



EMPLOYMENT TRIBUNALS

Claimant: Ms S Coulson

Respondent: Progressive Care Limited

Heard at: Leeds Employment Tribunal (By CVP)
On: 6 October 2021

Before: Employment Judge Anderson

Representation

Claimant: In person

Respondent: Mr T Pochron

JUDGMENT having been sent to the parties on 3 November 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Technology

1. The hearing was conducted by CVP (video). The parties did not object. A face-to-face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

Introduction

2. This was a claim of unlawful deductions from wages brought by the Claimant, Ms Coulson, against her former employer, Progressive Care Limited. The Claimant appeared in person. The Respondent was represented by Mr Pochron, solicitor.
3. I gave oral judgment on 6 October 2021. There was a delay in sending the written judgment to the parties; it being sent on 3 November 2021.

Evidence

4. I considered a bundle of documents and witness statements running to 177 pages.
5. The Tribunal heard evidence from the Claimant. For the Respondent, the Tribunal heard from Mr Waite (HR Manager). I heard submissions from both parties.

The Claims and Issues

6. At the outset of the hearing, I discussed the issues with the parties. It was agreed that the Claimant's final pay was less than her 'usual' salary, and that there had been a deduction. The issue for the Tribunal was whether that deduction was unauthorised within the meaning of s13 of the Employment Rights Act 1996.

The Facts

7. The Tribunal made the following findings of fact:
8. The Respondent is a provider of care, assessment and support packages for children, families, young people and adults.
9. The Claimant was employed by the Respondent as a support worker for the period 23 November 2020 to 19 March 2021. She was employed to work in a children's home in South Yorkshire.
10. The contract between the Claimant and Respondent was signed by the Claimant on 23 November 2021
11. The contract states that the Claimant was employed full time, to work 37.5 hours a week, at an hourly rate.
12. The relevant parts of the contract include as follows:

Clause 5:

Your employment is subject to an initial Probationary period of 6 months commencing on the contract commencement date. The Employer (acting reasonably) reserves the right to extend the Probationary Period and to terminate this contract due as a result of an unsuccessful probationary period providing notice as detailed in section 21.

Clause 19.5:

If your employment with the Employer ceases within the probationary period (for any reason whatsoever) then you will be required to repay in full to the employer the cost to or incurred by the Employer in providing you with the

induction training and any other training provided. The 'costs to or incurred by' the Employer will include but will not limited be to costs of the training itself, hotel stays, other incurred expenses and your wages for the hours spent training.

Clause 19.8:

The cost of training to be reimbursed will be reduced by 1/24th in respect of each full month of your employment with the Employer during the two year period.

Clause 19.9:

By signing this contract of employment you authorise and agree that your Employer may deduct any such monies from any wages. salary or other money due to you.

Clause 27.1:

By signing this contract of employment you authorise and agree that your Employer will be entitled to any time during you (sic) employment and in any event on termination to deduct from your remuneration including but not limited to, any outstanding loans, overpayments, advances, the cost of training, the cost of DBS checks (should you employment cease for whatever reason within one year of a DBS cost being incurred), the cost of medical reports, the cost of repairing and damage or loss to the Employer's property caused by you or any Annual leave taken in excess of your pro-rata entitlement accrued to the relevant date.

13. The Claimant signed the contract, as she confirmed in evidence. She agreed that her employment was subject to a probationary period, which would expire on 22 May 2021. She also accepted that by signing the contract, she had authorised and agreed to the deductions as set out in the document.
14. The Claimant agreed that the terms of the contract provided that the costs of training to be repaid to the Respondent would decrease the longer she stayed with the company; they would reduce by a quarter if she completed the probationary period and would reach zero after two years.
15. The Claimant sent a letter, by email, on 19 February 2021 tendering her resignation.
16. Under the terms of the contract, and as set out by the Claimant in that letter, her final day of employment would be (and was) 19 March 2021. This date fell within the Claimant's probationary period.
17. The Respondent wrote to the Claimant by letter dated 16 March 2021, referring to the employment contract and the requirement to "*repay the cost incurred in providing you with induction training and any other training provided together with the cost of obtaining the Disclosure & Barring Service certificate.*" The letter stated that "*The company seeks to recoup these costs as a genuine pre-estimate of loss, in that it has invested time and money in providing you with training that has increased your skill and knowledge, and in obtaining a DBS*

disclosure required to enable you to carry out your role, but has not received the full benefit of its investment as a result of your employment ending.”

The Respondent set out that “According to your agreement with the company, it is estimated you are required, therefore, to repay:

*Training Hours: £743.04
Training Costs: £2,203.24
Additional Cost: £40.00
Total Costs: £2,986.28”*

18. The Claimant understood there would be costs to be re-paid in the event she left her employment. She confirmed this very clearly in her evidence. When it was put to her that she knew there would be training costs to be re-paid, she replied ‘Oh yes, I understood’.
19. The Claimant requested an itemised breakdown of the training costs shortly after handing in her notice. She said she did this ‘following concerns that the costs were disproportionate.’
20. Mr Waite’s evidence was that on occasions, the Respondent will invest a significant amount of time and money in providing training to a support worker and paying them for their time spent training, only for the support worker to resign shortly after. I accept this evidence.
21. Mr Waite set out that the Respondent’s training provision is outsourced to a separate limited company – the ‘Academy’. This is part of the Respondent Company Group, but is a separate company and has its own budgets, employees, etc. Mr Waite’s evidence, which was not challenged, was that *“Some of the training is done ‘in house’ by the Academy and its staff and others are further outsourced to different providers. The Academy organises this for the Respondent and charges them the fees shown on the relevant invoices”*. He confirmed in oral evidence that this was the cost the Respondent incurred and this was not challenged. I had sight of the invoices from The Academy.
22. The Claimant undertook a significant number of training courses, both in person and online: 41 courses were listed in the Claimant’s Training Log over the course of a month. These ranged in duration from 0.6 hours, to one of 13 hours. The Claimant accepted she had completed all the courses listed and had been paid for the time it took to complete them.
23. The Respondent stated and the Claimant agreed that the certificates obtained as a result of these training courses could be ‘transferred’, or ‘taken with her’ on leaving her employment.
24. The Respondent deducted a proportion, rather than the full amount of what it says is payable. This was to ensure that the Claimant’s salary for the final pay period did not fall below the National Living Wage rate.
25. The Claimant’s final pay slip is dated 8 April 2021 and reflected this.

The Law

26. Section 13 of the Employment Rights Act provides as follows:

13.— Right not to suffer unauthorised deductions.

(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.

(3) 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 him to the worker 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 worker's wages on that occasion.

...

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

...

27. In the case of Fairfield Ltd v Skinner [1993] IRLR 4, [1992] ICR 836, the EAT considered that "*As a matter of simple language it seems to us that section [13(1)(a)] contemplates that the...tribunal must, where there is a dispute as to the justification of the deduction, embark upon the resolution of the dispute.*"

Application of the Law to the Facts

28. The facts were not in dispute in this case. The Claimant's position is that she knew that she would have to re-pay training costs, but that she did not realise what the actual costs would be, and she considers them to be disproportionate.

29. The Claimant's contract sets out that in the event she leaves the Respondent company during the probationary period, she will be required to repay the costs of and associated with her training in full. The terms of the contract make it clear that such costs will be repaid by way of a deduction from her wages. I am satisfied that the terms setting out this obligation are clear and sufficiently particularised. I am satisfied that, applying s13, the deduction was authorised to be made by virtue of a relevant provision of the Claimant's contract
30. This is a case where the dispute is in relation to the proportionality or justification of the amount of the deduction. I note that the Claimant's hourly wage was £9.21 per hour and that the costs of training, which the Respondent says were owing at the time her employment ended, were £2,986.28. This is not an insignificant sum.
31. The Claimant was employed as a support worker within a children's home. It seems to me that a role with such responsibility will by necessity require employees to be trained to a minimum standard across a wide range of issues. I have reviewed the training log and note that the courses attended by the Claimant included safeguarding, appropriate adult, mental health, missing from care, self-harm, communicating with children and many more, which are entirely appropriate for the role involved.
32. As set out above, I accept that the investment by the Respondent in training employees is a significant one. Given the nature of the role, this is not only understandable, but necessary, to ensure that the children supported by the Respondent are cared for by adequately trained staff.
33. The Claimant undertook a significant amount of training, which she is able to 'transfer' to other employment.
34. Although the amount to be repaid was relatively significant when considered in light of the Claimant's hourly pay, I have accepted the evidence of the Respondent that these were the charges it incurred for that training, for the reasons set out above, and the training itself appears proportionate to the role the Claimant was undertaking.

Conclusions

35. The Claimant raised complaints about being asked to work at another site, about rotas being provided at short notice, and about a conversation she said she had with a manager. However, these issues were not relevant to the matter before me as to whether there had been an unauthorised deduction from her wages.
36. In my judgment, the contract contained clear terms that re-payment of training costs would be required if the Claimant left her employment during the defined probationary period, and that the re-payment would be made by way of deduction from wages, in accordance with a specified 'sliding scale'.

37. There was a deduction from the Claimant's wages by the Respondent, in accordance with the contract.
38. I am satisfied that the deduction made by the Respondent, from the Claimant's final pay, was authorised by a relevant provision of her contract. That provision was set out in writing, the Claimant was aware of it when she signed the contract more than four months prior to the deduction being made.
39. There has been no unauthorised deduction from wages and I therefore dismiss the claim.

Employment Judge Anderson

22 November 2021