# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | | **Respondent** |
|---|---|---|
| Mr S Delves | AND | Keltek Motors Limited |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Plymouth **ON** 13 April 2018

**EMPLOYMENT JUDGE** N J Roper

**Representation**

**For the Claimant:** **In person**
**For the Respondent:** **Mr S Deacon and Miss S Zoffman, Directors**

## JUDGMENT

**The judgment of the tribunal is that the claimant's claim for unlawful deduction from wages is dismissed.**

## REASONS

1. In this case the claimant Mr Steve Delves brings monetary claims for breach of contract and unlawful deduction from wages against his ex-employer Keltek Motors Limited. The respondent denies the claims.
2. I have heard from the claimant. I have also heard from Mr S Deacon and Miss S Zoffman who are directors of the respondent on behalf of the respondent.
3. There was a degree of conflict on the evidence. I have heard the various witnesses give their evidence and observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent company Keltek Motors Ltd is a 24-hour vehicle recovery business. The claimant Mr Steve Delves was employed by the respondent as a 24-hour breakdown mechanic from 16 December 2016 until his resignation on 8 July 2017. The claimant was not paid for the last week of his employment.
5. The claimant was paid at £9.00 per hour and worked an average of 43.8 hours per week during his employment, with more hours being worked during the busy summer months. The claimant says that he worked about 70 hours during the first week of July 2017, which the respondent disputes, but there is no timesheet and no way of confirming the

exact figure. The claimant says that his pay should have been about £630, and the respondent says that it is more likely to have been about £450.

6. The claimant had signed and agreed the terms of a written contract of appointment, which included notice provisions. Following the completion of the claimant's probationary period, clause 4.2 provided that the claimant's notice period was one month. Clause 4.4 provided that: "If you leave without giving the proper period of notice or leave during your notice period without permission, in addition to not being paid for any unworked period of notice, the company shall also be entitled as a result of your agreement to the terms of this contract to deduct up to a day's pay for each day not worked during the notice period …"
7. On about 8 or 9 July 2017 the respondent's recovery controller advised Mr Deacon that the claimant could not be contacted for work even though he was on call. It became clear via Facebook and text messages that the claimant intended to "quit" his job. On 9 July 2017 he sent a message to the respondent through its vehicle recovery APEX messaging system and text to Mr Deacon that he was terminating his employment and would return the recovery vehicle. Mr Deacon and the claimant then exchanged texts, with Mr Deacon referring to the claimant's notice period and the claimant suggesting that he thought it best he did not work out his notice.
8. The claimant confirmed his resignation by letter dated 10 July 2017. He stated: "Due to events that took place on Saturday 8 July/Sunday 9 July 2017 I believe I have been left with no other alternative but to tender my resignation with your company. Under normal circumstances I would of course give the appropriate notice period, but I believe in the circumstances it may be better for both parties that I don't work my notice period and my employment with your company be terminated with immediate effect."
9. The claimant failed to work out his contractual period of notice. As a direct result the respondent was unable to meet its contractual obligations with customers, and has suffered loss as a result. The respondent has contracts with Copart and with Devon and Cornwall Police to recover vehicles. New employees had to undergo training and security checks, a process which could take six weeks. The claimant could not be easily or immediately replaced.
10. The respondent also had contracts with AA, RAC and Green Flag, and was paid a minimum of £45 and an average of about £70 for recovering vehicles. In the summer if visiting tourists needed recovery, they would often be transported long distance back to their homes which could pay £200 per time.
11. I accept Miss Zoffman's evidence that the Copart contract was cancelled during July 2017, and that the respondent had to refuse six recovery jobs and had 35 recovery jobs cancelled (at a minimum of £45 and average of £70) because the respondent could not service the recovery within an appropriate period of time. In addition, they had to "relay" certain long distance jobs to a competitor because they could not cover the distance, thus reducing the price on those jobs. I am satisfied (and so find) that as a direct result of the claimant's failure to work his notice the respondent lost at least £2,000 to £3,000, and probably much more.
12. Having established the above facts, I now apply the law.
13. The claimant's claim is for unlawful deduction of wages in respect of his last week worked for the respondent from 1 to 8 July 2017. He confirmed in an email dated 9 April 2018 that he dose not pursue a claim for accrued but unpaid holiday pay, and to the extent that there ever was any such claim it is dismissed on withdrawal by the claimant.
14. The claimant therefore claims in respect of deductions from his wages for the first week in July 2017 which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
15. In my judgment the deductions were authorised in principle by the provisions of clause 4.4 of the Claimant's contract of employment which he had signed and accepted. His average wage was £400 per week, although he sometimes worked up to 70 hours a week during busy periods, which would amount to £630 for the week. The question which falls to be determined is therefore whether the respondent suffered loss in excess of this amount during the claimant's one month notice period as a result of his failing to work it.

16. I accept the evidence of Mr Deacon and Miss Zoffman that their losses were substantially in excess of £630 during the month of July 2017 following the claimant's resignation. They lost or had to refuse work during a busy time, and were unable to find a replacement employee for many weeks. They lost at least £2,000 to £3,000, and probably much more.
17. I find therefore that the respondent was entitled to make the deduction which it did from the claimant's last week's wages and the claimant's claim for unlawful deduction from wages is hereby dismissed.

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Employment Judge N J Roper
Dated 13 April 2018

Judgment sent to Parties on

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