EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss D Castelli	**- V -**	Richard Corrigan Restaurants Ltd

Heard at: London Central **On**: 20 February 2023

Before: Employment Judge Baty

Representation:

For the Claimant: In person
For the Respondents: Ms I Terescuk (HR Manager)

JUDGMENT

1. The claimant's complaint of unlawful deduction from wages in relation to her uniform fails.

2. The claimant withdrew her complaint of unlawful deduction from wages in respect of her alleged entitlement to work 48 hours per week and her complaint of unpaid holiday pay and these complaints are dismissed.

REASONS

The Complaints

1. By a claim form presented to the employment tribunal on 14 December 2022, the claimant brought complaints of unlawful deduction from wages and unpaid holiday pay.

2. The respondent defended the complaints.

The Issues

3. In advance of the hearing, I had the chance to read the claim form and the response form. I then went through with the parties what the issues of the claim were. The claim form was not long and I identified what I thought were three separate complaints brought by the claimant.

4. These were: a complaint of unlawful deduction from wages in relation to the returning of the claimant's uniform; a complaint of unlawful deduction from wages based on the claimant's allegation that she was entitled to work 48 hours per week but had only been provided with 41 hours work per week; and a complaint that she was owed 1.5 days accrued but untaken holiday pay.

5. At the start of the hearing, however, the claimant confirmed that the unlawful deduction from wages complaint in relation to the alleged entitlement to work 48 hours per week and the holiday pay complaint were not being pursued. She withdrew those complaints and I dismissed them.

6. I then tried to ascertain what the issues were in relation to the uniform complaint.

7. By way of background, the claimant was employed by the respondent from 11 October 2022 until 22 October 2022 as Head Waitress. The respondent's case is that the claimant was supplied with a locker key and the following uniform items: three shirts, an apron and a tie. The respondent says that the claimant did not return any of the items at the end of her employment and it consequently deducted £152 from her final wages, relying upon a clause in the claimant's contract. The claimant accepts that she was issued with the uniform items and that she has not returned the three shirts, but she maintains that she has returned the apron and the tie. She disputes that she was ever issued a locker key. It is agreed that the value of the three shirts was £90. The respondent maintains that it allocated £5 to the value of the allegedly missing locker key. The balance of the deducted sums, of £57, is what was ascribed by the respondent as the value of the apron and the tie.

8. I asked the claimant whether, given that she accepted that she had not returned the three shirts, she also accepted that the respondent was entitled to deduct the £90 in respect of those shirts from her wages. The claimant said that she did not accept this and disputed whether the clause in her contract entitled the respondent to make such deductions.

9. Having been through the lengthy exercise above to establish what was in dispute and what wasn't, the issues which I had to determine were agreed between the parties and me as being:

1. Did the claimant's contract with the respondent permit the respondent to make the deductions of wages which it did; and

2. Did the claimant return the tie and the apron and was she issued with a locker key.

The Hearing

10. Today's hearing was a difficult one to manage. This was for two reasons.

11. First, the claimant had sent to the tribunal and the respondent by recorded delivery on 14 February 2023 a short pack of documents for the hearing. Ms Terescuk had received the documents sent to her. However, I did not have the tribunal's copy of the documents. I asked the clerk to find them and the hearing adjourned for 20 minutes to enable the clerk to do so. However, when the clerk returned, she explained to me that the documents had indeed been received by the tribunal and had been signed for but that, since then, they had gone missing and the tribunal did not have them.

12. When the hearing then reconvened, I explained this to the parties and apologised profusely because the tribunal had lost these documents. We then discussed what to do.

13. The pack of documents which the claimant had before her looked to me as if it contained around 100 pages, but made up of individual documents of sometimes only a couple of pages each stapled together, so it would have been a fiddly and time-consuming task in the context of a two-hour hearing which had already been substantially delayed for either the claimant or the tribunal to obtain a complete set of copies. Both parties were keen that the hearing should be completed and not postponed to allow further copies of the documents to be produced. I explained that, given the discrepancies in the factual evidence, I would need to take evidence from the claimant and (having discussed this with the parties) from Ms Terescuk and would be asking various questions of them. I said that, although it was not ideal, we could, when a party wished to refer to a document, simply have that party hand up a copy of that document to me at the relevant time. That way, we could proceed. The parties agreed with this approach.

14. However, I asked in any case if I could have a copy of the claimant's employment contract (particularly as the terms of the deductions clause in it which the respondent relied on were clearly key to determining the issues). The claimant suggested also that I should have a copy of the letter terminating her employment. Copies of these documents were therefore specifically made by the clerk and provided to me.

15. Despite the approach agreed, neither party at any stage asked me to look at any other document apart from the employment contract (of which I already had a copy).

16. The second reason that the hearing was difficult to manage was the behaviour of the claimant. It was extremely difficult to get clear answers to questions which I put to her and sometimes impossible to get any answer at all and she persistently went off on tangents without addressing the question I asked. Even getting to agree the issues of what was a very simple case took a long time because of this and this remained an issue throughout the hearing

during evidence and submissions. Worse still, the claimant persistently interrupted and talked over others, including the judge, despite being asked on numerous occasions not to do so. Her attitude became at times during the hearing rude and aggressive.

17. After I delivered my decision, which went against her, she was even more rude and aggressive, talking over me and not allowing me to speak.

The Evidence

18. As noted, both the claimant and Ms Terescuk gave evidence. No witness statements had been provided (as is common in simpler deduction from wages claims) and neither party was a legally qualified. I therefore decided that it would be a more beneficial approach in each case to begin the evidence with my asking a succession of questions of the witness in question and then the other party asking their cross-examination questions. That was the approach which was used.

19. Both parties made brief oral submissions.

20. The claimant repeatedly tried to give evidence about the content of discussions with ACAS. I explained several times that the parties could not give evidence of the content of those discussions, which was without prejudice, and explained what this meant.

21. After the evidence and submissions were completed, I asked the parties to wait for a few minutes while I considered my decision and then gave them my decision orally at the hearing with my reasons for it.

22. As already indicated, after I had done so, the claimant became extremely rude and aggressive and delivered a tirade about the unfairness of the decision, talking over me and interrupting me when I tried to speak. I asked the parties whether they would like to have the written reasons and explained, for the claimant's benefit, that she would need those reasons if, as she had indicated that she might, she wanted to appeal my decision. It took me a while to get an answer to that question, as the claimant carried on with her tirade about the decision, but eventually she said that she did want the written reasons, as did Ms Terescuk.

Findings of Fact

23. I make the following findings of fact. In doing so, I do not repeat all of the evidence, even where it is disputed, but confine my findings to those necessary to determine the agreed issues.

24. As already noted, the claimant's employment with the respondent began on 11 October 2022 and terminated on 22 October 2022.

25. The claimant confirmed in her evidence that she had received and had indeed signed the employment contract provided by the respondent. The

contract, a copy of which I was provided with, was signed by the claimant. There was a dispute about the date on which it was signed. The date written by the claimant on the contract is 11 October 2022. However, she said that in fact she signed the contract on 18 October 2022, but wrote 11 October 2022 as the date of signature because she considered that that was correct as her employment started on 11 October 2022. Either way, the contract was signed by the claimant before the respondent exercised the deduction of wages clause on termination of the claimant's employment (which was on 22 October 2022).

26. On page 2 of the contract, there is a clause headed *"Deductions from Pay"*. This states:

"We can require you to repay to us, by deduction from pay or any other method acceptable to us:

…

- the reasonable cost of replacing equipment and/or property entrusted to you during employment. This applies if you fail to reasonably maintain it properly or do not return it before leaving our employment…"

27. As noted, it is accepted by all parties that the claimant was provided with three shirts, a tie and an apron as part of her uniform for working at the respondent. It is also accepted that the claimant did not return the three shirts at the end of her employment nor has she since returned them.

28. The claimant's evidence was that, at the end of her employment, she spoke to an assistant manager called Giovanni about the return of her uniform; that she then went to get changed; that she then returned to Giovanni in order to give him the apron and the tie but that he had since left; that she had a telephone call with him; and that she then left the tie and the apron on top of a locker at the respondent and then left herself.

29. The claimant's evidence was also that she did not return a locker key because she had never been issued with a locker key at any point during her employment.

30. Ms Terescuk's evidence was that she had been informed by Glenn Harris, the general manager, that the claimant had not returned any of the items of her uniform and that he asked her to exercise the deductions clause in her contract and make the appropriate deduction from the claimant's wages. Ms Terescuk said that she also spoke to Giovanni about this and Giovanni had confirmed that the claimant had not returned any of the items of her uniform. I asked specifically whether he said this in general terms or gave any specifics and Ms Terescuk confirmed that he had gone through each of the items of uniform which were missing (the three shirts, the tie and the apron) as well as the locker key.

31. As to the locker key, Ms Terescuk stated that she was responsible for issuing locker keys to staff and that it was she who had issued the locker key to the claimant at the start of her employment.

32. When giving my decision, I took care to explain to both the claimant and Ms Terescuk that I was not making a finding that either of them was lying but that I needed to make a finding, based on the evidence available to me, as to which evidence, in the case of each disputed fact, I preferred on the balance of probabilities.

33. In deciding this, I took into account that the claimant had not been straightforward in terms of her evidence and approach at the hearing (for the reasons set out above). Ms Terescuk, by contrast, had been straightforward and open and answered questions clearly and consistently. I also noted that the respondent had offered to reimburse the claimant for any items of uniform which she subsequently returned; but, although the issue of the tie in the apron is in dispute, the claimant did have the three shirts and had nonetheless not returned them, which would have dealt with the majority of the sums deducted by the respondent, and yet she was still claiming as part of her tribunal claim the value of those items. If being repaid the money which was deducted was her main goal, this was a strange way of going about it; it was not necessary to bring an employment tribunal claim at least as far as concerns the three shirts; why not just simply return them.

34. Furthermore, I found it unlikely that an HR manager would maintain the position which the respondent held in relation to a £5 locker key if in fact Ms Terescuk had not issued a locker key to the claimant in the first place. I therefore accept on the balance of probabilities that Ms Terescuk did issue the locker key to the claimant and the claimant did not return it and has not since returned it.

35. Similarly, I find it difficult to believe that an HR manager would maintain this position for £57 worth of uniform (the tie and the apron) if it had indeed been returned; why would a company incur the disproportionate time and expense of fighting a tribunal claim for what to the company is such a small sum unless it genuinely believed that the items had not been returned and was not as a point of principle prepared to pay even this relatively small sum to settle the dispute.

36. In addition, whilst neither Mr Harris nor Giovanni were at the tribunal to give evidence, I accept that, particularly given the detail with which Ms Terescuk maintains she established precisely what items were missing with Giovanni (and then ascribed particular values to each one in calculating the total amount to deduct from the claimant's wages), and the fact that she spoke to both of them, it is more likely on the balance of probabilities that the items were not discovered on the locker by the respondent and were not returned.

37. In addition, I should add that, if they had been placed in an obvious place on a locker, it is unlikely that they would not have been found and, in the light of the employment tribunal proceedings, unlikely that Ms Terescuk would not have been informed about it.

38. In short, for such small sums of money, I find it unlikely that Ms Terescuk and the respondent would not be telling the truth; whereas, if they did not have the items, it is more likely that they would adopt the position that they have adopted as a matter of principle.

39. For all these reasons, therefore, I find on the balance of probabilities that the tie and the apron were not returned by the claimant.

40. As to the amounts deducted, Ms Terescuk informed us that the respondent had sought to ascribe amounts which were reasonable as the replacement value of the items. The claimant has not submitted that the amounts ascribed to the items by the respondent were unreasonable. However, in any event, I consider that, based on ordinary knowledge, £30 for a shirt; £57 for an apron and a tie; and £5 for a locker key are not outside the range of what is a reasonable replacement value for these items.

The Law

Unlawful deduction from wages

41. Section 13 of the employment rights act 1996 ("ERA") 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—
(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.

42. I briefly explained the law for the benefit of the parties at the start of the hearing.

Conclusions on the issues

43. I make the following conclusions, applying the law to the facts found in relation to the agreed issues.

44. As set out in my findings of fact above, I found on the balance of probabilities that the claimant was issued with a locker key and that she did not and has not returned to the respondent either the locker key or the three shirts, the apron or the tie.

45. I turn therefore to the question of whether the respondent was entitled to deduct the value of these items from the claimant's wages. The clause in the claimant's contract is clear that the respondent can deduct from the claimant's pay the reasonable replacement cost of property entrusted to her during her employment if she did not return it before leaving her employment. That is a "relevant provision" for the purposes of section 13(2) ERA, in that it was

contained in her contract and she had been given a copy of that contract prior to the respondent making the deduction in question (and had indeed signed that contract). The respondent was, therefore, entitled to make deductions from the claimant's wages in accordance with that clause.

46. The deductions were made in accordance with that clause. The property in question was not returned before the claimant left her employment (or indeed at all) and, as I found, the cost of replacing the property which the respondent assigned to the items of that property and which comprised the total deduction made was reasonable. The deduction was, therefore, made in accordance with the clause.

47. The deduction from the claimant's wages was therefore lawful.

48. There was therefore no unlawful deduction from wages and the claimant's complaint therefore fails.

Concluding matters

49. As part of the claimant's tirade after I had delivered my decision informing her that her claim was not successful, the claimant complained that she had not been able to adduce all the documents which she had with her as evidence. However, the approach set out above in these reasons as to how to proceed in the light of the unfortunate fact that the documents which she had delivered to the tribunal had been lost was agreed between the parties and no one made any objection to it; that is, until the point after the claimant heard my decision that she had been unsuccessful in her claim.

22 February 2023

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Employment Judge Baty

Judgment and Reasons sent to the parties on:

17/03/2023

For the Tribunal Office