



EMPLOYMENT TRIBUNALS

Claimant

Mr P Mishlakov

v

Respondent

Merriveen Limited

Heard at: Bury St Edmunds

On: 1 August 2018

Before: Employment Judge Laidler

Appearances

For the Claimant: In person

For the Respondent: Mr P Buck, Director

RESERVED JUDGMENT

1. There were no unauthorised deductions from wages, the respondent being entitled under the claimant's contract to make a deduction from pay due to him for damages caused to its vehicle.
2. The claimant has not established there were any further monies due to him.
3. The respondent's preparation time application is dismissed.

RESERVED REASONS

1. This is the reserved decision following the hearing on 1 August 2018, the matter having been adjourned to enable the parties to produce further documentation.
2. The history of this matter is that a default judgment had been entered on 19 March which was set aside by this Employment Judge at a preliminary hearing on 5 April 2018. At that hearing, the claimant was represented, and the claims were clarified.

3. The claimant accepted that he did not have two years' service to be able to bring an unfair dismissal claim. His race discrimination claim was that he was dismissed by text message. It has transpired at this hearing, however, that he was not then dismissed as his employment continued. The claims that were before this tribunal were therefore only the monetary claims.
4. The respondent argues it was entitled to deduct monies from the claimant under clause 10 of his contract. At the hearing at which these claims were clarified, the claimant did not dispute there was such a contractual entitlement but submitted there had been no consultation or other discussion with him about the amount of the deduction.
5. There had also been an argument by the claimant that £250 had been deducted from his wages prior to the accident. He also claimed money in respect of holiday pay and sickness absence. Those amounts were further clarified after the hearing by his then representative as being
 - 5.1 17 days sick pay of £223.55 and
 - 5.2 holiday pay of £176.83 (at £122 per day).

Although at the preliminary hearing, the representative had agreed to provide calculations as to how those amounts were calculated, when he wrote into the tribunal with the corrected figures he did not provide calculations of the exact dates save to provide that the sick pay had been calculated at £92.05 per week gross. 1.44 days holiday pay had been claimed, but no dates were given of holidays taken.

6. At this hearing, the claimant was again assisted by a court appointed interpreter. His evidence was heard. He does not dispute that there is a clause in the contract that provides for deductions from pay. The clause provides as follows:

"If at any time you owe the organisation money, it may be deducted from your salary. This includes, but is not limited, to overpayment of wages, a day or part day's pay for each day or part day of unauthorised absence, damage caused by negligence or carelessness and any loan made by the organisation to you."
7. The tribunal saw an invoice for damage to the respondent's vehicle which totalled £1,699.55 (including VAT).
8. The claimant then gave evidence that the £250 he also claims was a deduction on the ground he had "*scratched the step*". He stated there had been a text message from Mr Buck in which he had agreed it was not the claimant's responsibility and that Mr Buck had agreed to give this money back. The claimant looked on his mobile phone whilst in the tribunal room and then found an email, not a text message, purporting to be from Mr

Buck of 15 August 2017, which he then forwarded to the tribunal office. The email exchange was as follows:

15 August 2017 at 07:31 hrs from the claimant to Mr Buck,

“Hello Peter, would you explain why I only have £306. Thanks”.

The reply from Mr Buck at 10:01 hrs on the same day stated,

“I had to stop £250 off to get your fairing resprayed. The driver showed me a photo before he left with no damage and you were the only driver to use it.”

9. Mr Buck, Director of the respondent and alleged writer and recipient of these emails doubted their credibility. He normally communicated with the claimant by text. The claimant was off sick between 7 and 21 August at the time this email exchange is alleged to have taken place. He had no way of checking this email whilst in the tribunal and explained that he now uses a payroll provider. It was agreed, the evidence of the claimant having been heard, that the decision would be reserved to enable Mr Buck to take further instructions from his payroll provider as to any such deduction.
10. By email of 24 August 2018, Mr Buck stated again he had no knowledge of the email of 15 August 2018. The claimant's wage for the week commencing 31 July 2017 of £321 gross, £306 net was for 2.5 days work as the claimant had gone home early without finishing the job. The job was for 12 hours but the claimant went home after 8 hours. The payment was for 2.5 days. Mr Buck disputed that there was any money withheld for fairing painting. He had sought further clarity on the payslip but without success.
11. This Employment Judge instructed a letter to be sent to the parties which went on 23 September 2018, asking if Mr Buck had obtained information from the payroll provider. By email of 27 September he confirmed that he had not. By letter of 30 November, the Judge requested any further submissions within 7 days of the date of that letter. All that was received was a copy of a piece of paper from the claimant on which he had highlighted that he expected to be paid the following amounts:

£1,326.24 in outstanding wages;

£250 in withheld wages;

£166.83 in outstanding holiday pay;

£357.40 in sick pay.

Total £2100.47

12. The tribunal did receive at the hearing copies of two payslips given to the claimant. One for 4 August 2017 showing a gross entitlement of £653.75, deductions of £29.76, making a net payment of £623.99 which has been noted in hand writing as being for the week commencing 24 July 2017.
13. The next payslip was for 11 August 2017 showing gross pay of £321, deductions of £15 and a net payment of £306. That is also noted in hand writing as being for the week commencing 31 July 2017 (as referred to in paragraph 10 above)
14. From the evidence heard, it is known that the claimant was off sick for the period 7 – 21 August 2017. The respondent produced a print out from the government web site showing the entitlement to sick pay for the period between those dates to total £125.09 calculated,

Week ending 12 August 2017, £35.74;

Week ending 19 August 2017, £89.35.

It appears to this tribunal that the first week is a reduced amount as the first three days of the absence would not be taken into account and therefore in the five-day week there were only two day's pay. In the second week there were five qualifying days. It is not clear to the tribunal and has never been adequately explained, where the claimant gets his figure of £357.40 for sick pay.

15. In the respondent's calculations of the claimant's pay, it had provided for two days holiday pay totalling £245.60. It therefore calculated that the following sums (but for the damage to the vehicle), would have been due to the claimant:

Sick pay	£125.09
Holiday pay	£245.60
Pay:	
Week commencing 21 August 2017	£245.60
Week commencing 28 August 2017	£522.20
Week commencing 4 September 2017	<u>£122.80</u>
Total	£1,261.29

Conclusions

16. Despite the time given to the parties, no further documentation of any assistance has been provided to the tribunal. However, the tribunal has not seen any documentation to show that £250 was incorrectly deducted from the claimant's wages. What it has seen is two payslips showing that he was paid £623.99 and £306 respectively. It has seen that the parties communicated by text message and has concerns about the email that was produced at a late stage purporting to be from Mr Buck.
17. The respondent did have an entitlement to deduct from pay due to the claimant the cost of the damage to their lorry. That exceeded the amount of wages that were due and payable to the claimant. There is therefore, no unauthorised deduction.

The respondent's costs application

18. It was submitted on behalf of the respondent that the claims had been vexatious and that he had travelled from Southampton where he had been working to attend this hearing. He had had to incur costs in his office of help for preparing for the hearing. He had produced invoices from Driver Base, accounts department showing:

for week ending 31 March 2018, one hour spent at a charge of £625 plus VAT, being a total invoice of £750 and

then another invoice for week ending 3 August 2018 for the same amount.

There was also an invoice of the same amount for week ending 6 April 2017.

Mr Buck explained that the charges were three days' time for a nine hour day in preparation for this case.

19. It was explained that the Employment Tribunal Rules only allow for preparation time which would be limited to £38 per hour.
20. The claimant explained he was working as a driver but his hours varied, earning a maximum of up to £800 per week. It was not regular work. He had debts of £5,000. He lives in a camper van paying £200 per month. He sends money to Bulgaria monthly when he can. He pays approximately £500 to Lloyds bank for his debts.
21. In the circumstances of this case and in view of the lack of documentation from not only the claimant, but also the respondent, it cannot be accepted that time of three days at nine hours a day has been incurred in preparing

for this matter. The claimant genuinely believed that monies were due to him and the fact that he has not succeeded does not mean that the claim was unreasonable, vexatious or misconceived. The tribunal is not prepared in all the circumstances of this case to entertain the respondent's application.

Employment Judge Laidler

Date: 22 February 2019

Sent to the parties on: 8 March 2019

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For the Tribunal Office