



EMPLOYMENT TRIBUNALS

Claimant: Mr A Walker

Respondent: Elcock Associates Limited

Heard at: Bristol **On:** 25th May 2022
(remotely, by Video Hearing Service)

Before: Employment Judge Halliday
Ms Goddard
Mr Richardson

Representation

Claimant: In person

Respondent: In person

JUDGMENT having been sent to the parties on 15 June 2022 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

Claims, Issues and Preliminary Matters

- 1 By a claim form presented on 18 January 2021 the Claimant brought the following complaints;
 - (a) Victimisation
 - (b) Unlawful deductions from wages.
- 2 The issues in this case were clarified by Judge Youngs at a preliminary hearing on 26 November 2021 and these were discussed and agreed at the start of this hearing as being the relevant issues to be determined:

Victimisation (Equality Act 2010 s. 27)

2.1 Did the Claimant do a protected act as follows:

- 2.1.1 On or around 18 September 2020 send a WhatsApp message to Mr Adam Elcock of the Respondent in relation to Mr Elcock allegedly using a homophobic term?

- 2.2 Did the Respondent do the following things:
 - 2.2.1 Deduct £233 from the Claimant's wages?
- 2.3 By doing so, did the Respondent subject the Claimant to detriment?
- 2.4 If so, was it because the Claimant had done the protected act?
- 2.5 If so:
 - 2.5.1 what financial losses has the victimisation caused the Claimant?
 - 2.5.2 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
 - 2.5.3 Should interest be awarded? How much?

Unauthorised deductions (Part II of the Employment Rights Act 1996)

- 2.6 Were the wages paid to the Claimant on 30 September 2020 less than the wages he should have been paid?
- 2.7 Was any deduction required or authorised by statute?
- 2.8 Was any deduction required or authorised by a written term of the contract?

Preliminary matters

- 3 This has been a remote hearing (by Video Hearing Service) which has been consented to by the parties. A face to face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing.
- 4 At the start of the hearing, the Claimant confirmed that he wished to pursue a claim for £174.74 as stated in the ET1 and that he did not wish to pursue the claim for the full £233 deducted as referred to in the Case Management Order.

Findings of Fact

- 5 We heard from the Claimant and Mr Elcock, the Managing Director of the Respondent, who had each prepared brief witness statements and we reviewed those documents contained in a 60-page bundle referred to us by the parties. We found the following relevant facts proven on the balance of probabilities after considering the whole of the evidence and listening to the submissions of the parties.
- 6 The Claimant was an employee of the Respondent from 1 October 2019 until his employment terminated by reason of his resignation on 29 September 2020.
- 7 In or around May 2020 the Respondent paid an RICS fee on behalf of the Claimant of £233.
- 8 Included in the bundle is an unsigned contract between the Claimant and the Respondent. Clause 37 of this contract provides for deductions from pay in relation to course fees. The Tribunal accepts that there was some discussion about this provision (and others) between the parties in or around October 2019 when the Claimant commenced employment and find that the Claimant believed he was contractually bound to repay RICS fees/training fees on a pro rata basis should he leave employment within 12 months of the cost being incurred. The

contract was not however signed and Mr Elcock's evidence was that no other agreement in writing permitting deductions from salary was reached between the parties.

- 9 The Claimant resigned on or around 13 September 2020. The Tribunal accepts Mr Elcock's evidence that there was a conversation and/or email exchange immediately following the Claimant's resignation on or around 13 September in relation to repayment of the full amount of the RICS fees.
- 10 On or around 18 September 2020 the Claimant alleges he overheard a homophobic comment made by Mr Elcock. After messaging a colleague, he sent a WhatsApp message to Mr Elcock at 21:24 on 18 September stating: "Adam can you do me a big favour and try not to use homophobic slurs in the office. Just between me and you because I was embarrassed and others might be offended. Mr Elcock did not respond to this message.
- 11 On or around the 29 September 2020, being the date of the termination of the Claimant's employment, £233 was deducted from the Claimant's final in relation to the payment by the Respondent of the RICS fees
- 12 On the 29 September 2020 there was a further email exchange between the parties relating to the deduction of the RICS fees.
- 13 The Tribunal accepts the Claimant's evidence that he expected a deduction to be made, but that he believed it should have been reduced pro rata to reflect the number of months he had worked (prior to the termination of his employment) in the 12-month period following the payment of the fees. The amount of the deduction was therefore not agreed between the parties.
- 14 However, the Tribunal does not accept the Claimant's assertion that the full deduction was only made because on or around 18 September 2020 he had sent the WhatsApp message to Mr Adam Elcock.
- 15 The Tribunal accepts Mr Elcock's evidence that where an employee leaves within 12 months of the Respondent incurring such fees on that employee's behalf, the Respondent believed it had the right to deduct the equivalent sum from the employee's wages on termination in reliance on the contract and did so in the case of the Claimant in reliance on clause 37 of the Claimant's contract of employment.
- 16 The Tribunal also accepts Mr Elcock's evidence, that this had been discussed with the Claimant previously. The Claimant presented no evidence in support of his contention that the WhatsApp message caused the deduction to be made. The Tribunal therefore concludes that the decision to deduct the full amount was made prior to the Claimant's WhatsApp message being sent and not because it had been sent.

Law

Victimisation

- 17 The definition of victimisation is found in section 27 of the Equality Act 2010. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the Equality Act 2010 giving evidence or information in connection with proceedings under the Equality Act 2010; doing any other thing for the purposes of or in connection with the Equality Act 2010; and making an allegation (whether or not express) that A or another person has contravened the Equality Act 2010.

Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

- 18 The provisions relating to the burden of proof are to be found in section 136 of the Equality Act 2010, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
- 19 The remedies available to the tribunal are to be found in section 124 of the Equality Act 2010. The tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; may order the respondent to pay compensation to the complainant (on a tortious measure, including injury to feelings); and make an appropriate recommendation. In addition, the tribunal may also award interest on any award pursuant to section 139 of the Equality act 2010. 10.

Unlawful deductions

- 20 Part II of the Employment Rights Act 1996 protects an employee against unlawful deductions from pay. A deduction is defined in section 13 as amounting to any occasion on which the amount paid is less than the amount properly payable without prior authorisation.

Decision

- 21 In relation to the victimisation claim under section 27 of Equality Act 2010 we conclude that:
- 21.1 the Claimant did do a protected act, namely sending a WhatsApp message referring to an allegedly homophobic comment to Mr Elcock on 18 September 2020; and
- 21.2 subsequently on or around 29 September 2020 a deduction of £233 was made from the Claimant's salary and that this would constitute a detriment to the Claimant.
- 22 However, we are not satisfied that the deduction was made as a consequence of the protected act but have found that the decision to make the deduction from the Claimant's final pay had already been made before 18 September 2020 as evidenced by the discussions about the deduction which predated the WhatsApp message and the fact that those discussions were in line with the contractual provisions known to and discussed with the Claimant both in or around October 2019 and on or about 13 September 2020.
- 23 The Claimant's claim for victimisation therefore fails.
- 24 In relation to the claim for unauthorised deductions under Part II of the Employment Rights Act 1996) we conclude that:
- 24.1 the wages paid to the Claimant in his final pay-slip were less than those he should have been paid due to the deduction of £233 on account of the RICS fees;
- 24.2 the deduction was not authorised by statute, or otherwise in writing by the Claimant whether in an agreed and signed contract or in another

document such as a training bond.

- 25 This therefore constitutes an unlawful deduction from wages of the sum claimed by the Claimant and the Claimant's claim for unlawful deductions is therefore upheld.

Remedy

- 26 No further evidence being required in relation to remedy the Respondent is therefore ordered to pay to the Claimant the sum claimed by the Claimant of £174.74 in relation to his claim for an unlawful deduction from wages.

Employment Judge Halliday
Date: 6 August 2022

REASONS SENT TO THE PARTIES ON
22 August 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE