr T Thayaranjan

Respondent: Greenage Utilities Limited

HELD AT: Manchester **ON:** 19 July 2017

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimant: Mr M J Henstock, friend

Respondent: Miss E Quinn, Head of Business support

JUDGMENT

The judgment of the tribunal is that:

1. The respondent did not make an unlawful deduction of wages when it deducted the sum of £2,500.00 from the claimant's wages in relation to the cost of training.

2. The respondent made an unlawful deduction of wages and is ordered to pay to the claimant the sum of £620.00, being the sum it deducted from the claimant's wages in relation to the cost of repair to a garage door.

3. The respondent is ordered to pay a contribution to the costs to the claimant under rule 75(1)(b) Employment Tribunals Rules of Procedure 2013 in the sum of £195.00 in respect of the issue and/or hearing fee paid by the claimant in these proceedings

REASONS

1. Written reasons are provided pursuant to the oral request of the respondent's representative at the hearing.

Issues to be determined

2. At the outset it was confirmed that the issues were:

   2.1 whether the claimant had consented to deductions being made from his wages in the following sums:

   - £620.00 in relation to the repair of a garage door;
   - £2,500 in relation to training costs

   2.2 whether the deductions were authorised by a term in the claimant's contract of employment;

   2.3 whether the respondent could rely on the terms of that contract because the claimant had refused to sign the written contract of employment and had worked under protest until his resignation.

3. It was agreed that one matter in dispute between the parties, whether the claimant had given notice of resignation, was not relevant to the issues to be decided.

Orders

4. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following.

5. No case management orders had been made prior to the hearing. The parties had not exchanged documents or prepared witness statements in advance of the hearing. The respondent had sent copies of a bundle of documents to the tribunal and the claimant the day before the hearing. The claimant and his representative were given some additional time to consider those documents. The claimant provided copies of some additional documents, including copies of payslips. Both parties indicated that they were prepared to continue with the hearing on the understanding that the tribunal would consider all of these documents and would hear evidence from each witness in response to questions put by either the representative or the tribunal. Neither party applied for a postponement of the hearing.

6. The respondent indicated an intention to rely upon the written evidence of Mr Hinchliffe. The tribunal agreed to consider that evidence, noting that it was a question of how much weight it was prepared to attach to the evidence of a witness who had not attended tribunal and could not be questioned on the veracity of their evidence. The respondent did not seek a postponement of the hearing to secure the attendance of Mr Hinchliffe.

7. The employment judge explained the procedure she would adopt in the hearing. Both parties indicated that they understood the procedure.

Submissions

8. The representative for the claimant made a number of submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

    8.1 at interview the claimant was promised that there would be no weekend work and no excessive hours of work, no call-outs in the evening. The claimant accepted the offer of employment on that basis;

    8.2 the claimants and his work colleagues were later presented with a contract of employment for signature. The contract specifically provided for callouts and weekend work, and required the employees to work excessive hours. The claimant and his colleagues objected to these provisions and refused to sign the contract of employment. The respondent agreed to review the position and come back to the claimant and his work colleagues with different proposals. They never did;

    8.3 the claimant did not agree to the terms and conditions of employment as set out in the written contract of employment. The respondent cannot rely on the terms;

    8.4 The claimant was told prior to employment that the training fees were £1500, not the £2500 deducted;

    8.5 The claimant was never told that he was responsible for damage to customer premises. The respondent made the first deduction from his wages without any explanation of the reason for the deduction. The damage he did to the customer's garage door was minor. He followed procedure by reporting it. He was not told that he would have to pay for the damage. He was not given the opportunity to comment on the extent of the damage. He had taken photographs at the time which showed that the damage to the customer’s garage door was minor, and that the van had suffered no damage

what so ever. He never agreed to a deduction from wages for damage to customer premises. He understood that this was covered by insurance.

9. The representative for the respondent made a number of submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

9.1 the claimant was not working under protest because he had not followed the ACAS guidance, whereby he was required to demonstrate with what they did not agree, in writing, and to explain that he was working under protest. The claimant did neither of these things. He was operating under the terms and conditions of the written contract of employment;

9.2 the claimant was not made to work excessive hours;

9.3 the contract of employment authorised the deductions from wages;

9.4 the claimant has signed a training agreement agreeing to the deduction of £2500 from his wages if he left employment within 12 months;

9.5 a company handbook policy was signed by the claimant and clearly set out that the respondent would deduct any money owed to the employer from the last salary payment. The claimant signed an acknowledgement of the policy and must therefore be fully aware of this;

9.6 the respondent did not make any unlawful deduction from wages, each of which was authorised.

Evidence

10. The claimant gave evidence. He called no further witnesses.

11. The respondent relied upon the evidence of:

11.1 Mr J Tupaea, Head of Commercial;

11.2 Mr J Hinchliffe, Operations Manager

12. The witnesses, other than Mr Hinchliffe, provided their evidence by way of answers to questions from the representatives and the tribunal. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.

13. The parties relied upon the documents contained in the respondent's bundle of documents and the documents provided by the claimant, as referred to at paragraph 4 above. References to page numbers in these Reasons are references either to the page numbers in the respondent's Bundle (with the suffix 'R') or to the claimant's documents (with the suffix 'C')

Facts

14. Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

15. The claimant paid the sum of £390.00 in tribunal fees on the issue of the claim and to progress the claim to hearing.

16. The claimant gained employment with the respondent through an agency, which provided him with written confirmation of some of the terms and conditions of employment (doc C2). These included details of the training provided at the commencement of employment and the following statement

    "Training is completely free however, you will be required to sign a contract agreeing to repay the cost of the training (£1500) should you leave Greenage Utilities within one year of commencement of the employment."

17. The agency informed the claimant that there would be no weekend work, no on-call work and that the hours of work were 40 hours per week. He was told that he would be required to install 10 meters a day and that anything in excess of that would attract a bonus.

18. The claimant commenced employment with the respondent as a smart meter installer on 14 June 2016. He attended a four week training course, which was provided by a third party. The respondent is charged by, and pays to, the training provider the sum of £2500.00 for every employee who attends that training course.

    [On this the tribunal accepts the evidence of the respondent's witness.]

19. On the 14 June 2016 the claimant signed a security training agreement (R17) which included the following:

    - Greenage Utilities Ltd will provide funding of £2500 (cost) to complete the above course, paid directly to the training provider.

- I will remain in employment with Greenage Utilities Ltd throughout the training period and for two years after the completion of the above course. Should my employment be terminated for any reason other than redundancy I agree to repay a percentage of the cost based on the below:
    - 0 -- 12 months from the date of course completion -- 100% of the cost is repayable

20. On 14 June 2016 the claimant was advised of the existence of a company policy Handbook and on request signed an acknowledgement in the following terms (R22):

    A hardcopy version of the Greenage Utilities Ltd company policy handbook is available for you to view at any time.
    I have read and acknowledged the above statement of the Greenage Utilities Ltd company policy handbook.

    The claimant was not provided with a copy of the handbook

21. The Handbook included the following:

    We will deduct any monies you owe us from your last salary payment

22. The claimant was provided with a company van to assist in the performance of his duties. On 14 June 2016 the claimant signed the document headed “Van incident policy” (R15) which includes the following:

    - In case of an accident you must contact Amber Quinn as soon as possible.
    - The engineer must obtain visual evidence if possible after the police have been notified. Damages to the vehicle and the surrounding location must be photographed, and sent to their supervisor or operations manager.

23. The Van incident policy does not contain any term notifying the claimant that:

    - he was liable for any damage to the van or third-party property caused by the claimant's negligence;
    - he was liable for any insurance excess in relation to damage to the van or other property caused by the claimant's negligence;
    - the cost of repair to the van or other property would be charged to the claimant and/or deducted from his wages.

24. The first three months of the claimant's employment was a probationary period.

25. On or around 1 September 2016 the claimant and his work colleagues were provided with a Statement of terms and conditions of employment (R9) and were asked to sign a copy by way of acceptance of the terms and conditions.

26. The claimant and his colleagues were unhappy with the terms and conditions and discussed their anxieties with management at team meetings. The claimant objected to the terms set out at clause 7 of the Statement of terms and conditions, which related to the hours of work and out of hours call-outs, which the claimant understood to mean would involve him in weekend working. The claimant did not object to the other terms of the statement. The respondent agreed to consider an amendment to clause 7 of the Statement of Terms and Conditions. The claimant continued to work. He did not sign the contract.

27. No further action was taken by the respondent in relation to this disagreement. The respondent did not provide a revised clause 7, did not insist on the claimant returning a signed contract of employment. The claimant did not put his complaint in writing, did not expressly state that he was working under protest. He and his colleagues raised this issue at nearly every staff meeting. After this the claimant worked longer hours and on-call. He did not work at weekends.

28. The Statement of Terms and Conditions includes the following:

6.0 Deductions from wages

6.1 For the purposes of the Employment Rights Act 1996, sections 13 -- 27, you hereby authorise the Company to deduct from your remuneration under this agreement any sums due from you to the Company including, without limitation, any overpayments, private mileage in company vehicles, training costs, negligent liquidated damaged, rectification costs as a result of poor workmanship, loans or advances made to you by the Company.

14.0 Damages

14.1 Damages to plant, equipment or materials, whether owned or hired, due to employee negligence may be deducted at the company's discretion but not without prior investigation and notification to the employee. Please reference ‘Deduction from Wages’ section of the contract.

29. The claimant was unhappy with the hours of work and resigned from his employment. The claimant left employment on 14 November 2016.

30. In or about September 2016 the claimant was working at a customer's property. He reversed his company van onto the customer’s drive and

reversed into the garage door. The claimant got out of his vehicle and noticed that there was no damage to the van but that there was slight damage to the garage door. He took photographs of the damage and sent them to his line manager. He followed the Van Policy agreement by notifying the accident. He was not, at the time, advised that he would be responsible for the cost of repair to the garage door.

[On this the tribunal accepts the evidence of the claimant. Mr Hinchliffe has not been called to give evidence.]

31. The respondent paid the sum of £620.00 for the replacement of the customer's garage door (R20). It made no claim on its insurance as it has an excess exceeding the amount paid. The claimant was not given the opportunity to comment on any claim from the customer as to the damage to the garage door. He was not provided with a copy of the repair bill.

32. There was no investigation of the extent of the damage to the garage door prior to the deduction being made from the claimant's salary.

[There is no satisfactory evidence of any such investigation. Mr Hinchliffe has not been called to give evidence. The assertion that the collision with the garage door caused a beam to break, caused the garage door to buckle and require replacement, is inconsistent with the evidence given by the claimant as to the extent of the damage. The claimant was unaware of the extent of the damage alleged by the customer until he had sight of the invoice as part of these proceedings.]

33. On 31 October 2016 the claimant was paid. His pay slip showed that there was a £100 deduction from his salary. He did not know why that deduction had been made and no explanation was given at the time.

34. On 30 November 2016 the claimant was paid his final salary. His pay slip showed that there was a deduction of £3,020.00 from the claimant's pay.

35. The respondent made the following deductions from the claimant's pay:

    35.1 £620.00 for the cost of repair to the customer's garage door, intended to be deducted by way of seven monthly instalments, the first instalment of £100.00 being on 31 October 2016. The balance was deducted from the final wages payment on 30 November 2016;

    35.2 £2500.00 being the training costs charged to, and paid by, the respondent for the four weeks training provided to the claimant at the commencement of his employment. That was deducted from the final wages payment on 30 November 2016;

The Law

36. Section 13 Employment Rights Act 1996 (ERA 1996) 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.

    2. In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised –

        a. in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

        b. in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

37. The employer may include an express term in the contract of employment requiring an employee to repay certain costs and expenses (for example in relation to training the employee) in the event that the employee leaves during training or for a period thereafter, and in circumstances where such costs are clearly not a penalty, they may prove recoverable in effect as liquidated damages. The amount claimed must be a genuine pre-estimate of loss or it may be a penalty and unenforceable.

38. Where there is a written term authorising a deduction contained in the staff handbook, the employer must ensure that prior to the deduction the employee has either received a copy of the handbook or been notified in writing about the existence and effect of the term.

39. A deduction authorised by a contractual term may be contingent upon the employer following a certain procedure. If that procedure is not followed, the deduction would be unlawful.

40. In **Kerr v The Sweater shop (Scotland) Ltd 1996 IRLR 424** the EAT held that for a term authorising a deduction to be valid, the employee must

have agreed to it so that it becomes part of his or her contract. The agreement does not need to be in writing and may be implied if the employee continues to work once the term has been brought to his or her notice, either at the commencement of employment or following a variation.

41. Where contractual provisions and written agreements authorising deductions are being relied on, these should be drafted as precisely as possible. In **Galletly v Abel Environmental Services Ltd Case No 3100684/98 the** contract gave the employer the power to deduct 'any sums due to the employer from the employee for whatever purpose'. The tribunal held that this was too widely drawn to constitute a relevant provision.

42. In **Newland v Mick George Limited ET Case No 2601456/08** a clause in the contract stated that 'the company reserves the right to deduct from your wages and salaries any amount that may have been overpaid or any other sums owed by you to the company'. The tribunal was not satisfied that this clause, without more, was sufficient to enable the company to recoup its insurance excess from individual employees in respect of accidents which may have been caused by them.

43. Any ambiguity is likely to be construed against the employer under the contra preferentem rule - a well-established rule of construction whereby ambiguity will be resolved against the party who seeks to rely on it to avoid obligations under the contract.

44. An employer must have authority to make a deduction from wages in order to satisfy s13 ERA 1996. A clause simply providing that the employee will be liable for losses incurred by the employer is unlikely to be sufficient.

45. Where it is established that there is a statutory or contractual provision or a written agreement authorising the type of deduction in question the tribunal made then go on to consider whether the actual deduction is in fact justified.

46. Where a claim before the tribunal is successful, and the claimant is required to pay an issue and hearing fee, it is appropriate for the tribunal to consider making an order that the respondent reimburse the claimant for the fees which he or she had to pay to enforce a right denied by the respondent.

Determination of the Issues

(including, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence)

47. The first question is whether the deductions from wages were authorised by a relevant provision in the claimant's contract or whether the claimant had previously signified in writing his agreement to the deduction.

48. The respondent cannot rely on any appropriate provision in the Handbook policy because the claimant was not given a copy of that Handbook and the existence and effect of the policy was not notified before the deduction was made. Further, and in any event, the provision in the Handbook (see paragraph 21 above), is too widely drawn to constitute a relevant provision authorising a deduction under s 13 ERA 1996. The tribunal is not satisfied that this clause, without more, is sufficient to enable the company to recoup its insurance excess from individual employees in respect of accidents which may have been caused by them, or to recover training costs.

49. The claimant did sign the security training agreement which constituted an agreement by the claimant to repay the cost of training if he left employment within 12 months. However, that does not comprise an agreement by the claimant to allow a deduction from his salary within the meaning of section 13 Employment Rights Act 1996.

50. The claimant signed the Van incident policy. That document does not provide any notification to the employee that as a driver of the van he would be responsible for payment to the respondent or customers for any damage done when driving the vehicle. Further, it does not comprise an agreement by the claimant to allow a deduction from his salary within the meaning of section 13 Employment Rights Act 1996.

51. The tribunal has considered the terms of the Statement of terms and conditions of employment in particular clause 6.1. That is a clear authorisation for the deduction of wages for certain sums under s13 ERA 1996. The claimant asserts that the respondent cannot rely on it because he did not sign the contract, did not agree to this term. The claimant and others objected to the term at clause 7, relating to hours of work. The claimant did not object to the other terms. The respondent agreed to consider an amendment to clause 7. No amendment was agreed prior to the deduction. Nevertheless, the claimant continued to work. The Statement of Terms and Conditions was not signed by the claimant. However, the claimant, by continuing to work, without objection to the

majority of the contractual terms set out in the statement of terms and conditions, provided his implied consent to the terms and conditions other than clause 7. Those remaining clauses accurately reflected the terms and conditions of the claimant's contract of employment. In these circumstances the respondent can rely on the authorisation provided by clause 6.1 of the Statement of Terms and Conditions.

52. The next question is whether the deductions were justified, whether they fall within the authority provided in clause 6.1.

Deduction re garage door.

53. There is no clear term advising the claimant that he was responsible for damage to third-party property caused by his negligence and that a deduction would be made from wages to enable the respondent to recoup the cost of repairing the damage. Clause 6.1 purports to be extremely widely drawn, stating ' you hereby authorise the Company to deduct from your remuneration under this agreement any sums due from you to the Company including, without limitation". That part of the clause is too widely drawn to constitute a relevant provision authorising a deduction under s 13 ERA 1996 for all and any sums due to the company for whatever purpose. The tribunal is not satisfied that this clause, without more, is sufficient to enable the company to recoup either damages paid to third parties or its insurance excess from individual employees in respect of accidents which may have been caused by them. Clause 6.1 does provide examples of the types of deductions that will be made. However, the phrase 'negligence liquidated damaged' is ambiguous, is insufficient to notify the employee that he or she would be liable to pay compensation for any damage caused to either the respondent's or a third-party's property and that deductions would be made from wages to discharge that liability. The Statement of Terms does not expressly state that drivers of company vehicles are personally liable for accidents caused by their negligence and/or wrongdoing. There is no provision in the Van policy notifying the claimant that he was liable for costs of repairs to the vehicle or third-party property and that he would be pursued for such sums.

54. The tribunal has considered clause 14.1 of the Statement of Terms and Conditions, which does provide appropriate notification to an employee that damage to plant equipment or materials owned or hired due to the employee's negligence may be deducted but not without prior investigation and notification to the employee. This clause refers to damage to plant equipment or materials owned or hired by the respondent. It does not include damage to customer's property, to plant equipment or materials owned by a customer or third-party. Further, and in any event, clause 14.1 clearly indicates that no deduction would be made without prior investigation and notification to the employee. The tribunal accepts the evidence of the claimant and finds that he was not told that he would be

responsible for the damage to the garage door and that the first time he was aware of the deduction was in October when £100 was deducted from his salary. There was no investigation of the extent of the damage to the garage door. There was no notification to the employee.

55. In these circumstances the tribunal finds that a deduction from wages relating to the damage to property arising from the employee's negligence was not authorised within the meaning of s13 ERA 1996. The deduction of £620 in relation to the garage door was an unlawful deduction from wages.

Training costs

56. Clause 6.1 of the Statement of Terms and Conditions is a term of the claimant's contract of employment whereby the deduction from wages for training costs was authorised. Training costs is provided as a specific example of the sums which would be deducted from wages. There is no ambiguity in this.

57. It was the clear understanding of the claimant that he would be required to repay the cost of training if he left within 12 months of commencement of employment. The claimant did sign the training agreement indicating his agreement to this. That document showed a training cost of £2500. That was more than the agent initially advised the claimant as to the cost of training. However, the time to question that was when the claimant was asked to sign the agreement to repay the training cost, prior to the commencement of training. He did not do so.

58. The claimant left employment within 12 months. He was contractually obliged to repay to the respondent the full cost of the training in the sum of £2,500.00. That was the actual cost of the training to the respondent. This was not a penalty.

59. In these circumstances the tribunal finds that a deduction from wages relating to repayment of training costs was authorised within the meaning of s13 ERA 1996. The deduction of £2,500 in relation to the training costs was not an unlawful deduction from wages

Tribunal fees

60. Neither party made any comments, when invited to do so, in relation to the reimbursement of Tribunal fees paid by the claimant in pursuing this claim. On balance, the tribunal finds that it is in the interest of justice that the respondent be ordered to pay to the claimant one half of the fees in the sum of £195.00. The claimant was successful only in part. Had he not pursued his claim in relation to the training costs there is a strong

possibility that this case may have settled prior to hearing. It is not therefore appropriate to order the respondent to reimburse the claimant with the entirety of the fees.

Employment Judge Porter
Date: 10 August 2017

JUDGMENT SENT TO THE PARTIES ON
30 August 2017

FOR THE TRIBUNAL

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2401637/2017

Name of case: Mr T Thayaranjan v Greenage Utilities Ltd

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding discrimination or equal pay awards or sums representing costs or expenses), shall carry interest where the sum remains unpaid on a day ("*the calculation day*") 42 days after the day ("*the relevant judgment day*") that the document containing the tribunal's judgment is recorded as having been sent to the parties.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant judgment day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant judgment day" is: 30 August 2017

"the calculation day" is: 31 August 2017

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For and on Behalf of the Secretary of the Tribunals