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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr P Pickering

and

Respondent

Barradale Eggs Limited

Held at Ashford on 22 May 2019

Representation

Claimant:

In Person

Respondent:

Mr D Etheridge, Director

Employment Judge Kurrein

JUDGMENT

- 1 The Judgment dated 19 November 2018 is revoked.
- 2 The Respondent had made an unauthorised deduction from the Claimant's pay and is ordered to compensate him in the sum of £20.00.
- 3 The Respondent has failed to pay holiday pay and is ordered to compensate the Claimant in the sum of £193.09.
- 4 The Claimant's case alleging wrongful dismissal is not well founded and is dismissed.

REASONS

- 1 The Judgment of EJ Baron entered on 19 November 2018 should have been listed for reconsideration but the case was re-listed in error for a full merits hearing. AREJ P Davies gave me authority to deal with a reconsideration hearing pursuant to Rule 72(3) as EJ Baron has retired.
- 2 Both parties consented to that Judgment being revoked: the Claimant because it was not for enough, the Respondent because it was for too much.
- 3 I then offered the parties the opportunity to immediately have the case heard on its merits. Both consented to do so.
- 4 I heard the evidence of the Claimant and of Mr Etheridge and read the documents to which I was referred. I considered their submissions and make the following findings of fact.
- 5 The Claimant was employed by the Respondent on 3 February 2018 as a 7.5 tonne driver collecting and delivering eggs. He was paid £450.00 per week gross, £362.95 net.
- 6 The Claimant asked to borrow a van over the Easter weekend to move some possessions. There is a dispute as to whether Mr Etheridge knew this would involve a round-trip to Driffield. I concluded he did not, and would have refused

- permission had he known due to the risk of the vehicle not being easily recoverable from such a distance.
- 7 The Claimant had previously borrowed a van for a short trip of about 18 miles, and had put £10 of diesel fuel in it.
- 8 On this occasion, however, he used the Respondent's fuel card to spend £195.58 on diesel fuel, £20.42 on ad-blue and £5.26 on the dart charge. He did not have permission to use that fuel card at all for personal use. I accepted Mr Etheridge's evidence that he would not do so himself: it is not a business deductible and VAT cannot be reclaimed. The Claimant accepted he did not have permission and used it as he could not afford to pay for the fuel at the time.
- 9 Mr Etheridge dismissed the Claimant summarily. I have no doubt the Claimant's misuse of the fuel card was an offence of gross misconduct for which he was, and legally could be, dismissed without notice. His claim for notice pay is therefore not well founded and must be dismissed.
- 10 It is clear from the Claimant's email of 14 April 2018 that he consented to deductions in respect of the unauthorised expenses he had incurred. That does not apply to the £20.00 deducted for fuel for his earlier use of the van. I make an award in that sum in favour of the Claimant.
- 11 The Claimant was employed for two months so was entitled to 4.66 days holiday pay. He had been paid for Good Friday and Easter Monday so was owed 2.66 days pay at the date of his dismissal.
- 12 I calculate his net pay at £72.59 per day and make an award in his favour of £193.09.

Employment Judge Kurrein
22 May 2019