



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr D Muldowney

AND

Gemini Mechanical Services
Engineers Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: North Shields

On 17 August 2017

Before: Employment Judge Shepherd

Appearances

For the Claimant: Mr Allison, the claimant's uncle.

For the Respondent: Mr Clark.

JUDGMENT

1. The claim of unlawful deduction from wages is well-founded and succeeds.
2. The respondent is ordered to pay the claimant the sum of £940.50.
3. The claimant has paid fees in connection with this claim. Following the Supreme Court decision in R (on the application of Unison) v Lord Chancellor [2007] UK SC 51, in which it was decided that it was unlawful to charge these fees. HMCTS has undertaken to repay such fees. I shall draw to the attention of HMCTS that this is a case in which fees have been paid and are therefore to be refunded to the claimant. The details of repayment scheme are a matter for HMCTS.

REASONS

1. The claimant was represented by his uncle, Mr Allison and the respondent was represented by Mr Clark.

2. I heard evidence from:

Darren Muldowney, the claimant
Michael Welch, the Managing Director of the respondent company.

3. I had sight of a bundle of documents consisting of 71 pages. I considered those documents to which I was referred by the parties.

4. The claimant brought a claim of unauthorised deduction from his final salary. The issue I had to determine was whether there had been an unauthorised deduction from the claimant's wages on 28 February 2017.

Findings of fact

5. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings I made from which I drew my conclusions.

6. The claimant was employed by the respondent from 25 March 2015. He was employed as a Technical Engineer.

7. On 27 January 2017 the claimant wrote to Mr Welch, the respondent's managing director, informing him of his resignation. He gave one month's notice and indicated that his last day of employment would be 24th every 2007. He stated:

"I will have 5 days holiday to take so maybe we can arrange an earlier departure however, at the same time I don't want to leave in a difficult position without a replacement for me."

8. There was no written response to that request. The claimant said that Mr Welch agreed to the arrangement that the claimant would use his holidays and leave on 17 February 2017 in a telephone conversation on 6 February 2017.

9. Michael Welch said that he refused to allow the claimant to take the holidays in his last week of his notice period during a meeting on 31 January 2017.

10. The evidence was very unclear on both sides with regard to whether it had been agreed that the claimant could take his five days outstanding annual leave during the last week of his notice period. There was no reference to meeting on 31 January 2017 in the correspondence or in the response to the claim by the respondent. It was stated that no agreement was reached as to termination of the claimant's employment before 24th every 2017. In his witness statement, Michael Welch said that Dawn Welch, Company secretary, had also attended the meeting

and that he had told claimant that he was unable to let him take his outstanding because he needed him to work that week.

11. At 16:21 on Thursday, 16 February 2017 the respondent's Operations Director sent an email to the claimant referring to 2 jobs for Monday. The claimant said that he told the Operations Director that this would be the claimant's first day of employment with his new employer.

12. On 17 February 2017 there was a telephone conversation between the claimant and Mr Welch in which the claimant was asked to inform his new employer that he could not start work on the Monday. The claimant said that he informed Mr Welch that he had cleared out the van and asked where he would like it to be delivered. Mr Welch said that he told claimant he was sending someone to collect the respondent's van and other equipment.

13. On 28 February 2017 Dawn Welch, the Company Secretary, wrote to the claimant and stated:

"Listed below are monies which have been deducted from your final salary for works not carried out due to your early and not approved departure date from the company.

St Wilfreds School – Pressurisation working replacement gas valve £600.00.

Hexham Boiler Service £150

This is a small percentage of the profit lost by the company.

Also deducted from your final salary is the sum of £70.50 for hours paid for two employees to collect the van and other items not returned by yourself including a hard drive which I have deducted the sum of £80.00 also I have deducted £40.00 which you received during a boiler service in Feb 2016 and did not hand in to the company despite being asked several times."

14. The claimant's statement of main terms and conditions of employment provides:

"We reserve the right to deduct from your pay any sums which you may owe to the Company including, without limitation, any overpayments or loans made to you by the Company or any losses suffered by the Company as a result of your negligence or breach of the Company rules."

The Law

15. The Employment Rights Act 1996 provides:

Section 13 Right not to suffer unauthorised deductions

"(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..."

Section 14 Excepted deductions

"(4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established –

(a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing..."

Conclusions

16. The contract of employment provides that the respondent reserves the right to deduct from the claimant's pay sums owed to the respondent as a result of a breach of the Company rules. This authorises deduction of sums owed by the claimant at the time of the deduction. This does not authorise blanket deductions of amounts that the respondent may be able to claim against the claimant in the future.

17. There was no sum that was established as a debt properly owed by the claimant to the respondent on 28 February 2017. Mr Welch was asked, on a number of occasions during the Tribunal hearing, how the sums of £600 and £150 had been arrived at. He said that he could provide a breakdown and, when pressed, he referred to 2 invoices. These were from a subcontractor. One was with regard to St Wilfred's College. It referred to work completed on 2 March 2017 and the invoice was dated 21 March 2017. The invoice was in the sum of £206.28 including VAT. The other invoice was in respect of work completed on 25 February 2017 at Hexham Middle School. The invoice was dated 21 March 2017 and was in the sum of £331.74 including VAT.

18. When Mr Welch was asked, in re-examination, what proportion of the loss to the Company caused by the claimant did the £600 amount to he said that it was about 100%. This contradicts the letter of 28 February 2017 in which it is stated that the combined sum of £600 and the £150 was a small percentage of the profit loss by the company.

19. There was no evidence that the sum of £70.50 had actually been incurred by the respondent. Mr Welch said that he had to call to employees back to work in order to go and collect the van. However, there was no calculation of how that sum had been arrived at and I am satisfied that the claimant would have returned the van and that he had asked to where he should take it.

20. With regard to the deduction of £80 in respect of a hard drive, the claimant was willing to return this and there was no evidence provided of the value of the hard drive.

21. The £40 deduction was in respect of payment made to the claimant by Mr Welch's father in November 2015 or February 2016. The claimant said that it was a personal payment to him that was placed in his pocket by Mr Welch's father. Mr Welch said there was correspondence with regard to this sum but none was provided in evidence.

22. Even if there had been money the respondent could claim from the claimant, there was no sum that was a debt properly owed to the respondent on 28 February 2017. These were arbitrary amounts estimated by the respondent. The largest part of the deductions was in respect of work carried out by subcontractors and the requirement for payment, or the amount to be paid, had not been provided to the respondent at the date of the deduction.

23. The Protection of Wages provisions in the Employment Rights Act protect workers from unauthorised deductions by an employer. The terms of the contract in this case refer to sums which the employee may owe. Deductions in respect of arbitrary amounts estimated by the employer that may accrue in the future are not authorised. The amount must be a quantifiable debt owed by claimant at the date of the deduction and the legislation protects such employees from deductions for arguable amounts.

24. I am satisfied that there was a deduction from wages. I am not satisfied that this was as a result of a breach of company rules. There was confusion as to the date the claimant was to finish working. Even if I had been satisfied that there was a breach of company rules I am not satisfied that there were any sums owed by the claimant at the date of the deduction.

25. In the circumstances, the claim of unauthorised deduction from wages succeeds and the respondent is ordered to pay the claimant the sum of £940.50.

**Employment Judge Shepherd
18 August 2017**

Sent to the parties on:

**25 August 2017
For the Tribunal:**

P Trewick