# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr. B Garratt**

**Respondent:** **Dennis Horton & Son Limited t/a Horton Skoda**

**Heard at:** **Lincoln**

**On:** **10th September 2018 & 25th September 2018 (In chambers)**

**Before:** **Employment Judge Heap (sitting alone)**

**Representatives**

**Claimant:** **In Person**
**Respondent:** **Mr. O Horton - Director**

# RESERVED JUDGMENT

1. The claim of unauthorised deductions from wages in relation to deductions for training costs succeeds in part to the extent below and the Respondent is Ordered to pay to the Claimant the sum of £163.00.

2. The Claimant's claim of unauthorised deductions from wages in relation to deductions for overtaken holiday pay fail and are dismissed.

# REASONS

## BACKGROUND AND THE ISSUES

1. This is a claim brought by Mr B Garratt (hereinafter referred to as "The Claimant") against his now former employer Dennis Horton & Son Limited t/a Horton Skoda (hereinafter referred to as "The Respondent").

2. The claim is one of unauthorised deductions from wages contrary to Section 13 Employment Rights Act 1996 relating to deductions made for the cost of training and for overtaken holiday pay upon termination of employment.

3. The Respondent by way of its ET3 Response resists the claim in its entirety. In short terms, the Respondent says that the Claimant owed money to them in respect of training fees and those monies were deducted upon termination of the Claimant's employment under the terms of a contractual provision contained within his contract of employment. They say therefore that this was a permitted deduction.

4. Insofar as the holiday pay claim is concerned, it is said by the Respondent that the Claimant had overtaken his annual leave entitlement for the year in question and that a lawful deduction was made from his final salary in respect of the same.

5. As it transpired from discussion with the parties at the outset of the hearing there was little argument between the parties on the facts. I accordingly heard limited evidence on the facts of the dispute between the parties from the Claimant on those few areas where he was at odds with the Respondent. I did not hear evidence from the Respondent given that Mr. Horton who appeared on their behalf candidly accepted that he would not have been able to materially assist me on those points.

6. Although on the face of it a relatively straightforward claim, there were certain points which needed to be considered further by the parties, including the scope of the contractual provision relied upon by the Respondent (or at least the specific limited provision as I understood the Respondent to be relying upon at the time) and also the question of whether the Respondent could retrospectively assign a certain period initially granted as parental leave as annual leave without giving the correct notice under the relevant provisions of the Working Time Regulations 1998.

7. Given that both parties were unrepresented, I gave them the opportunity to further consider the relevant issues, including the point raised by me at the hearing regarding the notice requirements of the Working Time Regulations, and to thereafter make written representations. Both parties have helpfully done so and I have considered those written representations carefully before reaching my decision in relation to the claim.

8. Upon reading the Respondent's representations, a further issue had arisen in that it was contended that the Respondent relied on any deduction in respect of holiday pay as being an overpayment. The Claimant had not had the opportunity to consider that point and his further comments were therefore sought. I have also taken those additional representations into account.

9. There was, as the parties are aware, a regrettable delay in the draft of this Reserved Judgment being typed and thereafter, as a result of other work, it being finalised and despatched. The patience of both the Claimant and Respondent has been appreciated in awaiting the same.

## THE LAW

10. Sections 13 and 14 Employment Rights Act 1996 deal with the entitlement of an employer to make deductions from the wages of a worker. Those provisions state as follows:

***"Right not to suffer unauthorised deductions.***

*(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.*

***Excepted deductions.***

*(1)Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—*

*(a)an overpayment of wages, or*

*(b)an overpayment in respect of expenses incurred by the worker in carrying out his employment,*

*made (for any reason) by the employer to the worker.*

*(2)Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.*

*(3)Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.*

*(4)Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—*

*(a)in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or*

*(b)otherwise with the prior agreement or consent of the worker signified in writing,*

*and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.*

*(5)Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.*

*(6)Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer."*

11. The Working Time Regulations 1998 deal with entitlement to annual leave, including the rights of an employer to specify to a worker the dates upon which leave should be taken. That is contained within Regulation 15 Working Time Regulations which provides as follows:

***"Dates on which leave is taken***

***15.****—(1) A worker may take leave to which he is entitled under regulation 13(1) on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).*

*(2) A worker's employer may require the worker—*

*(a)to take leave to which the worker is entitled under regulation 13(1); or*

*(b)not to take such leave,*

*on particular days, by giving notice to the worker in accordance with paragraph (3).*

*(3) A notice under paragraph (1) or (2)—*

*(a)may relate to all or part of the leave to which a worker is entitled in a leave year;*

*(b)shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and*

*(c)shall be given to the employer or, as the case may be, the worker before the relevant date.*

*(4) The relevant date, for the purposes of paragraph (3), is the date—*

*(a)in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and*

*(b)in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.*

*(5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.*

*(6) This regulation does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides."*

## FINDINGS OF FACT

12. As I have already observed, the parties are not at odds on the vast majority of the facts of this case. However, I set out all relevant facts here, whether agreed or not, so as to allow the conclusions that I have reached to be understood.

13. The Claimant was employed by the Respondent from 6th March 2017 until 30th October 2017 as a Service Technician. The Respondent operates a Skoda car dealership and I understand that as part of the services that they provide to customers with that make of vehicle the ability to undertake routine servicing and the like.

14. The Claimant was initially offered employment by the Respondent by way of a letter of 24th February 2017 (see page 4 of the hearing bundle). That letter set out the rates of pay upon which the Claimant would be remunerated and basic details of his working hours and the benefits to which he would be entitled. That included a holiday entitlement which was set at 22 days per annum in addition to statutory holidays.

15. The offer letter also set out a number of courses that the Claimant was required to undertake which, if completed successfully, would in turn entitle him to an increase in his rate of remuneration. The offer letter was silent upon the question of whether there was to be any recoupment of training costs in the event of the Claimant leaving employment with the Respondent.

16. The Claimant accepted the offer of employment and he was provided by the Respondent with a relatively detailed contract of employment running to some 23 pages. I understand from Mr. Horton that this is the Respondent's standard contract of employment. I need not rehearse all of the terms but only those that are relevant to the claim brought by the Claimant.

17. Clause 12 dealt with the issue of holiday and holiday pay. Paragraph 10 of clause 12 said as follows:

> *"At the end of your employment if you have taken more holiday than your accrued entitlement in the holiday year in which your employment ends, then a deduction will be made from your final instalment of pay in respect of that excess.*
>
> *If you have taken less holiday than your accrued entitlement in the holiday year in which your employment ends then you will be paid holiday pay for that accrued but not taken holiday entitlement."*

18. Clause 18 of the contract of employment dealt with what was referred to by the Respondent as "Family Friendly legislation. This included details of paternity leave and pay, in respect of which the Claimant was referred to the Respondent's Company Handbook, a copy of which was provided to him during the course of his employment.

19. Clause 21 of the contract of employment dealt with deduction from wages and provided as follows:

*"You irrevocably agree that we may at any time during your employment, or in any event on termination, deduct any sum you owe to us from any sum we owe to you whether or not such sum has fallen due for payment."*

20. Immediately below that clause is a heading "Qualified Technician and it reads as follows:

*"If you are a Vehicle Technician whether Apprentice, Qualified or Master you are required to repay the cost of your training if you hand in your notice within 1 year of the training being completed. If arrangements are not made for the repayment with your Departmental head then the full cost to the Company will be reimbursed from your final month's salary. In the event that this does not cover the full cost then a repayment plan must be agreed within your Departmental manager."*

21. The Claimant signed the contract of employment, agreeing that he had read and understood the contents and agreed to be bound by its terms. He did so on 8th March 2017 (see page 28 of the hearing bundle).

22. It is not disputed by the Claimant that during the course of his employment with the Respondent he undertook a number of training courses. It is also not disputed by the Claimant that those were courses which the Respondent was obliged to put its technicians through in order to comply with Skoda franchise requirements although he disputes their worth or relevance to him now that he has left employment with the Respondent. One particular course was requested by the Claimant outside of the scope of those requirements. The Claimant does not dispute the value of that particular course.

23. It is a matter of fact that the Claimant left employment with the Respondent in a period of under one year from the date on which he undertook each of the training courses that the Respondent put him through and which I have seen details of within the hearing bundle. I come to the circumstances of the Claimant's departure from the Respondent below.

24. The relevant courses that the Claimant attended was a service and maintenance best practice course on or around 5th April 2017 (see page 116 of the hearing bundle); a diagnostic equipment course on or around 8th May 2017 (see page 117 of the hearing bundle); an Electrical Diagnostic for Service Technicians course on or around 25th May 2017 (see page 118 of the hearing bundle) and an MOT Training Centre Accreditation course in June and July 2017.

25. The Claimant takes no issue whatsoever with the requirement to repay to the Respondent the costs of the MOT Training Centre Accreditation Course given that that was a course he specifically asked the Respondent to place him upon. He takes issue, however, with the remainder of the courses (although it is not in dispute that he attended them) on the basis that those will not be of any ongoing benefit to him in the future.

26. I am satisfied from the invoices within the bundle at pages 116, 117 and 118 that the aforementioned first three courses resulted in costs to the Respondent of £95.00 each and that the MOT course incurred costs of £740.00. That amounted therefore to the sum of £989.00. An earlier sum of £660.00 for a separate MOT course had already been charged to and paid by the Claimant.

27. During the course of the Claimant's employment, he became a father and I accept his evidence that before the birth of his daughter he requested Paternity Leave. The Claimant does not dispute now that he was not in fact entitled to take Paternity Leave on account of his length of service, either under the relevant legislation or otherwise in accordance with the Respondent's own policy as contained within the Company Handbook. I accept, however, that the Claimant did not know that at the time although he did of course have a copy of the "Family Friendly" policies referred to in his contract of employment.

28. The Claimant's daughter was due to be born in May 2017 and around the time of her birth he spoke to Lee Millington, his then Line Manager. He made a request to take paternity leave and I accept his evidence that Mr. Millington told him that that would be fine and that he should let him know as soon as he knew anything. Upon the birth of the Claimant's baby daughter he telephoned Mr. Millington. The Claimant understood the position to be that he had been granted Paternity Leave and he understood therefore that he had two weeks of leave in this regard. It is common ground that the Claimant took two weeks off work following his daughter's birth.

29. A few days after his daughter's birth, the Claimant called into the Respondent dealership to introduce his baby to everybody.

30. At that stage, I accept the Claimant's evidence that he had a conversation with Mr. Oliver Horton, a Director of the Respondent Company and that he requested to take the following week as annual leave rather than Paternity Leave. That was because by that stage the Claimant had discovered that Paternity Leave was paid at a lower rate than his ordinary rate of remuneration. He therefore made a request to Mr. Horton that he take his second week of Paternity Leave as annual leave so that that would allow him to be paid his usual rate of pay. I accept that he was told by Mr. Horton that he should put in a holiday request form and I have seen that particular form duly completed by the Claimant within the hearing bundle. It is notable that there is no holiday request form for the first week that the Claimant had understood himself to be taking as Paternity Leave and I accept his evidence that it was only the second week that he requested as annual leave for the reasons that I have already set out above.

31. I further accept that the Claimant was never told by Mr. Millington, or indeed anyone else at the Respondent Company, that he was not entitled to Paternity Leave and that indeed the first time he was made aware of that position was during the course of these proceedings.

32. On 13th October 2017 the Claimant resigned from employment with the Respondent. His resignation was acknowledged and accepted, albeit with disappointment, by Richard Martin the Group Aftersales Manager on 16th October 2017. The relevant portions of that letter said this:

> *"Your final payslip will consist of the following amounts, 11 days' pay for the days worked in October to date and a further 10 days for your notice period (168 hours in total). There are also 2 Saturdays due at 4 hours each. This gives a total number of hours payable of 176.*
>
> *You will have used 9 days' holiday in excess of the annual leave that you will have accrued by your final date of employment. You have already used 20 days' holiday in this holiday year, but you will have accrued only*

*11 days by the time you leave us. You will be required to reimburse the Company for this additional leave that you have taken. We suggest that the amount be deducted from your final wages.*

*As part of your contract you are required to reimburse the company the cost of any training incurred if you leave within 1 year of the training being completed. This amounts to £1152.50."*

33. The £1152.50 was reached on the basis of a calculation of the £998.00 training course costs and a proportion of a levy from Skoda of £163.00. I say more about that levy below.

34. A section at the bottom of that letter was set aside for the Claimant's signature. The Claimant signed his name in that regard on 16th October 2017 and it is clear from the words surrounding his signature that he was agreeing to be terms that had been set out in the letter from Mr, Martin. However, there was no breakdown as to what the training costs were for an no mention at all of any levy from Skoda.

35. On 26th October 2017, the Respondent wrote to the Claimant providing his P45 and setting out the payments that he would receive. His net pay following the deductions to which I have already referred amounted to £33.24. The figures in that letter for annual leave taken are not disputed by the Claimant except in one material way. That is the fact that, as stated above, the Claimant had not taken annual leave for the first week of his "Paternity Leave". I accept that he was not aware until these proceedings that the Respondent had processed his first week of that leave as annual leave. It is not clear when that occurred but I accept that the Claimant was never informed about it.

36. The cost of the four courses to which I have already referred above were deducted from the Claimant's final wages. In addition, there was a further deduction in respect of what is referred to as a levy which was charged to the Respondent by Skoda for the purposes of allowing each of their relevant employees to attend manufacturer required training. Page 114 of the hearing bundle shows that the 2017 levy was to be fixed at £205.00 per person for accredited staff and £255.00 per person for non-accredited staff. That fee was charged to the Respondent per individual whether they attended any training courses or not.

37. A pro rata proportion of that levy was charged by the Respondent to the Claimant upon termination of employment. As I have already touched upon, that levy is not for training per se but it allows the Respondent to send technicians on relevant courses so as to complete Skoda's technical qualification programme. It is therefore a levy introduced by Skoda to charge the Respondent for their continued support in the training and accreditation of relevant staff. That would have included the Claimant but there is nothing at all before me to suggest that the Claimant attended or completed and course for which the levy was applicable. Indeed, the other courses attended all came at a cost to the Respondent which was of course subsequently deducted from his wages.

## CONCLUSIONS

38. I deal firstly with the question of whether the Respondent was entitled to deduct monies in respect of training costs as at the termination of the Claimant's employment.

39. I had initially understood from what Mr. Horton told me at the hearing that he relied only upon the following clause of the Claimant's contract of employment which appeared immediately under the heading "Deductions from wages" and provided as follows:

*"You irrevocably agree that we may at any time during your employment, or in any event on termination, deduct any sum you owe to us from any sum we owe to you whether or not such sum has fallen due for payment."*

40. It was for that reason that I asked the parties to consider and provide submissions on whether that clause was sufficient to cover the circumstances of the deduction that was made. I referred the parties in that regard to consider the authority of **Key Recruitment Limited v Lear EAT 0597/07** and I have considered the representations of them both.

41. It is now clear from the Respondent's helpful written submissions, however, that the Respondent in fact primarily relies upon a separate paragraph headed "Qualified Technician". I remind myself that that paragraph said this:

*"If you are a Vehicle Technician whether Apprentice, Qualified or Master you are required to repay the cost of your training if you hand in your notice within 1 year of the training being completed. If arrangements are not made for the repayment with your Departmental head then the full cost to the Company will be reimbursed from your final month's salary. In the event that this does not cover the full cost then a repayment plan must be agreed within your Departmental manager."*

42. I am satisfied that that particular clause did entitle the Respondent to make the deduction that it made in respect of all of the four courses for which the costs were recouped. That provision constituted a relevant provision of the Claimant's contract which authorised the Respondent to make the deduction. The deduction was therefore an authorised deduction by virtue of Section 13(1)(a) Employment Rights Act 1996.

43. Whilst the Claimant points in his submissions to the case of **Potter v Hunt Contracts [1992] IRLR 108**, that is not to the point. In **Potter** the Respondent sought to rely only on an oral agreement by the Claimant to make a deduction. Here, under the "Qualified Technician" clause of the Contract of Employment – which was expressly signed and agreed by the Claimant - there is a written contractual entitlement to make the deduction. It matters not if the courses undertaken are not of future benefit to the Claimant, the Respondent was contractually entitled to seek repayment from the Claimant. It is common ground that the Claimant did not make arrangements for repayment with the Departmental head and thus that gave the Respondent the right to recover the sums due by a deduction from the Claimant's final salary. That is what they did and the deduction was therefore an authorised deduction. This part of the complaint therefore fails and is dismissed.

44. I turn then to the separate consideration of the levy fee. The levy fee was not for training per se but, as the letter from Skoda makes clear, a fee charged to the Respondent per individual whether they attended any training or not. I have not been taken to anything which demonstrates that the Claimant attended any training session for which the levy related. The clause upon which the Respondent relies is quite clear that this relates to the deduction of the costs of training which had been completed. There was no training completed under the levy charge as far as I have been made aware. It was an annual fee intended as

"support for training" for the Respondent; not the cost of a training course which the Claimant attended and completed. It was a separate matter and one which I therefore do not find to have been covered by the express provision of the "Qualified Technician" clause.

45. I have considered if that levy fee may have fallen within the wider provision of Clause 21 which required the Claimant to pay any sum due from him to the Respondent. However, I do not find that to be the case. There is nothing to which I have been taken to show that the Respondent ever informed the Claimant about the training levy and the requirement that he reimburse a proportion of it upon termination of employment. As such, I do not accept that a sum and matter previously unknown to the Claimant prior to these proceedings was a sum that was due from him to the Respondent.

46. I have taken into account that the Claimant did countersign the letter from Mr. Martin on 17th October 2017 agreeing to the content of the letter. However, that letter of itself did not entitle the Respondent to make any deduction from the Claimant's wages nor did it make specific mention of the levy such as to suggest that by his acceptance of the content of the letter, that sum became one owed to the Respondent by the Claimant. The situation is therefore distinguishable from the situation in **Lear** where such a sum was, potentially at least, due.

47. I am therefore satisfied that the deduction of £163.00 in apportionment of the levy fee was an unauthorised deduction from wages and that part of the Claimant's claim succeeds to that limited extent.

48. I turn then to the deduction in respect of what was said to have been overtaken annual leave. The Respondent deducted 7 days annual leave from the Claimant's final wages.

49. The calculations as to what holiday the Claimant had taken are not in dispute with the exception of those within the "Paternity Leave" period.

50. Insofar as the Claimant might still argue that the Respondent was not entitled to deduct any sums in respect of the second week of annual leave, I reject that argument. The Claimant expressly asked to take that second week as annual leave and he completed the necessary forms to do so. He does not dispute that he had an accrued entitlement as at termination of employment to 12.24 days or that otherwise that he had taken in that leave year an additional ten days that are not disputed at all.

51. There can be no question that Clause 12 of the Claimant's contract of employment expressly permitted the Respondent to deduct overtaken holiday entitlement from final salary. It follows that the Respondent would be able to deduct any overtaken entitlement under that clause.

52. The question is whether that right also included the first week of the "Paternity Leave" period. The Claimant did not request annual leave for that week. Equally, the Respondent neither served any notice on the Claimant under Regulation 15 Working Time Regulations 1998 nor even alerted him to the fact that they had apparently, at some unspecified point, unilaterally determined that the Claimant was going to take annual leave for that first week. The Claimant was in fact not aware of that until these proceedings.

53. As such, I am satisfied that the first week of the "Paternity Leave" period was not taken as annual leave (either requested by the Claimant or at the lawful request of the Respondent) and so should not count against him in respect of the calculation of the leave that he had taken upon termination for the purposes of any deduction under Clause 12 of his contract of employment. That reduced the leave which the Claimant had taken to 15 days. It is not disputed that the Claimant had an accrued entitlement to 12.24 days on termination and the Respondent deducted 7 days leave. They were not entitled to deduct five of those days leave because the Claimant had not taken them as annual leave for the reasons that I have already given. Clause 12 therefore did not bite and did not entitle the full deduction to be made. It did, however, clearly allow the additional two overtaken days to be deducted.

54. I turn then to the alternative argument of the Respondent that the deduction was made on account of an overpayment and therefore falls to be an excepted deduction within Section 14 Employment Rights Act 1996. The relevant part of Section 14 requires that the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages.

55. Whilst the Respondent characterised that as overtaken annual leave (which as I have found above I do not accept that they were entitled to do) it is not in dispute that the Claimant was overpaid during the first week of "Paternity Leave". He was paid full pay when, as he now accepts, he was entitled in fact to no pay given the first week of leave that he took because he had no entitlement to take paternity leave at all.

56. I am therefore satisfied that the deduction was an excepted deduction because it recouped the overpayment of wages that the Claimant had, by his own admission, received during the week after his daughter's birth.

57. That part of the claim therefore fails and is dismissed.

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Employment Judge Heap

Date: 6th December 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE