



# EMPLOYMENT TRIBUNALS

Claimant: Miss L M Cook

Respondent: The Eye Academy (Richmond) Ltd

HELD AT: Watford Employment Tribunal ON: 31 October 2022 (By CVP)

BEFORE: Employment Judge McCluskey

## REPRESENTATION

Claimant: In person

Respondent: Ms Romana Hashim, Director

# JUDGMENT

The judgment of the Tribunal is that:

- (i) The claimant succeeds in her claim for unlawful deduction from wages for the value of the sunglasses. The respondent is ordered to pay to the claimant the sum of £300 net.
- (ii) The claimant's claim for unlawful deduction from wages for the General Optical Council fees does not succeed.
- (iii) The claimant's claim for breach of contract in respect of reimbursement of parking expenses does not succeed and is dismissed

# REASONS

## Introduction

1. The claimant was a dispensing optician and latterly practice manager, employed by the respondent. Her employment terminated on 2 November 2021. The respondent is a dispensing opticians practice, with a number of branches. The claimant worked at the respondent's Banbury branch. ACAS was notified under the early conciliation procedure on 1 December 2021 and the certificate was issued on 10 December 2021. The ET1 was presented on 10 December 2021.

## Claims and issues

2. The claimant has brought claims for unlawful deduction from wages paid to her on 30 November 2021 and for breach of contract for failure to reimburse parking expenses she says were due to her on the same date.
3. The parties agreed that the sum due to the claimant in wages on 30 November 2021 was £317.24 net. The parties agreed that the following deductions had been made (i) £90 General Optical Council (GOC) registration fees; (ii) £227.24 for sunglasses. This resulted in no wages being paid to the claimant on 30 November 2021.
4. The claimant asserted that no deductions should have been made because there was no contractual entitlement to deduct GOC registration fees and the sunglasses had been given to the claimant as a gift by Ms Romana Hashim, Managing Director of the respondent. The respondent disputed these assertions.
5. The claimant asserted that she was due to be reimbursed for parking expenses in the sum of £95. The respondent disputed this.

## Procedure, documents and evidence heard

6. The claimant was a litigant in person. Her mother, Elaine Cook attended as a McKenzie friend. The Tribunal heard evidence from the claimant. The claimant had intended to call her mother and her boyfriend Gareth Cadden as witnesses. They had provided witness statements and were present. Having identified the issues and after the claimant gave her own evidence, she decided not to call her mother or Mr Cadden as witnesses.
7. The Tribunal heard from Ms Romana Hashim, Managing Director on behalf of the respondent. Ms Hashim had intended to call Ms Lorraine Crowther, HR Manager as a witness. She had provided a witness statement and was present. Having identified the issues and after Ms Hashim gave her own evidence, she decided not to call Ms Crowther as a witness
8. Both the claimant and the respondent provided various other witness statements in the joint bundle of documents prepared by the respondent. These witnesses were not present. I informed parties that as these witnesses were not present their statements could only be given limited weight. I informed parties that if there were any paragraphs in these witness statements which were relevant to the issues identified, they should

draw my attention to those paragraphs. I would then decide what weight, if any, to be given to them. I explained that I would not be reading these witnesses statements in full and only paragraphs which were brought to my attention.

9. The parties drew my attention to a few short paragraphs from those statements. I determined that these were not relevant to the issues to be decided and I did not give any weight to these paragraphs.
10. There was a Tribunal bundle of approximately 111 pages. I informed the parties that unless I was taken to a document in the bundle, I would not read it.

#### Fact-findings

11. The respondent is a firm of dispensing opticians. It has 8 branches and approximately 55 employees.
12. The claimant was employed as dispensing optician with the respondent from 1 August 2020 until 12 September 2021. With effect from 13 September 2021, she was promoted to the post of practice manager with the respondent. The claimant's last day of employment with the respondent was on 2 November 2021. The claimant resigned from her employment.
13. The claimant's contract of employment was signed by her on 30 July 2020. The contract of employment was signed by Ms Romana Hashim, Managing Director, on behalf of the respondent on 2 August 2020.
14. After the claimant was promoted to practice manager, she was sent a letter dated 21 September 2021 from Ms Hashim. The letter confirmed amendments to the claimant's contract of employment, with effect from 13 September 2021. Amendments were made to the claimant's job title, salary and working hours. Her working hours increased from 4 days per week to 5 days per week. The letter stated that "all other terms and conditions of your contract remain the same".
15. The claimant signed the amendment letter on 22 September 2021 confirming her acceptance of the changes to her terms and conditions of employment.
16. The respondent wrote to the claimant by letter dated 30 November 2021 (page 46 bundle) in the following terms: "Your final net pay has been calculated at £317.24. This is made up of your salary at £134.64 for the one day you worked on Tuesday 2 November 2021, and a tax refund owing to you of £182.60. This amount to a total final net pay of £317.24. The following deductions have been made: GOC fees paid in advance past your leave date. The amount due back to us is calculated pro-rata from 2 November 2021 to 31 March 2022 and amounts to £90; Chanel sunglasses that you have kept. We have generously applied a staff discount, reducing the price to £300. Total deductions amount to £390, leaving a balance owing to Eye Academy of £72,76".
17. The final net pay due to the claimant before any deduction for General Optical Council (GOC) fees or for the Chanel sunglasses was £317.24.

18. Two deductions were made from the claimant's net pay; £90 for a General Optical Council (GOC) payment and £227.24 for the cost of sunglasses. No wages were paid to the claimant. The respondent believed the value of the Chanel sunglasses was £300. The respondent calculated that £72.76 was due to the claimant.

#### General Optical Council (GOC) fees

19. On 16th April 2021 the sum of £216 was reimbursed to the claimant by way of an expense claim. This was for the cost of the claimant's annual membership with the GOC for the period 1 April 2021 to 31 March 2022. The claimant's contract of employment required her to maintain registration with the GOC, whilst employed by the respondent.
20. The claimant left the respondent's employment on 2 November 2021. This was after approximately 7 months of the annual membership period with the GOC had elapsed. Approximately 5 months remained. The cost of GOC membership for the claimant for 5 months was £90. The sum of £90 was deducted from the claimant's final wages on 30 November 2021. It was not disputed by the parties that the value of 5 months of GOC membership was £90.
21. Clause 27 of the claimant's signed contract of employment was headed "Deductions from salary". The clause stated "The Company reserves the right to make deductions from your salary and/or requires you to make a payment to the Company in any of the following circumstances." Various circumstances were listed including "Any monies or other sums due to the Company" and "When your salary or expenses or any other payment to you from the Company has been overpaid".

#### Sunglasses

22. On 19 April 2021 Ms Hashim and the claimant had a text exchange about a pair of Prada sunglasses for the claimant and a pair of sunglasses for the claimant's boyfriend. Ms Hashim stated in a text exchange with the claimant on that date "Well yours are a gift from me for all your hard work and his [the claimant's boyfriend's] will be 40% off which is cost price". The claimant replied on the same day to say "Oh my god, thank you so much". (page 41 bundle).
23. The claimant purchased the sunglasses for her boyfriend. The claimant was undecided which sunglasses she preferred. Work was busy and she did not obtain the Prada sunglasses.
24. On 23 July 2021 the claimant emailed Ms Hashim with screenshots of two pairs of Chanel sunglasses. A text conversation followed between the claimant and Ms Hashim about the sunglasses and which ones the claimant and Ms Hashim preferred. Ms Hashim stated that one of the pairs of Chanel sunglasses was available in the Windsor branch of the respondent. The claimant asked Ms Hashim to send them to her so the claimant could try them. This conversation took place on 23 July 2021. The claimant did not obtain any Chanel sunglasses at that time.
25. On 21 August 2021 the claimant asked Ms Hashim if the respondent had a different pair of Chanel glasses in stock (page 43). Ms Hashim replied "No but

we can order them? We are seeing the Chanel rep on Monday...” The claimant replied “Thank you that’s very kind”.

26. Ms Hashim did not give any indication, during the text conversations on 23 July 2021 or 21 August 2021 or at any other time that the Chanel sunglasses would not be a gift. Ms Hashim did not tell the claimant the price of the various Prada sunglasses which they had texted each other about, either with or without a staff discount. Ms Hashim said nothing at all to the claimant about the cost of any of the Prada sunglasses.
27. After the text exchange on 21 August 2021, Ms Hashim obtained the Prada sunglasses requested by the claimant and delivered these to the Banbury branch where the claimant worked. When she did so she did not tell the claimant the cost of the Prada sunglasses or that these were not intended as a gift by her.
28. The Chanel sunglasses delivered to the claimant subsequently broke. The claimant texted Ms Hashim on 17 September 2021 to tell her. Ms Hashim told the claimant to order another pair and to get a return on the ones that were broken. The claimant decided not to order new ones or get a return. She decided to keep the Chanel ones and removed the broken part.
29. On 4 October 2021 the claimant submitted her resignation from the respondent. Her last day of employment was 2 November 2021.

#### Parking expenses

30. Whilst employed as a dispensing optician the claimant was contracted to work 4 days per week. By agreement the claimant worked overtime on a fifth day, on occasion. Ms Hashim agreed verbally with the claimant that her parking expenses, when she worked a fifth day, would be reimbursed by the respondent.
31. The claimant moved to the practice manager role with effect from 13 September 2021. She was contracted to work 5 days per week in this role. There was no entitlement to reimbursement for parking expenses with effect from 13 September 2021. This was because she was on a full-time contract working 5 days per week. The claimant accepted this in her evidence.
32. The claimant submitted her parking expenses in arrears. The last reimbursement of parking expenses to the claimant was on around 8 September 2021. The reimbursement was for parking expenses for end July 2021 and August 2021. Ms Crowther emailed the claimant on 8 September 2021 to confirm this (page 40 bundle). The claimant did not reply, either in writing or verbally, to say that there were still expenses for the period to end August 2021 which were outstanding.

#### Law

33. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker’s wages unless this is authorised by statute, a provision in the worker’s contract or by the previous written consent of the worker.

34. The Tribunal has jurisdiction for a claim for breach of contract under the Employment Tribunals (Extension of Jurisdiction) (England and Wales) Order 1994.

## Conclusions

### General Optical Council fees

35. In relation to the GOC fees, I was satisfied that clause 27 of the contract of employment did provide for deductions by the respondent for the GOC fees for the proportion of the registration year during which the claimant was not employed by the respondent.
36. The claimant had previously been reimbursed her expenses for GOC fees for the whole of the registration year (April 2021 – March 2022). Her employment with the respondent had terminated 2 November 2021. She had not been employed by the respondent for the whole of the registration year. The £90 represented approximately the 5-month period (November 2021 – March 2022) when the claimant would no longer be working for the respondent.
37. Section 13 ERA provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
38. The deduction of the £90 was a deduction which was authorised by a provision in the claimant's contract of employment. Clause 27 stated that the respondent was entitled to make a deduction for an overpayment of expenses or for any sums which were due to the respondent. I was satisfied that the £90 was an overpayment of expenses by the respondent for a period when the claimant was no longer an employee. I was satisfied that the £90 could also be treated by the respondent as a sum which was due by the claimant to the respondent. It covered a period when the claimant was no longer an employee of the respondent. The claimant had a copy of her contract before the deduction was made on 30 November 2021. The claimant had agreed in writing to the deduction (by way of clause 27) before it was made.
39. The claimant stated that there was no specific reference to the GOC fees in clause 27 of the contract of employment and that is correct. However, I was satisfied that specific types of expenses or other overpayments do not need to be listed separately and that clause 27 allowed for the deduction of £90 to be made,
40. I find that the claim for unlawful deduction from wages for the £90 GOC fees does not succeed.

### Sunglasses

41. The respondent's position in evidence was that the Chanel sunglasses, retained by the claimant when her employment terminated, had not been offered to the claimant as a gift by Ms Hashim. Rather, only a pair of Prada sunglasses had been offered by Ms Hashim as gift. I was not satisfied that this was the case.

42. The Prada sunglasses had been offered as a gift by text message from Ms Hashim on 19 April 2021. Ms Hasim stated in a text exchange with the claimant on that date “Well yours are a gift from me for all your hard work and his [the claimant’s boyfriend’s] will be 40% off which is cost price”. The claimant replied on the same day to say “Oh my god, thank you so much”. (page 41 bundle).
43. The next text communication in the bundle between the claimant and Ms Hashim in connection with sunglasses was on 23 July 2022 (page 42). The claimant emailed Ms Hashim with screenshots of two pairs of Chanel sunglasses. A text conversation followed between the claimant and Ms Hashim about the sunglasses. Ms Hashim stated that one of the pairs was available in the Windsor branch and the claimant asked Ms Hashim to send them to her so the claimant could try them. This conversation took place on 23 July 2022.
44. The next text communication in the bundle between the claimant and Ms Hashim in connection with sunglasses was on 21 August 2022 (page 43). The claimant asked Ms Hashim if they had a different pair of Chanel glasses in stock. Ms Hashim replied “No but we can order them? We are seeing the Chanel rep on Monday...” The claimant replied “Thank you that’s very kind”. This conversation took place on 21 August 2021. Ms Hashim did not give any indication that the Chanel glasses, which she had offered to order, would be treated differently to the Prada glasses which had been offered by Ms Hashim to the claimant as a gift. Ms Hashim did not tell the claimant the price of the Prada glasses, either with or without a staff discount. Ms Hashim said nothing at all to the claimant about the cost of the Prada sunglasses.
45. The Prada sunglasses were obtained by Ms Hashim and she delivered the sunglasses to the Banbury branch where the claimant worked. There was no evidence led that at any time Ms Hashim had told the claimant the cost of the Prada glasses or that these were not intended as a gift by her. I was satisfied that the provision of the Prada sunglasses followed a text conversation in April 2021 about the respondent providing sunglasses to the claimant as a gift, for her hard work., albeit the make of sunglasses had changed from Prada to Chanel.
46. Ms Hashim’s position in evidence was that only the Prada glasses were to be offered as gift. As the Chanel glasses were more expensive these were not to be provided as a gift. I did not accept that evidence. If the intention had been that the Chanel glasses were to be paid for by the claimant, I consider that Ms Hashim would have said this during the text conversations with the claimant or on delivering the glasses to her, which she did so by personally delivering to the claimant’s store. She did not do that.
47. By contrast Ms Hashim had been very clear in previous text messages with the claimant about the cost of purchasing a pair of sunglasses for her boyfriend. If Ms Hashim had intended that there would be a cost for the Chanel glasses, I believe, on balance, that she would have said so. Further the claimant’s messages about the Chanel glasses suggest to me that the claimant’s understanding at the time were that the glasses were a gift. Ms Hashim offers to speak to the Chanel representative to order them and the claimant says “thank you that is very kind”. The conversation was very friendly and familiar and Ms Hashim did nothing to suggest to the claimant that there would be a cost to the claimant for the glasses.

48. The Chanel glasses subsequently broke. The claimant told Ms Hashim by text on 17 September 2021. Ms Hashim told the claimant to order another pair and to get a return on the ones that were broken. The claimant decided not to order new ones or get a return. She decided to keep the broken Chanel ones. In her evidence Ms Hashim relied upon her text message of 17 September 2021 about getting a return on the broken glasses to support her position that the sunglasses were to be returned to the respondent and the respondent was therefore entitled to make a deduction for the Chanel sunglasses as they were not returned. I did not accept that this supported her position that the Chanel sunglasses were not a gift. I was satisfied that there would only be a need for a return if a new pair of sunglasses were ordered, in order that the respondent was not charged for two pairs of Chanel sunglasses.
49. The question as to the contractual provision in the contract which may have provided for deduction of sunglasses costs did not arise. I was satisfied that the glasses were a gift which did not require to be returned. I find that the claim for unlawful deduction from wages for the Chanel sunglasses succeeds.

#### Car parking expenses

50. In relation to car parking expenses the claimant claimed £95. She did not have any vouching to show this figure. She accepted that she was not entitled to reimbursement of parking expenses when she became the practice manager. She said the sum claimant was because only some expenses in the period up to becoming practice manager had been reimbursed. She said these outstanding expenses were for the period up to end August 2021.
51. I considered that on a balance of probabilities, parking expenses to end August 2021 in the sum of £95 were not due. The claimant had not led any evidence to support this aspect of her claim. The evidence in the bundle showed that car parking expenses had been reimbursed up to end August 2021. When the claimant received the email from Ms Crowther on 8 September 2021 she did not reply, either in writing or verbally, to say that there were still expenses for the period outstanding. On balance I find that her claim for breach of contract in relation to reimbursement of parking expenses does not succeed.

---

Employment Judge McCluskey

Date: 20 December 2022

JUDGMENT SENT TO THE PARTIES ON 23/12/2022

N Gotecha - FOR THE TRIBUNAL OFFICE



Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employmenttribunal-decisions](http://www.gov.uk/employmenttribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.