



EMPLOYMENT TRIBUNALS

Claimant: Mr A Barber

Respondent: Premier Waste Recycling Limited

HELD AT: Sheffield

ON: 19 December 2017

BEFORE: Employment Judge Little

REPRESENTATION:

Claimant: In person

Respondent: Mr P Hillier, HR Manager

JUDGMENT

1. By consent the name of the Respondent is amended to Premier Waste Recycling Limited.
2. The complaint of unauthorised deductions from wages succeeds and the Respondent is ordered to pay the sum of £585.15 to the Claimant forthwith.

REASONS

1. It is agreed that the Claimant resigned his employment as an HGV driver without notice on 18 August 2017.
2. If it was not already agreed, it is abundantly clear from the Claimant's contract of employment that the Claimant should have given one month's notice to terminate his employment.
3. The contract of employment is a document common to the bundle which the Claimant has prepared and the bundle which the Respondent has prepared. In

the Respondent's bundle it begins at page 20. The Claimant accepts that he signed this contract and was given a copy of it.

4. I have explained to Mr Hillier that because the Claimant is not invoking the Tribunal's contractual jurisdiction (under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) it is not possible for the Respondent to bring a counterclaim within the Employment Tribunal.
5. The Respondent's position is that it incurred costs in providing cover for the Claimant when, to put it colloquially, he left them in the lurch. All told they contend that those costs were £936.40. They cover such things as fees paid to an agency who provided agency workers and overtime paid to existing employees. Although for the reasons set out below it is irrelevant to this Judgment, the Claimant had a concern that the Respondent was also trying to recover the costs of a disputed incident when a skip was emptied on a client's car park – this occurring on 10 August 2017 and so prior to the Claimant's resignation.
6. The Respondent had prepared witness statements from Ray Hilton it's transport supervisor and Nicholas Shaw it's transport manager. However neither of those witnesses attended. In the event little within their statements was controversial.
7. I have also given both the Claimant and Mr Hillier the opportunity to expand upon their cases today and to ask each other questions although that has been "informal evidence" not evidence on oath or affirmation.
8. The Employment Rights Act 1996 contains a part (Part II) which deals with the protection of wages. The right not to suffer unauthorised deductions is set out in section 13 which is in these terms as far as relevant to this Judgment -

"(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. "

Subsection 2 goes on to explain what a relevant provision is. Usually it will be in written terms which have been given to the worker.

9. The Respondent relies upon clause 8.2 of the contract of employment as authority for the deduction it has made. That clause reads as follows:

"The period of written notice to be given by the employee is one month. In the events that the employee fails to give the appropriate notice the employer is authorised to recover reasonable costs incurred as a result of the employee not serving his full notice."

10. The point which I have discussed with Mr Hillier is that whilst the contractual term refers to the recovery of reasonable costs, it does not say how those costs will be recovered. Crucially in my judgment it does not say that they can be recovered by deducting them from monies such as wages otherwise due to the employee. Having regard to the importance which Parliament has placed on the protection of wages it is necessary that the letter of the law is met. To paraphrase section 13, for a deduction to be authorised the contractual provision must at the very

least say that a deduction can be made. It may not be necessary to actually use the word 'deduction' but it is probably best that it is. However, in my judgment it is not sufficient to use the word "recover". Recovery could be by various means.

11. Clause 8.2 in the Claimant's contract gave him no warning that recovery could include by deduction from wages. As drafted, all that clause does is to warn an employee that if he does not give the appropriate notice there may be consequences. In the instant case there may still be consequences for the Claimant because the Respondent may choose to commence proceedings in the County Court against him for breach of contract. That is a matter of course for the Respondent about which I can make no comment other than to note that it is a possibility.
12. What is clear in the case before me is that the Respondent did not have contractual authority to do what it did – withholding the Claimant's wages for the last period of employment – accordingly I find that there has been an unauthorised deduction. The amount that has been deducted must now be paid to the Claimant forthwith.

Employment Judge Little

Date: 5th January 2018