



## EMPLOYMENT TRIBUNALS

**Claimant** Mr L Jendras  
**Represented by** Mr Iossifidis (paralegal)

**Respondents** Dyno-Pest Limited  
**Represented by** Ms Evans-Jones (solicitor)

**Before:** Employment Judge Cheetham QC

**10 September 2021 at  
London South Employment Tribunal by Cloud Video Platform**

### JUDGMENT

1. The claims for unauthorised deductions of wages are dismissed, save for the claim in respect of 10 hours' deducted pay in the sum of £100.96.

### REASONS

1. The parties were previously before the Tribunal on 9 April 2021, when the claim against Ralph Izod (2301910/20) was dismissed. This claim is against Dyno-Pest Limited. The Claimant was employed by them from 26 November 2019 until his dismissal on 30 April 2020.
2. The claim is for unauthorised deductions of pay. In his Schedule of Loss, the Claimant set out the following claims in the total sum of £1,462.51:
  - (i) The failure to repay 2 weeks' deposit - £807.50
  - (ii) Notice pay - £403.85
  - (iii) Failure to pay a Christmas bonus - £150.50
  - (iv) Deductions in respect of working hours - £100.96

3. The Tribunal heard evidence from the Claimant and – for the Respondent – from Mr Darren Williams (Service Manager) and Mr Ralph Izod (Director). There was an agreed hearing bundle of 189 pages.
4. The Tribunal made the following findings of fact and it is easier to set these out under each of the 4 alleged deductions.
5. The failure to repay 2 weeks' deposit. The Claimant was employed as a Field Technician, working 40 hours a week on a salary of £21,000 per annum. At the start of his employment, a deposit of 2 weeks' gross pay was taken to cover any loss or damage. This was shown on his first pay slip, where it was listed as "*Pay in hand -£807.50*". There is no issue that the deduction was made, nor that it had not been repaid before now.
6. However, the Tribunal was told that the Claimant had very recently received a payment of £267.90 from the Respondent, which should be set off against the deposit, so the amount allegedly still owed was £539.60.
7. The Respondent's evidence was that the deductions were made in respect of two missing items: a 1 litre sprayer and a 5 litre sprayer. Mr Williams said they were kept in the store, but were for the Claimant's use and were his responsibility. This was the company's practice for its employees. Although the Respondent did not have a signing-out system, the Tribunal found that in itself suggested that it trusted its employees to look after the equipment they were given to use.
8. The Claimant said that he had stopped using the 1 litre spray in February 2020. As to the 5 litre spray, he said that he had not kept it and that others were using it. It was not listed on the "leaver Checklist", although the 1 litre spray was listed as not returned.
9. On balance, the Tribunal found that these items were and remained the responsibility of the Claimant. He accepted that he used them and therefore it followed that included storing them safely when he had finished using them. It follows that the Claimant has not established that this was an unauthorised deduction.
10. The replacement costs were £150.38 and £380.80 (including VAT) for the 1 litre and 5 litre sprays respectively. That comes to £431.08. However, the apparent gap between the replacement cost and the retained £539.60 is that the 2 weeks' pay kept as a deposit was a gross figure, whereas it would have been paid net.
11. Notice pay. The Claimant was dismissed for gross misconduct. As this was not a claim for unfair dismissal, the question was whether his conduct was such as to amount to gross conduct, which then entitled the Respondent to dismiss him without notice.
12. Four reasons were given for the Claimant's dismissal:
  - (i) the timings of his work did not tally;

- (ii) his inaccurate reporting of worklists;
- (iii) unauthorised use of his Oyster card; and
- (iv) ignoring calls and emails.

13. Of these, the first and second were the more important. The difficulty for the Claimant was that, on undisputed documentary evidence, he was filling in his worksheets inaccurately and the timings did not tally. He accepted in evidence that he did so, saying that he would forget to do the report and fill it in a few days later. He said that he could see why his employer took this seriously, because it meant that clients were being charged the wrong amounts.
14. That was indeed a serious issue and, as Mr Izod said, it happened on multiple occasions. Whether or not the Claimant was deliberately obscuring what happened, as opposed to just being extremely careless, it amounted to conduct that the Respondent was entitled to treat as gross misconduct.
15. That being so, there is no need to make findings regarding the other reasons (the Oyster card and ignoring calls) and this claim for unpaid notice pay fails.
16. Failure to pay a Christmas bonus. The issue here is whether the Claimant was told he would be paid a Christmas bonus. The contractual entitlement was to participate in any bonus scheme, but clause 8.5 states that payment of any bonus was discretionary. This was the Claimant's first Christmas, so there was no previous payment.
17. The Tribunal found that there was no evidence that the Respondent intended to pay the Claimant a bonus, apart from the Claimant's assertion to that effect. Mr Izod said that most of the staff did get one, but it does not follow that the Claimant was therefore entitled to one, because it was in the employer's discretion who to pay and who not to pay a bonus. This claim also fails.
18. Deductions in respect of working hours. This final part of the Claimant's case was rather confusing. By reference to a spreadsheet, Mr Iossifidis showed that 10 hours' pay had been deducted between 25 March and 27 April 2020. For instance, on 25 March, the Claimant worked from 11.30 to 16.15 (4.75 hours). As he worked an 8 hour day, the Claimant should have had 3.25 hours deducted, but the Respondent deducted 4.25 hours. That occurred on 10 occasions.
19. This was an issue for submissions, rather than witness evidence, because the documents were (eventually) clear. Ms Evans-Jones said that the Claimant was employed from 8.00 to 5.00, which was a 9 hour day, with one hour unpaid. However, while that is undoubtedly correct, it does not explain why this additional hour was deducted from the Claimant's pay. In fact, there was no proper explanation.
20. It may well be that the Respondent became frustrated with the Claimant or perhaps understandably confused over his time-keeping. However, they

had no contractual right to deduct these 10 hours and so the claim for £100.96 is allowed.

21. Therefore, the claims are dismissed, save for the claim for an unauthorised deduction in respect of those 10 hours in the sum of £100.96.

Employment Judge S Cheetham QC  
Dated 4 October 2021