



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106355/2022

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Held in Glasgow on 16 February 2023

Employment Judge R King

10 **Mr S Urie**

**Claimant
In Person**

15 **WQS UK Ltd**

**Respondent
Represented by:
Mr K McGivern -
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondent made an unauthorised deduction from the claimant's wages in the amount of £280 but that no award is due to him.

REASONS

25 **Introduction**

1. The claimant claims that the respondent made unlawful deductions from his salary upon the termination of his employment on 21 October 2022. The respondent admits that it made deductions from his final salary but believes that these deductions were lawful. The claimant gave evidence on his own behalf. Kevin McGivern (company director) and John Burrows (operations manager) gave evidence on behalf of the respondent. Both parties produced documents and made oral submissions at the end of the hearing.
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Relevant law

2. Section 13 of the Employment Rights Act 1996 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—

5 *(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.

10 *(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

15 *(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.”*

The issues

20 3. The single issue for the Tribunal to determine was whether the deductions that the respondent admitted that it had made from the claimant’s final salary were lawfully made.

Findings in fact

Having heard the evidence, the Tribunal makes the following findings in fact.

25 4. The claimant was employed by the respondent as a plumber’s mate between 1 May 2022 and 21 October 2022. The claimant had a written contract with the respondent, which both parties signed on 30 May 2022. The contract provided that the claimant worked 37.5 hours each week at an hourly rate of

£10.50 per hour and that, having completed more than three months' employment the notice he was required to give the respondent to terminate his employment was one month.

5. The claimant's terms of conditions of employment included a "Deductions From Pay Agreement", which set out the circumstances in which the parties had agreed the respondent could lawfully make deductions from the claimant's salary. These included:

"(9) If you terminate your employment without giving or working the required period of notice, as indicated in your individual statement of main terms of employment, you will have an amount equal to any additional costs of covering your duties during the notice period not work deducted from any termination pay due to you. You will also forfeit any contractual accrued holiday pay due to you over and above your statutory holiday pay, if you fail to give work or work the requirement period of notice.

...

(12) On termination of your employment, you must return any Company vehicle in your possession to our premises. Failure to return the vehicle will result in the cost of its recovery being deducted from any monies outstanding to you."

6. On 21 October 2022, the claimant decided for health-related reasons to terminate his employment with the respondent without notice. However, he did not initially tell the respondent of his decision even though he had no intention of returning to work.

7. During the first few days of the week beginning 24 October 2022, the respondent attempted to get in touch with the claimant when he did not attend for work, particularly as he had possession of one of the respondent's work vehicles, which he parked at his home.

8. In the circumstances, on 26 October 2022 the respondent's operations manager, John Burrows instructed the respondent's employees John Bruce

and Stevie Mackintosh to attend at the claimant's home to recover the vehicle as it contained tools and materials that it required for jobs that week. When they attended at the claimant's home, the claimant spoke to them and offered to hand over the vehicle key that he had in his possession. Mr Bruce replied that the claimant was to "*hang onto them*" even though the claimant informed Mr Bruce that he was not coming back to work with the respondent.

9. The cost to the respondent of recovering the vehicle was £210 as the engineers spent 6 hours planning, travelling to and attending at the claimant's home and then travelling to their next job, all at a rate of £35 per hour - two engineers being necessary because one had to drive there and then both vehicles had to be driven back.
10. During the period between 25 and 31 October 2022, the claimant was scheduled to work at Maryhill Housing Association and therefore the respondent had to make alternative arrangements to cover his duties at a cost of £393.75.
11. By the end of October 2022, the claimant had not yet contacted the respondent to confirm his intentions in relation to his employment. Therefore, the respondent decided to treat the claimant as having resigned without notice on 21 October 2022, which was the last day he had worked. The net salary due to the claimant between 1 and 21 October after deductions for tax and national insurance was £1,247.46.
12. However, the respondent made the following deductions from his pay -
 - a. An advance of £650 that had been paid to the claimant in respect of his October salary;
 - b. The cost of a replacement van key - £280;
 - c. The cost of the six hours spent by the engineers collecting the van - £210;
 - d. The cost of mileage used by the claimant between 21 and 24 October - £10.22; and

e. The cost of covering the claimant's work at Maryhill Housing Association between 25 and 31 October - £393.75.

13. As those deductions total £1,543.97 but the claimant's net salary was only £1,247.46, the respondent was unable to deduct £296.51, which it would have deducted had the claimant's salary been sufficient to cover that.
14. The claimant eventually contacted the respondent by e-mail on 7 November 2022. In his e-mail he apologised for not having been in touch until then and explained that he had resigned due to health reasons. He also queried the non-payment of his wages for October and reminded the respondent that he remained in possession of his company van key, '*which I need to return*'.
15. The claimant still has the vehicle key in his possession. The respondent eventually purchased a replacement key on 8 December 2022 at a cost of £280.
16. The claimant accepted that it was reasonable for the respondent to deduct both the loan advance of £650 and £10.22 for the mileage he had incurred in the respondent's vehicle in the days after he had left his employment.

Submissions for the claimant

17. The claimant submitted that he should be paid for the work he had done during October but accepted that the respondent had been entitled to deduct the loan repayment and the vehicle mileage from his final salary payment.
18. However, he disputed the cost of collecting the vehicle on 26 October 2022, because the claimant's home is only a 15-minute drive from respondent's premises and therefore he believed six hours for two engineers was excessive.
19. He also disputed that the £393.75 payment for covering his work was reasonable when in the previous week before he had left the respondent's employment, he had been helping one of Mr McGivern's family members to move home. In the circumstances he did not accept that the respondent

genuinely had to cover his absence during the period after he resigned until the end of October.

20. So far as the replacement key was concerned, he had tried to return the spare vehicle key to Mr Bruce on 26 October 2022 but he had declined it and therefore he should not be responsible for the £280 charge for a replacement.

Submissions for the respondent

21. On behalf of the respondent, Mr McGivern submitted that the disputed deductions had been permitted by the claimant's contract of employment and that they were reasonable having regard to the costs incurred by the respondent when the claimant failed to work his notice.

Discussion and decision

22. In respect of the disputed deductions, the Tribunal had regard to the Deductions from Pay Agreement referred to by the respondent in which the claimant had previously signified in writing his consent to the making of deductions from his salary in certain circumstances. It therefore had to determine whether the moneys had been deducted in circumstances in which that was permitted by the written agreement.

Cost of engineers collecting van - £210

23. Although the claimant's home was only 15 minutes' drive from the respondent's premises, the Tribunal accepted that clause 12 of the Deductions From Pay Agreement entitled the respondent to deduct three hours at a rate of £35 per hour for each of the engineers who attended to recover the car, which included their time spent in planning, travelling, recovering the vehicle and then travelling to their next job.

Cost to cover work from 25 October to 31 October 2022 - £393.75

24. The Tribunal accepted the respondent's evidence that the claimant was scheduled to work at Maryhill Housing Association in the week following his resignation. It also accepted that clause 9 of the Deductions From Pay Agreement entitled it to deduct the cost of finding replacement labour to cover

his duties. It also finds that the cost to cover the work of £393.75, which cost was not challenged by the claimant even though he denied the respondent's right to deduct it, was fair and reasonable.

Replacement van key - £280

- 5 25. The Tribunal accepted that clause 12 of the Deductions From Pay Agreement entitled the respondent to deduct the cost of recovering the vehicle key had that cost been incurred reasonably.
26. However, while the respondent's position was that the claimant had not engaged with the engineers who had attended to recover the vehicle, the
10 Tribunal accepted the claimant's evidence that he had spoken to Mr Bruce and Mr Mackintosh when they had come to collect the van, which had been parked around the corner from his home. It accepted that if the engineers had simply gone to the vehicle, the claimant would not have seen them or even known who had been sent to recover it.
- 15 27. The Tribunal accepted the claimant's evidence that he had seen the engineers and that he had offered his van key to Mr Bruce on 26 October 2022, but he had not taken it from him. He had also reminded the respondent in his e-mail dated 7 November 2022 that he had the key in his possession and wished to return it. In all the circumstances, the Tribunal finds that it was
20 unfair to deduct £280 for the cost of a replacement van key bought on 8 December 2022.
28. Although the Tribunal finds that the respondent was not entitled to deduct £280, it takes account of the fact that the money that the respondent was entitled to lawfully deduct from the claimant's salary, and would have
25 deducted, was £1,263.97, which was more than the salary due to him of £1,247.46.
29. Therefore, while the claimant has suffered an unauthorised deduction, this has made no difference to the outcome as he would have received no payment in any event had the respondent deducted all the payments that it
30 was lawfully entitled to recover from his final salary.

30. In the circumstances no award is made.

5 **Employment Judge: R King**
Date of Judgment: 28 February 2023
Entered in register: 02 March 2023
and copied to parties

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