



EMPLOYMENT TRIBUNALS

Claimants: Mr Stephen Hughes
Mr Kai Hawkes

Respondent: Essential Group Limited

Heard at: East London Hearing Centre (by telephone)

On: 11 August 2021

Before: Employment Judge Barrett

Representation

Claimants: Mr Hughes represented Mr Hawkes and himself

Respondent: Mr Steven Smith, Director

JUDGMENT

The judgment of the Tribunal is that: -

1. The Claimants' claims for unauthorised deductions from wages are well-founded in part.
2. The Respondent is ordered to pay:
 - a. £452.61 to Mr Hughes.
 - b. £85.78 to Mr Hawkes.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was by telephone. A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.

Introduction

1. On 10 January 2021 the Claimants, who are father and son, presented a claim for unlawful deductions from wages arising out of their employment by the Respondent. The Respondent resists the claims.

The hearing

2. The hearing took place over the telephone at 2pm on 11 August 2021. Mr Hughes represented his son Mr Hawkes and himself. Mr Smith, Director of the Respondent, represented the Respondent.
3. The Tribunal was presented with a bundle of evidence numbering 767 pages by the Respondent and a further bundle of 21 pages by the Claimants.
4. Mr Hughes gave evidence. Mr Hawkes chose not to. Miss Julie de-la-Vigne, Bookkeeper and Payroll / HR Administrator, gave evidence on behalf of the Respondent.
5. The Respondent also provided a witness statement from Mr Daniel Chalkley, Service Engineering Manager. He did not attend the hearing and as a result no weight has been placed on his statement.

The issues

6. At the outset of the hearing the issues were confirmed to be as follows.
7. In respect of Mr Hughes, did the Respondent have lawful authorisation to deduct the following sums?
 - 7.1. A sum of £130 in respect of a parking Penalty Charge Notice ('PCN');
 - 7.2. A vehicle recovery deduction of £288.75;
 - 7.3. A vehicle cleaning deduction of £145;
 - 7.4. A deduction of £434.63 in respect of retained uniforms.
8. In respect of Mr Hawkes:
 - 8.1. Were the following sums properly payable?
 - 8.1.1. A sum of £355 in respect of hours said to have been worked but not paid;
 - 8.1.2. A contribution towards driving lessons of £135.

8.2. Did the Respondent have lawful authorisation to deduct the following sum?

8.2.1. A deduction of £181.18 in respect of retained uniforms.

Findings of fact

Mr Hughes' employment

9. The Respondent is a company providing fire detection and security systems.
10. Mr Hughes started working as a subcontractor for the Respondent in 2019. He was then offered employment as a Lead Engineer and started in that role on 2 March 2020. He worked from Monday to Friday from 8am to 5pm and was paid for 40 hours per week, with an unpaid hour's break for lunch each day.
11. The Tribunal was presented with a document entitled 'Contract of Employment' in Mr Hughes' name dated 11 March 2020. The signature page was not signed. The following clauses are relevant:
 - 11.1. Clause 2.5: "Any payments due to the Company may be deducted from The employee's basic salary and/or any other money due to The employee from the Company." [sic]
 - 11.2. Clause 3.9, which provides the employee is responsible for "Checking and maintaining the vehicle at the correct service intervals and keeping the vehicle in a good and clean condition".
 - 11.3. Clause 3.11, which provides the employee is also responsible "For paying any fines or penalties relating to parking or traffic offences incurred by the employee which can be by way of a deduction from salary."
 - 11.4. Clause 3.16: "The employee must pay any parking fines, PCN's or associated costs incurred in respect of the vehicle. If the Company pays such a charge, fine or costs The employee must reimburse the Company, which will be deducted via The employee's wages." [sic]
 - 11.5. Clauses 11.2 and 11.4: "Upon termination of The employee's employment The employee must immediately return all items of the Company's property which The employee has in your possession in connection with The employee's employment... The Company may withhold payment of your final salary or any other payment due or outstanding upon termination of The employee's employment until The employee's have fully complied with The employee's obligations to return property..." [sic]
 - 11.6. Clause 30, which sets out various situations in which the Respondent would be entitled to make deductions from salary, including "If the employer suffers loss by failure of the employee to follow reasonable instructions or exercise diligence".

12. The Respondent has an Employee Handbook, which states, “It is important for you to read the Handbook carefully as this, together with your Contract of Employment, sets out your main terms and conditions of employment”. Relevant provisions of the Employee Handbook include:
 - 12.1. “On the termination of your employment for whatever reason, you must return all Group property in your possession or for which you have responsibility. Failure to return all such items will result in the cost of the unreturned items being deducted from any monies outstanding to you. This is an express written term of your contract of employment.”
 - 12.2. “On termination of your employment you must return the vehicle to our premises. It is an express term of your contract of employment that failure to return the vehicle will result in the cost of its recovery being deducted from any monies outstanding to you.”
 - 12.3. “Any fines or prosecutions arising from any motoring offence either moving or static will be your responsibility. Notices relating to such fines received by the Group will be passed to you. Fines not paid will be settled by the Group on receipt of the first reminder and deducted from any monies, including salary and expenses, due to you. In this event the Group will also charge you 50% of such fines (a minimum of £5.00) as an administration fee.”
13. There is a dispute of fact as to whether Mr Hughes was provided with a copy of his Contract of Employment and the Employee Handbook. He says he did not see either until he disputed his final payslip after his employment terminated. Miss de-la-Vigne gave evidence that on 11 March 2020 she printed and distributed copies of contracts of employment, Employee Handbooks and health and safety policies to all staff including Mr Hughes. She recalls the date because it was at her first Company Meeting after she had joined the Respondent in February and it took her some time to undertake the printing. She followed the hard copy documents with digital copies and requested digital signatures.
14. On balance I consider it more likely that Miss de-la-Vigne’s positive recollection is reliable, and that Mr Hughes was provided with his contract and the Employee Handbook but has forgotten. Miss de-la-Vigne’s account is consistent with a letter addressed to Mr Hughes dated 11 March 2020 which appears to be the cover letter provided with the contract and policies. It states:

“Please find enclosed your contract of employment with Essential Group. Please take time to read it and within the week we will be sending out the same document digitally for you to sign, along with:...• Essential Group Employees handbook...”
15. The Respondent also has a Driver’s Handbook. There is no suggestion that the Driver’s Handbook is incorporated into the contract of employment.
16. The Driver’s Handbook provides, in relation to PCNs: “The company will communicate with the driver in the event that he/ she receives a fine. If it is

deemed that the fine can be contested, the driver will have 48 hours to decide to contest the fine. If the fine is contested and is won, the fine will be refunded to the driver upon receipt of a refund from the relevant authority. The driver will still be liable for the administration charge.”

Mr Hawkes’ employment

17. On 24 June 2020, the Respondent offered Mr Hawkes a position as an Apprentice Engineer. His offer letter provided he would be paid £4.15 per hour. His usual hours of work would be 8am to 4pm Monday to Friday, and he was not permitted to work more than 40 hours per week. The letter also stated it was a requirement he apply for a provisional driving licence for his 17th birthday, and that the Respondent would contribute towards his driving lessons. Mr Hawkes signed an acceptance slip on the bottom of the letter on the same date, which stated “I accept your offer of employment under the terms and conditions contained in this letter and the contract of employment”.
18. Mr Hawkes’ ‘Contract of Employment’ is dated 24 June 2020 on the header but 16 July 2020 at the foot of the document. The copy provided to the Tribunal is not signed. The following provisions are relevant:
 - 18.1. Mr Hawkes’ employment commenced on 1 July 2020.
 - 18.2. Clause 4.1 specifies that his normal working hours would be from 8am to 4pm with an hour for breaks, unpaid.
 - 18.3. Clause 11 provides for return of company property on termination of employment and that final salary payment may be withheld until such property be returned.
 - 18.4. Clause 29.2 stipulates that where the Respondent funded specialised training, the full cost would be reimbursed by the employee should his employment terminate within 2 years, or half the cost should it terminate within a further year.
 - 18.5. Clause 30 sets out various situations in which the Respondent would be entitled to make deductions from salary, including reimbursement of training costs.
19. On 17 July 2020, Mr Hawkes provided an electronic signature to confirm he had received a copy of the Employee Handbook. There is also an audit trail of both Mr Smith and Mr Hawkes digitally co-signing a document on 17 July 2020 which appears to refer to his Contract of Employment. On the balance of probabilities it is likely that Mr Hawkes did receive these documents.

Mr Hawkes’ driving lessons

20. On 11 September 2020, Mr Smith emailed Mr Hawkes stating, “If you send accounts receipts we’ll contribute 25% towards your driving lessons if they are staggered over months. In order for this to happen you will need to understand

that you're liable to return the contributions to Essential Group if you leave, an agreement will be prepared."

21. At some point after 26 October 2020, Mr Hawkes provided to the Respondent an undated document recording that he had paid cash for 2 blocks of 10 driving lessons and one single lesson, totalling £510. The document bore the contact details and website address of a driving instructor but no company logo, letterhead, signature or VAT details.
22. On 9 November 2020, Miss de-la-Vigne wrote Mr Hawkes a letter with the subject header 'Notice of training and costs agreement', which stated: "You must not bulk book driving lessons, only book them as you use them, for example, 1 lesson per week. You must supply receipts for all training expenses including driving lessons promptly. Essential Group need proof of payment sent and received. Essential Group will re-claim any costs, subject to the policy you signed, if you leave our employ, for whatever reason."
23. The Respondent did not pay a contribution towards Mr Hawkes' driving lessons, considering the documentation provided to be insufficient.

Mr Hawkes' working hours

24. Mr Hughes gave Mr Hawkes lifts to and from work. This meant that although Mr Hawkes was only required to work until 4pm, in practice he often carried on until 5pm, which was his father's finishing time and when his father would be free to drive them both home.
25. Mr Hawkes was paid for 35 hours' work per week. This was because the Respondent understood he was working from 8am to 4pm with an unpaid lunch hour, amounting to 7 hours per day, 5 days per week.
26. On 13 October 2020, Mr Hughes emailed Mr Smith, challenging his son's pay slips and suggesting that Mr Hawkes should be paid for 8 hours rather than 7 hours per day. He stated, "we rarely take a lunch break and kai offended [sic] is out with me over his 8 hours". Mr Hughes explained when giving evidence that he did not take issue with Mr Hawkes' lunch breaks being unpaid, which was the case for all employees, but rather that his son was in practice working the same hours as he was, until 5pm.
27. Mr Smith replied that he would look into the matter and emphasised that Mr Hawkes must not work through his breaks.

Termination of Mr Hughes' employment

28. On 17 November 2020 the Respondent informed Mr Hughes when he arrived at work that he was dismissed with pay in lieu of notice by reason of redundancy. He was asked to return the company van he was driving. Because the van contained his own tools as well as company equipment, he instead drove it home to unload his own property first.

29. At 8.10am that day, Mr Smith texted Mr Hawkes, “Kai, I can’t get hold of your dad. He’s taken the forms van. You need to tell him if it isn’t returned immediately, it will be reported stolen.”
30. Mr Hawkes replied, “We r going to take his tools and ladders off. U r welcome to collect it after that.”
31. Mr Smith replied “I’ve called the police. You’re now driving in a stolen vehicle.” He had indeed called the police, who attended Mr Hughes’ property.
32. The Respondent arranged for the van to be collected from Mr Hughes’ house loaded onto a vehicle recovery truck. A recovery charge of £288.75 was incurred.
33. Once recovered, the interior of the van was found to be cluttered and messy. Mr Hughes explained when giving evidence that he had removed his own tools in a hurry and thrown back into the van anything that belonged to the Respondent, including ladders and materials he had used on a job the previous day. He said he also left in the van items of uniform including his hard hat and high vis jacket, which can be seen in photographs of the interior provided by the Respondent. Mr Hughes did not have time to tidy the van because the Respondent was putting him under pressure to return it.
34. Mr Hughes’ evidence was that he did retain some uniform items, namely “a few” items each of jumpers, t-shirts and trousers. In closing submissions, he clarified that he still had in his possession 3 or 4 t-shirts, one jumper and two sets of trousers, and his son had a couple of pairs of trousers, a couple of t-shirts and a jumper.

Mr Hughes’ PCN

35. On 19 November 2020 a parking PCN of £130 was issued in respect of the company van driven by Mr Hughes on 8 October 2020. The Respondent paid the fine.

Deductions from Mr Hughes’ final payslip

36. On 4 December 2020, the Respondent wrote a letter to Mr Hughes outlining his final pay. It included the following deductions:
 - 36.1. PCN £130.00;
 - 36.2. Vehicle Recovery £288.75; 36.3. Vehicle Clean £145.00;
 - 36.4. Uniform “value held until all items returned” £434.63.
37. The letter was sent by Miss de-la-Vigne as an email attachment on 4 December 2020, together with two check-box lists of uniform bearing Mr Hughes’ signature. These showed uniform provided to the total value of £434.63. Miss de-la-Vigne’s evidence was that she found the two uniform sheets in Mr

Hughes' personnel file and added handwritten tallies of the costs. Mr Hughes' evidence is that one of the sheets bore his genuine signature, but that additional items had been added to the list such as boots which he never received. He says the signature on the second sheet was forged.

38. The signatures on the two uniform sheets are different in appearance: one looser and the other neater. However, the Tribunal was taken to other documents in the bundle of evidence signed by Mr Hughes which he stated bore his genuine signatures, showing he used both versions of his signature at different times. On balance, I conclude it more likely that the signatures on the uniform sheets are also genuine. There is no sufficient evidential basis for making a finding of forgery.
39. Mr Hughes responded on the same day, challenging the deductions and saying "I'm shocked with the money you feel you deducted and withheld, as there is nothing within my agreement with myself and the Essential group that states you can deduct or withhold any money from my wages. I'm also appalled by the very clearly fraudulent signature on one of the documents, also the fact you think I've had so much uniform. I haven't given any permission for yourselves to withhold/deduct any money from my wages."
40. Miss de-la-Vigne replied attaching a copy of Mr Hughes' employment contract and relying on clauses 3.16, 11.2, 11.4 and 30. She asked for clarification what signature he alleged to be fraudulent and explained the uniform charges were based on documents in his personnel file. In relation to the vehicle recovery charge, she wrote "Recovery of the vehicle was a cost incurred when you chose to take the vehicle without permission and consequently was reported as stolen. This situation was made by you not the Company. The Company had arranged for a hire vehicle for you to return home, however you chose to leave the premises with the Company vehicle, without permission."
41. Mr Hughes replied stating he had not seen his employment contract before.

Termination of Mr Hawkes' employment

42. On 19 November 2020, Mr Hawkes wrote an email to Mr Smith, stating "Due to the ongoing issue's [sic] regarding the missing hourly rate, travel money and money promised in your email and job offer towards driving lessons, I can no longer carry on with my apprenticeship as i [sic] would now also be paying out travel everyday to and from the office".
43. On 26 November 2020, the Respondent wrote to Mr Hawkes purporting to dismiss him for being absent without leave. However, given that Mr Hawkes had in fact already resigned, this was of no effect.

Deduction from Mr Hawkes' final payslip

44. On 4 December 2020 the Respondent emailed Mr Hawkes stating, "Your wages have been calculated up to the 16th November 2020. An amount of £181.18

will be held until your uniform is returned. As soon as we receive it the payment will be made to you”.

Submissions

45. Mr Hughes submitted that:

- 45.1. Mr Hawkes was permitted to work up to 40 hours per week and should have been paid for 8 hours' work per day not 7 hours. He worked 9am to 5pm because he did not drive and so accompanied Mr Hughes.
- 45.2. Mr Hawkes started driving lessons because it was a requirement in his offer letter. They had passed on all the documentation the driving instructor had given them, and it was not fair to expect a VAT receipt.
- 45.3. Mr Hawkes had not seen or signed his employment contract (this was Mr Hughes' submission, but Mr Hawkes had chosen not to give evidence and so was not questioned on this point). Mr Hughes himself had not seen his own contract or the Employee Handbook.
- 45.4. In relation to uniform, some items he was alleged to have retained were left in the van, as shown in photographs, and other items he had never been issued. The items he and his son did retain, they had been willing to return but they disputed the lists provided by the Respondent in respect of Mr Hughes, and the Respondent had failed to provide an itemised list in respect of Mr Hawkes.
- 45.5. There was no need for the Respondent to incur vehicle recovery costs, as he had informed them they could collect the van as soon as he had removed his property from it.
- 45.6. The vehicle was clean, it contained equipment and materials belonging to the Respondent and he did not tidy it because he had just been made redundant.
- 45.7. The Respondent had not provided receipts for the vehicle recovery or cleaning, and they appeared high.
- 45.8. In relation to the PCN, he ought to have been given the opportunity to contest it as provided for in the Driver's Handbook.
- 45.9. He considered the Respondent had forged his signature and this was a very serious matter.

46. For the Respondent, Mr Smith submitted that:

- 46.1. Mr Hawkes signed an acceptance slip on his offer letter which referred to the contract of employment and signed the Employee Handbook. Both Claimants accepted their remuneration and were bound to accept all the terms of their contracts.

- 46.2. It was reasonable to withhold money in respect of the items deducted in the final payslips.
- 46.3. Mr Hawkes had not provided sufficient evidence he had actually paid for his driving lessons. If the Respondent had paid for his driving lessons, he would in any event have been required to pay this back on termination of his employment.
- 46.4. The Respondent required Mr Hawkes not to work during his breaks and indeed it was unlawful for him to work more than 40 hours per week as an apprentice. He was not asked to work extra hours.
- 46.5. Mr Hughes had already left by the time the Respondent received his PCN and so there was no opportunity to give him time to contest it. His contract of employment authorised the Respondent to deduct the fine from his wages.
- 46.6. There was a security risk in non-employees retaining company-branded uniforms, as the Respondent's employees are trusted to enter customer properties. If the Claimants had returned the uniforms at the time, they would have been paid the retained sums.

The Law

- 47. Part 2, Ss.13 to 27B of the Employment Rights Act 1996 Act ('ERA') set out the statutory basis for a claim of unauthorised deduction from wages.
- 48. An employer shall not make a deduction from wages of a worker employed by him, which are properly payable to the worker, unless the deduction is required or authorised to be made: by virtue of a statutory provision; a relevant provision of the worker's contract; or the worker has previously signified in writing his agreement or consent to the making of the deduction. Any agreement or consent authorising the deduction from wages to be made must be entered into before the event giving rise to the deduction.
- 49. A worker's right not to suffer an unauthorised deduction does not apply to a deduction from a worker's wages made by the employer where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages.
- 50. 'Wages' for the purposes of Part II ERA is widely defined. It includes any fee, bonus, commission, holiday pay or other emolument referable to employment, and to statutory sick pay.

Conclusions

- 51. In Mr Hughes' case, there is no dispute that deductions were made. The question is whether they were authorised by a relevant provision of his contract. I have concluded above that Mr Hughes did receive both his Contract of Employment and the Employee Handbook, which also had contractual effect.

52. In respect of Mr Hughes, did the Respondent have lawful authorisation to deduct the following sums?

52.1. A sum of £130 in respect of a parking Penalty Charge Notice ('PCN')?

The Respondent had the contractual right to deduct the value of the PCN under clause 3.11 of Mr Hughes' Contract of Employment. The provision in the Driver's Handbook regarding allowing employees to contest PCNs was noncontractual and did not prevent the Respondent from making the deduction, but rather provided a mechanism for it to be refunded if later successfully challenged. The deduction of £130 was authorised.

52.2. A vehicle recovery deduction of £288.75?

The Employee handbook provided that "It is an express term of your contract of employment that failure to return the vehicle will result in the cost of its recovery being deducted from any monies outstanding to you." The Respondent did have authority to deduct the costs of vehicle recovery from Mr Hughes' payslip if he failed to return his company van. The Respondent acted quickly and incurred the recovery costs on the very morning that Mr Hughes was informed of his dismissal. It may well have avoided those costs by simply allowing Mr Hughes time to empty the van and then collecting the keys and van from him. However, Mr Hughes elected to drive the van to his home after he was dismissed and did not thereafter return it but expected the Respondent to collect it. In the circumstances he had failed to return it. The deduction of £288.75 was authorised.

52.3. A vehicle deduction of £145?

The potentially relevant clauses in Mr Hughes' contract are clause 3.9, which required him to keep the company van "in good and clean condition", and clause 30, which authorised the Respondent to make a deduction from wages "If the employer suffers loss by failure of the employee to follow reasonable instructions or exercise diligence". In this case, the Respondent incurred a loss because it had to pay cleaning costs due to the messy state of Mr Hughes' van when it was recovered. However, the state of the van was not caused by Mr Hughes failing to keep the van "in good and clean condition" during his employment. Rather, it was caused by the chaotic way in which Mr Hughes emptied the van of his own property, having been told he was dismissed and immediately put under time pressure to return it by the Respondent. In the circumstances, this was not a "failure of the employee to follow reasonable instructions or exercise diligence". The deduction of £145 was not authorised.

52.4. A deduction of £434.63 in respect of retained uniforms?

The Respondent was entitled to withhold payment in respect of retained uniforms under clauses 11.2 and 11.4 of Mr Hughes' contract. However, I accept Mr Hughes' evidence that he did not retain all the items featured on the uniform lists. It is evident from the photographic evidence that his hard hat and jacket were returned in the van. On the basis that he retained 4 t-shirts (£15.81 each), 1 jumper (£20.80) and 2 pairs of trousers (£21.49 each), the

Respondent was entitled to withhold £127.02 from his final salary. The balance of £307.61 was not authorised.

53. Therefore, the Respondent made unauthorised deductions from Mr Hughes' wages of £452.61 in total.
54. In Mr Hawkes' case there is an issue as to whether pay in respect of an additional hour's work per day and contribution towards driving lessons were "properly payable" and a further issue as to whether the deduction in respect of his uniform was authorised by a relevant provision of his contract. I have concluded that Mr Hawkes also received both his Contract of Employment and the Employee Handbook.
55. Were the following sums properly payable?

55.1. A sum of £355 in respect of hours said to have been worked but not paid?

Mr Hawkes' offer letter and contract both provided that his normal hours of work were 8am to 4pm. His case, as advanced by his father, was not that he was entitled to be paid for lunch breaks but that he was entitled to an additional hour's pay because in practice he worked between 4pm and 5pm and left when his father finished at 5pm and drove him home. There was no contractual requirement to work this additional hour. The Respondent did not instruct him to work the additional hour. It was a matter of choice and convenience to dovetail his working hours with his father's. In the circumstances, wages were not properly payable in respect of additional work he chose to do of his own volition, and there was no unauthorised deduction in this regard.

55.1.1. A contribution towards driving lessons of £135?

I accept the Respondent's submission that Mr Hawkes did not provide sufficient evidence of payment in respect of driving lessons to trigger the contractual promise in his offer letter to contribute to their cost. The document he did provide is not a formal invoice or receipt. However, even if I am wrong about that, any contributions made would fall to be reimbursed under clause 29.2 of his employment contract, because he left within 2 years. In the circumstances, wages in respect of driving lesson costs were not properly payable, and there was no unauthorised deduction in this regard.

56. Did the Respondent have lawful authorisation to deduct £181.18 in respect of Mr Hawkes' retained uniforms? The Respondent was entitled to withhold payment in respect of retained uniforms under clauses 11.2 and 11.4 of Mr Hawkes' contract. However, the Respondent has not provided an itemised list of uniform retained by Mr Hawkes. Mr Hughes says his son still has 2 t-shirts (£15.81 each), 1 jumper (£20.80) and 2 pairs of trousers (£21.49 each), totalling £95.40. The balance of £85.78 was an unauthorised deduction.

Case Numbers: 3200086/2021 & 3200087/2021

Employment Judge Barrett
Date: 15 September 2021