



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant:** Mr C Hall

**Respondent:** London General Transport Services Limited

Heard at: London South Tribunals  
On: 24 January 2019

Before: Employment Judge Freer

Representation

Claimant: In person

Respondent: Mr MacCabe, Counsel

## **REASONS FOR JUDGMENT**

1. These are the reasons for the judgment of the Tribunal that the Claimant's claim of unauthorised deductions from wages is unsuccessful. They are provided at the request of the Claimant.
2. The Claimant claims unauthorised deductions from wages. The Claimant gave evidence on his own behalf and Mr Sufyan Patel gave evidence for the Respondent.
3. The Tribunal received a bundle of documents comprising 135 pages.
4. Upon discussion at the outset of the hearing, the sum of money that the Claimant is pursuing should his claim be successful was agreed by the Respondent as £161.76.
5. The relevant law is contained in section 13 of the Employment Rights Act 1996:  
"Right not to suffer unauthorised deductions.  
  
(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.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract 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 variation took effect.

(6) For the purposes of this section 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.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer”.

6. The Background to the substantive issue is that the Claimant’s PSV licence was pending an annual renewal. The Claimant attended at a test centre for a review.
7. At the end of that process there was a document produced by Dr Hughes, at page 46 of the bundle, and that medical certificate deferred the Claimant’s driving. It said: “Cannot drive, await opticians report”.
8. The advice to the Optician is at page 47: “Before this person can be employed I would be grateful if you could investigate and treat as appropriate when they are fit for employment. Please let your patient know and they will make their own arrangement to be examined by a colleague or by myself”.

9. Mr Hall went to a branch of Specsavers for assessment and a document at page 48 was produced. That Optician was not a nominated optician for the purposes of the DVLA, or at least there is no evidence before me to confirm that they were.
10. As part of that Medical Assessment Report, Box 7 is ticked 'Yes': that box states "Is there a history of any medical condition that may affect the applicant's binocular field of vision, central and/or peripheral?". Box 10: "Does the applicant have any other ophthalmic condition?" is left unchecked whether 'yes' or 'no'. In the details of additional information, the form confirms accurately that the Claimant was having a check at Moorfields hospital in April.
11. As a consequence of that document Dr Iqbal, on behalf of the Respondent's Occupational Health team, produced a document at page 49, again a medical certificate where under the heading 'pass, deferred or failed' it is marked deferred. It says: "Opticians report visual field defect. DVLA is likely to investigate this further. Remains unfit for driving duties but available for non-driving alternatives". So at that stage the Claimant was medically told that he was not fit to drive.
12. Clause 7.2 of the Claimant's Contract of Employment under 'Absence' requires a MED3 from the Claimant's GP. Mr Hall did not produce that initially, but once difficulty with his pay arose he provided a MED 3, which is at page 73 of the bundle.
13. On the 13 February the Claimant received a letter from the DVLA, which is at page 54 of the bundle, with regard to their medical enquires into his fitness to work requesting him to take time to read the letter and complete the enclosed medical questionnaire, which Mr Hall subsequently did.
14. Mr Hall eventually saw a nominated optician. The report was delayed but it was eventually produced and sent to the DVLA who subsequently issued the Claimant's licence.
15. It should be noted for completeness that the Claimant's original annual licence expired on 24 February 2018.
16. The claimant makes two arguments, the first being that during the active period of his licence to 24 February 2018 he was in fact fit to drive as subsequently found by the DVLA so his pay should have been retrospectively restored to full pay on the basis that the DVLA did eventually confirm his fitness and grant his licence.
17. The second argument is that the period post termination of his licence from 24 February 2018 onwards should have fallen under section 88 of the Road Traffic Act 1988 (the details of that are at page 62 of the bundle) which he argued applied in his circumstances, that he should have been assessed as fit to drive while DVLA completed its medical investigation and therefore again his pay should have been restored once the DVLA confirmed his fitness to drive.

18. With regard to the first argument, it is my conclusion that Dr Iqbal was quite right to have concerns on behalf of himself and the Respondent. My understanding is that Mr Hall accepts that position. It is my conclusion that the procedure adopted by Dr Iqbal and the Respondent was reasonable in the circumstances. It was a process that followed the correct procedure under the Claimant's contract of employment and on that basis the pay made to Mr Hall was properly payable under the company sick pay scheme and that the deduction from the Claimant's normal pay fulfils all the requirements of section 13 of the Employment Rights Act 1996 that makes provision for the right not to suffer an unauthorised deduction from wages. They were sums properly payable on that occasion.
19. With regard to the second point, looking at page 62 which is Guidance on "Can I drive while my application is with DVLA?" it states: "To continue driving under section 88 you must meet *all* of the following criteria: Your doctor must have told you that you are fit to drive. . . .". There has been no medical advice put before me and I do not understand any to have existed at that time, to demonstrate that a doctor had told the Claimant that he was fit to drive prior to the DVLA restoration of his licence. Indeed it is my understanding that the Claimant has not approached any medic to confirm that position. Therefore in my conclusion there is no error contained in Dr Iqbal's advice or the Respondent not allowing the Claimant to drive pending DVLA fitness to drive confirmation. Again, the terms of the Claimant's contract of employment applies and the company sick pay and the method of payments made in the circumstances were both reasonable amounted to the sums properly payable on that occasion under the provisions of section 13.
20. Therefore it is my judgment that the Claimant's claim of unauthorised deductions from wages is unsuccessful.

Employment Judge Freer  
Date: 14 August 2019