



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Claim 1803375/2022

Mr A Jordan v Tunstall Healthcare UK Limited

Claim 1805321/2022

Tunstall Healthcare UK Limited v Mr A Jordan

Heard at: Sheffield (by CVP) **On:** Wednesday 23 November 2022

Before: Employment Judge James

Representation

For the Claimant: In person

For the Respondent: Mr H Dhorajiwala, counsel

JUDGMENT

- (1) The claimant's claim for unauthorised deduction of wages (s.13 Employment Rights Act 1996) is upheld in the sum of £445.40. The respondent is ordered to pay that sum to the claimant, less tax and NI as appropriate.
- (2) The claimant's claim for breach of contract (Article 3 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) is not upheld.
- (3) The respondent's counterclaim is upheld in the sum of £1,259. The claimant is ordered to pay that amount to the respondent.

REASONS

The issues

1. The issues which the tribunal had to determine are as follows
 - 1.1. did the respondent make an unauthorised deduction of wages from the claimant's salary? If so, how much is the claimant owed?

- 1.2. Did the respondent breach the claimant's contract of employment? If so how, and are any sums owed to the claimant as a result?
- 1.3. On the termination of the claimant's contract of employment, did the claimant owe to the respondent, under the terms of that contract, sums of money which remain outstanding? If so, how much is owed to the respondent?

The proceedings

2. Acas Early Conciliation commenced on 4 May and ended on 13 June 2022. The claim form was issued on 13 July 2022. No time limit issues arise. Standard case management orders were made when the notice of hearing was sent.

The hearing

3. The hearing took place over half a day, by video link (CVP). The Tribunal heard live evidence from the claimant; and for the respondent, from Adrian John Caddoo. There was an agreed hearing bundle of 160 pages. The claimant should have provided a written witness statement in advance of the hearing. At the outset of the hearing the Judge clarified what factual matters were in dispute. He allowed the claimant to give evidence in relation to those matters, on the basis that the respondent's counsel was then given adequate time to take instructions, in relation to the factual evidence just given. That appeared to the Judge to be a fair way of dealing with witness evidence in the circumstances.

Findings of fact

4. The claimant started work for the respondent on 25 June 2019 as a Field Engineer. The claimant helped to maintain warden call systems, fire systems, door entry systems, emergency lights and other related systems for the respondent's customers.
5. The claimant handed in his notice on or about 7 February 2022. His termination date was agreed as 7 March (the claimant being contractually obliged to give a month's notice). The claimant's employment ended on 7 March 2022.
6. The claimant's contract of employment entitled the respondent to make deductions from the claimant's wage as follows (clause 2):

DEDUCTIONS

The Company reserves the right to require you to repay to the Company by deduction from your pay:

- *Any fines, penalties or losses sustained during the course of your employment and which were caused through your conduct, for example, speeding fines, parking charges etc. ...*
- *Any other sums owed to the Company by you, including, but not limited to, any overpayment of wages, outstanding loans or advances, or relocation expenses;*
- *Any deductions otherwise entitled under this contract;*
- *Where you have entered into a separate agreement with the Company, any outstanding costs detailed in the agreement.*

You authorise the Company to make any such deductions from any and all monies owing to you by the Company.

7. Clause 17.1 ('Company Car and Driving Licence') states:

You will be provided with a motor vehicle, in accordance with the current Company Motor Vehicle Policy. The car allocated to you will be H category as stated in the Group Policy Document. Please note that initially you may be provided with an existing vehicle, which may not necessarily be of the same grade. You will be liable for £46 charge per month (reviewed annually) which will be deducted from your salary as a contribution towards private usage.

8. The claimant was provided with a car by the respondent, to enable him to carry out his duties. The Company Car Policy states (as does the Driving on Company Business Policy Handbook):

Fines/penalties are the employee's responsibility; in the event of fines being paid or handled by the Company/Contract Hirer, all costs (including third party administration charges) will be recovered directly from the employee via the Payroll.

9. The claimant was provided with an existing vehicle when his employment commenced. In October 2019, he was provided with a new company vehicle, for a term of three years. The claimant accepts that he was liable for a payment of £46 per month in respect of his use of that vehicle on a private basis. He also agrees that he was responsible for fuel charges for any private mileage.

10. The Car Policy also provided:

Employees may add optional extras on the vehicle up to the maximum of the trade up allowance, and will be charged for them via monthly deductions from salary over the term of the lease. The maximum annual amount that can be taken through monthly deductions is £1,000. If the cost of the optional extras exceeds this amount the additional amount will need to be paid as a lump sum at the beginning of the lease period. ...

Penalties will be recorded on the employees file and will be deducted through the payroll. ...

A driver who purchases extra above the benchmark whole life cost value but chooses to leave the company before the termination of their vehicle contract will be liable for a payment of the full amount outstanding in respect of these extras to the end of the lease period. The company will deduct this payment from the final salary payment made to the employee. In the event that the amount is greater than the sum of the final salary the employee is required to submit a cheque payment to Tunstall for the balance payable within 30 days of termination of employment.

...

Amounts allegedly owing on termination

11. The respondent says that the following amounts were owed to the respondent on termination and were lawfully deducted from the claimant's final wage.

£71.89 Vehicle Deduction – Vehicle Extras

£12.99 Vehicle Deduction – Private fuel for March 22

£550 Driving Offences

£158.77 Private Fuel Recovery

12. The claimant was due £905.20 for his final wage for March 2022. None of that was paid to the claimant, as the above deductions, together with tax and NI, came to that

amount. The respondent now accepts however that the sum of £445.40 was also due to the claimant in his final wage; this represents the claimant's basic pay for the period 1 to 7 March inclusive.

13. In addition to the above sums, the respondent claims a further £399 in respect of fines/penalty charges, and £860 in relation to the cycle to work scheme; a total of £1,259. The actual amount for fines is £518, but the respondent agrees to stick to its pleaded case, which claims £399 in respect of fines/penalty charges. Further details of these amounts are set out below.

Fuel charge

14. As noted above, the respondent deducted the total amount of £171.76 from the claimant's final wage. This deduction is not disputed by the claimant.

Vehicle Extras

15. As noted above, the Claimant was provided with a Company Car. His contract provided that the car was subject to the current company motor vehicle policy. This policy states:

A driver who purchases extra above the benchmark whole life cost value but chooses to leave the company before the termination of their vehicle contract will be liable for a payment of the full amount outstanding in respect of these extras to the end of the lease period. The company will deduct this payment from the final salary payment made to the employee. In the event that the amount is greater than the sum of the final salary the employee is required to submit a cheque payment to Tunstall for the balance payable within 30 days of termination of employment.

...

Fines/penalties are the employee's responsibility; in the event of fines being paid or handled by the Company/Contract Hirer, all costs (including third party administration charges) will be recovered directly from the employee via the Payroll.

16. The 'New Vehicle to Fleet Advice and Allocation Details' confirmed that the extras on the car were 'premium paint - phantom black'; the monthly charge in respect of that was £10.27 per calendar month, £369.72 over the 36-month term. The claimant could not recall receiving a copy of that document or having a discussion about the paint. It is the respondent's case that he was sent that document. In any event, the claimant was aware of the deduction of £56.27 being made from his wages each month for the car – i.e. £10.27 more than the amount set out at clause 17.1 of his contract. The claimant did ask his managers about that early on in his contract. Other than those initial queries, the claimant did not question the monthly deductions or follow up his initial queries.
17. The amount owing on termination was £71.89 (i.e. a further 7 months @ £10.27 pcm). That balance was deducted from the claimant's final wage.

Fines

18. On receipt of a fine/penalty charge, the respondent's practice is to send that to the employee. The claimant was responsible for paying the fine/charge, under the terms of his contract of employment. The claimant had a choice to pay it immediately (to take advantage of the lower amount), to appeal the charge, or otherwise question it. If the respondent then receives a further communication from the Council threatening court action, their practice is to pay the fine and seek reimbursement from the employee. This is to avoid the respondent company having court judgments made against it, which could have adverse financial consequences for it.

19. There are five fines/penalty charges as set out below. They were all originally for the sum of £130 but due to non-payment within the specified period, and in some cases, initial enforcement action, those have all increased to £195 or more.
 - 19.1. London Borough of Lewisham – 21/12/2021 - £204 - Penalty Charge No. ZY04217906 - for '*Failing to comply with a prohibition on certain types of vehicle (Motor vehicles)*'. The claimant queried this with Lewisham, telling them that he was working in the area at the time. The Council suggested that the claimant contact his employer about that and he did so. The claimant's current company contacts the Council to let them know when he will be working in a particular Council area, so that fines are not levied. The claimant explained that he had heavy tools and spare parts to carry for his work with the respondent, and therefore needs to be able to park close to the job.
 - 19.2. London Borough of Hackney - 12/01/2022 - penalty charge notice QZ10432793. Originally for £130, increased to £195 as no response was received.
 - 19.3. London Borough of Islington – IZ20773458 - 14/01/2022 - £195, again due to no response being received to the initial charge of £130.
 - 19.4. London Borough of Hammersmith and Fulham – HZ65025152 - £195, increased due to non-payment from £130.
 - 19.5. London Borough of Waltham Forest – FR54362024 - £204 plus compliance stage fee of £75. This arose because of parking issues around the flat where the claimant's partner lives. Some of the residents put police cones in parking bays. If they saw the claimant remove those and try to park in those bays, they would come out and challenge him. The claimant complained about that to the Council, but nothing was done about it.
20. The total paid by the respondent for these fines is £1068. If the charges had been paid at the time, the total due would have been £650.

Cycle to Work Scheme

21. During his employment, the claimant took advantage of the respondent's cycle to work scheme. He entered into an agreement on 26 January 2022. The agreement provided that the claimant's gross salary would be reduced by one payment of £81 followed by 11 payments of £78. The total reduction to gross pay was £939. Clause 5 provided that:

... in the event of your employment terminating for any reason all monies outstanding under this agreement shall be paid to the Employer from any monies owing to you by them such as but not limited to: outstanding salary, holiday pay, or bonuses.
22. The agreement also provided that if the payments were insufficient to repay the Respondent the amount due at the date of termination of the Claimant's employment, he would repay the Respondent within 14 days of termination.
23. The amount taken from the Claimant's February 2022 wage was in fact £79 (not £81), leaving a balance of £860. The claimant accepts this amount is due.

Relevant law

24. Section 13 Employment Rights Act 1996 provides:

(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. ...*
 - (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. ...*
- 25. Section 14(4) provides:
 - (4) *Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—*
 - (a) *in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or*
 - (b) *otherwise with the prior agreement or consent of the worker signified in writing,**and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.*
- 26. Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides:
 - Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*
 - (a) *the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
 - (b) *the claim is not one to which article 5 applies; and*
 - (c) *the claim arises or is outstanding on the termination of the employee's employment.*

27. The provisions of Article 5 are not reproduced here since none of them are relevant to this claim.

Conclusions

28. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above.

Wages claim – 1803375/2022

29. The respondent has discovered, in preparing for this hearing, that the Claimant is owed £445.40 for basic pay for the period 1 to 7 March 2022 and accepts that amount is due to the claimant.
30. The other amounts deducted from the claimant's last wage were lawfully due to the respondent under the claimant's contract, and the respondent was contractually entitled to deduct those amounts, on termination. There is therefore, no unauthorised deduction in respect of those amounts. Only one of the amounts is in any event disputed by the claimant – the sum of £71.89 for vehicle extras. The Tribunal concludes that even if the document was not sent to the claimant in or around October 2019, the claimant knew or should have known that he was being charged an extra £10.27 pcm. He did not follow up his initial query, the amount continued to be deducted for over two years and the claimant is deemed in law to have accepted that deduction.

Counterclaim – 1805321/2022

31. The claimant does not dispute that the sum of £860 is owed to the respondent, in relation to the cycle to work scheme.
32. As for the fines/penalty charges, the Tribunal accepts that the fines were a matter of frustration for the claimant. Further, the Tribunal accept the difficulties associated with driving around and parking in London. By his own admission during the hearing however, the claimant 'put his head in the sand' in relation to those matters. It is noted that his current employer seeks permission from Councils in advance; the respondent was not however contractually obliged to do so.
33. On the other hand, the contractual position is that the claimant is responsible for paying those fines/charges. He had the opportunity to challenge them if he thought there was a reasonable basis for doing so. That risked the higher charge being levied, but ultimately that is what happened in any event. The respondent was entitled to pay the fines on receipt of those higher charges/threat of enforcement action, to protect its own position and seek reimbursement from the claimant. The total due to the respondent is £518 but that is limited to pleaded amount, £399.
34. The total amount due to the respondent from the claimant is therefore £860 plus £399 which comes to £1,259.

Employment Judge A James
North East Region

Dated 28 November 2022

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