EMPLOYMENT TRIBUNALS

Claimant: **Mr J Liddle**

Respondent: **T Brown Group Limited**

Heard at: **London South**

On: **18 January 2018**

Before: **Employment Judge Pritchard**

Representation
Claimant: Mr V Khanna, LLB
Respondent: Ms E Gardiner, Human Resources and Communications Director

JUDGMENT

The Claimant's claim that he suffered unauthorised deductions from wages is dismissed.

REASONS

1. By way of an ET1 presented on 2 August 2017, the Claimant complained that the Respondent had made unauthorised deductions from his wages. The Respondent resisted the claim.

2. The Tribunal heard evidence from the Claimant and from Paul Housby, the Respondent's Transport Manager.

3. The Claimant also asked the Tribunal to have regard to the statements of three of the Respondent's employees who state that they did not have sight of the document terms contained in the vehicle induction form. The Respondent asked the Tribunal to have regard to the statements of Emily Gardiner, Simon Brown (Transport and Insurance Director), and Jolyon Tack (former Transport Manager). These individuals did not attend give evidence before the Tribunal and since their evidence could not be tested in cross examination, it has been given very little or no weight.

4. The Tribunal was provided with a number of documents contained within two bundles and to which the parties variously referred.

5. At the conclusion of the hearing the parties made brief oral submissions.

The Issues

6. The issues were discussed and agreed with parties at the commencement of hearing as follows:

   6.1. Whether the Claimant previously signified his written agreement or consent to the making of the deductions from his wages in respect of damage to his company vehicle;

   6.2. If so, whether the Respondent was entitled to make the deductions in question. The Respondent relied on section 13(1)(b) of the Employment Rights Act 1996.

Findings of fact

7. The Respondent is in the business of servicing, repairing, maintaining and installing central heating systems, mainly for local authority and housing associations. It employs in the region of 200 engineers. The Claimant was employed as a Commercial Heating Engineer with effect from 1 February 2008. For the performance of his duties, the Claimant was provided with a company vehicle.

8. When employees are provided with a vehicle, or a replacement vehicle, they undergo a vehicle induction process, part of which is being required to sign a vehicle induction form.

9. The Claimant signed a vehicle induction form, a single page document, on 12 October 2011 which states, among other things:

   Where damage is caused to a company vehicle by a driver's negligence, including where parked, the company reserves the right to deduct the excess part of the repair cost. This includes unreported off-hire damage, the cost of which may be deducted in full.

   Standard excess £500

10. He signed a further form in identical terms on 3 Feb 2012 when he was provided with a replacement vehicle.

11. The Tribunal was shown a further vehicle induction form dated 22 January 2015 for a further replacement vehicle registration number LJ64 UVU and which also bears the Claimant's signature. The first page of this two page form states, among other things:

   When the driver is responsible for damage caused to the vehicle, including unauthorised use, the company can deduct the policy excess of £1,000 from the driver. Unreported off-hire damage can be deducted in full.

   You have been issued with a copy of the Use of Company Vehicle Policy which has been explained and read at induction

12. The Use of Company Vehicles Policy provides, among other things:

   Where a driver is responsible (at fault) for damage caused to any vehicle including any third party, the company reserves the right to deduct up to

£1,000 towards the insurance policy excess. Furthermore, the company reserves the right to deduct the full amount associated with any damage caused by a driver during the unauthorised use (private use) of any company vehicle

13. In fact, the Respondent's insurance excess is £2,500.

14. On 6 March 2017, the Claimant reversed his company vehicle LJ64 UVU out of his drive and collided with another vehicle. Although the damage to his vehicle was said to be minimal, the Claimant duly reported the incident.

15. Shortly after that incident, a second occurred when the Claimant reversed vehicle LJ64 UVU into the company car of one of the Respondent's managers. This caused damage to both vehicles. The manager duly reported the matter.

16. The Respondent's vehicle repairers provided an estimate for repairs to LJ64 UVU in the sum of £863.24 plus VAT. In reliance upon the deductions clause in the vehicle induction form, the Respondent started to make deductions from the Claimant's wages in the sum of £863.24 by instalments.

17. On 23 May 2017, the Claimant lodged a grievance complaining about the deductions. Gary Clinton, Field Operations Manager, held a grievance hearing on 1 June 2017. The Claimant said that he had not signed the vehicle induction form and that the damage to vehicle LJ64 UVU should be considered wear and tear. The Respondent stopped making deductions from the Claimant's wages until his grievance was finalised. Mr Clinton did not uphold the Claimant's grievance.

18. On 27 June 2017, the Claimant appealed against Mr Clinton's decision. Michael Creer, Field Operations Manager, heard the Claimant's appeal on 6 July 2017. The Claimant's appeal was made on substantively the same grounds as he had made in his grievance. Mr Creer did not uphold the Claimant's grievance appeal.

19. In the event, repairs to LJ64 UVU totalled £764.08 and the deductions schedule was amended accordingly.

20. Although the Respondent had initially sought reimbursement for the damage to the manager's vehicle involved in the second incident, the decision was rescinded upon the Respondent's reconsideration of the terms of the deductions clause relied on.

Applicable law

21. Section 13(1)(b) of the Employment Rights Act 1996 provides that an employer must not make a deduction from a worker's wages employed by him unless the worker has previously signified his written agreement or consent to the making of the deduction.

Conclusion and further findings of fact

22. The Claimant had signed similar, although not identical, vehicle induction forms on two occasions prior to 2015. These were single page documents and the deductions provisions thus clearly shown on the signature page. The

Claimant's assertion the he would not have signed the 2015 vehicle induction form had he known it contained a deductions provision cannot be accepted. The Claimant told the Tribunal that he had probably read the Company Vehicle Policy, an extract of which is set out above. The Tribunal is satisfied, on the balance of probabilities, that the Claimant was aware of the Respondent's policy to make deductions from wages and had sight of the relevant deductions provision in the vehicle induction form of 22 January 2015 when he signed it and as stated in the vehicle induction form. He has failed to persuade the Tribunal otherwise. Having signed the form, the Tribunal finds that he gave his written consent for deductions to be made in accordance with the provision within the vehicle induction form. The Claimant's submissions based on the doctrine of *non est factum* are not accepted.

23. Mr Housby gave unchallenged evidence that the Claimant had reported the first incident admitting fault and the manager involved in the second incident had been sitting in his company car when the Claimant reversed into him. The Tribunal concludes that the Claimant was responsible for damage caused to vehicle LJ64 UVU during the two incidents.

24. There was no credible evidence before the Tribunal to suggest that the repairer's estimate was inflated or anything other than a sum which could reasonably be charged for the repairs. Given the size of the estimate in question, and the description of the work to be done, the Tribunal concludes that the damage to the vehicle was more than simply wear and tear.

25. The Tribunal has had some concern with Mr Housby's evidence that even if the damage to vehicle LJ64 UVU had not been caused by the Claimant during either incident, it must necessarily be attributable to the Claimant. Mr Housby thought the Respondent could rely upon the provision relating to unreported off-hire damage. However, vehicle LJ64 UVU was not off-hire (Mr Housby explained that this referred to the end of the lease period when vehicles are inspected prior to return).

26. Nevertheless, the Tribunal is satisfied on the balance of probabilities that the Claimant was responsible for the damage to vehicle LJ64 UVU and the repair estimate provided was in relation to the two incidents. Mr Housby gave instructions in an email dated 8 May 2017 for the estimate for any rear damage as part of the two incidents to be provided, and anything else separate. The estimate was provided in response to that request and specifically relates to damage to the rear of the vehicle.

27. The Tribunal has carefully considered the Claimant's submission that the consent provision upon which reliance is placed is ambiguous and/or that the Respondent would have been entitled to deduct £1,000 but no other sum. The clause is perhaps not drafted with the greatest precision but, in the Tribunal's view, its meaning, objectively viewed, is tolerably clear; if an employee is responsible for damage caused to the particular vehicle in question as identified on the vehicle induction form, then the employer is entitled to deduct from the employee's wages a sum up to and including £1,000 to cover the cost of the damage. This view is supported by the explanation provided in the Company Vehicle Policy, a copy of which the Claimant signed to say he had received and which, he told the Tribunal, he had seen.

28. The Tribunal has no need to consider the second sentence of the provision relied on: at relevant times vehicle LJ64 UVU was not off-hire and the second sentence does not apply in this case. Nevertheless, as concluded above, the first sentence of the deduction provision applies.

29. The Tribunal concludes that the Respondent was entitled to make the deductions to the Claimant's wages and his claim must accordingly fail.

Employment Judge Pritchard

Dated 18 January 2018