



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr A Ananjevs

v

Onyx Building Products Ltd

**Heard at:** Cambridge (CVP)

**On:** 13 August 2020

**Before:** Employment Judge S Moore

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Elena Donaldson, Counsel

## JUDGMENT

**The claim for unlawful deduction from wages succeeds in the sum of £150.**

## REASONS

1. The Claimant was employed by the Respondent as an HGV /LGV Driver and Factory Manual Worker/Brick Cutter from 14 April 2019 until he resigned with immediate effect on 26 August 2019. He says the reason he resigned was because the Respondent deducted £150.00 from his pay for July 2019. In this respect he has produced pay slip for July 2019, showing that he earned £1,775.41 net pay, and a copy of his bank account showing that he was paid a total of £1,625.41 for July.
2. The Respondent did not dispute that it had deducted £150 from the Claimant's pay but said that it did so because on 6 July 2019 the Claimant took a DAF truck without permission and used it in London Low Emission Zone. As a result the Respondent received a PCN in the sum of £500 and said it was agreed with the Claimant that he would pay it in three instalments. The first instalment of £150 was therefore deducted from his July pay. The Respondent further said that the Claimant's contract authorized the deduction and did not require the Claimant to be notified in writing prior to the deduction being made.

3. The Claimant denied that he was driving the truck at the date of the penalty notice and said that he was not informed of any deduction, either verbally or in writing, before the deduction was made.

4. Section 13 of the Employment Rights Act 1996 provides that:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless-

- (a) the deduction is...authorised to be made by virtue of ...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 making of the deduction in question...”

5. The copy of the Claimant’s contract initially provided to me (by the Claimant) contains the following provision:

“Deductions From Pay

The Employer reserves the right to make deductions from your salary or other sums due to you including salary payable on termination of employment. Such deductions may be made, for example, in respect of:

- Recoupment of salary/wages advances;
- Payroll errors resulting in overpayment;
- Holiday taken over and above entitlement;
- Loans;
- Cash shortages, advances or other deficiencies;
- Cost incurred for assistance with professional qualifications;
- Damage to company property where is as a result of your negligence;
- Any loss to the company which is a result of your failure to follow rules, or procedures;
- Unreturned company property, including any uniform or PPE supplied to you;
- The cost of the insurance excess in the event of an at fault accident whilst driving one of our vehicles.

This is not an exhaustive list.

These are express written terms of you contract of employment. You will be notified in advance *and in writing* of the total amount of any deduction to be made from your salary/wage should this be necessary.”

(italics added)

6. Shortly before the hearing I was sent another copy of what purported to be the Claimant's contract by the Respondent. However, in this copy the words "and in writing" were omitted. Plainly one version of the contract was an amended and falsified version.
7. I find that the contract which the Respondent sought to rely upon at the hearing was a falsified version and that the true version of Claimant's contract contained the words "and in writing".
8. First, during the course of the hearing the Claimant found his contract and showed it to the camera. The Respondent's coloured logo and the Claimant's signature, as well as the words "and in writing" were plainly visible. Secondly, the Claimant's case, both in his claim form and in his oral evidence, was not that he hadn't been informed of the deduction in writing, but that he hadn't been informed of it at all, so that the amendment was not material to his case. Thirdly, the Claimant required a Russian interpreter to conduct the hearing, having very little English, and I consider it highly unlikely that he would have known how to amend his contract, even if he had wanted to.
9. Accordingly, the requirement to notify the Claimant in writing in advance of making any deduction was an essential component of the Respondent's contractual procedure for making deductions. Consequently, the deduction made of £150.00 was not authorised by a relevant provision of the Claimant's contract pursuant to section 13(1)(a) ERA. Further the Claimant had not signified his agreement or consent in writing to the deduction pursuant to section 13(1)(b) ERA.
10. It follows that the deduction was unauthorised and the claim for unlawful deduction succeeds.

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Employment Judge S Moore

Date: ...13 August 2020.....

Sent to the parties on: 20 August 2020

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For the Tribunal Office