



EMPLOYMENT TRIBUNALS

Claimant: Miss D Wiaderna
Respondent: GDMA Group Limited (Progressive Care)

Heard by Cloud Video Platform (CVP) **On:** 16 February 2022
In Chambers: 10 March 2022

Before: Employment Judge Shulman

Representation

Claimant: In person
Respondent: Mr L Williams, Solicitor

RESERVED JUDGMENT

The claimant's claim that the sum of £964.46 was an unauthorised deduction of wages is hereby dismissed.

REASONS

1. Claims

- 1.1. Unauthorised deduction of wages.

2. Issues

The issue in this case relates to whether the respondent made a deduction from the wages of the claimant, which deduction was not authorised by a relevant provision in the claimant's contract and/or whether the claimant had previously signified in writing her agreement or consent to the making of the deduction.

3. The law

The Tribunal has had regard to the following provision of the law:

- 3.1. Section 13(1) Employment Rights Act 1996.
- 3.2. The respondent referred the Tribunal to a number of authorities, none of which assisted the Tribunal more than section 13(1) Employment Rights Act 1996 above and/or in some cases were first instance Tribunal decisions and were therefore not authoritative as far as this Tribunal is concerned.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as a payroll administrator from 25 January 2021 until the claimant resigned by letter dated 27 April 2021. The respondent is in the business of social care, property, training and education. On the resignation of the claimant the respondent deducted from the claimant's wages the sum of £964.46, which the respondent alleged was part of an outstanding debt amounting to £3535.39. No further sum was deducted in respect of that debt at the time because the respondent maintains to do so would have brought the claimant underneath the national minimum wage. The claimant had a six month probationary period and her contract was terminated within that period.
- 4.2. The claimant signed her contract of employment on 24 January 2021. The contract recorded that the claimant was subject to an initial probationary period of six months in an un-numbered clause. I set out below the other relevant clauses of the contract:
 - 4.2.1. Clause 12 – training
 - 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 your normal hourly rate of pay for the time you attended minus breaks.”

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.”

12.7 “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”.

I find that the expression “any such monies” relates to training.

4.2.2. Clause 21 – Employment Agency or Employment Business Introduction

21.1 “Where you have been introduced to your Employer through an Employment Agency or Employment Business, then if you leave the employment of the Employer within a two year period following the commencement of your employment you will be required to repay to the Employer the cost incurred by the Employer in securing your employment via that introduction on a sliding scale. The amount you will be required to repay is dependent how close you are to completing the two year employment period. The cost 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.”

21.2 “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.”

4.2.3. Clause 22 – Deductions

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.”

- 4.2.4. As I have said the claimant signed the contract with all the above provisions in.
- 4.3. The figure of £3535.39 for deduction was split up as follows:
 - 4.3.1. For training days when the claimant was employed - £265.39
 - 4.3.2. The cost of training - £470.00
 - 4.3.3. For the recruitment fee - £2760.00
 - 4.3.4. DBS checks - £40.00
- 4.4. As it turned out the recruitment agency costs were not tapered and that figure should be £2415.00 and not £2760.00. Further the DBS checks had an overcharge of £17.00 which sum has been repaid to the claimant.
- 4.5. In her evidence the claimant accepted that she was bound by Clause 10.5 of the contract, which was a clause (in addition to the above) that if she left employment within the probationary period she would be required to repay the employer the cost to or incurred by the employer in obtaining a DBS check.
- 4.6. The claimant also accepted in her evidence that she was bound by Clause 12.1 of the contract, which required her to participate in training and by Clause 12.3 of the contract, whereby if she left within her probationary period then she would be required to repay the employer the cost to or incurred by the employer in providing her with induction training and any other training provided. The claimant also accepted that that clause applied to all training, whether mandatory or voluntary. We will endeavour to determine what the expression “the cost to or incurred by the Employer” in Clause 12.3 actually covers.
- 4.7. In her evidence the claimant accepted Clause 12.7 of the contract, which gave authority to the respondent to deduct training monies.
- 4.8. With regard to Clause 21 of the contract the claimant accepted that she was introduced by Hays, who charged the recruitment fee to the respondent and the respondent then decided that it could be passed on to the claimant.
- 4.9. In relation to the construction of the words mentioned above in relation to Clause 12.3, the respondent maintains that it does incur a salary cost when training people, because if a person leaves the respondent, it has had no benefit for that period but the respondent accepted that it did not tell the claimant that she would not be paid for the three days when she was training. The respondent also accepted that Clause 12.3 could have been clearer, but on the other hand was wide enough to include wages during a period of training.
- 4.10. During her evidence the claimant agreed to repay for her training as per the certificates she had received for her training. These were for Level 2 Health and Safety in the Workplace, Coronavirus Outbreak Leaving Care, Display Screen Equipment, Advanced Safeguarding Children (Level 2), Fire Safety Awareness, Advanced Safeguarding Adults (Level 2) and Data Protection. This was so even though the claimant maintained the certificates were not useful to her in another

job, although she accepted that they were for induction training. She acknowledged that the training was relevant to the respondent, but that it would not benefit her in the future.

- 4.11. The claimant was concerned about the size of the recruitment agency clawback at £2415.00.
- 4.12. The respondent wrote to the claimant on 11 May 2021 setting out the deductions. These are set out above, subject to the amendments for the recruitment agency fee and the DBS cost.

5. Determination of the issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. It is incontrovertible that the claimant signed the contract of employment containing clauses which covered the respondent's ability to deduct from wages, some during a probationary period and some during a two year period, in relation to training, DBS checks and recruitment agency fees.
- 5.2. The claimant made no challenge to the training costs (or indeed the training hours), or the DBS checks. The claimant was less happy with the recruitment agency fee, which is understandable having regard to its size even at £2415.00. However the contract is unambiguous around the collection of recruitment agency fees, as it is in relation to the cost of training and the DBS cost.
- 5.3. The contract is less clear in relation to the training hours and the deduction of £265.39. As we have highlighted the relevant clause is Clause 12.3 of the contract. If the claimant leaves within the probationary period, which she did, then she would be required to repay to the Employer **cost to or incurred by the employer** (my emboldening) in providing the claimant with induction training and any other training provided. I am mindful that other first instance tribunals may have proved a clause so as to allow collection of numbers in relation to working hours, but I am not bound by those decisions and the question for the Tribunal to decide is whether there is cost to or incurred by the employer in providing the claimant with induction training. The relevant cost related to three days wages and the claimant, in employment, attended training. If the claimant had not attended training on those three days the employer would still have had that cost. Whilst being mindful of the fact that Clause 12.7 authorises deduction of wages, the claimant was not aware of that fact and I find that there is an ambiguity in Clause 12.3. If there is an ambiguity that should favour the claimant and not the respondent.
- 5.4. In all the circumstances we find that the amount for deduction in this case is £2908.00. That is not how or what this case is about. This case is about whether the £964.46, which has been deducted, was authorised or not authorised. I find that that £964.46 was an unauthorised deduction. However as I am not allowing £265.39 for training days, the balance which may be collected from the claimant should be no more than £1943.54. My comments in relation to the

balance are outside of the jurisdiction of this Tribunal and I set it out so that the respondent can think long and hard, having collected nearly a £1000.00 from the claimant, as to whether or not they wish to pursue the balance.

Employment Judge Shulman

23 March 2022