EMPLOYMENT TRIBUNALS

Claimant: **Mr M Rabbitt**

Respondent: **Biffa Leicester Limited**

Heard at: **Leicester**

On: **1 February 2019**

Before: **Employment Judge Ahmed (sitting alone)**

Representation

Claimant: **In Person**
Respondent: **Mr B Williams of Counsel**

JUDGMENT having been sent to the parties on 20 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

The judgment of the Tribunal is The Respondent is ordered to pay to the Claimant £977.74 (net) in respect of an unlawful deduction of wages.

REASONS

1. This is a claim by Mr Martin Rabbitt for an unlawful deduction of wages. Mr Rabbitt continues to be employed by the Respondent as a Driver. His employment has not ended. For that reasons his breach of contract complaint in respect of the same issues as these proceedings was dismissed earlier. There is no issue that his claim can also be brought as a complaint of an unlawful deduction of wages.

2. Mr Rabbitt was absent by reason of sickness between 25 June and 17 August 2018. His claim is quite simply that he believes he is entitled to his full rate of pay whilst he absent on sick leave. What he has been paid however is a lower rate, £41.06 gross, which the Respondents say is all that he is entitled to because that is what is agreed between the Respondent and the GMB union of which the Claimant is a member. In other words the rate of pay is, the

Respondents say, governed by a collective agreement incorporated into the contract of employment.

3. The issue in this case is, as Mr Williams quite rightly identifies, one of contractual construction. Although there is a witness statement from the Operations Manager and one from the HR Business Partner, there is really no factual dispute which is relevant to the determination of the issue. What is determinative is the (unnumbered) clause at page 36 of the bundle headed "Trade Union Recognition" which states:

"All terms and conditions for hourly paid employees on the Leicester Integrated Waste Contract are determined by a collective agreement with the GMB. The terms of the agreement are embodied in a Recognition Agreement, a copy of which can be obtained from the Personnel Department."

4. That is all that the relevant contractual term says. The issue before me is quite simply is whether that term has been properly incorporated into the Claimant's contract of employment.

4. The effect of incorporating collective terms can be quite serious on employees. They are bound by its terms provided the incorporation is done properly. It is trite law that mere mention of a collective agreement in a document does not amount to express incorporation (see **Stewart v Graig Shipping Ltd** [1979] ICR 713).

5. This clause does not specifically say as a matter of ordinary construction that the Recognition Agreement (or anything else for that matter) is being incorporated. The heading of the clause does not give a clue either. The heading is about trade union recognition. Leaving aside the fact that the relevant provision relied on is by any standards a sloppily worded clause there is in my view no express incorporation.

6. It is also necessary for an employee to be bound by collective agreement terms that he is either aware of it or given a copy of the relevant documentation. In **Worrall and others v (1) Wilmott Dixon Partnership Ltd and (2) Mr J Sambrook** (UKEAT/0521/09) the Employment Appeal Tribunal made it clear that a party is bound by a contractual document which he has not received merely because it was 'available' to him. At paragraph 20 Silber J says this:

"In my view and bearing in mind that there was no evidence that the Claimant received the Personnel Handbook, it cannot be right that a party is bound by a contractual document which he has not received merely because it was a document available to him. The fact that a document was available to the Claimant does not show that he had notice of its terms or that he had agreed to them."

7. There is no evidence that the Claimant has ever been supplied with a copy of the collective agreement. It is not enough to simply say a copy can be obtained from the Personnel Department. There is also no evidence that the Claimant has ever been supplied with Appendix A which is mentioned in the contract of employment. There is no signed copy unlike the contract itself.

8. The only possible relevant document is an email from Mr Bryan, the HR Director, sent to 'all employees' (though there is no evidence that the Claimant was on the distribution list) but that not refer to the rate card, which is now relied on as carrying the appropriate levels of payment, nor does it include the rate card as an attachment to the email or a copy of the collective agreement.

9. In my judgment the contractual provision relied on is not properly incorporated and thus the Respondent cannot therefore have the benefit of it.

10. The only other issue was what is meant by “full sick pay rate” as full sick pay is apparently different between contractual pay and the rate card pay. To my mind ‘full sick pay’ can reasonably be interpreted as an employee receiving full pay when one is sick at the contractual rate.

11. In my judgment therefore the Claimant is entitled to the sum claimed of £977.74 in respect of an unlawful deduction of wages.

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Employment Judge Ahmed

Date: 4 April 2019

REASONS SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE