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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos.: 4104305/2020 & 4104306/2020 (V)

Hearing Held via Cloud Video Platform (CVP) on 29 April and 19 July 2021

Employment Judge: M Sutherland

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Jessica Niosi

**First Claimant
In person**

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Hector Andres Roman Ihla

**Second Claimant
In person
Interpreters:
Ms S Ricci
Mr J Oya**

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**Claremont Park Ltd
T/a Meredith House Hotel**

**Respondent
Represented by:
Mr C Edward,
Counsel instructed by
Ellis Whittam**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that –

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1. There was no unlawful deduction from the First Claimant's wages and her claim is dismissed.
2. There was no unlawful deduction from the Second Claimant's wages and his claim is dismissed.

REASONS

1. The First and Second Claimants lodged complaints for unlawful deduction from wages including holiday pay. A final hearing was arranged to determine all
5 issues.
2. The First and Second Claimants appeared on their own behalf. The Respondent was represented by Mr C Edward, Counsel.
3. The Claimants had also raised additional issues within their claim and it was explained to the Claimants that these issues did not amount to claims falling
10 within the statutory jurisdiction of the Employment Tribunal.
4. During the hearing the Claimants advised of possible additional complaints. The Claimants were advised of their rights to make applications for amendment to include such additional claims including during the adjournment but elected not to do so.
- 15 5. Following discussion it was clarified that the claims as plead were for unlawful deduction from final wages due to be paid on or about 20 June 2020. The final wages pertained to the fortnight ending 21 June 2020 and included payment for 3.1 days of accrued but untaken holidays. It was agreed between the parties that the net final wages (after tax and NI) due to be paid were as follows:
20 £554.31 to the First Claimant and £526.57 for the Second Claimant. The Respondent made deductions from the First Claimant's net final wages in sum of £554.31 and from the Second Claimant's final wages in sum of £526.57 (such that no payment was made) citing failures to return master keys, damage to a window, and other losses.
- 25 6. The First and Second Claimants gave evidence on their own behalf. Mishbah Javid, Manager gave evidence on behalf of the Respondent.
7. Parties had each prepared a bundle of documents.
8. The parties made oral legal submissions.

List of Issues

9. The issues to be determined were as follows –

Unlawful deduction from wages s13 ERA

- 5 a. What was the total amount of wages properly payable to the Claimant on each occasion?
- b. What was the total amount of wages paid to the Claimant on each occasion?
- c. Were any of the deductions of wages authorised or excepted
- 10 deductions (Section 14)?

Findings of Fact

- 10. The Claimants were both employed in the position of Duty Manager from 13 February 2020 until their resignations effective 21 June 2020. The Claimants
15 were provided with tied accommodation. The Respondent also employed Misbah Javid as a Manager. The Respondent business was owned by Shaftqat Ali.
- 11. The Claimants were originally employed on contracts providing for 40 hours a week, but this was changed by agreement to a zero hours contract with
20 effect from 13 March 2020.
- 12. By letters dated 15 June 2020 the Claimants gave one week’s notice of termination of their employment. The Claimants did not remain in the tied accommodation during the period of notice but instead left early and in haste on 15 June 2020. They wanted to leave without seeing the Manager or the
25 owner.

13. Their contracts of employment provided that the Respondent may make deductions from their wages in respect of any loss or damage to the Respondent's property caused by their carelessness or negligence.
14. The Claimants' resigned by leaving letters of resignation in the hotel office.
5 The Claimants left the master keys on a desk alongside their letters of resignation. The hotel office internal door locked automatically when it was closed but from time to time that door was left open. At the time of their resignation a homelessness charity was using the hotel to provide emergency accommodation for the homeless. The homelessness charity had staff
10 working in the hotel. The keys were not hidden within the letters of resignation or otherwise. The Claimants did not hand the master keys directly to the Respondent's Manager or the owner.
15. Neither the Manager nor the owner ever received or found the master keys for the Hotel. The master keys opened all of the doors in the hotel. The loss
15 of the master keys created a security issue for the Respondent which required to be remedied by replacing the lock system. The lock system was replaced at a cost of £1750.

Observations on the evidence

16. The standard of proof is on balance of probabilities, which means that if the
20 Tribunal considers that, on the evidence, the occurrence of an event, etc was more likely than not, then the Tribunal is satisfied that the event did occur.
17. The Respondent's witness Misbah Javid, Manager was a reliable and credible
25 witness. She was measured and reasonable in her testimony which was wholly consistent with the documentary evidence. She explained that she had been in a relationship with the owner and they had children together but they were separated.
18. The First Claimant was in the main a reliable and credible witness. She was
30 largely but not wholly measured in her testimony but that was understandable given the background context she asserted and the importance of these wider issues to her.

19. The Second Claimant was in the main a reliable and credible witness. He was largely but not wholly measured and reasonable in his testimony and on occasion sought to give self-serving answers (e.g. regarding the office door being left open) but again that was understandable given the background context he asserted and the importance of the claim to him.
20. On 15 June 2020 the manager attended the hotel in response to a fire alarm and found the letters of resignation. The Claimants' letters of resignation do not refer to leaving the keys on the desk. The Manager did not find any keys on the desk. The Manager made a contemporaneous note that Room 15 had been left open and that the heater had been left on causing the fire alarm to go off. She inferred from the state of the room that the Claimants had left early and in haste. The Manager texted the Claimants but did not receive a reply. The Manager later confirmed with the owner that the keys had not been handed to anyone.
21. On 16 June 2020 the Claimants raised a grievance regarding working without adequate protection whilst on furlough. The Respondent took independent advice on the grievance and the property issues. On or about 20 June 2020 a third party bookkeeper prepared the final payslips but these were not issued by the Respondent because of the property issues. (The Claimants accepted that they had not raised this as a separate tribunal complaint). On 22 June 2020 the Owner wrote to the Claimants asking for return of the keys and noting damage to the window. The Claimants did not reply to that letter. The Respondent concluded that the Claimants had failed to return the keys. The Respondent made a complaint to the police regarding the keys. The Claimants asserted that the Respondent should have checked the CCTV footage. The Respondent was not aware that the Claimants asserted having left the keys on the desk until they received the tribunal claim.
22. The Respondent arranged for replacement of the keys/ locks around end June. The Respondent provided copies of the following: an invoice from Jewson's dated 26 June 2020 regarding purchase of keys/ locks in sum of £1500; and an invoice dated 10 July 2020 in sum of £1,000 regarding

replacement of locks by Scott Maxwell, Joiner. The First Claimant accepted that the invoices were valid and that the Respondent had incurred the costs but denied that the Claimants had caused the losses. The Second Claimant asserted that the invoices were fake but without reasonable evidence to support this (a delay of about 11 days to undertake the remedial works was not considered unreasonable given the difficulty of securing a joiner during the COVID lockdown). The Respondent declared to HMRC that the Claimants were each paid £443.28 and £579.99. The Claimants considered this unfair because they had not in fact received payment. Parties were unclear as to what approach ought to have been taken where wages are earned but set off against alleged property damage. Having regard to the testimony of the Claimants and the Manager and the contemporaneous note and invoices it is considered more likely than not that the Claimants did leave the master keys lying on the office desk but that the Manager and owner did not find or receive those keys and that the Respondent incurred costs of £2500 in replacing the keys/ locks.

23. On 15 June 2020 the Manager also identified that a window had been damaged. The Manager had inferred that the damage was caused by the Claimants because she only identified the damage following their departure, the window had been jammed open and some of their belongings were left in the relevant room suggesting that they had jammed open the window to aid their departure. The Respondent alleged that the Claimants damaged the window on departure and which was repaired at a cost of £300. The Respondent provided a copy of the following invoice: repair of window by Wasim Windows dated 21 July 2020. Having regard to the testimony of the Manager and the contemporaneous invoice it was accepted that the window frame was damaged and cost £300 to repair. There was however insufficient evidence to conclude on balance of probabilities that this damage was caused by the Claimants on their departure.

The Law

Unlawful deduction from wages

24. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
25. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.

Respondent's Submissions

26. The Respondent's submissions were in summary as follows –
- a. The parties were in agreement regarding the final earnings and holiday pay
 - b. The parties were in agreement regarding the contractual right to make a deduction in certain circumstances
 - c. The master keys were not left or alternatively were not safely returned to the Manager or the Owner.
 - d. The First Claimant accepted that the remedial work was undertaken
 - e. The Second Claimant had no reasonable basis upon which to assert that the invoices were fake and the remedial work was not undertaken
 - f. The Claimants accepted the need for the remedial works if the keys were not safely returned.

Claimants' Submissions

27. The Claimants' submissions were in summary as follows –

- a. The invoices were not proof that the Claimants had caused the loss/damage.
- 5 b. The Claimants didn't want to hand the keys to the Manager or Owner because they feared being persuaded to stay.
- c. They are simply seeking the monies owed to them. They were unfairly reported to the police for theft but they had nothing to gain by keeping the keys.
- 10 d. The deductions were simply retaliation for their earlier grievance

Discussion and decision

28. There was a written contractual provision which provided that the Respondent may make deductions from wages in respect of any loss or damage to the Respondent's property caused by the carelessness or negligence on the part of the Claimants. Whether there was any loss or damage to the Respondent's property caused by carelessness or negligence on the part of the Claimants requires to be determined objectively from the perspective of a reasonable person in the relevant position.

20 29. Considered objectively the Claimants' failed to take reasonable steps to ensure the safe return of the master keys to the Respondent. The Claimants left the master keys on a desk in the office . The keys were master keys which opened every door. The loss of the keys would create an obvious security issue. The keys were not hidden or handed directly to the Manager or Owner.
25 Neither the Manager or Owner found or received the keys. The Respondent had no reasonable alternative but to arrange for replacement of the locks at a cost of £2,500. That loss was caused by the careless of the Claimants. The

Respondents were therefore entitled to deduct that cost from their final wages and accordingly there was no unlawful deduction from their wages.

5 Employment Judge: Michelle Sutherland
Date of Judgment: 02 August 2021
Entered in register: 25 August 2021
and copied to parties

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