EMPLOYMENT TRIBUNALS

Claimant: Mr R Beckett v **Respondent:** Designer Contracts Ltd

Heard at: Nottingham (via CVP) **On:** 23 September 2022

Before: Employment Judge Fredericks

Appearances
For the claimant: In person
For the respondent: Ms Kennedy-Curnow (Trainee Litigation Consultant)

RESERVED JUDGMENT

1. The Respondent made two unlawful deductions from the Claimant's wages (in April 2022 and May 2022) and it is ordered to pay the claimant the total amount deducted.

2. Consequently, the Respondent is ordered to pay the Claimant **£3,715.52**.

REASONS

Introduction

1. The claimant brings claims following his resignation from the respondent, and the respondent's deductions from his salary in relation to what it says is a loan or debt owing to the respondent in respect of a company car scheme. The claimant claims for those sums back. He also claimed compensation for (1) other payments in respect of interest incurred on borrowed sums, and (2) stress.

2. The respondent confirmed that it deducted a total sum of £4,035.52 from the claimant's final two months of wages, which was 100% of the claimant's salary in that period. It says that it was entitled to make the deduction because there was a contractual agreement in place for the claimant to pay the sum of £160 every month for 48 months to pay for a company car upgrade and that any amount left outstanding also fell due upon the claimant leaving his employment. It relied on the terms of the claimant's contract and correspondence which it says captured an agreement in relation to the amount deducted.

3. The claimant represented himself at the hearing. The respondent was represented by Ms Kennedy-Curnow, a trainee litigation consultant. The respondent presented evidence from Ms Stacey Brereton, HR and Health and Safety Director at the respondent. I also had access to a bundle of documents which ran to 78 pages. Page references in this judgment refer to pages of that bundle.

The claimant's evidence

4. In breach of a direction from the tribunal dated 23 June 2022, the claimant did not provide a written witness statement to support his case. Ms Kennedy-Curnow submitted that the respondent would be prejudiced if the claimant was permitted to give oral evidence on the day of the hearing because she would not have the time to consider and respond to that evidence. She asked that the claimant not be permitted to give oral evidence to ensure that a fair hearing could take place.

5. I considered the directions from the Tribunal. It was not clear in those directions that failing to send a witness statement would result in a party not being allowed to give oral evidence at the hearing. I also considered that the key points of the claimant's case were set out by him in his ET1, and that he would still be able to challenge the respondent's case. Those key points were:-

   5.1. the respondent made the deductions;
   5.2. there was no contractual agreement about these deductions; and
   5.3. he never received correspondence outlining his obligation to pay money after he had left his employment.

6. The claimant was content to not give oral evidence, understanding that the respondent needed to show that the deductions it admitted making were made lawfully. I therefore granted the respondent's application. As Ms Kennedy-Curnow had asked for the claimant to be barred from giving oral evidence, she did not have an opportunity to cross examine him and did not ask to be able to do so.

The facts

7. The facts as I find them, on the balance of probabilities, are as follows.

8. On 27 July 2020, the claimant began employment with the respondent as a senior contracts manager. His contract of employment was at pages 31 to 37. He signed a copy of that contract on 6 October 2020. The relevant terms of the contract for the purposes of his claim are:-

   8.1. Clause 7 – *"Company Car –*

   You are entitled to a company vehicle which will be an Audi A3 or similar (but may not be a new car. Fuel is provided for business miles only."

   8.2. Clause 10 – *"Deductions –*

   10.1 The Company may deduct from your remuneration any and all debts owed by you to the Company including but not limited to the following –

10.1.1 the balance of any outstanding loans, including interest if applicable;
10.1.2 the amount of any overpayment of remuneration to you;
10.1.3 the cost of repairing any damage or loss of the Company's property caused by you;
10.1.4 the loss suffered by the Company as a result of your neglect or breach of duty; and
10.1.5 the amount of any repayment due pursuant to clause 11.4 [holiday].

10.2 You shall be notified in advance of any deductions that are to be made from your remuneration and by signing this agreement you authorise the Company to make such deductions."; and

8.3. Agreement clause –

"I agree to the terms of these Particulars of Employment and understand that they constitute my contract of employment with the Company. I am aware of the circumstances in which money may be deducted from my remuneration."

9. The respondent allowed its employees to upgrade their company car by making monthly contributions, by salary deduction, to the cost of the lease car where that cost is more than the entitlement held by the employee. The claimant took advantage of this policy in January 2021 when he took possession of an Audi A6 (an upgrade to the Audi A3 to which he was entitled). The cost of the upgrade over the life of the lease was calculated as being £7,680, which meant the claimant would pay a contribution of £160 per month to cover the upgrade.

10. The respondent operated a policy which aimed to recover the entire cost of a vehicle upgrade from employees who left employment before the end of the vehicle lease period. A written policy was shown to me at pages 41 to 42. That policy contains the sentences –

"If a driver wishes to upgrade to a specification of car that is a standard one that is in regular use in our range, then they can opt to do this by having a monthly amount deducted from their salary. This amount is for an upgrade only and does not include car tax. If the employee was to leave the Company, the monthly figure multiplied by the number of months still outstanding on the 4 year lease would be deducted from their final salary.

If a driver wishes to upgrade to a specification that is not a standard one or if a driver wishes to add optional extras to the normal or upgraded car then they can do this by paying, prior to the car being ordered, the cost of the upgrade as shown on the Audi website. This is non-refundable and if the employee was to leave they would not get any money back as the company isn't getting any benefit from any of these upgrades. Automatics will normally be considered as an upgrade."

11. The documents indicate that the claimant's upgrade fell into the first of these categories. However, as I noted during the hearing, the document at pages 41 and 42 is dated 14 March 2022 – which is 14 months after the claimant took the vehicle upgrade. Paragraph 6 of Ms Brereton's witness statement implies that this document and policy was in operation when the claimant took his Audi A6 on the scheme. This

cannot be so given the date on the policy document. I was asked to take it as read that the policy pre-dated the document shown, and that the date was added at a more recent alteration to the policy. No previous version of the document was shown to me and no previous version was produced when the respondent was allowed to go and search for documents which I identified as missing if it were to make good on its defence. I was not able to see what additions or alterations were made on 14 March 2022. Ms Brereton was not able to enlighten me on that either. In my view, in those circumstances, I cannot find that a written policy in the same terms as that at pages 41 and 42 existed at the point at which the claimant took the policy. At best, I can accept that that policy as in force from 14 March 2022.

12. The respondent claims that, on 15 January 2021, it sent a letter to the claimant about his vehicle upgrade. A copy of the letter, signed by Ms Brereton, was shown at pages 39 and 40. It contains the following key sentences –

    "As discussed, from the 13 January 2021 you will be required to pay £160 per month for this upgrade.

    If you were to leave the Company, the remaining £160 multiplied by the number of months still outstanding on the four year lease would be deducted from your salary.

    Please can you sign the declaration overleaf to confirm that you accept the terms and conditions outlined in this letter."

13. Ms Brereton introduced this document in her witness statement as being an agreement that the claimant would pay £160 per month for 48 months for the upgraded vehicle. There is no signature returned by the claimant in the letter shown. The claimant has maintained in his ET1 form that he did not agree to this letter and in his submissions in the hearing he continued to assert that he never received this letter. He first raised that he had not seen the letter by e-mail on 13 May 2022 (page 47).The respondent says that it was posted to his home address.

14. There is no evidence before me that the respondent did anything other than produce this letter. Ms Brereton's witness statement is silent as to whether this letter was sent to the claimant at all, let alone outline whether it was sent by e-mail or first class post (and by whom) or by any sort of recorded delivery. Ms Brereton did not say that she posted the letter when giving evidence. When asked what discussion was being referred to in the letter, Ms Brereton was not sure, saying that it was not a discussion with her. She said that it must have been with the managing director. The managing director did not offer a witness statement or attend the hearing to give evidence.

15. Consequently, in the absence of any positive evidence that the letter of 15 January 2021 was sent to the claimant or that he was aware of its terms, I cannot find as a fact that the claimant was a party to any agreement that the letter might be said to create. I am able to make a positive finding of the opposite, on the evidence before me, when I additionally take into account that the claimant did as a matter of course return signed documents that he has seen and considered. This is evidenced at page 37, when he returned his signed contract some four months after the respondent had signed it, and at page 44, when he returned a signed agreement relating to the terms

of his notice period (which is silent about the deductions which were made). Accordingly, I find that the claimant did not receive written terms about an purported obligation to pay all of the upgrade amount upon leaving the respondent's employment.

16. On 13 January 2022, the claimant's job title changed to Regional Assistant Manager. The letter confirming this is at page 38. That letter indicates that only the claimant's job title changed and it enclosed copies of a new employment contract. That contract was not included in the bundle, but it does not appear to be in dispute that its terms were otherwise the same as the contract from the start of the claimant's employment.

17. On 11 April 2022, the claimant resigned from his position. The resignation was accepted by letter on the same day (pages 43 and 44). The letter placed the claimant on gardening leave and said that his salary would be paid *"in the usual way"*. That letter did not outline that any deductions from salary would be made.

18. On 28 April 2022, the respondent deducted £2,315.69 from the claimant's salary (all pay after other deductions). On 3 May 2022, the claimant returned the vehicle. A transfer document is shown at pages 45 and 46 and there is an e-mail on page 47 where the claimant confirms he has returned the vehicle and declared that the terms of his contract have ended. On 27 May 2022, the respondent deducted £1,719.83 from the claimant's salary (all pay after other deductions).

19. The respondent produced no written evidence about what happened to the vehicle after the claimant returned it. No documents in the bundle relate to that and Ms Brereton's witness statement is silent about it. The respondent seemed surprised when asked to confirm that the liability resting with the respondent was greater than the deductions made from the claimant. The amount that the respondent was said to owe to the lease company was not known. Ms Brereton then spoke to the respondent's managing director, who she says informed her that vehicle had gone back to the lease company under a reduced early termination fee. She said that the fee was more than that which had been deducted from the claimant, but less than £160 multiplied by the number of months left on the scheduled lease period for the vehicle. This fee was calculated to reflect the cost of the whole of the car's lease, not just the amount that the claimant was contributing in respect of the upgrade. I must treat this hearsay evidence from the managing director with some caution, but ultimately none of this evidence informs the conclusions drawn below.

20. The claimant entered ACAS early conciliation on 14 June 2022 and exited it on 16 June 2022. His claim form was received on the same day.

The law

21. An employer is unable to deduct from the wages of a worker employed unless this is authorised by statute or contract, or where the worker has previously agreed to the deduction in writing (*section 13(1) Employment Rights Act 1996)*. Where there is the power to make a deduction in certain circumstances, I must then consider whether the deduction was justified in those circumstances (*Fairfield Ltd v Skinner [1992] ICR 835 EAT)*. In other words, I should consider whether those matters giving rise to the authority to deduct wages have actually arisen and, if so, whether the amount deducted is commensurate with the facts of the case.

Discussion and conclusions

22. The respondent argued that it was able to make the deductions lawfully through two routes. The first route relied on the specific alleged agreement in relation to the obligation on the claimant to pay £160 multiplied by the number of months left on the agreement at the point the claimant left employment (**"The 48-month term argument"**). The second sought to rely generally on clause 10.1.1 of the contract, resting on the construction that the claimant owed the respondent the money outstanding on the car's lease when he left employment (**"The debt argument"**). There is no signed agreement between the claimant and respondent dealing with these specific deductions, and so the respondent must rely on a contractual provision. The claimant's submissions were a blanket denial that there was any agreement that the money for the vehicle could be deducted once he had handed the vehicle back to the respondent.

The 48-month term argument

23. I have found no facts which support the contention that the claimant was aware of the policy about having to pay the whole amount of the upgrade upon leaving his employment. There can be no agreement on the terms alleged without that awareness, as the claimant obviously cannot agree to those terms. Those terms would have fixed the claimant with paying the whole cost of the upgrade over the lifetime of the lease. It is apparent from the respondent's argument that it considered that it could lawfully deduct such an amount where the employee earned enough of a salary to cover it. Ms Brereton's witness statement says *"The remaining balance on the loan was £5,341.94"*.

24. The only reason why a proportion of that total cost was deducted from the claimant was because the respondent could not deduct more than 100% of the salary due to be paid. In my view, it would be rare for the respondent to be able to lawfully recover the entirety of an amount said to remain owing. To do so would be an unlawful double recovery in circumstances where, for example:

    24.1. Another member of staff takes over the lease, and pays for the term seeking to be recovered from the employee; and

    24.2. The vehicle is handed back for a fee which is less than the total lease amount due for the whole term of the vehicle, as this would extinguish some of the upgrade cost that is seeking to be recovered.

25. Where the respondent takes no steps to secure either of the outcomes listed above, then it may be found that the respondent had failed to mitigate its losses such that the whole amount cannot be recovered from the leaving employee. I consider that the respondent has misunderstood its legal position. Where the vehicle has been returned for a cost which is less than the total cost of the lease, it cannot be that the claimant's outstanding liability is fixed at £5,341.94 – unless the 'loan' Ms Brereton refers to is not associated with the vehicle at all. If that is the case, then it is likely that the clause allowing a deduction upon leaving would be considered an unlawful penalty.

26. In any case, there is no evidence here that the claimant agreed to the specific term relating to the consequences of him leaving employment after taking an upgrade. The claimant was aware he could upgrade his company car. He knew he would pay £160 per month for the upgrade, and he paid that during his employment. It is apparent from the claimant's reaction to the deduction that he did not agree with or know about any obligation to pay money for the period after his employment ended.

27. In the absence of any awareness or agreement about the deduction being made at the end of the employment, this 48 month term argument must fail. There is no term in the claimant's contract about this circumstance arising. The respondent cannot rely on this argument to show that the deductions were lawfully made.

The debt argument

28. In my view, considering the evidence provided in the bundle, this was the weaker of the two argument advanced by the respondent. For the claimant to owe a debt to the respondent, then the respondent would need to show one of two things:

    28.1. it advanced a loan to the claimant; and/or
    28.2. it undertook some liability on behalf of the claimant which it could then claim from the claimant.

29. There is no evidence in the bundle that any money was loaned to the claimant. There is no documentation outlining how the claimant was fixed with any liability; there is only the respondent's description of the arrangement (which I have found not to be agreed) being a 'loan'. There is no evidence in the bundle that the respondent incurred any liability on behalf of the claimant either. There was no disclosure about the agreement between the respondent and the vehicle hire company. I was told that the respondent had an account with the fleet hire company, but there was no evidence to support that in the bundle. There had been no attempt to work out how much the so-called debt actually came to. The respondent was seeking to fix the claimant with the whole cost of the upgrade for the whole lease term even though it had not itself been held liable for that whole term. It seemed to me that the respondent was surprised that I was looking for this information, even though it is vital if the respondent is to show how a 'debt' has come to be owed by the claimant to the respondent.

30. It is simply not enough for an employer to utilise a widely drafted deductions clause and then seek to recover all it thinks it can under that clause. The deductions must be justified. Where an employer asserts that it is owed a debt and makes a deduction, it must follow through with the proof that that debt is actually a debt, or that there is some liability fixed on the employee, and then explain how the deduction is justified. In my judgment, the respondent has failed to do this in this case. It might be that all of the gaps in documentation which would have helped the respondent justify the deductions made do indeed exist. It might be that their exclusion was an oversight based on an assumption that the contractual wording is sufficient. Unfortunately, if that is the case, the respondent has missed its opportunity to present relevant evidence during the hearing window. On the case as presented to me, this argument cannot succeed either.

Claimant's other compensation claims and disposal

31. The claimant cannot recover compensation for stress or injury to feelings for this type of claim and so none is awarded. The claimant claimed compensation for interest charges on money borrowed to cover the deductions. No evidence was presented by the claimant about these charges and so no compensation is awarded for those charges.

32. The claimant claims that the deductions made were unlawful. The respondent says that the deductions have been lawfully made, but has not been able to evidence that or persuade me of it during these proceedings. I consider that the claimant understood and agreed that he would have £160 per month deducted during the course of his employment for the vehicle. This is the amount which was deducted whilst he had the car and it is apparent from the evidence I have considered that the claimant did not complain about that. In my view, the respondent was entitled to continue to deduct those monthly sums during the claimant's employment. It follows that I do not find the additional deductions above £160 each month were lawfully made.

33. Accordingly, I order that the respondent must repay the claimant the sums deducted in excess of £320. In this case, that is £3,715.52.

Employment Judge Fredericks

Date: 11 December 2022