



EMPLOYMENT TRIBUNALS

Claimant: Mr C Broadwell

Respondent: Nor-Mech Limited

Heard at: Liverpool **On:** 17 October 2017

Before Employment Judge Wardle

Representation

Claimant: In person

Respondent: Mrs J Fraser - Director

JUDGMENT

The judgment of the Tribunal is that the claimant's complaint in respect of an unauthorised deduction from his wages is well founded and the respondent is ordered to pay him the sum of £1,176.83 in satisfaction thereof.

REASONS

1. By his claim form the claimant claims that he has suffered an unlawful deduction from pay in contravention of section 13 of the Employment Rights Act 1996 (the 1996 Act).
2. The respondent by their response denied that they had made an unauthorised deduction from the claimant's wages contending that the deduction in question was made in line with his contract.
3. The Tribunal heard evidence from the claimant and from Mrs Fraser, Director, on behalf of the respondent.
4. Having heard and considered the evidence the Tribunal found the following material facts.

Facts

5. The claimant, whose employment began on 24 March 2015 and ended on 31 March 2017 by his resignation, was employed by the respondent as a plumber

providing domestic plumbing and heating services to its main client, a social landlord.

6. In order to carry out his role he was provided with a company vehicle, a Citroen Berlingo, registration plate number PL15 GGX. On 6 January 2017 whilst driving this vehicle he was involved in an accident. On his evidence this was caused by a van pulling into his lane, which forced him to change lanes and resulted in him colliding with the rear of another vehicle an Audi A3, which had come to a stop and which in turn was shunted into a third vehicle. He obtained the details of the driver of the Audi but not those of the driver of the third vehicle involved who he said drove off. He took photos of the damage to his vehicle and to the Audi and he reported the accident to Mrs Fraser straight after it had happened. The vehicle was not driveable as a result of the front end damage caused to it and it had to be recovered and transported to the home of Mrs Fraser. He subsequently had a couple of days off as a result of the effect of the collision on him and when he returned he filled out an accident report form, which he said he left in the office but could not recall with whom specifically.

7. It was his further evidence that he was told at this time that he might have to pay a contribution towards the cost of the repairs to the vehicle, which he understood would be the respondent's insurance excess but was unaware of what this excess figure was.

8. An estimate of the cost of repairs to the vehicle was prepared for the respondent on 9 January 2017 in the sum of £4051.56 inclusive of VAT. However, notwithstanding that the vehicle had fully comprehensive insurance cover as stated in the section headed 'Vehicle Policy and Use of Mobile Phone Policy' at paragraph 19.8 in its Employee Handbook the respondent chose not to claim on its policy in respect of the damage to its vehicle, which it was established remained unrepaired at the date of hearing.

9. On the claimant's evidence no steps were taken subsequently to address the issue of his contribution towards the cost of the repairs until 17 March 2017 when he gave notice verbally to Mrs Fraser that he was leaving the respondent's employment as he had a job offer with Her Majesty's Prison Service. At this time he says he was told by her that all four tyres on the Berlingo were bald, which he disputed stating that only one of them was wearing, which he had previously mentioned to a member of the office staff called Debbie and which was supposed to have been sorted but wasn't and that she implied that his failure to spot and address this had caused the accident to occur. He also says that he was provided by her with a Vehicle Damage Agreement, which essentially required him to pay off the cost of the repairs in monthly instalments but contained no figures albeit that he was shown the estimate referred to above. He asked if he could take it home to discuss with his parents, which he did and was told by them that as the damage had been the result of an accident he ought not to be expected to pay the repair bill in its entirety

10. The claimant did not subsequently speak with Mrs Fraser about the Vehicle Damage Agreement to convey his parents' views and on 29 March 2017, two days before the expiry of his notice, having informed the respondent that he was too unwell to work that day he was telephoned to be told that someone was coming out to his home to collect his work phone and vehicle, which was the last contact he had with the respondent before his employment terminated by his resignation on 31 March 2017.

11. The claimant was expecting to receive his final wages on 15 April 2017 and the day before he rang Mrs Fraser to ask about their receipt and his tools which had been in his work vehicle but was told by her that he would not be getting any pay because he had not signed up to the Vehicle Damage Agreement to repay the repair costs monthly they would be withholding what was owed to him in wages towards these costs.

12. According to his pay advice for 15 April 2017 the claimant was due to receive net pay of £1676.83 on this date but received nothing. On 27 April 2017 he wrote to the respondent stating that he had been advised that his wages had been withheld unlawfully and asking that they were paid into his bank account as a matter of urgency. He also stated that he was willing to pay the insurance excess at the time of the accident. The wages, however, remained withheld.

13. In terms of the respondent's position it is their case that the deduction was permitted by a term of the claimant's contract of employment, which was entered into by the parties on 31 August 2015. The particular clause that they rely on is numbered 17 and headed 'Deduction of Remuneration', by which they reserve the right at any time to deduct from the employee's remuneration any monies owed to the company by him including the cost of any vehicle damage. They also rely on section 19.3 of their 'Vehicle and Use of Mobile Phone Policy', which forms part of an Employee Handbook, which is stated to form part of the employee's contract of employment, which was acknowledged by the claimant by his signature. The final sentence of the section states that if the employee damages inside or outside a company vehicle either as a driver or a passenger the cost of replacement/repairs will be deducted from his salary.

Law

14. Section 13 of the 1996 Act gives workers the right not to suffer unauthorised deductions from their wages. It provides at sub-section 1 that 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.

15. Section 23 permits workers to present a complaint to an employment tribunal in the circumstances of a contravention of section 13.

Conclusions

16. Applying the law to the facts as found the Tribunal reached the following conclusions. Addressing first of all the question whether this deduction of £1676.83 was authorised to be made by virtue of any relevant provision in the claimant's contract it concluded that it was not as the provisions in question relating to compensating payments for vehicle damage had to be seen in the context of the statement made at paragraph 19.8 of the Vehicle and Use of Mobile Phone Policy that the company will pay/arrange for company vehicles provided to be comprehensively insured and taxed. The respondent therefore had the means subject to the payment of an insurance excess to have had the repairs to the claimant's vehicle met by their insurers but chose not to avail themselves of this option because of the potential impact on their insurance premiums. Furthermore it was established with the respondent that there was

nothing in the contract documentation which would have alerted the claimant to the possibility that in the event of an accident whilst driving the respondent's vehicle they would not make a claim on their insurance policy but instead look to him to meet in essence unlimited costs of repair. In its view this context rendered the provisions relied upon as having been too widely drawn to constitute relevant provisions of the claimant's contract.

17. Moreover, it is the case that even if the Tribunal had been satisfied that the provisions in question were capable of providing authorisation for the deduction made it may still go on to consider whether the actual deduction is justified. In this case it finds that the deduction was not as the damage to the vehicle, which was relatively superficial was caused by a minor collision of the sort that happens all too often on our roads and in circumstances where the respondent's repair costs were insured ones and could have been covered upon payment of their excess, which was established with them as being £500. In the Tribunal's view recovery of this amount, which the claimant had indicated he was willing to pay had far more to commend it in terms of a justifiable contribution.

18. Accordingly the Tribunal concluded that the claimant has suffered an unauthorised deduction from his wages in the sum of £1,176.83 to allow for a contribution of £500 by him as described above, which sum the respondent is ordered to pay him.

—
Employment Judge Wardle
1 January 2018

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
2 January 2018

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS