



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr I Morrison

v

**Respondent**

East Anglia Logistics Ltd

**Heard at:** Bury St Edmunds

**On:** 13 July 2018

**Before:** Employment Judge King

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr King and Ms Williams

**JUDGMENT** having been sent to the parties on 26 July 2018 and reasons having been subsequently requested in writing in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The parties were both representing themselves at the hearing. The Claimant and Respondent had both previously received advice but neither representative was in attendance.
2. At the outset of the hearing it was established that the sole issue was that of an unlawful deductions from wages claim brought by the Claimant. I heard evidence from the Claimant and Mr Grey. I heard evidence from Ms Williams Sales Manager. The Respondent did not call any witnesses who witnessed the alleged damage to the van which formed the basis of the deduction.

### The Law

3. The law concerning unlawful deductions from wages is set out in S13 Employment Rights Act 1996 which states that:

*(1) 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, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

*(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

***(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.***

*(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.*

4. The Claimant can by virtue of s23 Employment Rights Act 1996 bring an unlawful deduction from wages claim before the Employment Tribunal which states that:

*(1) A worker may present a complaint to an employment tribunal—*

*(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),*

*(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),*

*(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or*

*(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).*

*(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

*(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

*(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

*(3) Where a complaint is brought under this section in respect of—*

*(a) a series of deductions or payments, or*

*(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

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**The facts**

- 5. The claimant was employed by the respondent as a delivery driver from 18 November 2017.
- 6. On the 24 November 2017 when driving a company vehicle, on legitimate business, the claimant hit a deer in the vehicle.
- 7. The claimant's evidence, which I accept, was that there was blood and fur from the dead animal visible on the vehicle. I have not heard evidence

from the respondent's witness who received the vehicle to determine whether or not this evidence was disputed. They did not call any such witnesses. He returned the van and explained what had happened.

8. At some point afterwards photographs were said to have been taken of the van and the damage which showed no such blood and fur. The Respondent's witness did not take the photographs and I did not hear any evidence from the Respondent as to when they were taken. They were said to have been taken by Laura Newman who did not attend the Tribunal so the Tribunal was not assisted by these undated and untimed photographs taken by a witness who did not attend.
9. The claimant attended work in the week commencing 27 November 2017. In this period, he was given for the first time a company vehicle policy on 29 November 2017 which had the clause 9, "*the driver is under any circumstances liable for any damages to the vehicle, unless a third party is to blame and there is evidence of this, ie we can claim from the third party, this includes any insurance excess*". This document was signed on 29 November 2017. The Respondent said that the Claimant's attention had been previously drawn to such terms in the welcome pack but the Claimant could not recall receiving such a document.
10. The Claimant was told by the Respondent's Laura Newman (who did not attend Tribunal) that they could not process his pay without a contract of employment. At that point the Claimant was not informed about the forthcoming deduction.
11. On 11 December 2017, the claimant signed a contract of employment which contained a clause 8, in respect of deduction from wages, "*the employer reserves the right to require you to repay to the employer, either by deduction from salary or any other method acceptable to the employer, any losses sustained in relation to property or monies of the employer, client, customer, visitor or other employee of the employer, during the course of your employment caused by your carelessness, negligence, recklessness or through your breach of employer's rules or any dishonesty on your part.*"
12. It is not in dispute that the Claimant did not sign the contract of employment until 11<sup>th</sup> December 2017. The claimant's employment terminated in December 2017. There is no evidence that at any time prior to the accident the Claimant saw such documentation and he certainly did not sign the same to authorize any such deduction.
13. The claimant received a final wage payment in January 2018, from which a deduction of £750 was made for the damage to the vehicle caused in the incident. The payment was late and was delayed so that a contract could be signed.
14. The claimant has yet to receive his final pay slip from the respondent and therefore the tribunal has made the order on the basis of the gross amount to be deducted less tax and national insurance.
15. The respondent did not claim on its insurance policy for the damage to the

vehicle, instead paying the sum of over £2,000 in respect of damage to the vehicle.

16. The respondent opted instead to deduct the insurance excess policy of £750 from his wages rather than the full amount as this is the loss they would have incurred had they made the claim.
17. The Respondent has since tightened up its policies and procedures so that such documents are signed at the outset of employment.

### **Conclusions**

18. Having considered the law and in particular section 13 (6), it is a requirement that any agreement or consent given by a worker does not authorise the making of a deduction on account of any conduct of the worker or any other event occurring before the agreement or the consent was signed. If the Respondent wanted to rely on a signed contractual term it needed to be signed both before the deduction and critically for the Respondent in this case before the accident to which it related.
19. It is on this basis that the claimant's claim succeeds as the contractual documentation upon which the respondent relies was signed post the incident with regards to the deer which forms the basis of the claim. The Respondent tried to correct this before making the salary payment presumably as it recognised there was no such signed term allowing them to make such a deduction by telling the Claimant he had to sign his contract to get paid. There is of course no such legal requirement for there to be a signed contract to be paid.
20. The Respondent's defence to the claim was bound to fail as the legal position is quite clear. The Claimant had an unlawful deduction made to his wages.
20. Had this not been the case, then the tribunal would have been asked to wrangle with the difficult decision as to whether the contract and the policy wording allowed the respondent to make the authorised deduction given that the accident involved a deer who did not have insurance.
21. Under the driver policy, the driver is liable for damages to the vehicle unless a third party is to blame. In this case, I found as a fact that, the deer was the cause of the damage to the vehicle and as the deer does not have insurance this would have caused an issue in terms of determining whether or not the claimant should pay the excess claimed under the policy. Having established the deer was to blame it would have been necessary to look more closely at the wording of the car policy. This was not necessary in this case as the case is so clear.

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Employment Judge King

Date: 19 October 2018

Judgment sent to the parties on

19 October 2018

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For the Tribunal office