Case Number: 3200892/2018

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EMPLOYMENT TRIBUNALS

Claimant: **Mr M Ewers**

Respondent: **City Clean & Support Ltd**

Heard at: **East London Hearing Centre** **On: 16 July 2018**

Before: **Employment Judge O'Brien sitting alone**

Representation:

Claimant: In person

Respondent : Did not attend and was not represented

JUDGMENT

The claimant suffered an unauthorised deduction of wages. The respondent shall pay to the claimant the sum of £320 net.

REASONS

1. By an ET1 presented on 30 April 2018, the claimant brought a complaint of unauthorised deductions from wages against "CCS Group". Following notification from CCS Group on 21 May 2018 that it had never been the claimant's employer, and confirmation on 12 June 2018 of the correct identity of the employer, Employment Judge Foxwell substituted City Clean & Support Ltd as respondent. On 6 July 2018, the respondent resisted the claim on the basis that it had been entitled to make the deductions in question.

2. Notification had been given to CCS Group on 8 May 2018 of today's hearing. That notification had prompted the email of 21 May 2018, written by Dave Mason. It was the same Dave Mason who submitted the response on 6 July 2018. It was surprising, therefore, that no one attended on behalf of the respondent today. When contacted by the tribunal, Mr Mason claimed to be unaware of the hearing, and declined the tribunal's offer to put this matter back in the list to enable the respondent to be represented, on the basis that Mr Mason was occupied with his son's birthday. However, I was satisfied that the

respondent had been properly notified of the hearing and that its director could have attended in any event had he wished. In all of the circumstances, therefore, I considered that it was in the interests of justice to proceed in the respondent's absence.

The Evidence

3. The Tribunal heard evidence from the claimant. He had not seen the respondent's response or the attached documents and so was given a few moments to consider them.

4. The claimant denied that he had failed to work a full working day on 31 January and 2 February 2018, as alleged by the respondent in. He confirmed that he had signed the "vehicle log and driver record" in respect of NX67 YBA and accepted that he would be personally responsible for any parking fines incurred in respect of that or any work vehicle. However, the claimant explained that he had registered that vehicle with via Toby Carvery, Snaresbrook, with Euro Car Parks as a work vehicle entitled to free parking. When he had been provided with NU67 LKX as a replacement vehicle, the claimant did the same; however, he was informed that there might be a delay in the records being updated. Therefore, when the claimant was phoned by Mr Mason and told that a parking ticket been received for that vehicle at the car park in question, the claimant was unsurprised. As luck would have it, the claimant was at the Toby Carvery talking to the manager, Daniel, who agreed that the ticket should be annulled. The claimant confirmed that Mr Mason had overheard the conversation, and understood that Nr Mason would take the necessary steps.

Findings of Fact

5. I made the following findings of fact, applying the balance of probabilities where necessary to resolve facts in issue.

6. The claimant was employed by the respondent from a date no later than 5 October 2017 until a date no earlier than 2 February 2018. His duties occasionally involved driving, for which he was supplied by the respondent with a vehicle.

7. The claimant worked a full day on 31 January and 2 February 2018.

8. On 5 October 2017, the claimant signed a vehicle log and driver record in respect of NX67 YBA, which included an express term that he would be personally responsible for any parking fines incurred by him while driving the vehicle, plus a £60 administration charge if the respondent had to pay the fine on the claimant's behalf.

9. The following were implied terms of that agreement:

    9.1 That the claimant would be responsible only for parking fines which the car park in question was entitled to levy.

    9.2 That an administration charge would only be levied by the respondent if the claimant had been given the opportunity to pay the fee himself and had failed to do so within a reasonable period of time.

10. At some point prior to 29 November 2017, the claimant was provided with NU67 LKX as a replacement vehicle for NX67 YBA. The claimant was not required to sign a fresh vehicle log and driver record in respect of that vehicle.

11. On 29 November 2017 and 8 December 2017, the claimant used NU67 LKX to visit the Toby Carvery, Snaresbrook, and parked in the local Euro Car Parks car park. He had, however, notified Euro Car Parks before those dates that NU67 LKX was to be substituted for NX67 YBA as a staff vehicle for which no charge would be levied for parking.

12. Therefore, whilst the respondent received notification of parking fines from Euro Car parks for that vehicle on those dates, Euro Car Parks was not entitled to levy any such fines. Moreover, the respondent was aware of that fact prior to termination of the claimant's employment.

13. Nevertheless, the respondent deducted a total of £320 from the claimant's final wages in respect of the following:

13.1 a parking fine of £80 (comprising a £50 fine and £30 administration charge) in respect of 29 November 2017.

13.2 A £30 administration charge levied by the respondent in respect of that fine.

13.3 A parking fine of £80 (comprising a £50 fine and £30 administration charge] in respect of 8 December 2017.

13.4 A £30 administration charge levied by the respondent respect of that fine.

13.5 A half day's pay (£50) in respect of each of 31 January and 2 February 2018.

The Law

14. Pursuant to s13 of the Employment Rights Act 1996, an employer is not entitled to make any deductions from a worker's wages unless permitted by statute, by a provision in the worker's contract or if the worker has signified in writing, prior to the deduction in question, his agreement or consent to such a deduction.

15. A deduction includes where the employee is paid less than the total wages properly payable (s13(3) ERA).

Conclusions

16. An action for unauthorised deductions of wages is a statutory action subject to specific technical provisions. Therefore, whilst the claimant might accept that he would be personally obliged to pay for parking fines he incurred as a matter of common law, the respondent only secured the claimant's agreement to that effect in writing in respect of NX67 YBA. No agreement in writing was reached in respect of NU67 LKX; therefore, the respondent was not entitled to deduct the parking fines in question or the administrative charges levied as a result.

17. Even if I had accepted that, by signing the vehicle log and driver record in respect of NX67 YBA, the claimant had agreed to those terms applying whichever vehicle he was provided with, the fact remains that Euro Car Parks was not entitled to levy the parking fines in question. Moreover, the respondent was aware of that and so was not entitled to levy its own administration charges. In addition, the respondent gave the claimant no

opportunity to pay the fines himself and so would not have been entitled to levy its administration charges in any event.

18. As for the claimant's pay for 31 January and 2 February 2018, the respondent has not proved that the claimant was only entitled on each occasion to a half day's pay. On the contrary, I was satisfied on the claimant's evidence that he worked a full day on each occasion and so was entitled to a full day's pay.

19. It follows that each of the deductions made by the respondent were unauthorised deductions prohibited by law. I am told, and it does not appear to be disputed by the respondent, that the claimant's final pay packet was consequentially short by £320. Therefore, I declare that the claimant suffered unauthorised deductions from wages and order that the respondent pay to the claimant £320 net.

Employment Judge O'Brien

20 July 2018