



EMPLOYMENT TRIBUNALS

Claimant: Alexander Hirst

Respondent: Snowdon Transport Limited

TELEPHONE HEARING

Heard at: By telephone **On:** 16 July 2020

Before: Employment Judge Wedderspoon

Appearances

For the claimant: In person

For the respondent: Mr. Cameron, Respondent

JUDGMENT

1. The Claimant's claim for unlawful deductions succeeds.
2. The Respondent will pay the Claimant the sum of £1,579.99 within 14 days.

REASONS

Claim and Issues

1. The Claimant was employed by the Respondent as a Class 1 driver from 3 February 2020 to 6 March 2020. The Respondent is a transport, haulage and logistics company. He claims the sum of £1,579.99 for unpaid wages and holiday pay.
2. The Respondent's case is that it was entitled by reason of the contract of employment to deduct the sum of £1,579.99 because of the Claimant's

unreasonable carelessness or neglect. The Respondent alleges that the Claimant failed to follow instructions to wait for a mechanic to arrive to repair the truck on 6 March 2020 which had consequential costs to the Respondent in terms of agency, fuel and other fees which amounts to over the sum claimed.

3. Following a concession in evidence by the Claimant that the Respondent did have a contractual entitlement to withhold monies where there was unreasonable carelessness or neglect by a driver, the real issue to determine in the case was whether the Claimant had acted in a manner which was unreasonable carelessness or neglect on 6 March 2020.

Evidence

4. The Respondent called Mr. Matthew Ahmed, Operations Manager of the Respondent to give evidence. The Claimant gave evidence himself. I was provided with a documentary bundle of 103 pages.

Facts

5. On 6 March 2020 the Claimant was due to collect a refrigerated container loaded with perishable goods from Felixstowe docks and deliver it to a customer in Bradford. All that week the Claimant had been having issues with his vehicle. The Respondent's vehicles (driven by the Claimant) are subcontracted to Martello.
6. The Claimant reported a fault with the truck to his line manager, Derek who invited the Claimant to contact Martello. The Claimant contacted Martello who informed him that they had another driver taking the trailer from him so that Martello could be confident the trailer would make it. He informed his manager, Derek.
7. The Claimant then managed to get his vehicle to work. There is a dispute of evidence as to what the Claimant's instructions were. The Claimant says he was not told to wait for a mechanic by the Respondent or Martello; he spoke to

Derek, his line manager who told him to return to Dewsbury so he did so. A trail of text messages between the Claimant and Martello indicates a dispute whereby Martello say they told the Claimant to get the truck fixed and to call Martello when the truck was fixed so they could get the Claimant to load a job to deliver on Monday to the North. The Claimant disputed this saying he had been told by Martello to call the Respondent; the Respondent said they could not get anyone out until the late evening so to go as far north as possible and he did so.

8. Mr. Ahmed disputes the Claimant's evidence. He says that neither Martello nor the Respondent were informed that the Claimant had managed to get his vehicle working but instead abandoned his trailer and drive back to Dewsbury. He was amazed to see the Claimant's vehicle appear at the yard without forewarning. He says as a result of the Claimant's conduct the Respondent were put to the cost of hiring an agency driver, extra diesel fuel and trailer hire.

The Law

9. Pursuant to section 13 of the Employment Rights Act 1996 an employer is not permitted to made a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or relevant provision of the worker's contract.
10. To make a deduction in this case the Respondent must establish on the balance of probabilities that the Claimant's conduct fell within the provisions of the employment contract entitling a deduction to be made, namely that the Claimant acted with unreasonable carelessness or neglect.

Conclusions

11. I am not satisfied on the evidence before me that the Claimant acted with unreasonable carelessness or neglect on 6 March 2020 entitling the Respondent to make a deduction to his wages.

12. There is a dispute of evidence as to the instructions received by the Claimant on 6 March 2020. Mr. Ahmed is the Operations Manager of the Respondent but he did not liaise or speak to the Claimant on 6 March 2020 concerning the Claimant's vehicle or trailer. I accept the Claimant's evidence that he was in contact with his line manager Derek at the Respondent and Martello via both telephone and text messaging. Some of those texts appear in the bundle (provided by the Claimant).
13. I accept the Claimant's evidence that upon finding his vehicle was defective he reported this to his manager, Derek, who required him to contact Martello. Martello told the Claimant that they were getting another driver to take the perishable goods off him so that the load would make its destination; the Claimant informed his manager, Derek about this by text (page 87).
14. I accept the Claimant's evidence that Martello told him they didn't have a job for him as he kept breaking down and to get his vehicle fixed (he has provided a text to support this; page 93). He is adamant he was not informed to wait for a mechanic. The Respondent rely upon a text from Martello which states that it requested the Claimant to get his vehicle fixed so they could send him back on Monday with a load. The Claimant is adamant this is not correct. There is no direct evidence from anyone from Martello to contradict this evidence. The Claimant says he took instructions from his manager Derek and made his way back north. There is no direct evidence from Derek to dispute this.
15. On the basis of the evidence I have heard, I accept the Claimant's evidence that he was instructed to return to the north once he got his vehicle fixed. On the basis that he followed instructions by his manager, I do not find that the Claimant acted with unreasonable carelessness or neglect on 6 March 2020 entitling the Respondent to make a deduction to his wages.
16. For these reasons, the claimant's claim succeeds.

EJ Wedderspoon

24 July 2020

Date signed