EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr C Stacey	AND	Stay Dry Roofing (South West) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 15 May 2020
Public Hearing by Telephone

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did Not Attend
For the Respondent: Mr A Passman

JUDGMENT

The judgment of the tribunal is that the claimant's claim for accrued but unpaid holiday pay is dismissed.

REASONS

1. In this case the claimant Mr Connor Stacey brings a monetary claim for accrued but unpaid holiday pay against his ex-employer Stay Dry Roofing (South West) Limited. The respondent denies the claims.
2. This has been a public hearing held remotely by telephone to which the parties have not objected. The form of remote hearing was a final hearing by telephone. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 60 pages, the contents of which I have recorded. The order made and the reasons are described in this judgment.
3. The claimant did not attend this hearing, in that despite a number of efforts I was unable to make contact with the claimant on the telephone number which he had provided to the Tribunal service, and which he had set out on his originating application. I have heard from Mr Passman for the respondent, who had also prepared a bundle of the relevant documents. I decided to proceed in the absence of the claimant under Rule 47 having considered such information as was available to me. This included the fact that Mr Passman and the respondent had not heard anything from the claimant with regard to

prospective witness evidence or the agreement of a bundle of documents. In addition, I noted that Employment Judge Goraj had directed the claimant by letter dated 10 February 2020 to confirm: "whether he accepts that the Respondent was entitled to deduct the monies identified in the Respondent's response and if not why not (including whether he accepts that the was a contractual right to do so under the terms of his contract and if not why not)". The claimant failed to respond to that direction.

4. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
5. The respondent is a roofing company and the claimant was employed as a slater/tiler. Following a previous short spell of employment, the claimant was re-employed by the respondent with effect from 15 September 2014. The respondent issued the claimant with a written statement of the terms and conditions of his employment which was referred to as a contract of employment. The claimant signed to agree the terms of that contract of employment on 22 December 2014.
6. Clause 7 of that contract was headed "Deductions from Wages". The relevant provisions of this clause provided: "… The Employer reserves the right and the Employee irrevocably authorises the Employer, at any time during the Employee's employment, or in any event upon termination, to deduct from the Employee's wages salary and/or any other monies due to the Employee, an amount equivalent to any the following: (i) … (ii) … (iii) the outstanding amount of any loan or advance made by the Employer to the Employee; and (iv) any cost of repairing any damage to or loss of property, or any fines or charges imposed upon, or any other loss sustained by, the Employer or any third party, caused by the Employee's breach of contract or breach of the Employer's rules or as a result of the Employee's negligence or do so."
7. The respondent had authorised the claimant to use a company van whilst on company business ("The Van"). The respondent had an on-board tracking device fitted to the Van. It became clear to the respondent as a result of this tracking device that the claimant was using the Van late at night and during the early hours of the morning whilst not on company business. The respondent required the claimant to stop, but the practice continued. The claimant then resigned his employment both verbally and by text message on 29 October 2019.
8. The respondent accepted the claimant's resignation and sought to recover the Van. The Van was found abandoned in a pub car park, and the on-board tracker device had been damaged in that the tracker wire had been cut. The respondent repaired damage to the tracking device in the Van which cost £97.00 for an engineer's assessment and £195.00 to repair the damage. The respondent therefore had to expend £292.00 to repair the damage to the Van.
9. In addition, the claimant had a tool and equipment account with the respondent and the respondent had issued the claimant with the following clothing and tools: on 6 August 2019 a coat for £77.71; on 17 August 2019 shoes for £106.30; on 29 August 2019 a shirt for £35.21; on 30 August 2019 a slate scribber for £14.95; on 9 September 2019 a ripper for £28.29; on 9 September 2019 a circular saw for £104.16; on 16 September 2019 a chalk line for £16.81; on 26 September 2019 jacket and trousers for £38.25; on 3 October 2019 a polo shirt for £8.24; and 15 October 2019 paint to the value £46.61. This totalled the sum of £476.03, which had effectively been advanced as a loan to the claimant.
10. The parties agree that as at the date of termination of the claimant's employment he had accrued but untaken holiday pay equivalent to a gross payment of £900.00. The respondent calculated that this was £654.82 net after the deduction of tax and National Insurance.
11. By letter dated 30 October 2019 Sarah Gould, a director of the Respondent, confirmed that the respondent had accepted the claimant's resignation on 29 October 2019 with immediate effect. The letter went on to say: "you are entitled to any accrued, but untaken holiday pay. This equates to a gross payment of £900.00 (£654.82 after tax). You have an outstanding tool bill of £476.00, which will be deducted from your final pay. Furthermore, you have deliberately caused damage to one of the company vehicles by cutting the tracker

wire. This has incurred a cost of £97.00 for an engineer's assessment and £195.00 to repair the damage caused. Once these costs are deducted from your final payment, it leaves a deficit of £113.18. We will not seek to recover this excess, or any the other costs incurred as a result of you using the vehicle for personal use, providing the van key is returned to the office by Monday, 4 November 2019."

12. The parties also appear to have had a dispute about the payment of paternity pay, but these proceedings are limited to the recovery of accrued holiday pay only and are not addressed in this Judgment.
13. Having established the above facts, I now apply the law.
14. The claimant claims in respect of a deduction from his wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996 ("the Act").
15. The wages in question which the claimant says have been unlawfully deducted is his claim for accrued but untaken holiday under the Working Time Regulations 1998. The parties agree that the amount of accrued holiday pay which is initially due and owing to the claimant is £900.00 gross.
16. In this case the claimant had specifically authorised the respondent to deduct from his salary, including his final salary on termination of employment, any outstanding loans, or the cost of any damage or repairs as a result of his negligence. I am satisfied that the sums deducted by the respondent from the net sum of £654.82 otherwise due to the claimant are included within the terms of this provision. Accordingly, the deductions made by the respondent fall within section 13(1)(b) of the Act, in that the claimant had previously signified in writing his agreement or consent to the making of the deduction. The deductions were therefore not unlawful deductions, the deductions extinguish the net amount of holiday pay otherwise due to the claimant. Accordingly, the claimant's claim is dismissed.
17. The claimant did not attend this hearing, and given the circumstances prevailing in the current Covid-19 pandemic, there may be a good reason for this. The claimant is entitled to seek reconsideration of this judgment under Rule 71. I will then determine whether it is in the interests of justice to revoke or vary this Judgment. However, if the claimant does wish to seek reconsideration, he must ensure that he complies fully with the direction earlier made, and set out accurately the following information: (i) whether he disputes that he authorised the respondent to make these deductions in the relevant contract of employment, as explained above, and if so why; and (ii) whether he challenges the accuracy of the amount of the sums deducted as explained above, and if so why. Any application for reconsideration must also be made within 14 days from the date this Judgment is sent to the parties, and must be copied to the respondent for its comments.

Employment Judge N J Roper

Dated: 15 May 2020

Judgment sent to parties on: 20 May 2020

FOR THE TRIBUNAL OFFICE