



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr H Suffield

v

**Respondent**

BDO Services Limited

**Heard at:** Norwich

**On:** 23 August 2019

**Before:** Employment Judge Postle

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Miss Ashiru, Counsel

**JUDGMENT** having been sent to the parties on 20 September 2019 and written reasons having been requested on 24 September 2019 in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, Employment Judge Postle having seen the application on 16 October 2019, the following reasons are provided:

## REASONS

1. This is an application by the Claimant that he suffered an unlawful deduction of wages in the sum of £1,247.22 on 31 July 2018. This alleged deduction arises out of the training costs incurred by the Respondent on behalf of the Claimant.
2. The Respondents accept they deducted the sum of £1,247.22 from the Claimant's wages on 31 July 2018. The Respondent's position is that those deductions were made in accordance with the written terms of the Claimant's Contract of Employment and signed by the Claimant on 18 July 2017, together with a Study Fee Agreement also signed by the Claimant on 8 September 2017.
3. In this Tribunal we heard evidence from the Respondents through Miss Stacey Bain the Senior Employment Relations Manager for the Respondent's, she gave her evidence through a prepared witness statement.
4. The Claimant gave evidence orally as he had not prepared a written witness statement.

5. The Tribunal also had the benefit of a bundle of documents consisting of 125 pages.

### **The Findings of Fact**

6. The Claimant was employed by the Respondent as an Audit Trainee at the Respondent's Norwich office from 8 September 2017 to 20 July 2018. On 18 July 2017, the Claimant signed his Contract of Employment (pages 28 – 38). Clause 2.7 of the Employment Contract authorises the Respondent to deduct from the Claimant any sums due from him to the Respondent including any over payment or loan made to him by the Respondent.
7. Together with the Employment Contract there was a copy of a Statement of Terms and Conditions for Employment for his qualification (the training agreement, pages 39 – 43) and a Study Fee Agreement (Study Fee Agreement page 44). Clause 6 of the Employment Contract states that the Training Contract explained that the study and exam support the Respondent undertook to give to the Claimant and what was expected from him in return.
8. The Training agreement clearly states at Clause 1 that it governs the approved training to be provided to the Claimant by the Respondent for the purposes of equipping the Claimant with the technical knowledge, work experience, professional skills and attitudes necessary for the Institute of Chartered Accountants for England and Wales membership. Clause 4e of the Training agreement required the Claimant to sign up and complete the relevant Apprenticeship Standard, including relevant sign up paperwork as and when required by the Respondent. Other than this there is no other reference made in the contractual documents to the Claimant being engaged under approved Apprenticeship Standard or otherwise suggesting that the Standard applied to the Claimant at the point he entered in to those documents and signed them.
9. Clause 9 of the Training agreement lists the costs the Respondents would cover. The fourth paragraph at Clause 10 of the Training agreement states quite clearly that if the Claimant voluntarily leaves the Respondent before completing his examinations, or within 12 months of completing the examinations, the Claimant would be liable to repay some of his study costs to the Respondent. The exact details are set out in a separate agreement.
10. The Study Fee Agreement also states that in consideration of the agreement by the Respondent to pay his study costs for the ICAEW qualification, in the event that the Claimant voluntarily left the Respondent either during or after the completion of his studies, then the Claimant would repay to the Respondent the direct study costs incurred by the Respondent for exams / assessments he sat within the previous 12 months and study related costs paid within the previous 12 months. That document sets out what direct study costs and study related costs include. By signing the document, the Claimant therefore agreed that once he had been informed of the costs, the Respondent may deduct those costs as a

lump sum from his final salary and further that should his final salary not be sufficient to recover the costs fully, he would repay to the Respondents any excess by cheque within 28 days of leaving (page 44).

11. On 8 September 2017, the Claimant's first day of employment, he attended a session conducted by the Respondent's Professional Qualifications Senior Manager, in which the terms of his Training agreement and Study Fee Agreement were explained in detail to him. The Claimant duly signed the Contract and Study Fee Agreement following that session.
12. During the recruitment process and following the commencement of the Claimant's employment, the Respondent informed the Claimant that the intention was that all September 2017 intake graduate trainees would be asked to apply for the Level 7 Accounting Apprenticeship Standard once it was approved. Pending approval of the Standard, the entire September 2017 graduate trainee intake studied and sat the first two exams outside the apprenticeship scheme.
13. The Level 7 Accounting Apprenticeship Standard was approved on 1 November 2017 and the Claimant, in conjunction with the Respondent's external training provider was requested to apply for acceptance onto the approved Apprenticeship Standard on 5 April 2018. However, on 25 April 2018 the Respondent was informed that the Claimant did not meet the eligibility criteria set by the Government for the Level 7 Apprenticeship Standard (page 67), specifically, the Respondent understands that the rules do not allow for an individual to undertake a Level 7 apprenticeship if they hold an equivalent Level 7 (Masters) qualification. As the Claimant held a Master's degree in Finance, he was therefore ineligible to complete the Level 7 Accounting Apprenticeship.
14. Therefore, at no point was an approved Apprenticeship Standard applicable to the Claimant's employment with the Respondent. Accordingly, the Education and Skills Funding Agency Apprenticeship Funding Rules and Guidance for Levy Paying Employers were not applicable to the Claimant.
15. The Respondent nevertheless continued to cover the Claimant's training costs for the ACA exams he completed in accordance with the terms of his Contract of Employment Training Contract and Study Fee Agreement.
16. The Claimant resigned on 22 June 2018 and his last working day was 20 July 2018.
17. On 6 July 2018, the Respondent emailed the Claimant informing him that under the terms of his Study Fee Agreement he was required to repay to the Respondents the study costs incurred by the Respondents within the previous 12 months to the value of £5,978.58.
18. In accordance with the Study Fee Agreement, on 31 July 2018, the Respondents deducted the full amount of the Claimant's final salary of £1,247.22. This left an outstanding debt owed by the Claimant to the Respondent of £2,638.86. Under the terms of the Study Fee Agreement

the Claimant was due to repay the outstanding debt to the Respondent by cheque within 28 days of the ending of his employment. Apparently, as at the date of the hearing the Claimant has failed to do so.

19. The Claimant bases his whole argument on the fact it is obvious he is eligible for the apprenticeship scheme notwithstanding the Respondent training provider confirming by email on 25 April 2018 that the Claimant was ineligible because of his MSC in Finance prohibiting eligibility to the Apprenticeship Funding Scheme.

## **Conclusions**

20. The Tribunal concludes it is clear that there has not been an unlawful deduction of wages and no breach of contract. Section 13 of the Employment Rights Act 1996 makes it clear:
  - (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.
21. It is clear there was a relevant provision in the Claimant's contract for the deduction, particularly Clause 2.7 (page 28).
22. The Training Agreement (page 44) also makes it clear that in the event of the Claimant voluntarily leaving the Respondent during or after completion of the studying, the Claimant agrees to repay to the firm direct study costs incurred by the firm for exams and / or assessments sat within the previous 12 months and for study related costs and then it sets out exactly those and confirmation that the Claimant agreed once he has been informed of the costs, which he was, the firm may deduct these costs as a lump sum from his final salary. This is what happened and clearly the Training Agreement falls clearly within the statute Section 13(1)(a) and (b).
23. The question of whether the Claimant was eligible for an Apprenticeship and thus exemption from fees, it is for the Claimant to complete the application and the training provider of the Respondent confirmed by email of 25 April 2018, that the Claimant did not qualify for an exemption because of his MSC qualification in Finance being the same level as the Apprenticeship which meant the Claimant was not eligible for exemption from fees. That was a matter decided by the Respondents' training provider. The eligibility for the scheme is clearly not a matter for the Respondents, quite simply the Claimant did not fall within the ambit of the scheme because of his previous MSC in Finance.

24. In the circumstances, the deductions made by the Respondents in the Claimant's last salary were therefore lawful under the Employment Rights Act 1996. The Claimant's signature to the Training Contract and Training Agreement clearly allows for such deductions.

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Employment Judge Postle

19 November 2019

Date: .....

Judgment sent to the parties on

19 November 2019

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For the Tribunal office