



EMPLOYMENT TRIBUNALS

Claimant(s): Miss I Fletcher & others (see attached schedule)
Respondent(s): Voltz Group UK Ltd

Heard at: North Shields Employment Tribunal
Before: Employment Judge Deeley
On: 30 September and 18 November 2019

Representation
Claimants: Mr Stephen Sheehan (claimant)
Respondent: Miss Gail Mawston (Managing Director, respondent)

RESERVED JUDGMENT

1. The claimants' claims for unauthorised deductions from wages succeed. The Tribunal declares that the claimants suffered the deductions set out in the Schedule and shall be awarded the amounts set out in the attached schedule (the **Schedule**).
2. The claimants' claims for breach of contract (wrongful dismissal) succeed. The claimants are awarded the amounts set out in the Schedule.
3. Mr Sheehan's claim for reimbursement of expenses succeeds and he is awarded the amount set out in the Schedule.

REASONS

Background

4. The eight claimants to this claim were employed by the respondent, whose business involved the sale of energy supply contracts to customers. The respondent's business was set up in early 2019 and Miss Gail Mawston is its sole statutory director. A former director (Lisa Milner), resigned from her directorship in March 2019. Miss Mawston is also employed by the respondent as its Managing Director.
5. Miss Mawston and Mr Stephen Sheehan had previously worked together for a competitor (Utilitywise) and were friends outside of work. Miss Mawston spoke with Mr Sheehan about her plans for the business before appointing him as the respondent's Operations Manager with effect from 1 February 2019. Mr Sheehan was involved with the recruitment of other staff, including Mrs Lisa Sheehan (Mr

Sheehan's wife) and the other claimants. All of the claimants, other than Mr Sheehan, were employed with effect from 1 March 2019.

6. The claimants were paid their salaries monthly. None of the claimants have a signed contract of employment, although draft copies of Mr Sheehan's and Mrs Rae's contracts were provided to them. Some of the claimants had seen a draft template contract of employment that was prepared by a firm of solicitors on behalf of the respondent.
7. The respondent ran into financial difficulties in May 2019 and did not pay any wages to the claimants during that month. The respondent initially promised to pay the claimants their wages within a week of their normal payroll date.
8. Mr John Rae, the husband of one of the claimants (Mrs Melanie Rae), offered a loan of £3000 to enable staff who were suffering from severe financial difficulties to meet their bills in early June 2019. There is a dispute about the structure of that loan which is addressed as part of the findings of fact set out below. However, it is not disputed that three of the claimants benefitted from the loan: Mrs Finnegan, Mr Smith and Miss Lowry.
9. The claimants had still not received their May 2019 wages from the respondent by early June and decided to resign. Their employment terminated on the following dates:
 - 9.1 Miss Sophie Lowry - 31 May 2019;
 - 9.2 Mr James Smith – 11 June 2019;
 - 9.3 all other claimants - 17 June 2019.
10. The claimants did not receive any wages for May or June 2019 and did not receive any notice pay.

Tribunal proceedings

11. This matter was originally listed for three hours on 30 September 2019. The hearing continued for the rest of that day and was relisted for a further one day hearing on 18 November 2019.
12. The parties provided a joint file of documents which I considered during their evidence together with additional documents produced by the parties and added into the bundle. Each of the claimants and Miss Mawston gave witness evidence.
13. The respondent conceded at the outset of the hearing that some deductions from the claimants' wages had been made in May and June 2019, due to the respondent's cashflow difficulties.

Claims

14. The claimants' claims are for:
 - 14.1 unlawful deduction from wages under Part II of the Employment Rights Act 1996 (the **ERA**); and
 - 14.2 claims for breach of contract under s3 of the Employment Tribunals Act (and subject to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994), namely:
 - 14.2.1 wrongful dismissal (all claimants); and
 - 14.2.2 reimbursement of expenses (Mr Sheehan only).

Issues

15. During the proceedings, the claimants and the respondent agreed the payments should be made by the respondent to the claimants in respect of the majority of the deductions made by the respondent from the claimants' wages. In particular, Miss Mawston conceded on behalf of the respondent that all of the claimants were due payments in relation to:
- 15.1 their May and June wages;
 - 15.2 one week's notice pay (except for Miss Lowry and Mr Smith, whose employment terminated with immediate effect on their resignations); and
 - 15.3 any accrued holiday;
- less any amounts relating to days of sickness absence or any holiday that had been taken or not accrued as at the termination date.
16. In addition, Miss Mawston conceded that Mr Sheehan and Mrs Sheehan were owed sums relating to the bank charges that they incurred because they were not paid during this time.
17. After discussions with both parties, it was agreed that the remaining points in dispute for the Tribunal to decide related to:
- 17.1 Miss Fletcher's claim for commission payments;
 - 17.2 part of Mr Sheehan's claim for expenses; and
 - 17.3 the status of the loan made by Mr Rae, the proceeds of which were divided between Mrs Finnegan, Mr Smith and Miss Fletcher (the **Loan Payments**).

Questions for the Tribunal to determine

18. The questions for the Tribunal to determine in relation to the claimants' claims for unlawful deductions from wages were as set out below.
19. *Commission – Miss Fletcher only*
- 19.1 Was Miss Fletcher entitled to receive a commission payment in relation to any contracts which were signed during May and June 2019?
 - 19.2 If so, what amount should Miss Fletcher have received?
20. *Expenses – Mr Sheehan only*
- 20.1 Was Mr Sheehan entitled to be reimbursed in respect of any expenses claims incurred during his employment with the respondent?
 - 20.2 If so, for what amount should Mr Sheehan be reimbursed?
21. *Loan Payments – Mrs Finnegan, Mr Smith and Miss Fletcher only*
- 21.1 To whom was the loan from Mr Rae made – i.e. was it made to:
 - 21.1.1 the respondent; or
 - 21.1.2 Mrs Finnegan, Mr Smith and Miss Fletcher?
 - 21.2 If the loan was made to the respondent, should the Loan Payments be offset against any deductions from the wages of Mrs Finnegan, Mr Smith and Miss Fletcher by the respondent in May and June 2019?
 - 21.3 If so, what amount should be offset?

Relevant law

22. Section 13 of the Employment Rights Act 1996 (**ERA**) states as follows:

- (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 or not 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 occasion.*

- (3) *Where the total amount of wages paid on any occasion by an employer 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.”*

23. Section 23 of the ERA states as follows:

- (1) *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...*

24. Section 24 of the ERA states as follows:

- (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...*

- (2) *Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*

25. The following caselaw is relevant in relation to Miss Fletcher’s claim for commission. Miss Fletcher has brought this claim as part of her claim for unlawful deductions from wages. The EAT held in *Asif v Key People Ltd* EAT 0264/07 that s13(3) of the ERA emphasises that this is a claim for wages that are payable on a particular occasion. As a result, a claim for wages cannot be overturned on the basis that an employee was in breach of her contract at the relevant time.

Findings of fact

Loan terms

26. It is common ground that:

26.1 Mr Rae offered a loan of £3000 to enable staff who were suffering from severe financial difficulties to meet their bills shortly after the respondent's May payroll date;

26.2 Mr Rae paid the £3000 to Mr Sheehan's personal bank account; and

26.3 the proceeds from that loan were transferred from Mr Sheehan's personal bank account to three of the claimants: Mrs Finnegan, Mr Smith and Miss Lowry (whom I have collectively defined above as the **Loan Recipients**).

27. There was a dispute regarding whether the loan was:

27.1 a personal loan from Mr Rae to each of the Loan Recipients, as submitted by the claimants; or

27.2 whether it was a loan from Mr Rae to the respondent, as submitted by the respondent.

28. I prefer that the claimants' evidence that the loan was a personal loan made to the Loan Recipients, rather than to the respondent, because:

28.1 the loan monies were transferred from Mr Rae's bank account to Mr Sheehan's personal bank account, rather than to the respondent's bank account;

28.2 Mr Sheehan then transferred part of the loan monies to each of the Loan Recipients without Miss Mawston's involvement. I accept Miss Mawston's evidence that Mrs Sheehan called her about the loan before the loan monies were distributed. However, it is common ground that Miss Mawston did not speak to Mr Rae regarding the loan at that time and that she was not involved in the distribution of the loan monies to the Loan Recipients;

28.3 the loan was not paid to the Loan Recipients via the respondent's payroll – when I questioned Miss Mawston on this point, she said that it did not occur to her that the monies should have been paid via payroll; and

28.4 Miss Mawston's note to Mr Rae regarding the loan dated 18 June 2019 was entered into around two weeks after the loan was made. It is common ground that the Loan Recipients had not been paid their wages by the respondent and were unable to repay Mr Rae at that point in time. I accept the claimants' evidence that Mr Rae approached Miss Mawston for this note because Mr Rae was concerned that the loan would not be repaid.

Commission

29. It is common ground that the respondent's sales staff, including Miss Izzy Fletcher, participated in a commission scheme during their employment. Under that scheme, commission was payable upon securing new customer contracts. There was no official commission scheme document, although a table containing sales and commission targets was provided to Miss Fletcher. Twenty percent of the commission amount was payable on the normal payroll date for the month after a customer signed a contract. The remaining commission was payable on the normal payroll date for the month after the energy supply to the customer commenced.

30. Miss Fletcher did not receive any commission pay for May 2019, although it was agreed that she had met her target for May 2019. It was common ground that the amount of Miss Fletcher's commission was £800 for May 2019, based on the information provided in the hearing file.

31. It is also common ground that there were no express terms of the commission scheme (whether written or otherwise) entitling the respondent to refuse to pay commission to any sales staff on termination of employment.

31.1 The respondent disputed that Miss Fletcher was entitled to receive any commission pay for May 2019. I prefer the evidence of Miss Fletcher and Mr Sheehan regarding the commission scheme terms. I find that:

31.2 the commission scheme formed part of Miss Fletcher's contract of employment, once performance of the scheme had commenced, and that the terms of the scheme could not be amended unilaterally by the respondent;

31.3 the respondent did not provide sufficient evidence to support their contention that:

31.3.1 the standard industry practice in this type of business was that the respondent had a discretion not to pay commission following termination of employment; and

31.3.2 that any such term should be incorporated into the scheme.

In particular, Miss Fletcher and Mr Sheehan gave evidence that they were not aware of any such term of the scheme and that industry practice varied from company to company.

32. I find that the relevant events at the time of Miss Fletcher's resignation were as follows:

32.1 Miss Fletcher resigned from her employment with the respondent with effect from 17 June 2019 because the respondent failed to pay her in May 2019 and she could not meet her daughter's nursery fees and other living costs;

32.2 she cancelled a signed contract with Torpoint Council on 17 June 2019 because of changes within the Council's own structure (it was changing to become a Borough Council);

32.3 she sold a contract with Torpoint Council on behalf of her new employer around a month after she left the respondent because her contact at the Council wished for her to continue to handle their account;

32.4 the total value of the contract with Torpoint Council was £10,000 because this agreement related to the supply of electricity to a small library with one electric meter;

32.5 she had set up an auto-forward for her emails to enable her to work from home around domestic commitments during May 2019 and was unable to remove the auto-forward after she left the respondent; and

32.6 she accessed the respondent's CRM systems in August 2019 in order to obtain information to prove her claim for commission, although she admitted that she should not have done that.

33. The key reasons why I prefer the claimants' evidence on this point include:

- 33.1 Miss Fletcher’s evidence is consistent with the email extract dated 17 June 2019 provided by the respondent, which refers to a single contract being rejected and resold;
- 33.2 the screenshot regarding the email auto-forward provided by the respondent suggests that the emails were forwarded to Miss Fletcher’s account, but not read by her; and
- 33.3 Miss Mawston alleged that Miss Fletcher caused at least £11,777.13 of loss to the respondent, but the respondent did not provide any documentary evidence regarding any other alleged breaches by Miss Fletcher other than the evidence relating to the Torpoint Council contract.

Expenses

34. It was common ground that Mr Sheehan incurred expenses relating to the business, which he did not claim during his employment with the respondent. It is also common ground that Mr Sheehan updated Miss Mawston as to the approximate amount of the expenses that he incurred, but that he did not provide her with receipts and/or claim expenses even though she told him he should do so.
35. The respondent does not have a written expenses policy. Mr Sheehan did not enter into a contract of employment with the respondent. However, Miss Mawston did provide Mr Sheehan with a draft contract of employment, clause 8 of which states:
“8.1 The Company shall reimburse (or procure the reimbursement of) all reasonable expenses wholly, properly and necessarily incurred by you in the course of the Appointment, subject to production of VAT receipts or other appropriate evidence of payment.”
36. It is common ground that Mr Sheehan was entitled to reimbursement of reasonable expenses related to his employment, on production of VAT receipts or other appropriate evidence. I therefore find that there was an implied term in Mr Sheehan’s contract that he was entitled to reimbursement of reasonable expenses incurred in the course of his employment upon production of VAT receipts or other appropriate evidence, because he did not enter into any written contractual terms.
37. However, the amount of expenses claimed by Mr Sheehan is in dispute. Mr Sheehan had not kept any log of his expenses during his employment. He was unable to provide a total figure for the amount of expenses that he was seeking to claim, stating that it changed every time he attempted to add up the receipts in the hearing file.
38. Mr Sheehan admitted during his evidence that some of the receipts should not have been included in his claim (e.g. a receipt from 2018, a petrol receipt and a duplicated receipt). Miss Mawston also admitted that some of the expenses were incurred by Mr Sheehan in the course of his employment and should be reimbursed.
39. I have made the findings set out in the table below relating to the categories of Mr Sheehan’s expenses claims:

Expense type	Reasons for accepting or rejecting category of expenses claimed by Mr Sheehan	Amount of any accepted expenses
Expenses accepted by respondent	Accepted – Miss Mawston accepted that Mr Sheehan should be reimbursed for expenses, including meeting room hire at the Village Hotel, day time	£306.81

Expense type	Reasons for accepting or rejecting category of expenses claimed by Mr Sheehan	Amount of any accepted expenses
	coffees and food at the Holiday Inn and Marriott hotels, stationery and other goods for use in the office.	
Day time coffees	Accepted – I prefer Mr Sheehan’s evidence that he took business contacts and staff for coffees due to the lack of appropriate meeting space in the respondent’s office.	£21.50
Other day time drinks and evening events (all staff)	Rejected – I prefer Miss Mawston’s evidence that she did not sanction expenses to be claimed for staff on nights out, save for any drinks or food that she paid for herself. I accept Mr Sheehan’s evidence that Miss Mawston told him that he should treat the staff to improve morale. However, I do not accept that this gave him open ended permission to incur expenses for staff ‘nights out’.	n/a
Other day time drinks and evening events (Miss Mawston, Mr Sheehan and Mrs Sheehan)	Rejected - I prefer Miss Mawston’s evidence that her ‘nights out’ with Mr and Mrs Sheehan were social occasions and were not in the course of their employment with the respondent.	n/a
Parking fine on 31 January 2019	Rejected – I find it implausible that Miss Mawston would have offered that the company would pay this fine, given that Mr Sheehan had not yet commenced employment.	n/a
Parking charge – Vermont Hotel	Rejected – it is common ground that Miss Mawston had paid for a night at the Vermont Hotel for Mr and Mrs Sheehan as a ‘thank you’ for their support to the respondent. However, I find it implausible that this would extend to any parking costs incurred.	n/a
Total		£328.31

Application of the law to the facts

Loan terms – Mrs Finnegan, Mr Smith and Miss Lowry

40. My findings of fact are that the loan from Mr Rae to the Loan Recipients was a personal loan. As a result, the Loan Recipients will be awarded the full amount of any deductions made in respect of their May and June 2019 wages.

41. The reason for my decision is that the respondent has not paid any monies to the Loan Recipients that should be offset against the deductions that the respondent made from their wages in May and June 2019, as set out in my findings of fact.

Commission – Miss Fletcher

42. Miss Fletcher is entitled to her commission for May 2019 for the following key reasons:

- 42.1 I have found that the respondent was not entitled to refuse to pay the commission following her resignation because there was no express or implied term of the commission scheme that entitled the respondent to do so; and
- 42.2 I have also found that Miss Fletcher was not in breach of her employment terms as at the date that her commission was payable (i.e. on or around the respondent's normal June payroll date). In particular:
- 42.2.1 she resigned with notice;
 - 42.2.2 her actions relating to the Torpoint Council contract were not in breach of any implied duties of her employment with the respondent; and
 - 42.2.3 the respondent failed to provide evidence of any other alleged breaches, other than Miss Fletcher's access to the CRM systems in August 2019. This breach took place over a month after the respondent's normal June payroll date and cannot be taken into account when considering Miss Fletcher's claim for unlawful deductions from wages.

Expenses – Mr Sheehan

43. Mr Sheehan is entitled to the expenses set out in the table above because I have found that he has an implied term in his contract of employment, entitling him to repayment of reasonable expenses upon production of appropriate VAT receipts.
44. However, I have decided that Mr Sheehan is not entitled to the other expenses that he has claimed because I have found that:
- 44.1 the other expenses that he claimed were not related to his employment with the respondent; and
 - 44.2 in the alternative, if they were related to his employment, they did not amount to 'reasonable expenses' due to the nature of the expenses and the amounts incurred.

Conclusions

45. In conclusion, the respondent has agreed that:
- 45.1 it has made unlawful deductions from the wages of all of the claimants, by failing to pay their salaries for May and June 2019;
 - 45.2 it shall reimburse Mr Sheehan and Mrs Sheehan for the bank charges that they have incurred as a result of the respondent's failure to pay their salaries for May and June 2019;
 - 45.3 it has failed to pay the notice pay due for all claimants (except for Miss Lowry and Mr Smith); and
 - 45.4 it has failed to pay the claimants in lieu of any accrued holiday pay on termination of employment;
46. In addition, I have concluded that:
- 46.1 the respondent has made unlawful deductions from the wages of Miss Fletcher, by failing to pay her commission pay of £800 for May 2019; and
 - 46.2 the respondent must reimburse Mr Sheehan for £328.31 of expenses incurred in the course of his employment.

Employment Judge Deeley
2 December 2019

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Case Number	Case Name
2502320/2019	Miss Izzy Fletcher -v- Voltz Group Uk Ltd
2502321/2019	Mr Stephen Sheehan -v- Voltz Group Uk Ltd
2502322/2019	Mrs Lisa Sheehan -v- Voltz Group Uk Ltd
2502323/2019	Miss Marie Finnegan -v- Voltz Group Uk Ltd
2502324/2019	Mr James Smith -v- Voltz Group Uk Ltd
2502325/2019	Miss Izzy Fletcher -v- Voltz Group Uk Ltd
2502326/2019	Mrs Melanie Rae -v- Voltz Group Uk Ltd
2502327/2019	Miss Sophie Lowry -v- Voltz Group Uk Ltd
2502328/2019	Mr Dean Robinson -v- Voltz Group Uk Ltd

Schedule of awards made

Employee name	Dean Robinson	Lisa Sheehan	Marie Finnegan	Sophie Lowry*	Melaine Rae	James Smith*	Izzy Fletcher	Stephen Sheehan
Net salary and holiday pay - May 2019 payroll date	£1,422.46	£1,711.77	£1,426.06	£1,541.33	£1,439.19	£1,484.88	£1,405.02	£2,741.56
Net salary and holiday pay - June 2019 payroll date	£1,473.21	£1,703.55	£1,304.00	£496.22	£1,306.11	£609.78	£1,839.37	£2,187.48
Total Net Pay Calculation	£2,895.67	£3,415.32	£2,730.06	£2,037.55	£2,745.30	£2,094.66	£3,244.39	£4,929.04
Notice pay (gross)	£423.08	£480.77	£423.08	£0.00	£461.54	£0.00	£480.77	£865.38
Commission Pay for May 2019 (payable June 2019 payroll date) (gross)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£800.00	£0.00
Agreed bank charges (gross)	£0.00	£95.78	£0.00	£0.00	£0.00	£0.00	£0.00	£454.00
Expenses (gross)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£328.31
Total Gross Pay Calculation	£423.08	£576.55	£423.08	£0.00	£461.54	£0.00	£1,280.77	£1,647.69

**Sophie Lowry and James Smith's employment terminated with immediate effect on their resignation*