EMPLOYMENT TRIBUNALS

Claimant: Mr N Garrett

Respondent: Floor Cleaning Machines Ltd

Heard at: Manchester **On:** 16 October 2018

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Mr K McNerney, Counsel

JUDGMENT

The complaints of breach of contract, of a failure to pay holiday pay and of unlawful deductions from pay fail and are dismissed.

REASONS

Introduction

1. By a claim form presented on 3 August 2018 the claimant complained that there had been a deduction from his final salary payment, reducing it to zero. It related to allegedly missing stock. As a consequence he had not been paid for work done during his notice period and was still owed holiday pay.

2. By its response form of 6 September 2018 the respondent defended the claim on the basis that it had authority to make a deduction for missing stock.

3. I clarified the issues with the parties at the start of the hearing. The claimant accepted that the gross amount he should have been paid was £740.39, representing six days of pay and one day of payment for accrued but untaken holidays. The respondent had deducted that amount from his final payment pursuant to a clause in his contract in respect of missing stock. The claimant accepted that there was contractual authority for such a deduction but denied that it could reasonably be applied in this case.

4. It followed that the sole issue for the Tribunal to determine was whether the deduction made fell within the scope of the authority provided by the contractual term.

5. I heard oral evidence on affirmation from the claimant and on oath from Rob Lewis, a Service Director of the respondent. The documents in the case were provided as exhibits to Mr Lewis's statement.

Relevant Legal Framework

6. The right not to suffer an unauthorised deduction from pay is provided by section 13 of the Employment Rights Act 1996. Subsection (1) provides as follows:

> **"An employer shall not make a deduction from wages of a worker employed by him unless –**
>
> **(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract….."**

Relevant Facts

Background

7. The respondent provides repairs and servicing of cleaning machines operated by its clients, and employs service engineers to attend client premises and effect the repair. To that end each engineer is provided with a company van and a range of parts as stock, and is responsible for monitoring stock levels and re-ordering stock where appropriate. Having the correct range of parts is important because clients expect the engineer to be able to repair the machine on the first call out.

8. The stock of parts on each vehicle is managed by means of a computerised system known as Tesseract. It does not generate paper records as a matter of course. It contains a "real time" record of the stock held in each vehicle. Periodic stock checks are done. When an engineer uses a particular part, he makes an appropriate entry on Tesseract and the part is subsequently supplied to be restored to the vehicle stock level.

9. The engineers are based from home and work all over the country but on occasion have reason to return to the company's main premises in Irlam.

10. The claimant transferred into the employment of the respondent in November 2014 as a service engineer. He retained a vehicle and stock allocated to him by his previous employer. He was issued with a further vehicle at some point. He did not have to sign anything to confirm what stock was in the van when allocated to him.

October 2017

11. On 25 October 2017 the claimant was in the Irlam area for work purposes and was made aware that there was a vehicle for him to take which had previously been used by a colleague. It is convenient to call the colleague "Mr X"; I did not hear any evidence from him and his identity is not important.

12. Mr X had been required to attend Irlam that morning for a disciplinary hearing at which he was dismissed. His van was a newer model than the van the claimant was using and it had a greater range of stock in it. Mr X told the claimant by telephone he had only just dropped the van off. It was at the premises in Irlam for a few hours at the most before the claimant took it away. Mr X was subsequently charged for excessive private use of the van based on analysis of the tracker reports.

13. As this handover was done at some speed the claimant did not believe the vehicle had been checked for damage or that any stock take had been done. The following day he sent an email about the state of the vehicle, providing photographs of some damage. The email was not produced in my hearing but it was later acknowledged by the respondent that it had been sent.

14. The claimant also said that that email raised the question of a stock take for the van. I found as a fact that he did raise this point in the email. He got no reply to it.

Contract

15. On 18 March 2018 the claimant signed his contract of employment. Clause 4 contained the following provision:

> **"Upon leaving the company or at any time during employment, we reserve the right to deduct from your salary or other remuneration any amounts owing to the company. Such deductions may include but are not limited to…the market value of any unreturned company property on the termination of employment."**

Resignation and Deduction

16. The claimant handed in his notice on 31 May 2018. His last day of work was 6 June 2018. He was entitled to be paid for those six days in June and for one day of accrued but untaken annual leave.

17. On 12 June 2018 the respondent raised a concern about damage to the vehicle. The claimant pointed out that he had sent an email on 26 October 2017, and this was accepted. He was told, however, there would be a stock take done.

18. The respondent said that the stock take was done between 21 and 26 June 2018. It required a manual count to be done of all the items in the vehicle, and for that to be matched with the details from Tesseract of what the vehicle was believed to hold. This exercise showed a discrepancy. The Tesseract record showed that there should have been 511 items in the vehicle with a total value of £8,400.69, but the manual count showed only 417 items with a total value of £6,984.58. The difference was £1,416.11.

19. The claimant was notified that there would be a deduction of part of this from his final salary payment. As a result he received zero pay at the end of June 2018.

Submissions

20. The claimant's case was that there had been no stock take done when he took the vehicle on 25 October 2017. There had simply not been enough time while the vehicle was at Irlam for that to be done. His request for a stock take the following

day had been ignored. As a result, the respondent could not establish what stock was on the vehicle when he took possession of it, and therefore there was no basis for thinking that there were any unreturned items when the vehicle was returned in June 2018. He therefore argued that the respondent had no authority to make any deduction from his pay.

21. The respondent's case was that there had been a stocktake done on 25 October 2017. Mr Lewis said in evidence he had instructed the Parts Department to do at least a count of the items on the vehicle before the clamant took it away, and then to enter the details onto Tesseract in the days that followed. In the months that followed the movement of stock out of and into the vehicle would have been recorded on Tesseract, and therefore the Tesseract records in June 2018 were accurate. The respondent therefore argued that there was a shortfall which was property not returned by the claimant to the company and therefore that the deduction was authorised.

Conclusions

22. This was a difficult case to resolve because both witnesses gave evidence in a straightforward and credible way. There was no inconsistency in what they said or any contradictions between their evidence and the documents. I therefore had to decide by reference to other factors which account was more likely to be correct.

23. Some points favoured the respondent's case. It had a sophisticated stock management process. The management of stock was crucial to its business, because without the right stock engineers might not be able to repair customer equipment on the first visit. It was also apparent that Mr X had left under a cloud. The company had taken the trouble to consider the tracker reports for his vehicle, and he had been charged for personal use of the van. All things being equal, it was inherently likely that a stock check would have been done when he relinquished the vehicle. Mr X was not charged for any missing stock.

24. Equally, the claimant's account had some things to support it. It was surprising that there was no clear "snapshot" record of what stock was in the vehicle on 25 October. Instead the respondent was relying on its dynamic Tesseract system. The claimant's email of 26 October 2017 requesting a stocktake had not produced any reply, and he had not signed any document such as a vehicle inventory to confirm stock levels when he took the vehicle. It was understandable that he thought that no stock check had been done, and therefore that there should have been no deduction.

25. Overall, however, I concluded that the respondent's case was to be preferred.

26. Firstly, the claimant's belief that no check had been carried out on 25 October 2017 was based on an inference on his part from the limited time the vehicle was at Irlam and the fact he asked somebody and was told the stock had not been checked. That was not necessarily inconsistent with the evidence of Mr Lewis that he had instructed that a manual stock count be done even if the formal entry of the information onto Tesseract would not be done until some days later.

27. Secondly, it seemed to me implausible that the respondent would not have bothered to check the stock when Mr X was leaving under a cloud, particularly when the respondent took steps to charge him for personal mileage.

28. Thirdly, if a stock count had in truth been done on 25 October 2017 it would explain why the claimant got no reply to his email the next day asking about that.

29. Finally, although the absence of a signed record of the stock was surprising, it was consistent with what the claimant said had been his experience on previous occasions when he got a new vehicle. I accepted the evidence of Mr Lewis that the vehicle inventory system only came in once the company commissioned some new vehicles in 2017. This was not a new vehicle and therefore the inventory system was not applied.

30. Putting these matters together I concluded that the respondent had proven on the balance of probabilities that the stock missing from the vehicle upon its return by the claimant fell within the definition of company property not returned by him. The Tesseract printout on which that conclusion was based was not a snapshot of the contents of the vehicle on 25 October 2017, but was an accurate record of what should have been in the vehicle in June 2018 taking account of stock movements in the meantime. The respondent was therefore authorised to make a deduction from the claimant's pay up to the value of the property missing when the final stock check was done. For that reason the unlawful deductions complaints failed.

31. The complaint in respect of holiday pay also failed: the payment due on termination was superseded by the lawful deduction. Similarly, the right of the claimant to be paid for the last six days of work during his notice period was subject to the right to make that deduction, and therefore the breach of contract claim failed as well.

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Employment Judge Franey

17 October 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 October 2018

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