EMPLOYMENT TRIBUNALS

Claimant: Mr J Obioha

Respondent: Core Drivers Limited

Heard at: **Leeds**
On: **16 December 2022**

Before: **Employment Judge Heath**

Representation
Claimant: In person
Respondent: Mr S Taylor (Managing Director)

JUDGMENT

The respondent has made an unlawful deduction from the claimant's wages and is ordered to pay the claimant the net sum of £1279.58 in respect of the amount unlawfully deducted.

REASONS

Introduction, claims and issues

1. The claimant claims for unauthorised deduction from wages in the sum of £1279.58. The respondent accepts a deduction was made from the claimant's wages in this sum, but it asserts that the deduction was authorised by a provision of the contract of employment relating to training costs.

Procedure

2. At the start of the hearing, I confirmed with the parties that I had been supplied with the following documents:

    a. The ET1;

    b. The ET3;

    c. An email from the claimant to the tribunal dated 27 September 2022 headed "Addition of information to claim";

d. A document prepared by the claimant dated 7 November 2022 providing a breakdown of his claim;

e. Two payslips;

f. A signed contract of employment.

3. The parties confirmed that they had no additional documents for the tribunal.

4. The claimant gave evidence on his own behalf, and he adopted his ET1, his email of 27 September 2022 and his document dated 7 November 2022 as his evidence in chief. He gave further oral evidence, and he was cross examined by Mr Taylor, and was asked questions by me.

5. Mr Taylor gave evidence on behalf of the respondent, and he adopted the ET3 as his evidence in chief. He gave further oral evidence, and he was cross examined by the claimant, and was asked questions by me.

6. The claimant and Mr Taylor briefly summed up their respective cases, I deliberated, and I gave an oral decision. Mr Taylor asked for written reasons at the hearing.

The facts and contractual provisions

7. The claimant commenced employment with the respondent, an agency supplying drivers to the fuel industry, on 4 April 2022. He was issued with a written contract, which he read over and signed, containing the following relevant provisions:

Under the heading **Hours of Work:**

> *…You must inform the Company immediately if you will be unable to complete it for any reason. Failure to give at least 24 hours' notice of not attending an agreed shift, without a reasonable reason, can incur a charge of £150. Dropped loads can be charged at £50 per load dropped. If you have a valid reason, there will be no charge. You are liable to pay the fees, if charged.*

Under the heading **Charges**:

> *If you do occur [*this should read "incur"] *any charges, then you understand that Core Drivers is permitted to deduct these fees from your earnings.*

Under the heading **Period of Notice**:

> *There is a significant amount of time and costs involved in training you to the Company's standards. If you leave voluntarily, or are dismissed, within the first 7 months of employment then you will be liable to pay for these costs at a sum of £1500.*

8. The claimant was employed by the respondent, but he was placed with the respondent's client, Hoyer. At the start of his employment, he received training provided by Hoyer which lasted around three weeks. He was also provided with PPE equipment. During the course of this training, he also

carried out some work. I accept Mr Taylor's evidence that the respondent notified the claimant about training before he took up employment, and told him that there would be associated training costs. The claimant was also asked to read the contract before he signed it. I also accept Mr Taylor's evidence that there was an actual cost of training in the sum of £1500, which Hoyer charged the respondent.

9. Mr Taylor's evidence was that, basically, all drivers who started with the respondent who were placed with Hoyer would undergo training. His evidence also was that most drivers did not incur charges for not attending agreed shifts or dropping loads.

10. On 24 June 2022 the claimant was dismissed by the respondent. Following his dismissal he received two payslips which showed a deduction of £1279.58 in respect of training.

The law

11. Section 13 Employment Rights Act 1996 ("ERA") provides:

> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> > *(a)…*
> >
> > *(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.*

12. In construing (that is to say making sense of) the contract, contractual terms are to be construed strictly in favour of the employee. Any contractual authorisation for a deduction should be clearly and unambiguously set out. In order to rely on such a provision, the terms must be clear not only that an employee is liable for a sum, but that the deduction of that sum from wages is authorised.

Conclusions

13. The respondent relies on the combined effect of the provisions set out above under the headings **Charges** and **Period of Notice** as authorising the deduction of training costs.

14. Under the heading **Period of Notice** the provision appears to create a liability for the claimant "to pay for these costs at a sum of £1500". This provision, however, is silent about whether the costs can be deducted.

15. The provision relating to **Charges**, which the respondent relies on as authorising the deduction of training costs, reads "*If you do [incur] any charges, then you understand that Core Drivers is permitted to deduct these fees from your earnings*. However, the only reference to "charges" or "fees" in the contract is under the heading **Hours of Work** as set out above. This provision envisages the claimant incurring a "charge" for not attending shifts or dropping loads, which will be "fees" the driver will be liable to pay. This provision envisages that "if" the driver incurs charges the respondent is permitted to deduct them from earnings. The word "if" does not seem appropriate to cover training fees which, on the evidence of Mr Taylor, are incurred by all new starter drivers.

16. The **Hours of Work** provision, taken together with the **Charges** provision, does not, in my judgement, sufficiently clearly and unambiguously authorise the deduction from wages of training costs. Reading the contract as a whole, the provisions under **Charges** appear more geared towards the deduction "charges" for missing shifts and dropping loads. Any ambiguity in this regard must be resolved in the claimant's favour.

17. In the circumstances, I find that the deduction of £1279.58 is not authorised by the contract of employment. I make a declaration in this regard, and I order the respondent to pay this sum. Mr Taylor clarified that this was the actual sum deducted from the claimant's wages and represented his loss. The claimant confirmed that he had deducted tax and national insurance from the sum he was claiming, and that he advanced it as a net sum. I therefore order that this be paid as a net sum.

Employment Judge **Heath**

16 December 2022