EMPLOYMENT TRIBUNALS

Claimant:	Miss L Hewson
Respondent:	GDMA Group Limited
Heard at:	Leeds ET (via CVP) **On**: 10 December 2021
Before:	Employment Judge M Rawlinson (sitting alone)

Representation

Claimant	In person, not represented
Respondent	Mr Lee Williams (solicitor)

JUDGMENT having been sent to the parties on 14 December 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

Introduction

1. This was a claim for unauthorised deductions from wages brought by Ms Hewson against her former employer GDMA Group Limited. The claimant, Miss Hewson, appeared unrepresented. The respondent was represented by Mr Williams, solicitor.

2. I heard evidence from the claimant herself and also from Mr Waite on behalf of the respondent. I considered evidence contained within a 93 page bundle as well as further documents supplied by way of email from the claimant dated 24 November 2021. Both parties had the opportunity to ask questions and cross-examine the other side, and they also addressed me by way of brief closing submissions.

3. I gave oral judgement and full oral reasons at the substantive hearing which took place on 10 December 2021. The judgement was sent to the parties on 14 December 2021. I subsequently became aware on 21 December 2021 that a request for written reasons had been made. The provision of these reasons was therefore delayed due to the intervention of Christmas and New Year, with parties being informed in early January 2022 that this was the case.

Claims and Issues

4. I discussed the issues at the outset of the hearing with the parties. The main issue in the case was whether the respondent was entitled to deduct from the claimant's final salary payment the sum of £465 (which was eventually agreed between the parties as being the sum in dispute, despite the way it was pleaded) and whether that deduction was authorised or unauthorised within the meaning of section 13 of the Employment Rights Act 1996. There was also a suggestion at one stage by the claimant that the said terms may amount to a penalty clause.

The Facts

5. The claimant was employed by the respondent as a Graphic Designer under a written contract of employment which she signed on 1 June 2021. The respondent company was, at the relevant time, part of a group of companies that operates across numerous sectors including social care, property, training and education. It also had a subsidiary known as “Progressive Care” which was a care provider. It was this arm of the company for whom the claimant did most of her work.

6. The claimant’s first day of employment was 23 June 2021. The claimant gave notice of her resignation on 30 June 2021 (as she was entitled to do pursuant to the contract) and her last day of employment was on 15 July 2021. There is no dispute between the parties that the claimant's resignation occurred during a six month probationary period for the purposes of her contract.

7. Upon termination of the claimant's employment the respondent deducted the said sums of £465 from the claimant’s final salary in respect of training costs, a step which they regarded as being entirely within their right to do under the employment contract.

8. I heard and read evidence regarding the various courses that the claimant was required to undertake. The respondent's case was that these courses cost the respondent company £594.84 in terms of the cost of providing the training (£460) and the time spent by the claimant undertaking the training (£134.84). The courses included courses on coronavirus, safeguarding, fire safety, GDPR, display equipment and equality and diversity.

9. The claimant's case was that some of the training was irrelevant to her role, it was unnecessary, the costs of it were inflated and especially given that the courses themselves were in fact provided by a sister company of the respondent. Further, she was never asked whether she had previously undertaken any similar training – with the claimant's case being that in fact she had.

10. The claimant also gave evidence concerning a conversation which she said had taken place on the first day of her employment with Mr Jonathan Waite, during which she was told words the effect of although she may have done some of the courses before, if she didn't do the courses then there would be no job for her. Her case was that, effectively, she had no choice but to do the courses

11. The respondent's case was that the training courses undertaken by the claimant were reasonable, justifiable and appropriate. More importantly, they point to the fact that the claimant never told them at any stage that she had previously done any similar courses, nor did she raise any objection at any stage until after her resignation in terms of either the content or provision of the training.

12. The respondent's primary cases relies specifically upon express terms of the contract that the claimant signed, including clauses 10.5, 12.1, 12.2 to 12.7 inclusive, as well as clause 22.1. They state that it is plain of the very face of contract (which the claimant signed freely) that she was potentially liable to reimburse a proportion of her training costs and DBS certificate costs on termination of her employment. In simple terms, the respondent asserts that they were contractually authorised to deduct the amounts that were ultimately deducted from the claimant's final salary.

13. The Respondent's DBS and training costs repayment regime was set out in clauses 10.5, 12 and 22 of the Employment Contract as follows:

> *10.5 If you leave the employment of the Employer within the Probationary Period then you will be required to repay to the Employer the cost to or incurred by the Employer in obtaining your Enhanced Disclosure Check from the Disclosure & Barring Service.*

12.1 During your employment you will be required to participate in training in connection with your job to enable you to better fulfil your duties under this contract. Where you are required to attend any lecture, seminar or workshop, you will be paid at your normal hourly rate of pay for the time you attended minus breaks.

12.2 Refusal to undertake training in connection with your job as required by your Employer or failure to complete such training may constitute grounds for dismissal.

12.3 If you leave the employment of the Employer within the Probationary Period then you will be required to repay to the Employer the cost to or incurred by the Employer in providing you with induction training and any other training provided.

12.4 If you leave the employment of the Employer within a two year period following the completion of any other training that you have undertaken in connection with your job, or before that training has been completed then you will be required to repay to the Employer the cost of that training incurred by the Employer in providing/procuring such training, on a sliding scale.

12.5 The amount you will be required to repay is dependent upon how close you are to completing the two year period. 12.6 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.

12.7 The Employer is authorised and 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.

22.1 The Employer reserves the right and by signing this contract of employment you authorise and agree that your Employer will be entitled at any time during your employment and in any event on termination to deduct from your remuneration under the contract or from any sums owed or owing by your Employer to you any monies due from you to your Employer including, but not limited to, any outstanding loans, overpayments, advances, the cost of training, the cost of the DBS checks, 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-rated entitlement accrued to the relevant date.

14. In the event only a proportion (£465) of the full amount of training costs that they incurred were deducted. This was the comply with national minimum wage requirements and they also did not seek recovery of the cost of the DBS certificate.

15. The respondent made the point that the claimant continues to have the potential benefit of completing these courses going forward into any future employment. Mr Waite (on behalf of the respondent) denies any such conversation as the claimant outlines - in terms of stating words the effect of if you do not the training then there is no job - took place.

The Law

16. 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.

17. 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*."

18. Penalty clauses are ordinarily concerned with payment to be made to one party in the event of a breach by the other. The leading case on penalty clauses is *Cavendish Square Holding BV v Makdessi; Parking Eye Ltd v Beavis (Consumers' Association intervening) [2016] AC 1172*.

Findings of Fact and Conclusions

19. On the evidence I have heard and read, I conclude that the relevant clauses as highlighted by the respondent in the written contract of employment amounted to primary obligations upon the termination of employment and did not depend upon, and indeed were not made in response to, any breach of contract by the claimant. There was no breach of a contract in this case because the claimant lawfully terminated her contract by giving notice.

20. I conclude that there is not an obligation in the contract for the claimant to perform an act in default of which she shall pay a sum of money. The contract expressly permits the claimant not to perform the act of remaining in work, by providing for its termination by the giving of notice. The requirement to pay sums relating to training falls into the second category described in paragraph 14 of the judgment in *Cavendish*; that is that if Miss Hewson does not perform the contract, by terminating the contract herself and giving notice within her probationary period, only then shall she be obliged to pay to the respondent the sums relating to training as defined in the relevant clauses.

21. In that regard, as a matter of law I conclude that they did not amount to penalty clauses.

22. In passing, I further conclude that the terms were enforceable at common law in any event. I agree with the assessment of the amounts involved as a genuine pre-estimate of loss and not as extravagant or unconscionable.

23. In terms of section 13 of the Employment Rights Act, I am satisfied that the terms setting out the claimant's obligations as within her contract were (and indeed are) clear and sufficiently particularised

24. Whilst I note the claimant's concerns regarding the cost of the training and the fact it was provided by the respondent's sister company, absent something wholly unfair or unconscionable, it is a matter for the respondent company as to how they arrange their affairs in terms of the provision of training.

25. I have seen within the bundle and I accept unchallenged evidence by way of invoices as to what the training actually cost the company. I also conclude that the training that was provided was genuinely regarded by respondent as being necessary for all of their employees. I do not find that given the sector they operate in and in the circumstances generally that this requirement for all employees to undertake these various training courses was unreasonable. The fact that the training may not have been a perfect fit for the claimant's particular lesser role does not detract from the contractual position between the parties.

26. On the issue of whether there was conversation between the parties on the claimant's first day of employment, I prefer the evidence of Mr Waite. His account was that he simply took the claimant through the list of courses that were to be undertaken. I accept his evidence that he did not say words to the effect of if the claimant were to refuse to do the courses, she would not have a job.

27. The simple fact is that the contractual position in the event of resignation within the probationary period was clearly outlined in a contract that was signed by the claimant on 1 June 2021. It is worthy of note that the claimant did not raise any of the concerns that are now articulated by her at the material time, or indeed at any period during her period of employment.

28. It follows that I am satisfied that applying section 13 Employment Rights Act, 1996 deduction of the said amounts was authorised to be made by virtue of a relevant provision of the claimant's contract.

29. Whilst the amount to be repaid was fairly significant (in the context of the overall salary payable) I accept the evidence of respondent in terms of the cost borne by the company in terms of training and the difficulties that can be encountered by companies training of individuals at a cost who then leave shortly thereafter.

30. In my judgement the contract contained unambiguous terms that the repayment of training costs will be required if the claimant left during the probationary period and that this will be deducted from wages in accordance with the sliding scale as outlined within the contract. Thereafter, when there was a deduction from the claimant's wages that I find to have been in accordance with that contract and therefore authorised by the relevant provisions of the contract.

Conclusion

31. I find that the relevant provisions dealing with the matter were clearly set out in writing in the contract, that the claimant was aware of those provisions when she signed a contract prior to the deductions being made.

32. It follows from the above findings that I conclude there has been no unauthorised deduction from wages. I therefore dismiss the claimant's claim.

Employment Judge Rawlinson

26 January 2022