THE EMPLOYMENT TRIBUNALS

Claimant Mr A Purcell

Respondent Winn Solicitors Ltd (" Winn")

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS ON 16th March 2018
EMPLOYMENT JUDGE GARNON (sitting alone)

For Claimant: in person
For Respondent: Ms D Henning Solicitor

JUDGMENT

The Judgment of the Tribunal is the claim of unlawful deduction of wages is not well founded and is dismissed

REASONS

1 Issues and the Relevant Law

1.1. This is a claim of unlawful deduction of wages. Winn accepts a deduction was made and relies on an agreement made with the claimant to render the deduction lawful. There are two issues (a) whether the deduction comes within the terms of that contract and (b) whether that contract is itself void, voidable or unenforceable.

1.2 Part II of the Employment Rights Act 1996 (the Act), so far as relevant, provides (bold print being mine for emphasis):

Section 13

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(b) **the worker has previously signified in writing his agreement or consent to the making of the deduction.**

(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.

23 Complaints to industrial tribunals

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13

24 Determination of complaints

(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of **any deduction** made in contravention of section 13,

1.3. If a case turns on interpretation of the express terms of a contract the rules set out by Lord Hoffman in Investors Compensation Scheme-v-West Bromwich Building Society are helpful. The key principle in this case is that interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

1.4 I have no doubt that if the contract upon which Winn relies to authorise the deduction is itself void , voidable or unenforceable, that would render the deduction itself unlawful. The claimant, being unrepresented, cannot be expected to affix correct legal labels to his argument, so I have considered and deal , albeit briefly with matters I think were being invoked by him. I label them somewhat imprecisely as (i) misrepresentation (ii) illegality (iii) restraint of trade and (iv) penalty.

1.5. The common law may intervene where a contract has been concluded on the basis of misrepresentation or deceit. However this must be distinguished from a circumstance in which one party makes a statement which may be imprecise, which the other party interprets optimistically. If a builder assumes a obligation to repair a roof for a fixed sum of £500 so as to make it watertight, thinking that doing so will cost only £100 in materials and on starting the work discovers it will cost £ 500 in materials alone, he must still complete the work for the quoted price. It would be different if the property owner told him something which caused him to hold the belief that the materials would only cost £100.

1.6. The circumstances where a contract may be rendered illegal were set down by Lord Justice Peter Gibson in Hall –v-Woolston Hall Leisure (paras 30 and 31): **"***In two types of case it is well established illegality renders a contract unenforceable from the outset. One is where the contract is entered into with the intention of committing an illegal act; the other is where the contract is expressly or implicitly prohibited by statute: St John Shipping Corpn v Joseph Rank Ltd [1957] 1 QB 267, 283 per Devlin J. In a third category of cases a party may be prevented from enforcing it. That is where a contract, lawful when made, is illegally performed and the party knowingly participated in that illegal performance…"* In some instances a contract may be illegal only part in which case the crucial issue is whether it is possible to separate the legal from the illegal part.

1.7. If a contractual term on its face restrains people from conducting their trade such a term will only be enforceable if it is a reasonable restraint on the employee's activities judged by reference to legitimate business interest of the employer.

1.8. If a contractual term provides for the payment of these sum in the event of a breach by the other party and that sum can be viewed as a penalty rather than a genuine pre-estimate of loss, that term may be unenforceable.

1.9. The brevity of the above analysis will I hope bejustified when I set out the facts which in all respect are in my conclusion is very clear.

2 The Facts and My Conclusions

2.1 The claimant was an IT Technical Support Assistant.He started on 12th January 2016 at 35 hours per week. His pay was £ 17000 p.a. He was enrolled onto an apprentice scheme in October 2016 and signed an agreement (" the agreement") to repay certain costs if he left before or within 12 months after completion. He resigned in November 2017 with notice expiring on Friday 8th December. He took up better paid employment on Monday 11th. When he left, £500 was deducted from his final salary and the respondent intends to pursue a claim against him for more. I agreed with the parties I cannot deal with anything other than the £500 deduction, though the findings of fact I make may be persuasive to any Court which does.

2.2. The agreement signed by the claimant on 19 September 2016 reads:
I Andrew Purcell of 56 Fareham Grove Boldon Colliery Tyne & Wear NE35 9NF confirm my agreement to remaining with Winns Solicitors Limited for a period of 12 months following the conclusion of my training course in respect of the Infrastructure Technician level 3 Trailblazer Apprenticeship
if I fail to remain with Winns Solicitors Limited during the term of the course and for a 12 month period following the conclusion of the Infrastructure Technician level 3 Trailblazer Apprenticeship I agree to repay Winns Solicitors Limited ***the full outlay made by them in respect of the Infrastructure Technician level 3 Trailblazer Apprenticeship***
I confirm that payment will be made to Winns Solicitors Limited before my employment is terminated or if payment is not made before my employment ends, I give Winns Solicitors Limited authority to deduct any sums from my final salary payment. If there are insufficient sums to cover the outlay in my salary payment I agreed to repay the balance owed within 1 month of leaving Winns Solicitors Limited employment
I understand the implications of signing this agreement and agree to the above said terms.
I explained to the parties at the outset that in order for the agreement to have effect Winn must not just be liable to pay, they must have paid for the word "outlay" to apply. The evidence categorically shows invoices at pages 51 and 53 already paid of £5500 . They may be fortunate to recoup part of that.

2.3. The claimant says when he signed the agreement he believed the most he would have to pay would be 10% of the cost of the course. The total cost is in the region of £16,500 so even 10% would exceed the £500 which has been deducted. I find he was not told anything about only having to pay 10% . Neither party was clear on what the overall cost would be because there is an element of government funding. I am wholly convinced the claimant was not deceived into entering the agreement, nor was any misrepresentation made to him.

2.4. This apprenticeship onto which he was enrolled involves four parties. A document issued by the Secretary of State for Business Innovation and Skills acting through the Skills Funding Agency (SFA) is at pages 79 -120. Winn argues this document does not constrict in any way its freedom to reach agreements with the claimant. I do not wholly agree with that but need not decide the point because even

if it does, I do not consider its terms have been violated . It is clear in paragraph D9 the claimant is the person meant by " apprentice". A company called QA Ltd is defined as the " lead provider" in paragraph D11 as an organisation holding a contract with the SFA through which funding for apprenticeship standards is routed. It has responsibility for the training and assessment. Winn is the 'employer" defined as an organisation which has a contract of employment with the apprentice.

2.5. The claimant's case is based on paragraph D95 which reads "*The price agreed by the employer and the lead provider must include all the direct costs of training and end point assessment to meet the standard. Apprentices must not make any cash contribution for training that is specified in the standard, or be asked to contribute financially to the direct cost of training or end point assessment for apprenticeship".*

2.6. The claimant says this renders the agreement void or unenforceable. I disagree. It does not ask for any contribution to the cost of training. Had the claimant finished the training while employed by Winn it would have cost him nothing.

2.7. The sequence of events was as follows. The claimant was paid considerably more than the national minimum wage for apprentices . The whole SFA document is predicated on apprentices being paid that minimum rate. During the two-year training, he was allowed day release rather than doing the work for which his salary was being paid, and permitted to do coursework during working hours. He was approached with an offer of a job. Having entered into the agreement voluntarily, he did not make enquiries with Winn as to what they would expect him to pay under the agreement. Rather he researched the SFA rules and believed clause D95 would enable him to pay nothing. He therefore handed in his notice, and could not be persuaded by the only witness I heard for the respondent, Mr Clint Milnes, to complete the apprenticeship whilst in Winn's employment. He has completed the end assessment, but not yet received the result, whilst in the new job . I asked him whether he had paid anything towards it and he had not. I asked him whether his new employer paid anything towards it and, to the best of his knowledge, they have not. The claimant, if he passes, he will have a qualification which has cost him nothing and his new employer will have a far better skilled employee the training of whom has cost them nothing. It has all been paid for by Winn.

2.8. As Mr Milnes lucidly explained it costs a lot to train up a person to do the claimant's job. If Winn fund that it is a reasonable restraint on the employee that he should be contractually committed to remain with them at least for the duration of the apprenticeship and in my judgment for a reasonable time thereafter. I believe 12 months to be a reasonable time.

2.9. The outlay recoverable under the agreement is certainly not a penalty. Winn employed the claimant throughout the training period paying him considerably more than would be paid to apprentice in the true sense, and gave him time off without stopping his pay in any way. All they seek is their actual "outlay".

2.10 In short no matter what arguments I put up for the claimant, I only find myself knocking them down. I can find nothing void voidable or unenforceable about the agreement. The deduction has which has been made is plainly within the express terms of the agreement. It satisfies all the requirements of section 13 (1) (b). The deduction is therefore not unlawful and the claim is dismissed.

_----------

T M Garnon EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 16th March 2018