



EMPLOYMENT TRIBUNALS

Claimants: (1) Miss H Yacoob
(2) Miss A Patel
(3) Miss S Taylor
(4) Miss S Curley

Respondent: Shine Bright Day Care & Out of School Club Limited

Heard at: Leeds (by video) **On:** 16 August 2022

Before: Employment Judge Knowles

Representation

Claimants: (1) & (2) no attendance
(3) In person
(4) Ms Milner, Friend

Respondent: Ms McDonald, Owner

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Third Claimant's claim of unauthorised deductions from wages is well founded and succeeds.
2. The amount of the deduction that the Respondent is order to pay to the Third Claimant (Miss S Taylor) is £4,680.00 gross.
3. The Fourth Claimant's claim of unauthorised deductions from wages is well founded and succeeds.
4. The amount of the deduction that the Respondent is ordered to pay to the Fourth Claimant (Miss S Curley) is £2,851.98 gross.
5. The Respondent shall be responsible for any statutory deduction for employee's income tax and employee's national insurance contributions as may be required by law.

6. The First and Second Claimant's claims are struck out under Rule 37 of the Employment Tribunals Rules of Procedure 2013 because they have not been actively pursued.

RESERVED REASONS

Issues

1. This is the final hearing of the Claimant's claims for unauthorised deductions from wages.

2. The issues for me to determine are as follows:

- a. Were the wages paid to the claimants on less than the wages she should have been paid?
- b. Was any deduction required or authorised by statute?
- c. Was any deduction required or authorised by a written term of the contract?
- d. Did the claimants have a copy of the contract or written notice of the contract term before the deduction was made?
- e. Did the claimants agree in writing to the deduction before it was made?
- f. How much are the claimants owed?

3. An additional issue I will need to consider is how the claims brought by the First and Second Claimant's should proceed in the light of the Respondent's emails to the Tribunal that these claims have settled through discussions with ACAS and payments have been made to them. Both have been contacted by the Tribunal in writing to confirm if they still wish to pursue their claims but have not replied.

Evidence

4. This hearing was undertaken using HMCTS's Cloud Video Platform.

5. The Third and Fourth Claimant's gave evidence during the hearing along with Ms McDonald who is the owner of the Respondent.

6. Neither the First or Second Claimant attended the hearing and no explanation was provided for their non-attendance nor was any request for a postponement received.

7. I had before me the claim forms and responses and the Tribunal file.

8. None of the parties produced written witness statements or any bundle of documents.

Findings of fact

9. I made the following findings of fact on the balance of probabilities.
10. I note that there were no material conflicts in the evidence for me to resolve.
11. There clearly is dispute between the parties over matters such as what the contract and other policies authorise the Respondent to deduct.
12. However there are no material factual disputes other than in relation to matters such as scratches on a returned mobile telephone which are simply not relevant to the issues which I have listed above as those for me to determine in this particular case.

The Third Claimant

13. The Third Claimant was employed by the Respondent between 1 March 2022 and 22 May 2022 as an office manager. She decided to end her employment with immediate effect on 22 May 2022 because she received only part pay in April and no pay in May or June 2022 (each payment being a month in arrears). The Respondent does not dispute that.

14. The Claimant's gross pay was £1,560 per month.

15. The Respondent contends that they made a deduction for an overpayment in April's pay which was in the sum of £740 then a deduction in May's pay packet in the sum of £1,090.

16. The Respondent concedes that those overpayments relate to the Third Claimant's employment with another company she owned, which ceased to operate, not with the Respondent.

17. The Respondent refers to a "*Supervision*" document where one of the aims is recorded as "*[The Third Claimant] to get back to aim for overpayment by May*". This is a performance review document signed by the Third Claimant.

18. Other deductions were made in May's pay packet.

19. Firstly for training. The Respondent deducted £43 relying on the training agreement which states "*if you decide not to continue employment with [R] leave within or are dismissed within 12 months of the training course date you will be liable for any costs associate with any training you have received*". This is in the form of a letter signed by the Third Claimant.

20. Secondly for a key fob £10 and thirdly for a laptop computer £399.

21. The Respondent contended that the key fob and laptop were part of an inventory signed by staff concerning company property which sets out the authority to make a deduction from pay if they are not returned when the employee leaves.

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22. However, the Respondent accepts that the laptop is not listed in the inventory. The Respondent concedes that the key fob has since been returned and the Third Claimant is due back that part of the deduction.

23. The Respondent claims that the laptop which has been returned was not the company laptop given to the Third Claimant and does not work. The Third Claimant disputes this and states that the laptop only needs the power cable plugging in. It is not necessary for me to resolve that dispute.

24. From June's pay packet another series of deductions were made. Firstly for a mobile telephone £261.96, secondly for building keys £840, and thirdly a deduction for leaving without due notice £360.

25. The Respondent accepts that the mobile telephone is not on the inventory either. The Respondent claims that the Third Claimant is only due £61.96 back for the mobile telephone because it had a damaged screen and cost £200 to repair when the Third Claimant did return it.

26. The Respondent accepts that the building keys have been returned and that the Third Claimant is due back that part of the deduction.

27. The Respondent stands by the deduction for inadequate notice because the staff handbook states that if you terminate the employment without notice a deduction may be made equivalent to pay for the period of short notice given.

The Fourth Claimant

28. The Fourth Claimant was employed as a Nursery Practitioner on 1 November 2021 and decided to end her employment on 30 May 2022 because the Respondent failed to pay to her two months wages.

29. The Fourth Claimant claims that she is owed £2,851.98.

30. The Respondent claims accepts that this is a correct calculation of pay due to the Fourth Claimant for 2 months wages but claims that it is entitled to deduct from that £35 training course fees and £576.70 wages for the period of induction training.

31. The Respondent therefore claims that the balance due is £2,240.28.

32. The Respondent relies upon the same form of training course agreement signed by the Fourth Claimant, which states "*if you decide not to continue employment with [R] leave within or are dismissed within 12 months of the training course date you will be liable for any costs associate with any training you have received*".

Submissions

33. None of the parties made any further submissions. Each said that they had nothing further to add.

The Law

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34. Section 13 of the Employment Rights Act 1996 sets out the right not to suffer unauthorised deductions from wages.

35. It 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract 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 variation took effect.

(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.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the

meaning of this Part is not to be subject to a deduction at the instance of the employer.

36. Overpayment of wages are in Section 14 excepted from Section 13 “where the purpose of the deduction is the reimbursement of the employer in respect of... an overpayment of wages”.

Conclusions

Were the wages paid to the claimants on less than the wages she should have been paid?

37. The Third Claimant, Fourth Claimant and the Respondent are in agreement on this issue, wages were less than they should have been paid because of the deductions.

Was any deduction required or authorised by statute?

38. The deduction for an overpayment is not excepted by Section 14 of the 1996 Act because the deductions were not in respect of a reimbursement of the employer. They were in respect of reimbursement of sums due to a different legal entity, another former employer.

39. It makes no difference whether or not Ms McDonald owns both companies.

Was any deduction required or authorised by a written term of the contract?

40. Deductions for training were not in my conclusion authorised by a written term of the contract.

41. Neither the Third or Fourth Claimant decided not to continue their employment.

42. The Third and Fourth Claimant's decided to accept the Respondent's repudiatory breach of contract, namely their failure to pay them wages.

43. The clause relied upon by the Respondent concerning training fees is not engaged.

44. The Supervision document contains no express authority to make a deduction from wages at all. There is simply no express authority that the overpayment made in the Third Claimant's employment with the third-party former employer may be made from her wages paid by the Respondent.

45. The inventory permitted the deduction relating to the fob and keys but those wages became due, as the Respondent accepts, once the Third Claimant returned them.

46. The inventory did not refer to the mobile telephone or laptop computer. I have not been referred to any contractual provision authorising those deductions by the Respondent.

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47. The staff handbook clause concerning liquidated damages for short notice is not engaged either. The Third Claimant (like the Fourth) decided to accept the Respondent's repudiatory breach of contract, namely their failure to pay them wages. No notice was due from the Third Claimant to the Respondent.

Did the claimants have a copy of the contract or written notice of the contract term before the deduction was made?

48. It is not necessary to determine this point because no authority has been established.

Did the claimants agree in writing to the deduction before it was made?

49. It is not necessary to answer this because no authority has been established.

How much are the claimants owed?

50. The Third Claimant is owed three months pay, £4,680.00 gross.

51. The Fourth Claimant is owed two months pay, £2,851.98 gross.

The First and Second Claimants claims

52. I conclude that these claims are not being actively pursued and should be struck out under Rule 37 of the Employment Tribunal Rules of Procedure 2013 because they have not been actively pursued and the First and Second Claimant's had a reasonable opportunity to make representations through the enquires sent to them by the Tribunal office.

Employment Judge Knowles

16 August 2022