



EMPLOYMENT TRIBUNALS

Claimant. Miss Hayter

Respondents: Rapid Response Solutions Ltd

Heard at: Southampton by CVP and telephone. On 27 November 2020.

Before: Employment Judge Hargrove

Representation

Claimant: In person

Respondent: Mr C Bennison of Counsel.

RESERVED JUDGMENT AND REASONS.

The Judgment of the Tribunal is as follows:

The claimant's claim of an unlawful deduction from her wages is well founded, and the respondent is ordered to pay to the claimant £861.52.

REASONS.

1. This hearing was listed to be conducted by CVP. However, despite several attempts, the claimant was unable to join the hearing by CVP. She did not have vision on her device and was able to hear what was being said, but we could not hear what she was saying. She was then contacted by telephone and agreed to the hearing proceeding with her participation by telephone only. There were in the event few disputes of fact.
2. The claimant worked as a credit controller for the respondent from the 1st of November 2016 until 10th of January 2020 when she left her employment during her notice period having given notice on the 8th of January 2020 which was due to expire on 31st of January 2020. She did not work after 10th of January.
3. At the time she left she was undertaking a level 4 AAT course at Portsmouth College on day release from the respondent. She had earlier undertaken a level 3 course in 2018 at the cost of the respondent of £1700, which the respondent met without recovery from the claimant. Portsmouth College

Claim no:1401308/2020

invoiced the respondent for that course on 4 September 2018. (See page 73 of the bundle), the respondent having confirmed in writing signed by Paul Barber the managing director, and Michelle Herman, financial controller and the claimant's line manager at the time – see page 76 of the bundle – that the respondent would pay. These two documents, together with an invoice for £2000 from the College for the level 4 AAT course for the claimant, dated 23rd of July 2019 at page 74, were disclosed by the claimant, having been obtained direct from Portsmouth College by her, only on 26 November 2020, the day before the hearing.

4. It is of some significance that there is no equivalent document signed and countersigned for the level 4 AAT course in 2019. Paul Barber has not been called to give evidence, nor has Miss Herman, the claimant's former line manager, who left the respondent's employment in November 2019. Miss Mitchinson, HR manager, has given evidence for the respondent, but was only employed by the respondent from November 2019. The claimant claims, and I accept, that Miss Herman authorised her to attend the level 4 course, but I do not accept that she expressly stated that the fees for it would be met by the respondent. The fees would have had to have been signed off by a senior manager in addition to Miss Hermann, and they were apparently not. I do not accept however that the claimant authorised the payment to the College on her own account, improperly or otherwise.
5. In the respondent's final wage slip to the claimant for January 2020, the respondent credited the claimant for her pay up to the 10th of January 2020, but deducted £861.52 in respect of the 2019 course fees leaving a nil balance due to the claimant.
6. On 16th of March 2020 the claimant made her claim to the employment tribunal in respect of that deduction. In her ET1 she does not detail the claim or claims she was making, but she has confirmed at this hearing that she is only claiming £861.52 as an unlawful deduction from her wages. She is not claiming for any notice payment from the 10th of January to the 31st of January 2020. Thus there is no issue arising as to why she left on the 10th of January and did not work her notice period, but it appears that she left because she was informed by the respondent that a deduction was to be made for the level 4 course, to which she did not agree. It is to be noted that the respondent has only claimed to be entitled to reduce from her wages the sum of £861.52, and not £2000 because that was the only amount of her wages due at the end of January 2020.
7. I heard evidence from the claimant and from Miss Mitchinson, both of whom relied on witness statements. There was a bundle of documents eventually amounting to 76 pages. Mr Bennison presented detailed written closing submissions to which he added oral submissions in response to questions from the tribunal.
8. The statutory provisions relevant to this claim are contained in section 13 and 14 of the Employment Rights Act 1996. The tribunal will cite only those parts which are relevant.

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

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or
- (b) The worker has signified previously signified in writing his agreement or consent to the making of the deduction.

Section 13 (2) defines a relevant provision as meaning "a provision of the contract comprised –

Claim no:1401308/2020

- (a) in one or more written terms of the contract of which the employer has given the worker a copy prior to the making of the deduction in question, or
- (b) In one or more terms of the contract (whether express or implied and, if express whether oral or in writing), the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

Section 13 (3) provides:- “Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by into the work on that occasion, (after deductions), the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the workers wages on that occasion”.

Section 14 provides for excepted deductions: –

“(1) section 13 does not apply to a deduction from a worker’s wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of –

- (a) an overpayment of wages, or
- (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker.”

Section 14(4) is also highly relevant but was not referred to during the hearing. “Section 13 does not apply to a deduction from the workers wages made by his employer in pursuance of any arrangements which have been established –

- (a) in accordance with the relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or
- (b) Otherwise with the prior agreement or consent of the worker signified in writing,

And under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person

9. There are a number of alternative arguments put forward by Mr Bennisson to justify this deduction in his written and closing oral submissions, which I have considered. There are relevant provisions contained in the written contract of employment, which I accept the claimant received, in clause 5.3 at page 23A: “ You are required at all times to comply with the rules, policies and procedures in force from time to time including those contained in the staff handbook, and in clause 151.3 in page 24: “We shall be entitled to deduct from your pay or other payments due to you, any money, which you may owe to the company at any time”. There is also a provision under the heading of Payslips in the handbook at page 35 stating in respect of overpayments, “if you are overpaid for any reason you are required to notify the finance team. The amount of overpayment will normally be deducted from the following payment but if this would cause hardship, alternative arrangements to repay may be made“. There are no specific provisions either in the contract of employment or in the handbook dealing with the

payment, or the recovery of payment, of fees for training courses which are paid by the employer. There ought to be.

10. **Conclusions.**

10.1. I accept that the payment of the fees constituted expenses for the purposes of section 14 of the Act, but that is not free from doubt.

10.2. The claimant's wages to the 10th of January 2020 were "properly payable" to the claimant at the end of January 2020, and subject to there being no unauthorised deductions under Section 13(1).

10.3. There is no evidence that the claimant authorised the payment by the respondent of the fees for her level 4 course, improperly or otherwise.

10.4. I accept that they were paid by the respondent to Portsmouth College directly. It appears that the respondent may not have followed the procedure of dual authorisation, but the paperwork has not been located.

10.5. There was no provision either in the contract of employment or in the handbook which contained terms under which any payments, whether as expenses or otherwise, made on behalf of the claimant were payable or recoverable against wages due. The provision in paragraph 153.1 of the contract is far too vague to make up for that deficiency. For it to be effective it would need to specify in writing in compliance with section 13 (1) and 13 (2) (a) or (b) in what circumstances it was deductible from wages. For example in circumstances where the claimant left her employment during or within 12 months of the ending of the course. There is no such provision either in the contract of employment or in the handbook. The deduction was not authorised in those circumstances by the email of January 2010 at page 53. Nor did the claimant agree to it.

10.6. There was no overpayment of wages pursuant to section 14 (1) (a) of the Act, which deals with wages but not expenses, which are dealt with in section 14 (1) (b). There was no overpayment of expenses to the claimant as required by section 14 (1) (b), as occurred in SIP industrial products Ltd versus Swinn 1994 ICR page 474, where the claimant made false claims for expenses. There is no facility nor is it appropriate to read into section 14 (1) (b) the additional words "or on behalf of the worker to a third-party (In this case, Portsmouth College). That situation is covered by payments to a third-party under section 14 (4) There were no such arrangements to which the claimant agreed or consented in writing either in the contract of employment or otherwise.

10.7. For each of these reasons I find that the deduction from her wages was unlawful.

Employment Judge Hargrove
Date 29 November 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON
10th December 2020
By Mr J McCormick

FOR THE TRIBUNAL OFFICE