EMPLOYMENT TRIBUNALS

Claimant: **Mr Peter Quail**
Respondent: **Envirocure Ltd**

Heard at: **Ashford** **On:** **22 February 2018**

Before: **EMPLOYMENT JUDGE CORRIGAN**

Representation
Claimant: Mrs K Quail, Claimant's wife
Respondent: Mr I Wheaton, Counsel

RESERVED JUDGMENT

1. The Claimant was constructively unfairly dismissed and is awarded compensation of £3,832 to be paid by the Respondent to the Claimant. This award consists of:

   Basic award £3,353 (£479 x7).

   Compensatory award £479

2. Recoupment does not apply to this award.

3. The Claimant was constructively wrongfully dismissed but no separate award is made.

4. The Respondent made an unauthorised deduction from the Claimant's final wages of £2445.51 and the Respondent is ordered to pay the Claimant £2445.51 subject to the appropriate deductions due to be made through PAYE.

REASONS

1. By his complaint dated 3 August 2017 the Claimant brings complaints of constructive unfair dismissal, wrongful dismissal and unlawful deduction of wages.

Issues

2. The issues were discussed at the outset with the parties.

3. The Respondent accepts that if the Claimant was constructively dismissed then it was both unfair and wrongful and the unlawful deduction of wages claim succeeds.

4. The issues in dispute were agreed to be:

   4.2 Did the Respondent act in the manner alleged on 27 January 2017?

   4.3 Did the Claimant resign his employment in response to that conduct on 27 January 2017? Alternatively did he resign because he found another job?

   4.4 Did the Respondent's conduct amount to conduct that without reasonable or proper cause was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee?

   4.5 If the Claimant was not dismissed, was the deduction from the Claimant's January pay authorised by the Claimant's written agreement?

   4.6 Was the written agreement signed under duress as alleged by the Claimant?

   4.7 If the deduction was not authorised how much should the Claimant been paid?

   4.8 Did the Respondent unreasonably breach the ACAS Code of Practice on disciplinary and grievance procedures? Should there be an uplift to the Claimant's awards to reflect this?

5. It was agreed with the parties that the dispute about tools would be resolved outside these proceedings if required.

6. The Respondent accepts that there were 1¼ days holiday outstanding. The Claimant has not brought a claim for unpaid holiday pay but this can be factored into consideration of what the appropriate deductions (if any) were.

Hearing

7. The Respondent's application dated 22 January 2018 to amend the response was granted.

8. The Claimant gave evidence on his own behalf and I also heard evidence on his behalf from Mr Daniel Mitchell (former employee of the Respondent).

9. On behalf of the Respondent I heard evidence from Mr John Green (Director). Mr Austin (Director) attended the hearing but did not give evidence.

10. Both parties had produced bundles for the hearing. The parties' representatives made oral submissions and both representatives had also prepared written submissions.

11. Based on the evidence heard and the documents before me I found the following facts.

The Facts

12. The Claimant worked for the Respondent as a Water Treatment Engineer from 22 August 2011.

13. The Claimant accepts that he signed the contract at pages 34-42 (Respondent's bundle). That states at paragraph 35:

    The Company reserves the right to deduct any outstanding monies you owe to the Company from your pay or on termination of employment from your final pay. This includes….the cost of any property that is not returned upon termination….

    Where you have entered into a training agreement with the Company, any outstanding costs detailed in the agreement will be deducted from your final pay."

14. The Claimant's contract also states that if the Claimant has a grievance he should set it out in writing and submit it to a Director. It directs him to the Employee Handbook for further details of the grievance procedure.

15. On 29 November 2011 the Claimant signed the agreement at page 45 that states that he agreed that his parking float of £30 or the balance less receipt values would be deducted from his wages if his employment was terminated or he left the company.

16. There was a meeting between the Claimant and Mr Green in March 2015 at which they discussed a plumbing course for the Claimant as confirmed by the letter at page 46. The letter confirms that the Respondent's work schedule could not accommodate the course during working hours. There is reference to the Claimant working at weekends to complete the course. There was no mention of a requirement for the Claimant to sign the training agreement.

17. The Claimant subsequently commenced a City & Guild course in July/August 2015 which cost £2083 plus VAT. This was paid for by the Respondent. He did not sign the training agreement at that time.

18. Mr Green says the Claimant knew he would have to sign a training agreement and that his Line Manager was responsible for getting his signature and it was left in his tray to sign. He says that when the Line Manager left it came to light the form had not been signed. He also says that the Respondent was not aware of when the course started. The Claimant says that the initial agreement was that the Respondent would pay for the course and he would do the work in his own time and there would be no requirement to sign a training agreement.

19. Both sides agree he was reluctant to sign the form. The form was discussed at a site visit from Mr Green in January 2016. Mr Green says he visited to remind the Claimant of his commitment to sign and that it was "unfair" of him to delay signing the agreement. The Claimant in his grievance appeal dated 5 March 2017 accepted he had been asked to sign the training agreement twice four months after his course started. He records there that he felt it unfair that Mr Green was trying to change the agreement. The site visit is recorded in a letter from Mr Green dated 25 January 2016 at page 52 which says "Please note I have decided despite our discussion on site to request that the enclosed form be signed for my own peace of mind."

20. I find that, whatever the Respondent's intentions, it was not made clear to the Claimant that he had to sign this agreement until around the time of the site visit in January 2016. This is consistent with the documentation. When he was asked the Claimant expressed his reluctance to sign in the site visit which is why Mr Green says in his letter that "despite our discussion" he had decided to request the form be signed for his peace of mind.

21. The Claimant's Representative pointed out that the letter does not state that the Claimant had known from the outset that he had to sign and that he had been asked to do so before. I find this absence, coupled with the language used in the letter, referring to a decision being made to request the form be signed after the discussion, supports the Claimant's account that he was only asked to sign the form in January 2016.

22. He eventually signed the agreement on 16 February 2016. He says he signed under threat of not being able to complete the course and losing his job. He says he was told to sign or the course would be cancelled. He relies on the fact that originally his exams were booked for 22-25 February 2016 but they were moved to April 2016. However he accepted in cross examination that they were moved to span a weekend and two work days rather than four work days and that it had nothing to do with the form. He relies on the fact that he was so upset as he felt forced into signing that he went to counselling that day. However he also says his GP had referred him to crisis counselling and issued him with a sick certificate from 8 February 2016 due to stress related to personal circumstances at that time. He also says he was in work that day despite his sick certificate as John Green had required him to attend work or lose his position. This was not put to Mr Green in cross examination but his representative did put to the Claimant that the possibility of losing his job was due to his absence. The Claimant, despite going to counselling that day, made no further objection to having signed the form.

23. I do not accept that he was threatened with losing his job if he did not sign the form. I do accept that there was discussion of his losing his position because of his absence. Nor were his exams rearranged because of a failure to sign the form.

24. I find that something did make the Claimant change his position and sign the form on 16 February 2016 and that he also spoke with John Green that day about his employment and his absence. In the three letters where the Claimant set out his allegation that he signed under duress only one refers directly to a discussion about cancelling the course if he did not sign (letter of 1 February 2017 pp64-65). In the other two letters he explains he signed under duress and when he was suffering from stress for various reasons, was officially signed off work and attending counselling (p99 and p106). I find that the Claimant felt vulnerable and under personal pressure at the time and, on the balance of probability, finally signed because he was told that otherwise he would not be able to complete the course.

25. The training agreement is at page 49 on 16 February 2016. This states:

    "…If you fail to complete the course or your employment with the Company is terminated for any reason either prior to the completion of the course, or within two years of the date of completion of the course, then 100 percent of all training costs are to be paid back in full by you.

    The Company reserves the right to deduct from your pay any money owed under this agreement, subject to the provisions of the Employment Rights Act 1996."

26. There is part for the employee's signature, signed by the Claimant where it also states: "I agree that any monies I owe to the Company under these terms may be deducted from my pay".

27. Other members of staff who were booked on similar courses around the same time also signed training agreements and have now left the Company but honoured their agreement to repay. This includes Mr Mitchell who has repaid £1500. He did sign his training agreement before the course began.

28. The Claimant signed other training agreements during his employment for much cheaper short courses. These were done in work time and the agreement signed before the course.

29. Both sides agree that 27 January 2017 was not the first time Mr Green had used swear language. The Claimant also uses swear language and accepts that swearing does take place in the work place. Both Mr Green and the Claimant have been known to lose their temper. The two have had disagreements before but they have always shaken hands and moved on.

30. On 27 January 2017 (Friday) the Claimant called into the office as a ball valve had broken whilst on a job. Mr Green, the Director, came onto the phone and the Claimant says he was angry about a previous job booked earlier the same day. The Claimant says Mr Green was aggressive and raised his voice. He says Mr Green ranted over him and told him to shut up and said "don't give me problems,

give me solutions". During the conversation Mr Green had referred to Mr Mitchell saying "tell that fucking idiot not to touch anything". The Claimant made the call in the presence of Mr Mitchell who confirms that he could hear Mr Green shouting at the Claimant on the call. He also confirms that the Claimant was trying to speak but was being shouted over. The call ended with the Claimant saying he would sort out the problems and report back to the office. Mr Green accepts he was angry with the Claimant on the phone due to a number of work issues. He says they had an argument and both were swearing. He also says the reason he was called onto the call was that the Claimant was ranting at the colleague who first took the call. However this was not supported by Mr Mitchell. I accept the Claimant's account as this is supported by Mr Mitchell's evidence.

31. When the Claimant attended the office he spoke with Mr Green in Mr Austin's presence. Mr Green was again talking aggressively about leaks and swearing at the Claimant. The Claimant says he asked him to stop swearing at him. He says Mr Green responded "it's my fucking company and I will swear at you if I want to". The Claimant walked away and Mr Green followed him and said "I'm fucking swearing at you now what are you going to fucking do about it". The Claimant then left the office.

32. Mr Green does not disagree that he raised his voice and was swearing. However he says they were both angry and arguing and swearing in the office. He says the Claimant is also volatile and was angry when he arrived. The Claimant accepted he was "incensed". Mr Green accepts he said the first line of the Claimant's account "it's my fucking company and I will swear at you if I want to" however he does not accept the Claimant asked him to stop. He says he did not say "I'm fucking swearing now what are you going to fucking do about it". He says he said "what are we going to do about this" with reference to the work issues. He believes it was an equal sided argument between two adults and made reference to the fact no female colleagues were present.

33. I accept that Mr Green said the words the Claimant ascribes to him. The Claimant first set his account in writing on the same day at 16.00 (page 62). He repeated the account in his resignation letter (page 78) and his appeal letter (pages 100-101). I find it is these two phrases that have particularly upset him. I accept that the Claimant asked Mr Green to stop and he continued. The phrases make sense in that context. He also told Mr Mitchell on 27 January itself that he had asked Mr Green to stop but he would not (paragraph 36 below). On the other hand the Respondent has not given an alternative account of what was said until cross examination.

34. The Claimant was not physically threatened and I do not accept that Mr Green was goading the Claimant to be physical toward him as the Claimant alleges. I agree with the Respondent's position that this was a leap in the Claimant's mind.

35. I also accept that the Claimant was also angry and raised his voice. The Claimant distinguishes this incident from previous disagreements on the basis that the swearing was aggressive and directed personally at him and Mr Green would not stop. I accept this to be the case. He considers Mr Green was abusing his position

and I accept Mr Green was asserting his position of authority when he said the words set out at paragraph 31.

36. The Claimant decided Mr Green's behaviour was such that he could no longer work for him. He called Lisa Leavers in the office and told her he was leaving and would leave the van with Daniel Mitchell and get a cab home. He then did leave the van with Mr Mitchell and left his keys and company phone. Mr Mitchell confirms that the Claimant was upset at how he had been treated by Mr Green and that was why he was leaving and leaving the van with him. He said the Claimant said Mr Green had been swearing and "having a go" at the Claimant. The Claimant had asked Mr Green to stop swearing and he wouldn't so the Claimant had left.

37. At 10.59 he received a call from Mr Green. The Claimant says Mr Green was still aggressive and saying the Claimant had to come to the office. He said there would be no pay or holiday pay. The Claimant said that he did not have to do anything for Mr Green any more yet Mr Green was still shouting and aggressive.

38. There were a number of other attempts to contact the Claimant but he did not pick up. Mr Green sent him the two texts on page 55 and 56 which are calm and measured in tone and were about formally resolving his employment. The Claimant sent an email in reply at 4pm (page 62) but the Respondent says this was not received.

39. On Monday 30 January 2017 the Claimant put his CV on Indeed website and began calling other water companies. The Claimant showed his digital phone bill during the hearing which showed the first call to Guardian Water (01268 number) was on the morning of 30 January 2017. Later the same day he received a call back from Guardian Water Treatment who offered him an interview the same day.

40. On the morning of 31 January 2017 the Claimant queried why he had not been paid by the Respondent. He was told the Respondent had written the letter at page 53 and it was on its way to him. This letter requested his letter of resignation and said all training agreement deductions would be taken from his final pay.

41. He was offered the job at Guardian Water Treatment on 31 January 2017 to start on 13 February 2017. There is an email in the bundle at page 148 sent on 31 January 2017 at 12:05 from Guardian Water to the Claimant which states:

    "Further to our recent discussion..we would like to make you a provisional offer for the role of Lead Engineer …We would like you to start on …13th February 2017".

42. Also on 31 January 2017 at 15:30 the Respondent received an email from Guardian Water Treatment stating the Claimant had " applied for employment …and is currently due to start with us on Monday 13 February 2017.."

43. The Claimant was not paid for January 2017.

44. The Claimant responded in writing on 1 February 2017 giving his account both of 27 January 2017 and the circumstances surrounding the training agreement dated

16 February 2016 (pages 63-65). He then sent his formal resignation on 4 February 2017. In it he said "I feel that I am left with no choice but to resign in light of recent events that happened on 27 January 2017. Due to your unwanted conduct and the arbitrary and capricious manner in which you acted, the goading using abusive language i.e."I'm fucking swearing at you now what are you fucking going to do about it? I fear had I not walked away from you and left site, this would have posed a risk of harm to my health" (pages77-78).

45. In the meantime the Claimant worked for an agency from 2-10 February 2017.

46. The Respondent treated the resignation letter as a grievance and invited the Claimant to a grievance meeting to discuss. The Respondent also said that there were no wages outstanding and the Claimant was in deficit. The letter listed amounts outstanding of £2,718.72 which included the City & Guild course and three much cheaper courses along with the £30 parking float. This exceeded the Claimant's final wages. The breakdown is at page 80 of the Respondent's bundle.

47. The Claimant requested the grievance be dealt with in writing. Mr Green responded in writing on 24 February 2017 setting out the Respondent's position (pages 91-95). In that response it was accepted Mr Green had been angry on 27 January 2017. He agreed voices had been raised but not that the Claimant had been physically threatened. He did not dispute the words the Claimant ascribed to him or set out an alternative account.

48. The Claimant appealed that decision on 9 March 2017 and asked that the appeal be dealt with by an impartial director. Again he requested the matter be dealt with in writing. The appeal was dealt with by Mr Austin, another Director. The appeal was not upheld. The outcome was sent to the Claimant on 12 April 2017. In relation to the events of 27 January 2017 Mr Austin stated: "despite raised voices on the day, at no time were you physically threatened ..which I can witness as I was present in the room".

49. The Claimant now earns more in his new employment.

50. During the course of the hearing the Respondent accepted the VAT element of the course fees could be reclaimed and so it would only be the balance to claim from the Claimant (£2083 not £2500)

51. The Claimant says there were alternative managers who could have looked at his grievance. He suggests a manager in the Scottish office or Lisa Leavers who is a Contracts Manager, though she is junior to Mr Green. He accepts the only other alternatives are Mr Green's wife who would not have been appropriate and Mr Austin who conducted the appeal.

52. The Claimant requested copies of the grievance procedures within his correspondence and it is clear from the correspondence that these were at some stage provided (for example the Claimant makes reference to them at p97).

53. The Claimant's gross pay was £2291.67 per month. His earnings are therefore above the statutory cap for a week's pay applicable to calculating the basic award, which at the relevant time was £479. His weekly net pay was £411.83. He agrees that his new job paid better than the Respondent and he started that on 13 February 2017. He earned £900 gross from 2-10 February 2017 which is also substantially more than he would have earned with the Respondent from 2 to 10 February 2017. My view is the Claimant effectively mitigated his losses straight away and this includes the three days without work and the travel costs he incurred in obtaining the alternative work and working for the agency.

Relevant law

Constructive dismissal

54. Section 95 of the Employment Rights Act 1996 states:

> **(1)For the purposes of this Part an employee is dismissed by his employer if . . ._**
>
> **. . .**
>
> **(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.**

55. The leading authority is *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221. For section 95 (c) to apply the following must be shown:

55.1 a repudiatory breach of contract by the employer (i.e. a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract and which entitles the employee to leave without notice);

55.2 the breach caused the resignation; and

55.3 the employee did not delay so long before resigning that he is regarded as having affirmed the contract and lost the right to treat himself as discharged.

56. There was an implied term in the Claimant's contract of employment as described in *Malik v Bank of Credit & Commerce International* [1997] IRLR 462 that the employer shall not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.

Unlawful deduction of wages

57. Section 13 Employment Rights Act 1996 states:

(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 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.

…

(6) …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.

58. The purpose of section 13(6) is to prevent pressure on the employee to agree to deductions (Discount Tobacco and Confectionary Ltd v Williamson 1993 ICR 371).

ACAS Code

59. Both unfair dismissal and unauthorised deductions from wages are jurisdictions listed in Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992 as applicable proceedings for the purpose of s207A.

60. S207A provides that if in applicable proceedings it appears to the Tribunal that the claim concerns a matter to which a relevant Code of Practice applies and the employer has unreasonably failed to comply with that Code then the Tribunal may, if it considers it just and equitable in all the circumstances, increase the award to the Claimant by 25%.

61. The introduction to the Code of Practice states that it is important to help employees understand what the procedures are and where they can be found. In relation to grievances it says that employees should raise the matter with a manager who is not the subject of the grievance. Employers should arrange for a formal meeting which employees should make every effort to attend. Decisions should be

communicated in writing and the employee should have a right to appeal. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case. The outcome should be communicated in writing.

Conclusions

Did the Respondent act in the manner alleged on 27 January 2017?

62. I have found that on the telephone on 27 January 2017 Mr Green was aggressive and shouted at the Claimant and shouted over him. When the Claimant attended the office he and Mr Green had an altercation in which both were angry and raised voices. Mr Green was angry at the Claimant in relation to a work incident. The Claimant did ask him to stop swearing at him. Mr Green did say "it's my fucking company and I will swear at you if I want to" and "I'm fucking swearing now what are you going to fucking do about it". I don't accept that the Claimant was physically threatened or that Mr Green was goading the Claimant into a physical response.

Did the Claimant resign his employment in response to that conduct on 27 January 2017? Alternatively did he resign because he found another job?

63. I accept that the Claimant resigned because of Mr Green's conduct on 27 January 2017. Although he did obtain work quickly I accept he only began looking after his resignation. I accept the Claimant's proposition that he would not have left in this way in order to start the new job as the offer was made on 31 January and the job was not due to start until 13 February. He would not have deliberately left himself potentially without work for over two weeks. I do not accept the Respondent's proposition that this was an elaborate engineered plan to claim constructive dismissal to be able to move into another job.

Did the Respondent's conduct amount to conduct that without reasonable or proper cause was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee?

64. The question is whether Mr Green's conduct was so serious that it was likely to seriously damage the mutual trust and confidence between employer and employee. Was it so serious that the Claimant could not be expected to tolerate it and was justified in regarding the contract as at an immediate end? Alternatively was it a lesser blow which the Claimant is expected to have absorbed?

65. In my view aggression, anger and swearing directed at an employee by a Director is normally unacceptable and not something an employee should be expected to tolerate. In my view it is irrelevant whether it has happened before and the employee has affirmed the contract by shaking hands and carrying on working. This is different to simply using swear language in the work place. It is likely to seriously damage the relationship of trust and confidence. An employee ought to be able to

have confidence they will be treated respectfully at work. Even if there is reason for the employer to wish to discuss issues such as errors and poor performance with the employee this does not provide reasonable or proper cause for speaking aggressively, with anger or swearing at the employee.

66. I agree with the Claimant that Mr Green was not only ignoring the Claimant's request that he stop but was inappropriately referencing his position of power and throwing his weight when he said "it's my fucking company and I will swear at you if I want to" and "I'm fucking swearing now what are you going to fucking do about it". This does suggest an intention not to be bound by the relationship of mutual trust and confidence. An employee acting in a similar way is likely to be considered to have committed gross misconduct.

67. That said the Respondent's Representative asks that I look at the context of both the past relationship and the Claimant's own behaviour and consider whether that affects my decision in respect of the seriousness of the behaviour. As already indicated above the fact that there had been previous altercations and making up does not alter my view. There may have been breaches by one or both in the past which were affirmed. That it was a workplace where swearing was common place also does not affect my view as the behaviour above was substantially more serious than simple use of swear words as it involved aggression, anger and swearing directed at the Claimant from the Director who was in a position of authority or power in respect of him.

68. Turning to the Claimant's own behaviour within the actual incident. I have accepted that he was also angry and raised his voice. There is a sense in which this was an altercation. However, I have found in favour of the Claimant that Mr Green commenced the altercation with the way he behaved on the phone, witnessed by Mr Mitchell. I also find he said the words attributed above, in response to the Claimant asking him to stop swearing at him, which were directed at the Claimant and asserted his position of power over the Claimant. The Respondent has not specified any particular conduct by the Claimant of commensurate seriousness. I find that out of the two Mr Green was the more aggressive and was in the position of authority. In any event the fact the Claimant could potentially be disciplined for his conduct does not prevent the Respondent's conduct being unacceptable and in breach of the term of mutual trust and confidence.

69. I do not find that the Claimant's conduct affects my view that the Respondent's conduct was likely to seriously undermine trust and confidence. Certainly I do not consider that the Claimant's conduct gives reasonable or proper cause for Mr Green's conduct.

70. It follows that I find the Claimant was constructively unfairly and wrongfully dismissed.

Did the Respondent unreasonably breach the ACAS Code of Practice on disciplinary and grievance procedures? Should there be an uplift to the Claimant's awards to reflect this?

71. The Respondent did not dispute that the grievance procedure applied and indeed the Respondent followed a grievance process in relation to the Claimant's complaints. This addressed both the incident on 27 January 2017 and the deductions from the Claimant's final pay. The Claimant has two complaints here. Firstly that he had to request a copy of the grievance procedures several times. Secondly, that Mr Green dealt with the grievance in the first instance rather than an independent manager.

72. The Code of Practice simply states that it is important that employees know where the grievance procedures are found. The Claimant's contract of employment did direct the Claimant to the location of the grievance procedures and he was provided with these during the process. It is not clear how he has been disadvantaged in this regard.

73. The Respondent did treat the Claimant's correspondence as a grievance and invited him to a meeting. Despite the Code saying employees should make every effort to attend the Claimant requested that the matter be addressed in writing. Mr Green did so. The Claimant was able to appeal and again was invited to a meeting which he declined to attend and requested to be addressed in writing. This was addressed by Mr Austin.

74. The Claimant himself accepts that the possible managers available are Mr Green, Mr Austin, Mr Green's wife, Lisa Leavers (Contracts Manager and junior to Mr Green) and a manager in the Scottish office. In fact the Code does not require an independent manager address the grievance. It merely states that the appeal should wherever possible be dealt with by a manager who has not otherwise been involved. The fact that Mr Green dealt with the grievance is not therefore a breach of the Code. However in any event the options available were limited. In the circumstances, including where the Claimant declined to attend meetings and requested the matter be addressed in writing, I do not consider the Respondent's approach unreasonable. The Respondent followed a reasonable grievance procedure in relation to both of the Claimant's complaints. I do not consider it just and equitable to increase the Claimant's award.

If the Claimant was not dismissed, was the deduction from the Claimant's January pay authorised by the Claimant's written agreement? Was the written agreement signed under duress as alleged by the Claimant?

75. The Respondent's Representative accepts that the training agreement alone can only be relied upon if signed prior to the training course.

76. However the Respondent's Representative asserts that as it is in the original contract the Respondent has authority to make the deduction. He argues that as the contract says "**Where you have entered into a training agreement with the Company, any outstanding costs detailed in the agreement will be deducted from your final pay"** this means that the training agreement post dating the commencement of the training, read with the contract, provides authorisation for the deduction.

77. S13(1) (a) provides that the deduction is authorised if it is authorised by the contract. I read this as meaning that the deduction must be authorised by the contract, without more. The contract does not say that all training costs can be deducted from final pay. It says that where there is a training agreement, outstanding costs can be deducted from final pay. It therefore does not authorise a deduction for training costs unless there is a training agreement. It is not on its own sufficient. Further agreement or consent from the worker is required to enable the deduction to be made.

78. Therefore in my view this is a case covered by s13(1) (b) read with s13(6). The Claimant needs to have signified his consent to this deduction before any conduct of the worker, or any other event occurring, on account of which the deduction is made.

79. The Claimant needs to have signed the training agreement before the training commenced, which he did not. Prior to the commencement of the training the deduction was not authorised by the contract nor had the Claimant signified his agreement. The point of this is to avoid the Claimant signing his agreement under pressure. The situation which arose in this case is precisely the situation the statute is seeking to avoid. The signature came too late.

If the deduction was not authorised how much should the Claimant been paid?

80. According to the letter at page 95 the Respondent deducted £1793.09 from the Claimant's final pay. I am treating this as £1793.09 towards the cost of the City & Guilds course.

81. The Claimant does not dispute the other training agreements were validly signed in advance of the other courses but the Respondent does not dispute that if the Claimant was constructively dismissed he does not need to repay these sums. I have not treated these as deducted but it is clear that the Respondent concedes they ought not to be recovered from the Claimant as I have found he was constructively unfairly dismissed.

82. The Claimant accepts that the £30 float should be returned to the Respondent but the Respondent accepts that there was 1 ¼ days holiday outstanding (not included in the Respondent's calculation of the final pay) so this more than covers for the float.

83. The Claimant received no pay for the month up to 27 January 2017. The Respondent has set out that he should have received £1793.09 net including a week in hand but excluding deductions for sickness (p95). The gross figure has not been provided. Awards are made gross and the Respondent should make the payment and the appropriate deductions for tax and National Insurance.

84. I have therefore calculated that he should have been paid £2080.13 gross, consisting of a month's pay of £2291.67 minus the deduction for sickness of £211.54 (page 141). He should also have been paid a week in hand. This has not been itemised but the principle is set out in the correspondence (p95). The

Claimant commenced employment at the weekly rate of £365.38 (based on the annual salary of £19,000). Therefore the gross figure owed for the period ending 27 January 2017 is £2445.51.

Unfair dismissal award

85. The Claimant's basic award is based on the week's pay at the statutory cap which at the relevant time was £479. The Claimant worked for 5 years and was 45 at the date of dismissal. His basic award is therefore £3,353 (£479 x7).

86. He is awarded a similar sum of £479 for loss of statutory rights. He otherwise fully mitigated his loss.

County Court proceedings

87. The Respondent is pursuing the balance that it was argued was owed by the Claimant in the County Court. The Respondent's representative accepted that those proceedings would not be necessary if the Claimant was unfairly dismissed and that these Tribunal proceedings would finally determine the issues between the parties. My having found the Claimant was unfairly dismissed should therefore be the end of the dispute between the parties, save that they are to resolve the matter of the tools between themselves

_____

Employment Judge Corrigan
27 April 2018