EMPLOYMENT TRIBUNALS

Claimant Mr A Barron

Respondent: Media Displays Ltd

HELD AT: Leeds **ON:** 17 March 2020

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person accompanied by Mrs C McCartney – support
Respondent: Mr I Taylor, managing director

JUDGMENT

The claim of the claimant is dismissed.

REASONS

Introduction

1. In this case Mr Barron was employed by Media Displays Ltd as a Vehicle Controller from 6 August 2019 until his dismissal on 26 November 2019. The claimant comes to this Tribunal on the basis that he has had unlawfully deducted from his wages the sum of £1,102.83.

Issue

2. The central issue is whether that deduction was indeed unlawful. In this case that centres around whether or not the claimant's conduct on 9 November 2019 was careless/negligent or not.

The Law

3. We now turn to the law in this case.

(1) The Tribunal has to have regard to the following provision of the Employment Rights Act 1996 in coming to its decision:

Section 13 (1) – "An employer shall not make a deduction from wages of a worker employed by him unless - ……..

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

(2) What is negligence? It is well settled law that negligence amounts to any act or omission which falls short of a standard to be expected of "the reasonable man". For negligence to be substantiated, it is necessary to establish that a duty of care was in this case owed from the claimant to the respondent, that that duty was breached, that the respondent's loss was caused by the breach of duty and that the loss fell within the claimant's scope of duty and was a foreseeable consequence of the breach of that duty.

From an employment point of view the relevant duty is the duty to exercise reasonable care and skill. Employees must perform their duties with reasonable care.

Facts

4. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it found the following facts (proved on the balance of probabilities):

4.1 In his employment the claimant drove vehicles ranging from three and a half to seven and a half tons, with digital screens on the side, to given locations.

4.2 On 9 November 2019 the claimant was driving a seven and a half ton vehicle. He had to back the vehicle into the warehouse at his base in order to fill up with diesel and thereafter proceed on his way.

4.3 Once inside owing to the height of the digital screen which needed to be raised to take the fuel, the roller shutter doors had to be closed. Once fuelling was complete, the claimant had to reopen the roller shutter doors fully and exit.

4.4 Unfortunately, and for a reason which is unclear, which reason I find was the claimant's responsibility, the claimant failed to open the roller shutter doors fully before exiting and although the vehicle was not damaged the roller shutter doors were, causing, in the event, £1,422.00 worth of damage to the roller shutter doors, which amount the claimant does not dispute.

4.5 There was no discussion about the damage until a conversation between the claimant and Mr Taylor, on 29 November 2019, of which a little more below.

4.6 However, on 26 November 2019, the claimant was asked to come into the depot and in the presence of a team leader, Brian Holliday, was sacked by Mr Taylor for an unrelated reason, apparently a failed probationary review which Mr Taylor, who sacked the claimant as I have said, could not substantiate. The incident on 9 November 2019 was never mentioned either on that day or in the claimant's letter of dismissal, which was dated 28 November 2019.

4.7 On 29 September 2019, without warning, the claimant discovered the sum of £250.00 had been deducted for "damage to vehicle". The claimant immediately questioned this by email and Mr Taylor clarified that it related to the damage to the roller shutter doors and maintained the respondent's entitlement to deduct.

4.8 There was more correspondence and on the same day Mr Taylor called the claimant and in the conversation did mention the deduction but the conversation was inconclusive. Certainly, the respondent never clarified the contractual basis for the deduction upon which the respondent now relies.

4.9 The claimant maintained that he had a driver handbook which provided for damage above wear and tear to be charged to the driver. This appears to relate only to vehicles and not any other company property. The damage was of course to the roller shutter doors.

4.10 To make things worse for the claimant, without warning again, this time on 31 December 2019, the respondent deducted £852.83 from his wages, including his holiday pay and there the contact ended between the parties save for these proceedings.

4.11 In this case the respondent relies upon the terms of the employee handbook. This can be found on page 19, under the heading of "Standards A) Wastage 3. "The following provision is an express written term of your contract of employment:-

a. any damage to vehicles or our property (including non-statutory safety equipment) that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement;"

The claimant said that the handbook was not issued to him, but when he accepted, however, that he had read and signed his statement and main terms and employment conditions, which clearly incorporated the handbook, the claimant found himself in difficulty in that regard.

4.12 The claimant denies his conduct was careless or negligent but he was unable to give a satisfactory explanation as to why he did not raise the roller shutter doors fully. He said he was late and under pressure and that there had been problems raising the video screen. He also suggested that a lack of training was somehow a contributory cause.

4.13 On the other hand, Mr Taylor was unable to explain why he had failed to raise the matter properly and formally with the claimant, that is the matter of the deduction, nor even mention it at the claimant's dismissal interview, nor in the dismissal letter. Mr Taylor admitted that in the email correspondence on 29 November 2019, rather than answering a question put by the claimant he was playing for time.

Determination of the Issues

5. (After listening to the factual submissions made by or on behalf of the respective parties) I find as follows:

5.1 The element of fairness or unfairness does not come into this case. It is a clinical assessment of whether the deductions were made where a claimant had previously signified in writing his agreement or consent to the making of a deduction.

5.2 I am satisfied that by signing his statement of main terms of employment, there was incorporated into the contract the employee handbook, which means that an express written term of the claimant is as set out on page 19 of the employee handbook, to which I refer at paragraph 4.11 above.

5.3 The question is was the claimant careless or negligent in what he did on 9 November 2019?

5.4 I have no doubt that by causing damage as he did to the roller shutter doors on that day the claimant fell short of the standard expected of a reasonable man.

5.5 I find that the claimant owed the respondent a duty of care, namely, the implied duty to exercise reasonable care and skill, that in driving as he did he breached that duty, that the respondent's loss was caused by the

breach, that the loss fell within the scope of the claimant's duty and was foreseeable.

5.6 It is therefore inevitable that the claimant's claim must fail.

5.7 However, the respondent does not emerge from this episode with flying colours. The respondent handled the whole thing badly. Given the claimant's conducted started it off, the respondent made deductions without notice, played for time, described one of the deduction payments at least incorrectly, failed to spell out that the respondent's position was in reliance of page 19 of the handbook and did not mention the claimant's conduct in the disciplinary process.

5.8 Whilst the conduct of the respondent not of the standard the claimant could reasonably have expected from the respondent, it gets the claimant no further and the claimant's case is dismissed.

Employment Judge Shulman

Date 27 March 2020