



THE EMPLOYMENT TRIBUNAL

SITTING AT: ASHFORD EMPLOYMENT TRIBUNAL

BEFORE: EMPLOYMENT JUDGE HARRINGTON
(sitting alone)

BETWEEN:

MR A SEWELL-BURRIS Claimant

and

VASSELL'S COMMERCIAL AND DOMESTIC
ENGINEERS LIMITED

Respondent

ON: 23 February 2018

APPEARANCES:

For the Claimant: In person

For the Respondent: Miss S. Phillips, Consultant

JUDGMENT

The Claimant has suffered an unauthorised deduction in earnings. The Respondent shall pay the Claimant the sum of £1,109.65 (one thousand, one hundred and nine pounds and sixty five pence).

REASONS

Introduction

1. By an ETI received by the Tribunal on 3 November 2017 the Claimant, Mr Andre Sewell-Burris, brings claims arising from his employment as a mobile maintenance plumbing engineer with the Respondent, Vassell's Commercial and Domestic Engineers Limited, from 1 March 2017 until 28 July 2017 [1-12]. It is noted that the dates of the Claimant's employment are agreed by the Respondent in the ET3 [13].
2. As a preliminary matter, the correct Respondent in this claim is Vassell's Commercial and Domestic Engineers Limited rather than Ms Sharon Hill, the Finance and Operation Manager of the Respondent business, and the title of these proceedings is amended accordingly.
3. In his application to the Tribunal, the Claimant brings claims for holiday pay, arrears of pay and other payments. Following clarification at the beginning of the hearing, the Claimant claims that unlawful deductions have been taken from his final salary payment in July 2017.
4. The Claimant's payslip dated 31 July 2017 [76] records that the Claimant's net pay for the relevant period was £1159.65. Although Ms Hill says in her statement, '*He was paid his basic pay, which is evidenced on his wage slip..*', the Respondent now accepts that it actually withheld the entirety of this payment to set off the following deductions:

4.1	Motor repairs	£474.81
4.2	Fine for smoking	£250.00
4.3	Charge for valet of company vehicle	£50.00
4.4	Cost of rectifying poor workmanship	£460.00
		—————
		£1,234.81
5. It is the Claimant's case that each of the deductions is unlawful and that he should receive his pay in the sum of £1159.65. It is the Respondent's case that the Claimant still owes the outstanding sum of £75.16 in order to have paid the required sums in full.
6. In my consideration of this claim, I have been provided with a bundle paginated 1 – 84 and all numbers appearing within square brackets in this judgment refer to pages from that bundle. At the hearing, the Claimant appeared in person and the Respondent was represented by Miss Phillips, Consultant. I heard evidence from both the Claimant and Ms Hill, each of

whom provided a written statement and both parties made closing submissions.

7. The Claimant told me, after clarifying his claims, that he was also owed two weeks statutory sick pay ('SSP') and that he sought to amend his claim to add a further £171.20. I referred both parties to the fact that any dispute over entitlement to SSP is adjudicated upon by the HMRC statutory payments dispute team, which has exclusive jurisdiction in relation to these matters. Accordingly, whilst SSP does fall within the definition of wages, the Tribunal does not have jurisdiction to consider a claim that non-payment of SSP amounts to an unlawful deduction from wages (see Taylor Gordon and Co Ltd (t/a Plan Personnel) v Timmons 2004 IRLR 180 ETA).

Factual Background

8. The Claimant was employed as a mobile maintenance plumbing engineer by the Respondent from 1 March 2017 to 28 July 2017. Shortly before joining the Respondent the Claimant completed his Level 2 diploma in plumbing studies; he had very little experience in plumbing.
9. The Claimant received a Statement of Main Terms of Employment which he signed on 1st March 2017 [24-26]. The following further documents are of direct relevance to this claim:

Safeguards and Standards

10. Within the bundle, placed behind the Main Terms, is a document entitled 'Safeguards and Standards' [27-32]. This document is unsigned. Within the document the following paragraph appears,

'F) LIABILITY FOR LOSS AND DAMAGE

Any damage to vehicles, stock or property (including non-statutory safety equipment) that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement.

Any loss to us that is the result of your failure to observe rules, procedures or instruction, or is as a result of your negligent behaviour or your unsatisfactory standards of work will render you liable to reimburse to us the full or part of the cost of the loss.

In the event of an at fault accident whilst driving one of our vehicles you may be required to pay the cost of the insurance excess up to a maximum of £250.

In the event of failure to pay, we have the contractual right to deduct such costs from your pay.' [28]

11. In evidence, the Claimant told me that he did not have the Safeguards and Standards document before him when he signed the Statement of Main Terms of Employment. He had no certain recollection of actually seeing the document until he had contacted ACAS and the document was forwarded to him. The Respondent contended that the document formed part of the contract pack given to the Claimant and that he had it at the time he signed the Main Terms. On this matter and, on the balance of probabilities, I accept the Claimant's evidence. I am not satisfied that he was provided with the Safeguards and Standards document at the time he signed the Main Terms. Overall, the Claimant gave his evidence in a straightforward way without embellishment. He made concessions, for example, about the cleanliness of the vehicle (see below) but on this point, his evidence was clear that he had no recollection of seeing the document at the relevant time.
12. By comparison the Respondent's case lacked clarity – for example, asserting that the Claimant had been paid when, in fact, he received no such payment, Ms Hill saying in her statement that no deduction had been made for poor workmanship when actually a deduction had been applied and, in her oral evidence, contending that the repairs had been carried out when in her statement she stated they *'are yet to be carried out'* (witness statement, paragraph 14).
13. Accordingly I do not accept that the clauses set out within the Safeguards and Standards document form part of the agreement between the parties.

Vassell's Commercial Ltd Company Vehicle Rules

14. This document was received by the Claimant and signed on 20 March 2017 [35-38]. Within that document the following paragraphs are of relevance,

'D) CLEANING AND MAINTENANCE

- 1) *As the vehicle has been allocated to you, it is your responsibility to keep it clean, and to ensure that the vehicle is regularly serviced in accordance with the requirements laid down by the manufacturer, and as specified in the maintenance book of the particular model of vehicle.*
- 2) *Any maintenance or repair work, or replacement of parts, including tyres, must be reported to us so that we can organise for it to be carried out.*
- 3) *Failure to adequately clean the vehicle may mean you are subject to the cost of the Valet being deducted from your pay.'*

.....

O) *PERSONAL LIABILITY FOR DAMAGE TO VEHICLES*

- 1) *Where any damage to one of our vehicles is due to your negligence or lack of care, we reserve the right to insist on your rectifying the damage at your own expense or paying the excess part of any claim on the insurers.*
 - 2) *Repeated instances may result in the use of the vehicle being withdrawn and disciplinary action being taken.*
15. A further document concerning the company vehicle is dated 20 March 2017, confirmed by the Claimant as signed by him and includes the following paragraph,
- 'There is a zero tolerance with smoking in the vehicle if found that smoking was carried out in the vehicle the responsible driver will be charge a fine of £250 and the van will be confiscated from your position.'* [39]
16. On 12th July 2017, the Claimant called Ms Hill and informed her that he would not be coming into work due to a skin rash. On or around 18 July 2017 a meeting was held with the Claimant, Ms Hill and Mr Marlando Vassell, the Respondent's managing director. The Claimant's medical condition was discussed and the Claimant referred to being on medication which affected his ability to drive. Accordingly the Respondent took the Claimant's company vehicle from him and he was sent home in a taxi.
17. In her statement, Ms Hill records that the Respondent's facilities manager subsequently observed the Claimant working on 23 July 2017 at an event, promoting his own photography business. This observation contradicted the Claimant's absence from his job with the Respondent due to illness.
18. It was on or around 28 July 2017 that the Claimant attended the Respondent's office and his employment with the Respondent came to an end. The Claimant returned the company property that he had. The Claimant was told on that day that he would not be paid because of deductions the Respondent was making from his pay. Although the Claimant requested details of the deductions made both on that day and following, he failed to receive a response from the Respondent. Accordingly on 5 September 2017, he contacted ACAS and commenced the early conciliation process. The Claimant did receive a payslip once in contact with ACAS. This is the payslip of July 2017 [76], showing the amount of pay to be received as £684.84. In fact, the Claimant was paid nothing. During her evidence, Ms Hill confirmed that the Claimant was not given notice of the deductions to be made and was only told this information via ACAS.
19. With respect to the particular issues arising in this claim:

19.1 Poor workmanship:

In Ms Hill's statement she says that the Claimant failed to carry out installation and services to an adequate standard at the KICC site which he attended from 21 June 2017 and that the job was not completed and, in the event, had to be completed by others. Various photographs are produced to show apparent poor workmanship [67-73]. The Claimant says that he asked the Respondent's owner for assistance and was told no and that he was generally not supported in the work he did. Ms Hill agrees that the Claimant asked for assistance. She recalls the Claimant saying he did not know how to do the job and that it was suggested to him that he consult a book.

19.2 In her statement, Ms Hills states,

'The deductions in regards to 'poor workmanship' however were not taken from the Claimant I shall notify the Claimant if it becomes apparent that these monies are owed to us'.

(witness statement, paragraph 15)

19.3 Although Ms Hill signed and dated her statement and confirmed it was true, this part is clearly wrong as it was confirmed at the start of the hearing that the sum of £460.00 was deducted from the Claimant's wages for poor workmanship.

19.4 Company vehicle:

Ms Hill states that she inspected the vehicle on 18 July 2017 and that she noticed damage to the vehicle, which had been brand new, and that the interior was untidy. She produced a number of photographs showing the inside and, in particular, a cigarette butt on the rear passenger seat [64-66]. Further photographs show various scrapes to the bumper and the van's bodywork [for example, 60, 62, 63].

19.5 It is the Claimant's case that any damage to the vehicle is fairly to be classed as 'wear and tear'. The Claimant does not smoke and denies smoking in the vehicle. He accepts that the vehicle needed to be cleaned - he contends that he would have cleaned the vehicle had he been given notice that the vehicle would be removed from him and that a professional valet was not required. With regards to smoking, on the balance of probabilities, I accept the Claimant's account that he is not a smoker and that did not smoke in the vehicle. Ms Hill was unable to say that the Claimant was a smoker or that the vehicle smelt of cigarette smoke. The only evidence of smoking was a cigarette butt placed on the rear passenger seat and I am not satisfied that this by itself, establishes that the Claimant was smoking in the vehicle.

19.6 Ms Hill refers to a document which recorded various areas of damage on the vehicle. At the bottom of the document there is a handwritten statement,

'This vehicle was given to you brand new. Therefore by signing this paperwork, liability is accepted for damages listed above. Vehicle is also not cleaned internal and external'. [43]

- 19.7 Beneath this statement, appears the Claimant's signature. When referred to this document, the Claimant accepted that it accurately noted the damage to the vehicle and that, when he had received the van, it was brand new. Ms Hill confirmed to me that the repairs to the vehicle have now been carried out.

Closing Submissions

20. On behalf of the Respondent, Miss Phillips submitted that reliance was placed on the Safeguards and Standards document. She also referred to the Claimant's acceptance that the vehicle was untidy and damaged. With regards to the poor workmanship, Miss Phillips referred to a letter sent to the Claimant, dated 18 September 2017 [52]. The cost of £460 had been calculated as an admin cost and 1 day's engineer's labour. I was also referred to the quote for works to the vehicle, dated 26 July 2017 in the sum of £474.81 [74-75].
21. The Claimant submitted that he had not received an accurate payslip and that he had, in fact, not been paid a penny for the month of July. He confirmed that he did not accept the liability for charges in respect of the van, the fine for smoking or the poor workmanship.

The Law

22. No deduction from a worker's wages may be made unless it is either required or permitted by a statutory or contractual provision or the worker has given his prior written consent to the deduction (s.13, s.15 Employment Rights Act 1996 ('ERA 1996')). If a deduction is made pursuant to a contractual provision, the terms of the contract must have been shown to the worker or if not in writing, its effect notified in writing to the worker, before the deduction is made (s.13(2) ERA 1996). With regards to what has to appear in writing, it is not merely provision for the repayment of the sum concerned but it must identify that it will be deducted from wages (see W Potter v Hunt Contracts Ltd [1992] ICR 337).
23. The worker may bring a complaint to an employment tribunal if his employer breaches these provisions. A complaint may be made that an unauthorised deduction has been made contrary to sections 13 and 15 of the ERA 1996 (s.23(1) ERA 1996).
24. Where an employment tribunal finds that a complaint under s.23(1) is well-founded, it will make a declaration to that effect and, where an unlawful deduction has been made, will order the employer to pay to the worker the amount of the deduction (s.24 ERA 1996). Pursuant to section 24(2) a tribunal may order the employer to pay to the worker 'such amount as the

tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of’.

Conclusions

25. In respect of each of the sums deducted, the issues for the Tribunal are:
- 25.1 whether there is a contractual provision or a written agreement authorising the type of deduction in question and what is the scope of that authorisation, and,
- 25.2 once the above is established, is the actual deduction in fact justified?

Motor repairs

26. In respect of the motor repairs, the Safeguards and Standards document refers to a liability to pay the cost of repair for *‘any damage to vehicles’* that is the *‘result of your carelessness, negligence or deliberate vandalism’*. This document goes on to state that in the event of failure to pay, *‘we have a contractual right to deduct such costs from your pay’* [28].
27. As set out in my findings of fact I accept, on the balance of probabilities, that the Claimant did not see this document when given his Main Terms, which he signed. I note that the Safeguards and Standards document is unsigned. Accordingly I am not satisfied that the paragraphs within this document can be relied upon by the Respondent as a contractual provision or written agreement authorising the relevant deduction.
28. I add that even if I am mistaken in that conclusion, namely that the Safeguards and Standards document did not form part of the agreement between the Claimant and Respondent, I would in any event have determined that the deduction made for vehicle repairs was unlawful.
29. The relevant paragraph of the Safeguards and Standards document permits a deduction from pay in the event of a *‘failure to pay’* for the repairs. It is entirely clear on the evidence from both the Claimant and Ms Hill, that the Claimant was given no opportunity to pay and that the deduction to his wages was applied immediately. At no stage did the Respondent issue notification of the relevant charges and then give the Claimant a reasonable time to pay. Accordingly the deduction was not justified even if the Respondent was able to rely upon the relevant paragraphs from the Safeguards and Standards document.
30. As set out above, in addition to the Safeguards and Standards document, there is the Company Vehicle Rules which was received by the Claimant and signed on 20 March 2017. This provides that *‘Where any damage to one of our vehicles is due to your negligence or lack of care, we reserve the right to insist on your rectifying the damage at your own expense or paying the excess part of any claim on the insurers.’* Further, the Claimant

signed the additional document detailed at paragraph 19.5 above. However these provisions do not provide for any costs to be deducted from a worker's wages (see W Potter v Hunt Contracts Ltd [1992] ICR 337). Accordingly I do not accept that those documents, although known to the Claimant and signed by him, provided the Respondent with the required authorisation to make the deduction of £474.81.

31. As I have reached these conclusions about the absence of any necessary contractual provisions / written agreement permitting the relevant deduction, it has been unnecessary for me to continue my consideration of this part of the claim to examine the particular damage recorded to the vehicle.

Fine for Smoking

32. The parties had agreed to the following provision in respect of smoking,

'There is a zero tolerance with smoking in the vehicle if found that smoking was carried out in the vehicle the responsible driver will be charge a fine of £250 and the van will be confiscated from your position.' [39]

33. However, again, the relevant provision did not identify that the fine would be deducted from the Claimant's wages. Accordingly this deduction is unlawful. I also add that, as set out in my findings of fact, I accept the Claimant's account that he did not smoke in the vehicle. Therefore even if there had been a relevant contractual provision or written agreement in place, I am not satisfied that the actual deduction would have been justified in any event.

Charge for valet of company vehicle

34. The Company Vehicle Rules were received by the Claimant and signed by him on 20 March 2017. It provides for the cost of a valet to be '*deducted from your pay*' if there is a failure to adequately clean the vehicle. Put simply, this was a written agreement authorising the cost of a valet to be deducted from the Claimant's wages.

35. In considering whether the actual deduction was justified, I note that the Claimant accepted that the vehicle was messy and required cleaning. I have not been provided with documentary evidence confirming the cost of the valet but Ms Hill told me this was carried out and cost £50. On the balance of probabilities I accept that a valet clean was done, that it cost £50 and that an appropriate and lawful deduction of £50 was made from the Claimant's wages for this item.

Cost of rectifying poor workmanship

36. Within the Safeguards and Standards document, it is stated,

Any loss to us that is the result of your failure to observe rules, procedures or instruction, or is as a result of your negligent behaviour or your

unsatisfactory standards of work will render you liable to reimburse to us the full or part of the cost of the loss.

37. However I have already concluded that this document did not form part of the agreement between the parties. Accordingly I am not satisfied that the paragraphs within this document can be relied upon by the Respondent as a contractual provision or written agreement authorising the relevant deduction.
38. Even if that were not the position, I do not accept that the Respondent has established that the Claimant is culpable for any poor workmanship. Whilst I note the photographs and the brief description that Ms Hill provided to me, I was particularly troubled by the fact that the Claimant was an inexperienced junior plumber. The Respondent knew that the Claimant had very limited experience. The Respondent also accepted in evidence that the Claimant asked for assistance and that the response to the Claimant, rather than providing any assistance or guidance, was that he should consult a book. I therefore do not accept that there was, on the evidence provided to me, a justification for making a deduction for poor workmanship even if there was an appropriate contractual provision in place to permit this.
39. Accordingly, in my judgment, the Claimant has suffered an unlawful deduction from his earnings in respect of the motor repairs, the fine for smoking and costs of rectifying poor workmanship. These deductions are in the sum of £1,109.65 and the Respondent shall pay this sum to the Claimant.

Employment Judge Harrington
Date: 20 March 2018