EMPLOYMENT TRIBUNALS

Claimant: Mr S Pope

Respondent: Redtronic Limited

HELD AT: Leeds **ON:** 31 May 2018

BEFORE: Employment Judge T R Smith

REPRESENTATION:

Claimant: In person
Respondent: Mr S Redfern, Director of the Respondent

JUDGMENT having been sent to the parties on 13 June 2018 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:

REASONS

1. The Tribunal heard oral evidence from the Claimant Mr Pope and also from a director of the Respondent, Mr Redfern.
2. The Tribunal had before it and marked "R1" a copy of a contract of employment. The Tribunal will refer to that document later in its Judgment.
3. The issue the Tribunal had to determine was:- did the Respondent make an unlawful deduction from the Claimant's wages on or about 3 November 2017.
4. The Claimant commenced employment with the Respondent on or about 13 June 2016.
5. The Claimant was employed by the Respondent as a quality and technical supervisor.
6. The Respondent is an electronics company.
7. The Claimant signed a document entitled contract of employment on 15 June 2016 having been given it, probably, on 14 June 2016.

8. The relevant section for the purpose of these proceedings is Clause 4.4(c) which reads as follows:-

> "The employer has the right to make deductions from any salary, wages or other payments owed to the employee. The circumstances in which such a deduction may be made include, but are not limited to, the following: …
>
> (c) where the employee is obliged to reimburse the employer in respect of payment or training, where the employee leaves the employer within a period of 12 months after the date of training".

9. The Respondent had cause to make enquiries as regards training subsidies available to it and discovered that it could receive a grant or allowance of 50% if a member of staff qualified as a IPC J standard 001. As the Tribunal understands matters this is an internationally recognised qualification relevant to the electronics industry. The qualification had value to both the Respondent and the Claimant.

10. There were discussions with the Claimant and the result of those discussions was the Claimant agreed to go on the IPC J standard 001 course.

11. The Claimant attended the course between 18 to 23 June 2017 which was facilitated by a company then known as Electronic Yorkshire Ltd. He obtained certification.

12. The Claimant was paid throughout the period of training.

13. In late October 2017 the Claimant resigned his employment.

14. Under the Claimant's contract of employment he was required to give four weeks notice to terminate his contract of employment.

15. The Claimant wished to leave his employment early and as it transpired started new employment on 6 November 2017.

16. In the intervening period there were discussions between the Claimant and the Respondent, the upshot of which was the Claimant left on the same day that he resigned and was placed on garden leave for some two weeks.

17. The Claimant's effective date of termination was 3 November 2017. There is no dispute that he was paid up to that date.

18. The dispute, however, relates to the deduction made from the Claimant's last pay of £987.50 which the Tribunal accepts is the cost incurred by the Respondent in the Claimant obtaining the appropriate IPC J standard 001 certification.

19. It is on the basis of the above facts that the Tribunal applied the relevant law.

20. The starting point is section 13 of the Employment Rights Act 1996 which provides as follows:-

> "*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 making of the deduction".*

21. Section 23 of the Employment Rights Act 1996 deals with complaints to a Tribunal. Section 23(1) states as follows:-

> *"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 …"*

22. There is no dispute that the Respondent made a deduction.

23. There is no dispute that the deduction was £987.50.

24. The dispute is whether the Respondent was entitled to make that deduction under section 13.

25. The Tribunal has carefully analysed paragraph 4.4(c) of the Claimant's contract of employment.

26. The opening words of 4.4(c) "where the employer is obliged" do not sit comfortably in the overall framework of the clause. However the Tribunal did note that 4.4(c) is qualified at the end by a reference to "where the employee leaves the employer within a period of 12 months after the date of training".

27. The sensible construction of this document therefore is that the reference to "obliged" means where the employee leaves within 12 months after the date of training.

28. The Tribunal is not required to look at the fairness or otherwise of matters. The Tribunal is required to apply the provisions of the law and the contract. It is not for the Tribunal to determine what a reasonable employer would do in this particular case. That said any substantial ambiguity in the clause should be construed against the Respondent.

29. There are some obvious matters in the drafting of the clause that would cause concern. For example one can see considerable unfairness if an employee undertook an expensive course and was then, through no fault of himself made compulsory redundant three months thereafter. Under the wording of the clause the whole sum would for the training would be repayable. That is not the situation here.

30. The Tribunal noted Mr Pope's representations that the employer only "has the right" and is not required to make a deduction and made the point that effectively there was a form of discretion. To some extent Mr Redfern accepted that, because he said, the Claimant had undertaken first aid training but no deduction had been made with that although the Claimant left within 12 months. He also said in evidence, which wasn't contradicted, this clause was applied to others, for example, fork lift truck drivers.

31. Having looked at all the evidence in its totality and having applied the law the Tribunal has come to the conclusion, with some regret, that the Respondent has not made an unauthorised deduction from wages. The Respondent is entitled to rely on clause 4.4(c). The Claimant agreed to go on the training course. He chose to leave his employment within 12 months. That therefore triggered the right for the employer to make the deduction. Many employers would not have made a full deduction and perhaps would have made a slight deduction or may not have made a deduction at all. That is not the issue for the Tribunal as it is already emphasised. This is not a question of reasonableness. It is a matter of

statutory interpretation and contractual interpretation. It cannot be said that if there was discretion under clause 4.4(c) that it was exercised capriciously.

32. It follows therefore in the Tribunal's judgment that the claim of unauthorised deduction from wages must be dismissed.

Employment Judge T R Smith

Date: 6/8/19