EMPLOYMENT TRIBUNALS

Claimant: Mr W Gibson

Respondent: Clearway Drainage Systems Ltd

Heard at: Manchester **On:** 7 September 2020

Before: Employment Judge Allen

REPRESENTATION:

Claimant: In person
Respondent: Mr T Goldup, Consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent unlawfully deducted £60 from the claimant's salary in relation to the valet of a vehicle. The respondent is ordered to pay the claimant the gross sum of £60.

2. The other claims for unlawful deduction from wages do not succeed.

3. The claim for breach of contract did not need to be determined as the respondent had paid the claimant the sum due prior to the hearing.

REASONS

Introduction

1. The claimant was employed by the respondent from 2 September 2019 until his dismissal on 23 January 2020. He was employed as a Reline Supervisor. Following his dismissal, the claimant brought claims for unlawful deduction from wages and breach of contract. The respondent denied that there had been any unlawful deduction and/or any breach.

Claims and Issues

2. At box 9.2 of the claimant's claim form he had listed the sums he was seeking and the reasons why he was seeking those amounts. At the start of the hearing it was confirmed with him that this recorded all of the claims that he was pursuing. The sums sought were as follows:

    i. £666 which the respondent had deducted from his wages in relation to course fees;

    ii. £1,267.20 which the respondent had deducted from his wages for a Bung or Bypass stopper, that is for an item of equipment which the respondent contended had been damaged, with the damage alleged to be caused by the claimant;

    iii. £305 for a Gas Monitor, which similarly was similarly a deduction made the respondent as it contended that damage had been caused by the claimant;

    iv. £60 for the valet of a vehicle which had been used by the claimant during his employment, which had been valeted after its return – the cost of which the respondent had deducted from the claimant's pay; and

    v. £300 in relation to on-call payments which the claimant alleged he was due but had not received. The claimant asserted that he was entitled to £100 a week for three weeks of on-call undertaken. The respondent agreed that was the rate payable for weeks on-call, but denied that the claimant had undertaken any on call; and

    vi. the difference between the amount the claimant was paid in his final wage and the amount the claimant said was due. This appeared to relate to the non-payment of notice. In fact, in the week prior to the hearing, the respondent had paid to the claimant the amount due in respect of notice. At the hearing, the claimant agreed that this issue did not need to be determined, as the claimant accepted that he had been paid the amount due (albeit much later than it should have been).

3. The claims for the sums recorded at 2(i) to 2(v) were considered as claims for unlawful deductions from wages under section 13 of the Employment Rights Act 1996. Claim 2(vi) was a breach of contract claim, but that did not need to be determined.

Procedure and Evidence heard

4. The claimant appeared in person at the hearing. The respondent was represented by Mr Goldup, Consultant.

5. The respondent had prepared a bundle of documents to which the Tribunal was referred during the hearing. The respondent had also prepared witness

statements for the two witnesses it was calling: Mr S McMullen, the respondent's Operations Manager; and Ms L Bridge, the respondent's HR Advisor. The claimant gave evidence without reference to a statement and was then cross examined. The respondent's witnesses gave evidence relying on their statements, and were also cross examined.

6. Following the evidence, the respondent made oral submissions. The claimant declined to make any further submissions, relying upon the pleaded case and the evidence which had been heard. As the time allocated for the hearing had already been exceeded, the Tribunal reserved its judgment and accordingly provides the judgment and reasons outlined below.

Facts

7. On 2 September 2019 the claimant signed a document (in a number of places). That document recorded various agreements between the claimant and the respondent.

8. In relation to training courses at number 3 (page 37) it said the following:-

> *"during the course of your employment with Clearway Drainage Systems you will be expected to attend a number of training courses pertinent to your position within the company. Clearway agree to pay for you to attend these courses and negotiate the best possible price and service on your behalf. In the event that you fail to attend any courses arranged or Clearway are unable to cancel on your behalf without incurring costs, monies will be deducted from your wages. Should you leave of you own volition or be dismissed by Clearway, the company will seek the following reimbursement from your wages.*
>
> *Less than one year from completing the course – 100% of costs"*

Thereafter there was a reducing scale for repayment for further periods after the course had been completed.

9. Under the heading deductions from pay, the same document said at number 5 (38):

> *"If at any time during or on termination of your employment, it is the opinion of Clearway Drainage Systems Limited that you owe money, you agree and authorise Clearway to deduct the sum or sums owed from any payment due to you from Clearway through wages, salary or payment of any other kind. For example, this will cover deductions from wages of overpayments, expenses, loans, damage caused by you and any other money due from you to Clearway. Clearway Drainage Systems Limited reserve the right to deduct the cost of replacement parts/equipment due to the loss/damage caused by you the employee/any insurance excess. If the situation recurs the company will instigate disciplinary proceedings".*

10. The claimant also signed a document on 2 September 2019 which was headed driver's responsibilities (4). It included the following relevant paragraph:

> *"if at any time during or on termination of your employment, it is the opinion of the Clearway Drainage Systems Limited that you owe money for any repairs/insurance excess/parts/labour/valet due to damage caused by you or because of failure to complete vehicle defects thoroughly you agree and authorise Clearway to deduct the sums or sums owed from any payment due to you from Clearway through wages, salary or payment of any kind".*

11. The respondent said in evidence that he had undertaken on-call while he was employed. His evidence was that he had done this for one week to cover another employee who had been on the on-call rota, but he could not remember the dates when this had occurred. He also stated that he had undertaken two weeks on-call from 6 January 2020. There was no documentation provided by the claimant to evidence either that it had been arranged that he would undertake the on-call, or that he had actually been on-call. The claimant made reference to an email which he said had been sent which confirmed that he was covering the on-call of another employee, but he was not able to provide the email and no such document was seen by the Tribunal.

12. The respondent denied that the claimant had undertaken any on-call. It provided copies of the on-call rota for the relevant period. The claimant's name was not recorded on those rotas. Ms Bridge's evidence was that the claimant was not rostered to work and she had seen no documentation or information that recorded him as undertaking on-call. This was the reason why the claimant had not been paid for undertaking on-call.

13. It was not in dispute that the claimant had been signed up to undertake the CITB Skills Site Manager Safety Training Scheme with an external provider, Ace Safety Academy Limited. An order form was provided (49) dated 19 December 2019 which recorded the cost of Mr Gibson attending the course over five days as being £555 plus VAT. That document contained terms and conditions which said that 100% of the course fee was payable if it was not cancelled by seven working days prior to course commencement. An invoice dated 20 January 2020 was also provided (50) recording the cost of £666, including course fees and VAT, clearly referable to the claimant. Ms Bridge's evidence was that the course fees were paid in full and that the respondent was unable to recover VAT where there was a recharge of the costs of the course.

14. The claimant's evidence was that he attended the first day of the course (17 January 2020) but did not attend the subsequent days (which were after the date on which he was dismissed). The claimant was offered the opportunity to attend the course on those days, but he declined to do so because he could not afford, and/or make arrangements for, travel to attend.

15. On 21 January 2020 damage occurred at a site at which the claimant was the supervisor. It was not in dispute that damage had occurred to a Gas Pump

and a Bung. The claimant believed that the equipment may have been capable of being fixed. The respondent produced invoices for the replacement products and provided an exchange of emails which confirmed that the equipment could not be fixed, and Mr McMullen gave evidence confirming that was the position.

16. There was a difference between the parties about the cause of the damage, why it occurred, and exactly who was responsible.

17. The claimant in his claim form had alleged that the Bung was installed by another employee (who he named) and stated he couldn't install it personally because his space certificate had expired. In evidence at the hearing the claimant provided a slightly different and more detailed explanation. His evidence was that the method he had used on site had not been successful because an item of equipment had run out of petrol, there had been no petrol available, and by the time the petrol had been obtained the damage had occurred. In answers to questions, he confirmed that he was the supervisor and was responsible for ensuring that the appropriate equipment was on site before work commenced. The claimant said that he was unable to check every single van every single day, and contended that the lack of petrol and the damage was the fault of other employees.

18. Mr McMullen's evidence differed in two key respects from the claimant's. His evidence was that the damage which occurred was as a result of the method which the claimant had used for the work (and would have occurred irrespective of whether or not petrol had been available). The method of work was the claimant's responsibility. In any event, it was the claimant's responsibility as supervisor to ensure that everything was in place before the work started – which included ensuring petrol was available for the relevant equipment.

19. Where the evidence conflicts, the Tribunal prefers the evidence of Mr McMullen in relation to the cause and reason for the incident on 21 January 2020. Mr McMullen's evidence was clear and cogent, and the Tribunal finds his account to be accurate. In any event, the Tribunal also finds that, as supervisor, the claimant was responsible for ensuring that the correct equipment was available at the start of the job (including petrol for that equipment). Even on the claimant's own account, the cause of the damage was therefore still something for which the claimant was responsible.

20. The claimant's employment was terminated on 23 January 2020 with immediate effect.

21. The claimant was provided with a vehicle by the respondent to undertake his duties and for personal use. The undisputed evidence of the claimant was that when his employment was terminated, the vehicle was recovered from him. The claimant was given a lift home in the vehicle, but did not have the opportunity to clean it himself or arrange for it to be cleaned. The claimant's evidence was that the vehicle became dirty because of his use of it at the sites where he operated, and that the interior of the vehicle would become dirty in areas such as the footwell as a result.

22. The dismissal letter informed the claimant that he would be paid in lieu of one week's notice. Deductions were made from the claimant's pay in January and February 2020 in relation to the matters which the claimant alleged (as well as some other deductions being made which were not in dispute). The respondent had previously failed to pay the claimant in lieu of notice and had only rectified that in the week prior to the Tribunal hearing.

The Law

23. The claimant has the right not to suffer any unauthorised deduction from his wages in accordance with Section 13 of the Employment Rights Act 1996. The question for the Tribunal is whether in January and February 2020 he was paid less wages than he was entitled to be paid. A deduction can be made if the worker has previously signified in writing his agreement or consent to the making of the deduction.

Discussion and analysis

24. In relation to the various deductions claimed the Tribunal has reached the conclusions outlined below, following the numbering at paragraph 2.

25. In relation to course fees (2(i)). The Tribunal fully understands why the claimant was aggrieved that the respondent deducted £666 from his wages for a course when he attended only one day and when the majority of the course occurred after he was dismissed. However, this is an unlawful deduction from wages claim and therefore the Tribunal does not need to evaluate the fairness of the deduction or whether the claimant obtained value for the fee (or could have done so had he attended). The Tribunal accepts the respondent's evidence that the full costs were incurred and were not recoverable, as is confirmed by the terms and conditions for the course on the invoice (50). On 2 September 2019 (37) the claimant agreed to course fees being deducted from his wages: in the event that the respondent was unable to cancel such a course on the claimant's behalf without incurring costs; and in full (at the relevant time). Applying the terms agreed by the claimant, the respondent was able to deduct the full cost of the course from the claimant's pay.

26. In relation to the items for which deductions were made (2(ii) and (iii)), the provisions of number 5 signed by the claimant on 2 September 2019 (38) are very clear. A deduction can be made for the costs of replacement parts and damage due to loss/damage caused by the claimant. The question was whether the claimant caused the damage, as the respondent has evidenced the costs. As confirmed above, the Tribunal finds that the claimant did. He had consented to these deductions and they were lawful.

27. With regard to the valet of the vehicle (2(iv)), the Tribunal does not find that the claimant had consented to the respondent deducting the cost incurred in a valet being undertaken. Paragraph 5 (38) consents to deductions for damage cause by the claimant and to the costs of replacement parts/equipment due to loss/damage caused by the claimant. A dirty vehicle is not damage or loss – far clearer wording would be required for the claimant's agreement to that provision to include agreeing to a deduction for a dirty vehicle to be cleaned.

28. The provision in the driver's responsibility document (40) only applies to the recovery of costs incurred "*due to damage caused by you or because of failure to complete vehicle defects thoroughly*". A dirty vehicle is neither damage nor a failure to complete a vehicle defect. When the respondent's representative was asked about this provision, he contended that the inclusion of the word valet earlier in the relevant provision meant that the costs of a valet must be recoverable where the vehicle was dirty, otherwise the inclusion of the work valet would be irrelevant. The Tribunal does not accept this submission for two reasons: the inclusion of the word valet cannot simply make all valet costs recoverable irrespective of whether the costs meet the other requirements of what is agreed; and it is perfectly possible to envisage a situation where valet costs maybe incurred after damage, when the provision may apply to such costs.

29. The claimant has accordingly not consented to the recovery of valet costs incurred on the return of the vehicle when dirty. Whilst not relevant to the lawfulness of the deduction, the Tribunal would also observe that the claimant was not given any opportunity to clean the vehicle or arrange for it to be cleaned before return, so it is unsurprising that it required cleaning when it was taken off the claimant. As a result, the Tribunal does not find that the claimant has consented to the deduction of £60 made from the claimant's pay on 27 February 2020. As there is no other lawful reason for the deduction, the Tribunal finds that the £60 deducted for the car valet was an unlawful deduction from wages.

30. In relation to on-call (2(v)), it is for the claimant to prove that he was entitled to the additional wages for on-call work undertaken. Whilst the claimant has given oral evidence that he undertook on-call work, no documentary evidence to support his claims has been provided. He has not provided any evidence of the arrangements by which he came to be on the on-call rota, nor has he provided any evidence which shows him working on-call. The respondent has provided a rota which does not contain the claimant's name. The Tribunal found Ms Bridge to be a truthful and credible witness - she gave clear evidence that she had not been informed that the claimant had undertaken on-call work. As a result, the Tribunal prefers the respondent's evidence about on-call and accordingly finds that the claimant did not undertake pre-arranged on-call. The claimant is not entitled to be paid the amounts claimed and no unlawful deduction has been made.

Conclusions

31. As outlined above, the Tribunal finds that the respondent did unlawfully deduct £60 from the claimant's wages. The claimant's other claims for unlawful deduction from wages do not succeed.

Employment Judge Phil Allen

11 September 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
17 September 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2401777/2020**

Name of case: **Mr W Gibson** v **Clearway Drainage Systems Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 17 September 2020

"the calculation day" is: 18 September 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at **www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426**

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.