EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Kennedy	**v**	Glaxosmithkline Services Unlimited

Heard at: Bury St Edmunds **On**: 27 February 2019

Before: Employment Judge Laidler

Appearances
For the Claimant: In person
For the Respondent: Ms C Urquhart, Counsel

JUDGMENT

There was no unauthorised deduction from the claimant's salary and the claim is dismissed.

REASONS

1. The claim form in this matter was received on 1 April 2018 in which the claimant brought a claim for unauthorised deduction from wages. There had been a period of ACAS Early Conciliation between 20 and 26 March 2018. The respondent defended the claim stating that the deduction was authorised by the contract.

2. The claimant's employment was from 8 July 2013 to 31 December 2017.

3. The tribunal saw in the bundle his contract of employment and it has not been disputed that it contained a clause entitled 'Deductions from Salary', it states,

> "You authorise the company at any time to deduct from your salary, or any other monies payable to you by the company, all sums which you owe to the company. If this is insufficient the company will require repayment of the balance. If you leave employment, you will be required to pay the full balance before you leave."

4. The claimant was to undergo a period of training and the respondent has a Further Education and Training Policy seen in the bundle, at page 41, the relevant provisions are contained section E 'Repayment of Further Education Fees':

> 'If you are receiving GSK-sponsored further education (including NVQs, CIMA, CIPD, OU degrees, PhDs and Masters) you may be required to repay the full cost of the course and examination fees if you:
>
> Remain in GSK employment, but do not complete the course;
>
> Leave the company of your own volition before the completion of the particular course/qualification; or
>
> Are dismissed in accordance with the Company's Disciplinary Policy and Procedure, before the completion of, or within one year of completing, the particular course/qualification.
>
> Should you leave the company of your own volition within one year of completing the particular course/qualification, you may be required to reimburse part or all of the fees. This will be discussed on an individual basis. You will not be required to repay any other expenses, including the book allowance.
>
> GSK may, at its absolute discretion, waive repayment of the course fees incurred by the Company if non-completion of any course year was due to unexpected circumstances beyond your control.
>
> Repayment provisions shall not apply where the Company makes your job redundant, where you retire through ill health, or where deferral has had to be made because of maternity, adoption or sick leave…'

5. When the claimant's training was authorised, an agreement was entered into with him, (page 55). The proposed start date of the course was 28 September 2015 and proposed completion date July 2017. He was to have day release for attendance and the agreement made it clear that the course and train fares were £7,930 for each year. At the end of this agreement the claimant signed that he agreed to repay the full cost of the course and the examination fee in certain prescribed circumstances and,

> "I understand that should I leave the company of my own volition within one year of completing the course / qualification, I may be required to reimburse part or all of the fees."

This was signed by the claimant on 3 August 2015.

6. The claimant undertook the course and on 23 October 2017 raised a query with HR about what would happen with regard to the fees if he left. He stated he was considering leaving the employment and needed clarification. To this he received an automated reply, but that did contain various telephone numbers and other ways of contacting the HR department and the tribunal is satisfied from hearing Ms Gallagher that

had the claimant used one of those telephone numbers he would have got through to an actual person. There was then a reply on 25 October from an HR Consultant saying she was looking into the claimant's enquiry.

7. The claimant accepted a job elsewhere on 6 November 2017 and the tribunal saw some chat messages (pages 73 – 74) between the claimant and Natasha Dhunna of HR Customer Support, when the claimant can be seen saying this had taken too long and he would ask her to,

> "…leave it as I have found a position and will be resigning next week once my clearance has completed"

8. The claimant resigned on 15 November 2017 and his last day of employment was 31 December 2017.

9. Mr Cattano, the claimant's line manager, met with him on 30 November 2017 and advised the claimant he would be required to repay one year's course fees of £6,750.

10. There are various emails in the bundle between HR representatives including Clare Wright, HR Policy Manager, confirming it was a business decision as to how much had to be repaid. There is then an email from Mr Soloch, Engineering Director to whom Ben Cattano reported, advising that they did need to ask for the funds to be returned. They had received 'very short time of benefit realization' at least the second year. This rationale was given to the claimant by Ms Gallagher in an email, to him of the 17 January 2018.

11. The claimant was then entitled to a bonus payment of £3,999.67 and he was advised in a letter from Sarita Chopra on 16 March 2018 that the monies that he owed the company for the training course would be offset against this amount. In a payslip, only recently disclosed, the actual deduction is shown as £2,810.66 and the claimant has accepted at this hearing that is the sum he seeks to recover.

Relevant law

12. Section 13 of the Employment Rights Act 1996:

> 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 employee.

Conclusions

13. The respondent firstly relies upon s.13(1)(a) that it was entitled to recover the course fees pursuant to a provision of the worker's contract. That is clearly correct as the contract sets out that there is that entitlement.

14. The claimant has sought to argue that this was a form of penalty clause. The tribunal does not accept that to be the case. It is clearly related to the cost to the respondent of the course and is not an arbitrary figure.

15. The respondent also seeks to rely on s.13(1)(b), namely a previously signed agreement between the parties. That is also the case here as the claimant had entered into an agreement on 3 August 2015 under which he understood that he may be required to reimburse part, or all, of the fees. The fees were set out in that document, so he knew what those were.

16. The fact that it says 'may' is something the claimant relies upon, but that gave the respondent a discretion. Its policy made it clear that there were certain circumstances when it would not seek to recover the fees, and these were set out at sub-paragraph (e) which has been set out above where perhaps the course was not completed due to unexpected circumstances outside the control of the employee, or redundancy, ill-health, maternity, adoption or sick leave.

17. The respondent did consider individual circumstances which it says it would do and there is no provision in the agreement that it would follow a specified procedure. The policy, as stated, does show that there are circumstances when the repayment would not be required but those did not exist in this case. The respondent did not act arbitrarily in setting the amount as they did and gave the business rationale for that decision.

18. The tribunal is satisfied therefore, that there was not an unauthorised deduction. It was authorised under the terms of the contract and the education proposal and repayment agreement and the claim is therefore dismissed.

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Employment Judge Laidler

Date: ……19.03.19……..

Sent to the parties on: ....22.03.19.....

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For the Tribunal Office