THE EMPLOYMENT TRIBUNALS

Claimant Mr A Marshall

Respondent JonSigns Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS ON 27th July 2018

EMPLOYMENT JUDGE GARNON (sitting alone)

For Claimant: Mr P Baxter Lay Representative
For Respondent: Mr J Cawthorn Director

JUDGMENT

The Judgment of the Tribunal is the claim of unlawful deduction of wages is well founded in part. I order the respondent to repay to the claimant £ 208.13

REASONS (bold print being mine for emphasis):

1 Relevant Law and Issues

1.1 The claim is of unlawful deduction of wages only. Part 2 of the Employment Rights Act 1996 (the Act) includes

13 (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.*

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

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

24 (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,*

25 (1) Where, in the case of any complaint under section 23(1)(a), a tribunal finds that, although neither of the conditions set out in section 13(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of section 24(a) be treated as reduced by the amount with respect to which that condition was satisfied.

1.2. The claimant gave one week's notice to leave on 14th March 2018 and worked his notice. On leaving he should have been paid for that week, a week in hand and some holiday a total of £850.13. The parties are in agreement on this and that the respondent deducted from the claimant's final wages the entire amount. The response form says its reason was " *the policy of the company is that if as a result of staff's carelessness, or negligence we(and /or our customers)suffer loss or damage to property this may render them liable to pay the full or part of the cost*."

1.3. More importantly the response says "*On commencement of employment all employees are given a Staff Induction with the Employees Workbook (which forms part of their Contract of Employment where they are talked through the book as part of their induction and key points may befall agreeing and signing they understand the induction and agreement to Authority to Make Deductions From Wages*."

1.4. There are statements in both the claim form and response form about health and safety practices and other matters which are completely irrelevant to the claim, and will not figure at all in my deliberations or these reasons.

1.5. The first issue may decide the whole case. It is whether, **assuming** the respondent's factual account is correct, the authority they say exists for making the deductions actually covers the deductions made. If it does not, the claim succeeds.The second issue arises only if it does cover the deductions and is whether as a matter of fact claimant's acts or omissions render him liable under the provisions of clause being invoked

2 The Facts

2.1. I heard the evidence of Mr Cawthorn first then the claimant and his one witness Mr Jonathon Arrowsmith. On the first issue Mr Cawthorn produced a document signed by the claimant headed Authority to Make Deductions from Wages. It is expressly stated to be a contractual term and a duplicate of one contained in the Employee Handbook One of the entries is

If as a result of your carelessness or negligence we (and/or our customers suffer loss or damage to property .. this will be construed as a serious breach of the rules

and where this is construed as particularly serious then this may render you liable to pay the full or part of the cost of repair … .. <u>If you fail to pay we reserve the right to deduct the costs from your pay.,</u>

2.2. The claimant says he was not given the Handbook or a copy of this form . It is witnessed on behalf of the company by the PA of Mr Cawthorn and dated 24 February 2017. Even if the claimant was not given a copy of his contract or the Handbook the above is expressly a term of his contract and its existence was notified in writing to him when he was handed the form to sign even if he did not retain the copy which I am satisfied he was given. It follows on the first issue I find in favour of the respondent.

2.3. As has recently been confirmed by the Court of Appeal an Employment Tribunal in a wages claim is entitled to construe a contract. There is some ambiguity in "the full or part of the cost" . Sometimes terms have to be implied into contracts to give effect to the presumed intention of the parties at the time the contract was made. If the company incurred costs as a result of actions of the claimant and another person, I am satisfied that had any body asked the parties at the time how that should be dealt with, both would have replied "*but of course the cost should be divided between the two people responsible.*"

2.4. The claimant says he did not cause the damage of which he was accused in two incidents where he, as the Sign Fitter , had "mates" working with him , Mr Arrowsmith and Stephen Little who themselves caused the damage.

2.5. The response form acknowledges there were two incidents one with a customer in Tewkesbury where the claimant's mate was Mr Arrowsmith. One of them drilled through a part of a new property damaging the customers roller shutter door on the other side of the component through which the drill was being inserted.. The respondent 's primary case is the claimant drilled through , but alternatively they say even if it was Mr Arrowsmith, the claimant should have been supervising him . I reject the claimant's argument was not possible to know there was a roller shutter on the other side of where the drill was inserted. As the lead fitter it was the claimant's job to look at such drawings as were available of the premises, one of which I saw today showing a roller shutter in place.

2.6. The respondent's belief it was the claimant who caused the damage is based partly on an email saying "I've drilled through slats on roller shutter." The email came from van 23 and the phone from which it was sent should only have been used by the claimant. Mr Arrowsmith says he sent it . As Mr Cawthorn points out Mr Arrowsmith is a good friend of the claimant and is taking the blame now because he himself having left the company Mr Cawthorn can recover no money from him . I am inclined to believe that Mr Arrowsmith was the one who had the drill in his hand, but the claimant was careless in the way that he allowed Mr Arrowsmith to drill in that area without taking adequate precautions to ensure that there was nothing behind the panel through which he was drilling which could be damaged.

2.7. The second incident was at a site near Edinburgh where the claimant and Mr Little carried out painting work in windy weather bespattering cars of two members of the public parked adjacent to the site. The customer as the site owner was liable to the members of the public and as the employer of the people who caused the damage the respondent was liable to them. Mr Little was dismissed over this and another incident. On this point I am satisfied the person doing the painting at the time

was Mr Little, but again the claimant was the person in charge on the site and should not have permitted painting to be undertaken in the prevailing weather conditions. I reject the claimant's argument the cars were bespattered when part of the building was spray-painted on another occasion.

2.8. I accept the damage in Tewkesbury meant the respondent had to reduce its bill to the customer by £614 and in Edinburgh the cost to it in getting the cars cleaned was £680. These were good customers of the respondent and despite Mr Baxter's criticism of the sums paid, it would be folly for the respondent to quibble with what appeared to be bona fide claims made by good customers.

2.9. On the basis I described above, I find the terms of the contract permitted the deduction from the claimant of half of each of the sums incurred i.e. £307 of the Tewkesbury costs and £ 344 of the Edinburgh costs . Applying section 25(1) £647 of the deduction from the final wages due of £855.13 was lawful . The balance was unlawful and therefore I order repayment of £208.13.

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T M Garnon EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 27th JULY 2018

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