



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Evans

Respondent: Stadar Limited

Heard at: Leicester **On:** Wednesday 4 October 2017

Before: Employment Judge Evans (sitting alone)

Representation

Claimant: In Person

Respondent: Mr R Lyons, Representative

JUDGMENT

1. The Respondent has made deductions from the Claimant's wages of £146.25 in breach of section 13 of the Employment Rights Act 1996.
2. The Respondent is ordered to pay the Claimant £146.25.

REASONS

Background

1. The Claimant was employed by the Respondent as a cleaner from 2 to 21 February 2017. Following the termination of her employment by her own resignation, she brought a claim for unlawful deductions on the basis that the Respondent had not paid her the wages that she had earned during her brief period of employment.
2. The case came before me in Leicester on 4 October 2017. The Respondent was represented by Mr Lyons; the Claimant represented herself.
3. The Respondent had prepared a bundle of documents running to 46 pages.
4. The Respondent also relied on a witness statement from Mr Leigh Stanford.
5. The Claimant had not prepared a written witness statement before the hearing.
6. The Claimant and Mr Stanford both gave evidence. The Claimant gave a little evidence in relation to whether or not she had signed a contract of employment in response to questions from myself and was then cross examined on that evidence by Mr Lyons.

7. Mr Stanford relied on his written witness statement. He was asked some supplementary questions by Mr Lyons and then was asked some questions by myself.

Issues

8. The Claimant and the Respondent agreed at the beginning of the hearing that the Claimant had earned £146.25 during her employment with the Respondent.

9. The Claimant and the Respondent also agreed that the Claimant had resigned with immediate effect by text message on 21 February 2017.

10. The Respondent argued that it was entitled by virtue of a provision in the Claimant's contract not to pay the Claimant £43.00 of the wages earned. As such it accepted that the deduction had been made. The Respondent argued that it was entitled to make the deduction under a relevant provision of the Claimant's contract. (Prior to the hearing the Respondent's position had been that it was entitled to deduct the whole of the sum earned by the Claimant in wages. However during the course of the discussion at the beginning of the hearing the Respondent conceded that in fact the only deductions which it had been entitled by virtue of the Claimant's contract to make were deductions totally £43.00. As such the amount in dispute at the hearing was £43.00. The Respondent accepted that the balance of the amount deducted (£103.25) had been deducted unlawfully.)

11. The issue for me, therefore, was whether the Respondent had made deductions of £43.00 from the Claimant's wages in breach of the relevant provisions of the Employment Rights Act 1996 (which I shall refer to as "the 1996 Act") or whether in fact the deduction was permitted by Section 13(1)(a) of the 1996 Act because it was authorised by a relevant provision of the Claimant's contract of employment.

The Law

12. Section 13 of the 1996 Act provides that an employer may not make a deduction from the wages of a worker unless the deduction is required or authorised by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing their agreement or consent for the making of the deduction.

13. Section 23 of the 1996 Act provides that an employee may claim to an Employment Tribunal that an employer has made deductions from their wages in breach of Section 13.

14. Section 24 of the 1996 Act provides that, where an Employment Tribunal finds a complaint under Section 23 well founded, it shall make a declaration to that effect and order the employer to pay the amount of any deduction made in contravention of Section 13.

Findings of Fact

15. The Respondent relies on the provisions of the contract of employment which it says the Claimant signed on 1 February 2017. The relevant provisions of that contract provide as follows:-

"Clause 23 deduction from wages. By your signature to this agreement, you

authorise us to deduct from your wages:

- Any losses sustained by us in relation to our property or monies, or the property or monies our clients, customers, visitors or other employees, during the course of your employment caused by your failure to follow our rules/procedures, failure to follow our instructions, your carelessness, your negligence, your recklessness, your omission, your wilful act or through any dishonesty on your part.”

16. Mr Lyons accepted during the course of the hearing that the word “of” was missing from after the second mention of “monies” in clause 23 as set out above.

17. Pursuant to that provision the Respondent deducted £43.00. The details of this deduction are shown at page 32 of the bundle which is a wage slip of the Claimant.

18. I accept Mr Stanford’s evidence that that £43.00 comprised a £25 refund of cleaning fees to a client whose offices the Respondent was unable to clean for a short period as a result of the Claimant’s summary termination of her employment and £18.00 of costs which the Respondent incurred in recovering the key to the client’s premises from the Claimant.

19. The next question in relation which I need to make findings of fact is whether the Respondent did in fact give the Claimant a copy of this contract prior to the deductions of £43.00 being made. I find that the Respondent did give the Claimant a copy of the contract in electronic form. This was an issue in relation to which Mrs Evans gave evidence and was cross examined. I found Mrs Evans’s evidence on this point to be ultimately confused although I have no doubt she was doing her best to remember what had happened and was not being deliberately untruthful.

20. By contrast the Respondent was able to produce a series of documents which suggested that the contract had been viewed and signed electronically by Mrs Evans. I found that this evidence was worthy of more weight than Mrs Evans’s recollections and for that reason I preferred the evidence of the Respondent in this respect.

Conclusions

21. I turn first to whether the deductions were made from the Claimant’s wages after the Respondent had given her a copy of the contract pursuant to which they were made. In light of the findings of fact I have made above, I conclude that they were.

22. I turn now to whether the relevant provisions of the contract catch the circumstances of this case. I conclude that the relevant provision does not. The Respondent contended that the relevant part of clause 23 is the first bullet point which I have set out above. However I find that this does not cover the deductions made in this case for two reasons. First of all the bullet point purports to authorise deductions in respect of any losses “sustained by us... during the course of your employment”. However in this case the Respondent accepts the Claimant’s employment ended on 21 February 2017 when she resigned without notice and the losses that the Respondent contends it suffered were all incurred *subsequently*. As such they were not incurred *during* the course of the Claimant’s employment.

23. Further and separately, the clause as relied upon by the Respondent refers to losses suffered by “your failure to follow our rules/procedure, failure to follow our

instructions". The Respondent said that I should construe the word "rules/procedures" liberally so that it would include the terms of the contract, i.e. the clause in the contract requiring the Claimant to give notice of the termination of her employment and the clause requiring her to return property (clauses 28 and 31). However I do not accept that the expression "rules/procedures" or the word "instructions" cover the terms of the contract referred to.

24. Mr Lyons submitted that in the event that there was any lack of clarity about the terms of the contract then natural justice required me to interpret it so that the deductions fell within clause 23 and so were permitted. I do not accept that the provisions of the contract are unclear on this point. However if I am wrong about that then the *contra proferentem* rule means that I need to take quite the opposite approach to that suggested by Mr Lyons.

25. Overall, therefore, my conclusion is that the Respondent has made deductions of £143.25 from the Claimant's wages in breach of Section 13 of the Employment Rights Act 1996 and the Respondent is ordered to pay the Claimant that amount.

Fees

25. The Claimant has paid fees in connection with this claim in **R (on the application of Unison) against the Lord Chancellor** [2017] UK SC51 the Supreme Court decided that it was unlawful for Her Majesty's Courts and Tribunals Service (HMCTS) to charge fees of this nature. HMCTS has undertaken to repay such fees. In these circumstances I should 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 the repayment scheme are a matter for HMCTS.

26. These reasons having been given verbally today will not be provided in writing unless a request is made for the same by the Respondent.

Employment Judge Evans

Date 24 January 2018

JUDGMENT SENT TO THE PARTIES ON

3 January 2018

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FOR THE TRIBUNAL OFFICE