



EMPLOYMENT TRIBUNALS

Claimant: Ms K Moxham

Respondent: Ms C Cropper t/a Croppers Butchers and Deli

UPON APPLICATION by the respondent made by letter dated 20 May 2021 to reconsider the judgment dated 30 April 2021 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing (as was agreed by both parties), and having considered the written information and evidence supplied by both parties in relation to the reconsideration request,

JUDGMENT

The application for reconsideration fails. The respondent is to pay to the claimant the judgment sum of £746.35.

REASONS

1. The respondent acknowledges that the claimant has not been paid sums outstanding at the termination of her employment. The Tribunal found the sums owing to be £746.35 at the hearing on 30 April 2021. Judgment was given ex tempore (orally) with reasons at the conclusion of the hearing on 30 April 2021. Neither party requested written reasons and so this decision records the reasons given on 30 April that are relevant to the reconsideration decision, to allow sense to be made of the reconsideration request and the subsequent decision.

The hearing and decision on 30 April 2021

2. The respondent told the Tribunal that sums had been lawfully withheld from the claimant's final salary. This was because, according to the respondent, the claimant had agreed to repay the respondent for money loaned to her and items given to her during her employment.
3. The respondent told the Tribunal that the claimant had been loaned £500 on 17 March 2020 as a deposit on a rental property, following the breakdown of her relationship. The respondent also told the Tribunal that the claimant had been allowed to take a fridge freezer and a TV cabinet from the respondent, but had been told that she would owe the respondent £200 for it, to be repaid at some point in the future.

4. The respondent was not able to explain to the Tribunal why, given that the respondent owed the claimant £746.35 in final salary payments but admits to being owed only £700, she had not paid the claimant the remaining £46.35 at the time of her dismissal.
5. At the hearing on 30 April 2021, the respondent had produced no evidence that the payment of £500 had ever been made to the claimant, despite her evidence that this was taken out of the shop takings. I noted at the time that I would have expected some kind of evidence to be easily available in the form of a till receipt or a chit, given the size of the sum.
6. The respondent produced two documents at the hearing relating to the alleged loan of £500. The first was a handwritten authorisation document dated 17 March 2020 and purportedly signed by the respondent and the claimant. It states that the £500 was a loan

“to be returned when settled in new house and can afford to pay back. Will deduct from future wages when both parties agree”.

7. It was the claimant’s case that the money had never been given to her by the respondent. She told the Tribunal that the signature on the document of 17 March 2020 was not hers and that therefore she did not owe the respondent £500 nor did she ever agree to repay it. She provided another official document (a cohabitation agreement with her former partner) in evidence that bore her signature and asked the Tribunal to compare both signatures to conclude that her own signature was materially different from that on the authorisation document of 17 March.
8. She told the Tribunal that the respondent had given her the fridge freezer and TV cabinet as a gift as she no longer had use for these items. The respondent’s witness Mr Rushworth told the Tribunal that he had been given items of spare furniture by Ms Cropper in the past and that no payment had been asked for these from him.
9. The second document produced by the respondent at the hearing on 30 April was a contract of employment for Ms Moxham, dated 1 November 2019. The signature on the contract of employment matches that on the authorisation document of 17 March, but not that on the other contract provided by Ms Moxham. Ms Moxham’s evidence was that she had never seen the contract and that it was not given to her in November 2019 or at any point during her employment.
10. The respondent told the Tribunal that Ms Moxham had not been a reliable employee. She told the Tribunal that she abused her staff discount, gave free food to her relatives when this was not allowed and that the till was down £229.16 in May 2020, a situation she largely attributed to Ms Moxham’s behaviour. There were also allegations made about Ms Moxham’s use of illegal drugs during her employment and her having been under the influence of these at work on at least one occasion.
11. It was clear that Ms Cropper considered herself to have been generous to Ms Moxham during her employment and that she believed Ms Moxham

had abused that generosity, to the detriment of the business. On the balance of probabilities I accepted Ms Cropper's evidence about Ms Moxham having been inappropriately free-handed with the respondent's stock and produce with visiting relatives and friends while working in the respondent's shop.

12. Ms Moxham told the Tribunal that her mental health was poor. She struggled to remember details of her employment, but after some effort at recollection was able to correct her initial evidence of, for example, whether she had taken annual leave to be with her son not long before her employment terminated. I found that her recall of facts was extremely poor but that she was honest about what she did recall.
13. I found neither party's evidence to be entirely reliable. This made deciding the case difficult. There was very little contemporaneous evidence, and the only third party witness was Mr Rushworth, who is an employee of the respondent. It was apparent from the conduct of Mr Rushworth when he gave his evidence that Ms Cropper was attempting to correct his recollection of events rather than allow him to give his evidence uninterrupted. The style of Mr Rushworth's signature bears more than a passing resemblance to what was alleged to be Ms Moxham's signature on the document of 17 March and the contract of 1 November.

The reconsideration request

14. The request for reconsideration was made by the respondent on the production of accounting chits and till receipts to show that the payment of £500 was made on 17 March 2020 from the shop. No reconsideration request is made in relation to the £200 for the fridge freezer and TV cabinet.
15. I accept that a payment of £500 was made on 17 March 2020 to Ms Moxham by Ms Cropper, on the basis of the till receipts which are date-stamped.
16. The claimant provided screenshots of text messages from her former partner who on 18 March 2020 agreed to help her with the deposit, which was £519. However, I find that this does not prove that the claimant did not also receive £500 from Ms Cropper. It is quite possible, given the claimant's own report of her financial difficulties, and her difficulties in recalling key events, that she received £500 from Ms Cropper and money from her former partner.
17. In order for wages to be lawfully withheld from an employee, the employer must abide by section 13 of the Employment Rights Act 1996, which states:

“(1) 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 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 employer making 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.”

18. The practical effect of s13 is that there must be a term of the employee's contract, in written form, that authorises the deduction or, if there is no relevant term of the contract (or no contract at all), advance written consent must be given by the employee to the deduction.
19. The respondent's ability to recover £500 from Ms Moxham's wages depends therefore on whether there is written contractual authorisation to a deduction from wages, or a separate valid written agreement made by the claimant and the respondent before the deduction.
20. The question then arises as to whose evidence is more credible as to the validity of the signatures on the “authorisation agreement” and the contract of employment – Ms Cropper's or Ms Moxham's?
21. As has been referred to earlier, neither party's evidence is wholly credible. Ms Moxham's recall of key events was patchy and unreliable although she did eventually recall that she had taken annual leave as stated by Ms Cropper, which was to her own detriment as she therefore received no payment for her annual leave claim. I find that she was honest in this regard. However, it took some considerable discussion during the hearing for her to remember a week's leave she took with her son twelve months earlier. I find that she has not remembered the payment of £500 from Ms Cropper, or has persuaded herself that such payment was never made.
22. I find that Ms Cropper enjoyed being able to help her employees out and enjoyed being a generous employer, having given furniture to both Mr Rushworth and Ms Moxham. It is clear that she considers herself as having tried to help Ms Moxham out with her personal difficulties. However, I find that this would have made Ms Moxham's abuse of her position while working in the shop all the more vexing to Ms Cropper, as it is an abuse not only of her position but also of Ms Cropper's help and generosity.
23. It is clear that Ms Cropper holds Ms Moxham responsible for the shortfall in the till in May 2020 of £229.16 and also quite possibly of other sums not disclosed to the Tribunal. Ms Cropper seeks to recover monies she believes the business has lost as a result of her behaviour. I find that this is why she withheld not only the £700 she alleges she is owed, but also the £46.35 from Ms Moxham's final wages.
24. However, she requires authorisation to deduct sums from Ms Moxham's wages that complies with the rules set out in s13 Employment Rights Act

- 1996, as set out above. I find that she does not have such authorisation.
25. On the balance of probabilities, I do not accept that the signatures on the “authorisation agreement” of 17 March 2020 or the contract of employment of November 2019 belong to Ms Moxham. They bear a resemblance to Mr Rushworth’s signature. They look nothing like Ms Moxham’s signature on the cohabitation agreement. I accept Ms Moxham’s evidence that she did not sign the agreement on 17 March 2020 or the contract on 1 November 2019.
26. Furthermore, the terms of the “authorisation agreement” are vague and unenforceable in that they are to be paid back “*when both parties agree*” and when Ms Moxham “*can afford to pay back*”.
27. It does not matter that Ms Moxham and Ms Cropper may have made an oral agreement that Ms Moxham will repay the £500 at the time the money was given. Sums can only be lawfully recovered from an employee’s wages in accordance with the requirements of s13, which requires written agreement. Ms Cropper may instead have a civil action against Ms Moxham for recovery of the money, but she does not have the authority in this jurisdiction to deduct the sums from Ms Cropper’s wages. She is to pay Ms Moxham £746.35.

Employment Judge Barker

Date: 15 September 2021

JUDGMENT SENT TO THE PARTIES ON

20 September 2021

FOR THE TRIBUNAL OFFICE