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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105710/2016

Held in Glasgow on 9 July 2018

Employment Judge: Ms A Jones

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Mr S Cosgrove

In Person

Claimant

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Eco Refrigeration Limited

**Respondent
Represented by:-
Mr L Lane -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is the respondent made an unauthorised deduction of £600 (Six Hundred Pounds) from the claimant's wages in contravention of section 13 of the Employment Rights Act 1996.

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REASONS

E.T. Z4 (WR)

Introduction

1. The claimant claimed that the respondent had unlawfully deducted £600 from his final wages following his dismissal. The respondent's position was that the claimant had signed a document which entitled them to deduct that sum from his wages.

Issues to be determined

2. The Tribunal was required to determine whether the claimant had signified in writing in terms of section 13 (1) of the Employment Rights Act 1996 his consent such that entitled the respondent to deduct the relevant sum from the wages of the claimant.

Findings in Fact

3. The Tribunal made the following relevant findings in fact:-
4. The claimant was employed from around September 2015 by the respondent as refrigeration engineer.
5. In order to perform his duties, the claimant was provided with a van by the respondent, which he was entitled to use for personal use.
6. The claimant was dismissed following an incident around 29 April 2016 when the claimant damaged the company van. The claimant returned the company vehicle at this time.
7. Around 11 May 2016 a meeting took place between the claimant and respondent, as a result of which the claimant was re-employed by the respondent in the same role.
8. At that meeting, the claimant was advised by the respondent that if he paid £600 towards repairs for damage to the respondent's van which was caused by him, he would be re-employed. An agreement was reached between the parties that the respondent would deduct £200 per month for 3 months from his June, July and August wages in order to recover the said £600.

9. A further incident took place on 22 September 2016 as a result of which the claimant was dismissed summarily.
10. The claimant completed timesheets which he signed.
11. The respondent deducted £600 from the claimant's final wages.

5 **Observations on the evidence**

12. The Tribunal heard evidence from the claimant and Mrs Martin who was a director of the respondent.
13. The Tribunal found the claimant to be a credible witness. He acknowledged that he had acted in an unacceptable fashion in causing damage to the respondent's van. He was however adamant that he had not signed any documents allowing deductions from his wages to be made.
14. Mrs Martin could not assist the Tribunal with a number of the relevant issues. She could not explain why the originals of what were said to photographs representing damage to the claimant's van had not been produced or provide any explanation as to why what was produced was undated and grainy. Neither could she give any evidence on the damage to the van itself.
15. The evidence the claimant gave about his re-employment by the respondent (which had not been put to Mrs Martin) was not challenged by the respondent's solicitor and no application to recall the respondent's witness was made to address this evidence, despite the Tribunal raising the possibility of this course of action. The Tribunal accepted the claimant's evidence

Relevant law

16. Section 13(1) of the Employment Rights Act states that:

"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 relevant provision of a worker's contract, or
- b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

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Discussion and decision

- 17. The Tribunal considered the case of *Potter v Hunt Contracts* [1992] ICR 337. In that case, an employee signed a document agreeing to repay training fees if he left the employment of the employer within a specific period. Crucially however, the document did not specify that sums would be deducted from the claimant's wages. On that basis, the Employment Appeal Tribunal found that the claimant had not signified in writing his agreement to a deduction being made from his wages.
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- 18. A document was produced entitled 'deductions from pay' which bore to be signed by the claimant. However, this related to a previous contract of employment and therefore cannot be relied upon to make any deductions from a subsequent period of employment.
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- 19. A further undated document was produced which stated 'Stephen Cosgrove has started with us on 11th May 2016. He agreed to pay back damage incurred by him on the company van (sic) and in the future should any further damage appear he has agreed to pay this back in full. A monthly amount as been arranged by both Stephen Cosgrove and Jacqueline Martin.' That document was said to have been signed by the claimant, although he categorically denied ever having seen it before these proceedings.
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- 20. The issue before the Tribunal was whether that document entitled the respondent to make the deduction of £600 from the claimant's wages.
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- 21. Crucially, in the view of the Tribunal, the document does not state how any such sums which may have been said to have been due in the context of this document should be paid. In particular, the document does not specify that such sums would be deducted from the claimant's wages.
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22. In these circumstances, the Tribunal was satisfied that there was no agreement in writing which permitted the respondent to make the deduction of £600 from the claimant's wages.

23. Therefore, the Tribunal did not find it necessary to determine whether or not
5 the claimant had in fact signed either of these documents.

24. The respondent is therefore ordered to repay to the claimant the sum of £600 which was an unauthorised deduction from his wages.

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15 Employment Judge: A Jones
Date of Judgment: 23 July 2018
Entered in register: 31 July 2018
and copied to parties

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