



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Miss H Garratt

Respondent
Jigsaw Medical Services Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Liverpool on 22 May 2018

EMPLOYMENT JUDGE Warren

Representation

Claimant – Mr S Hayes, friend

Respondent – Miss L Halsall, consultant

JUDGMENT

1. The respondent has made an unlawful deduction from the claimant's wages in the sum of one thousand eight hundred and seventy five pounds.
2. The respondent is ordered to pay the claimant the sum of one thousand eight hundred and seventy five pounds (net)

REASONS

1. Background

By a claim form presented on 29 January 2018, the claimant alleged that when she left the respondent's employ on 28th November 2017 there were unlawful deductions from her wages. She subsequently withdrew claims of breach of contract and a holiday pay claim. The respondents denied the claim, alleging

that the claimant had been given a loan which was repayable, and they had simply deducted as much of the loan as they could from her last month's salary. In the alternative, that there had been an express agreement that this was a loan, made on the 26 September 2016 at a meeting between the claimant and Mr Henderson and was thus an amendment to the claimant's terms and conditions of employment.

The respondent is a private limited company with a turnover of around £5 million.

2. The Issues

Was there a loan agreement in place under which the claimant had agreed to repay the money she was given and which had varied the terms and conditions of her employment?

Had the claimant signified her consent to a deduction from her wages

Was the respondent entitled to deduct the money from her salary in accordance with her signified consent?

3. The Evidence

I heard from the claimant in person and from Mr Callum Henderson, Finance Director on behalf of the respondent. There was an agreed bundle of documents. Page references in this judgement relate to that bundle. The case was decided on the evidential test - 'the balance of probabilities'. Both witnesses gave clear evidence, and were credible. The claimant was able to give a first hand account of what happened and what was agreed, but for most of the important issues in the case, Mr Henderson could only give hearsay evidence, as the person with whom the claimant had agreed everything was not present in tribunal to give a first hand account.

4. The Facts

The claimant began work on 12 February 2016 as an executive assistant. She signed a contract of employment and also an agreement authorising deductions from her wages (page 30) in the following terms:-

' if you are overpaid for any reason, the total amount of the overpayment will normally be deducted from your next payment but if this would cause hardship, arrangements may be made for the overpayment to be recovered over a longer period'

In July 2016 Mr C Percival, chief executive of the respondent company offered to let the claimant use his company credit card to pay for holiday accommodation for herself and her partner. It was agreed that this money was repaid by deducting the sum from the subsequent payment given to her to repay her car loan. The claimant agrees that this was always a temporary loan to enable her to book accommodation.

At the end of August Mr C Percival offered to pay off her existing car loan to enable her to sell the car and obtain something more reliable. He told her to 'put it through as an early bonus', according to her evidence. 2 weeks later he raised the car issue again, and asked her to obtain a completion figure for the loan, and to give it to Mr Henderson. Mr Percival was out of the country at this stage. Mr Percival told the claimant that he would tell Mr Henderson to put it through as an early bonus. It is unclear if he did so.

On the 26 September there was a brief discussion between the claimant and Mr Henderson in which he mentioned that there would be a loan agreement. The claimant told Mr Henderson that he should discuss it with Mr Percival, as this was not a loan. Mr Henderson agreed that the claimant and Mr Percival should discuss this when Mr Percival returned from abroad.

Mr Henderson believed it was a loan, but having transferred the money to the claimant on 28 September 2016, he made no further effort to set up loan repayments, or question the fact that the claimant was not making repayments.

The status quo continued for 14 months.

The claimant was dismissed on 1 month's notice on 31 October 2017, and placed on gardening leave.

Mr Henderson remembered what he believed to be a loan, and chose to deduct as much of the value as he could from the claimant's last salary payment, leaving her with a zero balance. He had offered, post dismissal, to let her pay in installments, but the claimant argued that this was never a loan, it was a bonus payment, and she was not going to agree to it being a loan.

At the hearing, and provided at short notice, was a series of emails which were part of a discussion purporting to be between Mr Henderson and Mr Percival, in which there is a discussion about the payment for the claimant's car loan, and Mr Percival says that it should be discussed with the claimant, and a recovery period agreed. As with much of the evidence, it was very hard to assess, without Mr Percival giving evidence.

Mr Percival did not attend the hearing, nor the previous date when this case was listed, and he had not made a witness statement. He was still employed by the respondent. The claimant had not seen the emails as part of normal disclosure, and had been unaware of them when she was an employee.

5. The Law

Section 13(1) Employment Rights Act 1996 states that an employer must not make a deduction from the wages of a worker unless:

The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract (section 13 (1) (a))

Or

The worker has previously signified in writing his or her agreement to the deduction (Section 13 (1) (b))

The tribunal has reminded itself of the need to subject contractual terms of this nature to a considerable degree of scrutiny, because of the vast disparity in economic power between the employer and employee.

6. Representations of the claimant

All of the discussions about the terms under which this money was given to the claimant, were between herself and Mr Percival, and he was not at the Hearing, nor has he disputed what was said. The first 'loan' agreement was offered to the claimant 1 month after she had been dismissed. This was an unlawful deduction from wages and she should receive the deducted monies.

7. Representations of the respondent

The respondent put forward 2 arguments:-

The first, that the claimant had expressly agreed on 26 September with Mr Henderson, that this was a loan, albeit that she never signed a loan agreement. This was a variation of her terms and conditions of employment – a loan without agreed repayments.

She had further signed to agree that there could be deductions made by the employer for any over payment – and this was an overpayment. This was a lawful deduction from her wages. The money had been given to her in good faith on the understanding that she would have a discussion with Mr Percival. It is unlikely that it was a bonus.

8. Conclusions

Was this payment to repay the claimant's car loan given to her in the form of a loan? Mr Henderson was clear in his own mind that it was a loan, but the claimant never signed or agreed it as a loan. In the only conversation she had with Mr Henderson about the money, she made it clear that she needed to discuss the suggestion that it was a loan with Mr Percival – expressly disputing that it was a loan. Mr Henderson transferred the monies 2 days later, without apparently making any attempt to resolve the issue. The claimant was not asked to repay the money either in part or in full at all over the following 14 months, and she is adamant that she agreed with Mr Percival that it would be treated as an

early bonus.

Mr Percival was not present to confirm or deny that, nor could he explain why he told the claimant one thing and apparently emailed the finance director with something else. The evidence I have heard leads me to the conclusion that this was an early bonus, not a loan.

The argument put forward by the respondent that there was an agreed change in the terms of her employment is unattractive. Nothing was ever agreed and no attempt made by the respondent to enforce anything, until the claimant was dismissed, and such a change was not necessary for the operation of the contract of employment.

Further, the claimant denies it absolutely. Mr Henderson's reference to a formal discussion on 26 September is denied – she nipped into his office as agreed with Mr Percival to give Mr Henderson the amount she needed to pay off her car loan. I found her evidence to be credible on this point. If there had been a proper meeting, Mr Henderson would at least have had some notes, but he had nothing, and he agreed that the claimant was sent away to discuss matters with Mr Percival. It is clear that no agreement had been reached.

There were no terms under which this sum could be deducted in any event – the claimant had only signified her consent to a deduction from wages for an over payment.

Whatever this payment was – loan or bonus, it wasn't an over payment.

I conclude from the paucity of evidence to the contrary, that the money was transferred to the claimant on the instruction of Mr Percival, to enable her to repay her car loan, and with no evidence of any terms attached which would suggest it was a loan as opposed to a bonus, conclude that it was a bonus.

In particular there were no repayment terms agreed, no regular deductions from her wages, in fact nothing happened at all for the last 14 months of her employment, and there was further no hint even, that had she stayed in employment she would at some point have been asked to repay the money. I therefore conclude this was an ad hoc payment to the claimant in the form of a bonus.

Can it be deducted from her wages? The money was given to her, with no evidence of any over payment. It cannot then be said that she has signified her consent in writing to the deduction. There is nothing at all in the form of a written agreement signed by the claimant, which the respondent could utilise as authorisation to enable them to deduct anything from her wages.

I therefore conclude that this amounted to an unauthorised deduction from the

claimant's wages and as such is repayable to her.

The respondents deducted the sum of one thousand eight hundred and seventy five pounds being one month's net pay.

I order the respondents to pay to the claimant the sum of one thousand eight hundred and seventy five pounds.

Employment Judge Warren

Signed on 11 June 2018

Oral reasons having been given at the Hearing, written reasons may be requested within 14 days

Judgment sent to Parties on

23 June 2018

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2403364/2018

Name of case(s): Miss H Garratt v Jigsaw Medical Services Ltd

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 23 June 2018

"the calculation day" is: **24 June 2018**

"the stipulated rate of interest" is: 8%

MRS L WHITE
For the Employment Tribunal Office