



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Pritchard

**Respondent:** Harbour International Freight Limited

**HELD AT:** Manchester (Via CVP)                      **ON:** 13<sup>th</sup> March 2023

**BEFORE:** Employment Judge Anderson  
(Sitting Alone)

## **REPRESENTATION:**

**Claimant:** In Person

**Respondent:** Mr Stenson (Counsel)

**JUDGMENT** having been sent to the parties on **16th March 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## **Introduction**

1. The Claimant, Mr Pritchard claims unlawful deduction from wages from his former employer Harbour International Freight Limited.

## **Procedural Matters**

2. There was no draft list of issues before the Tribunal.
3. The claim form complains that £350 was deducted from the wages of the Claimant. This arose because the Claimant put the wrong fuel in the works van.

4. In clarifying the issues, using the payslips, it was established at the start of the case that in fact two deductions had been made from the Claimant's pay. The fact of the deductions was not in dispute and the Claimant accepted the accuracy of the figures during this clarification. The first deduction was £96.88 and the second deduction was £145.32. This totalled £242.20. A further deduction of £145.32 would have been made had the Claimant remained in employment.
5. The issues to be determined therefore were:
  - a. Was the deduction of £96.88 authorised by the Claimant's contract of employment in accordance with s.13(1)(a) of the Employment Rights Act 1996?
  - b. Was the deduction of £145.32 authorised by the Claimant's contract of employment in accordance with s.13(1)(a) of the Employment Rights Act 1996?
6. Prior to the evidence being heard, I raised with Mr Stenson about the range of points that were raised by the witness evidence that appeared to have no relevance to this case. I made it clear that the Tribunal was only concerned with the points relevant to the issues before it.
7. There was an agreed bundle of documents. The Claimant provided a witness statement and was cross-examined. The Respondent provided a witness statement from Melanie Bingham, Operations Manager and she was cross-examined.

### **The Facts**

8. I made the following findings of fact on the balance of probabilities.
9. Clause 5.3 of the Claimant's contract of employment states:

*"Your salary will be paid after making any statutory deductions. We also reserve the right in our absolute discretion to deduct from your salary (which for this purpose includes salary, payment in lieu of notice, holiday pay, unauthorised absence and sick pay) at any time during your employment and in any event upon termination, any sums which you may owe us, including, without limitation, overpayments, outstanding expense advances, loss or damage to Company property or the balance outstanding of any loan made to you and interest where appropriate. By signing this contract you authorise us to make such deductions."*
10. At page 42 of the bundle is the Claimant's signature on the contract.

11. It is an agreed fact that on the 29<sup>th</sup> July 2022, the Claimant put petrol into his van. This was in fact a diesel vehicle.
12. The Claimant did call the office to inform them of this fact. As to what happens next is not agreed between the parties, though neither party addressed this in detail. The Claimant spoke to one individual and Melanie Bingham. There was a reference in that conversation to the possibility of filling the remainder of the van's fuel capacity with diesel and attempting to use it. At no point was this a settled course of action. The van was towed from its location and taken to a garage for inspection.
13. At page 43 is the invoice for the damage caused by the correcting of the fuel issue. The invoice is for £387.50 plus VAT totalling £465. The Respondent did not seek to recover the VAT and therefore it was the sum of £387.50 that it alleged that the Claimant was responsible for.
14. Page 61 evidences the first deduction of £96.88 in the 31<sup>st</sup> October 2022 payslip and Page 62 evidences the second deduction of £145.32 in the 30<sup>th</sup> November payslip. The final deduction of £145.32 was never taken as the Claimant had left employment.
15. Based upon the oral evidence of Melanie Bingham and notwithstanding the absence of documentary evidence, I am prepared to accept that the vehicle in question was the property of the Company and not a lease vehicle or hire purchase.

### **The Law**

16. S.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.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker 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.*

*(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.*

17. In respect of contractual or written authorisations for a deduction, neither the statute nor case law requires that the specific sum to be deducted is specified.

18. In Yorkshire Maintenance Company Ltd v Farr UKEAT/0084/09 HHJ Pugsley noted the respective lack of economic bargaining power and suggested that authorisation or repayment clauses should be "subject to a considerable degree of scrutiny."

19. In Potter v Hunt Contracts [1992] ICR 337 it was held that any written authorisation relied upon must be clear that any deduction is to be made from the wages of the employee. i.e. the deduction must be authorised to be taken from the source which it taken from in order to give effect to the true meaning of the statute.

## Conclusions

20. The Claimant's argument that the contract did not authorise the deduction is twofold. Firstly, he argues in effect that he did not cause the loss and secondly, that the sums deducted were excessive.
21. The height of the Claimants argument regarding the cause of the loss is that he accepts that he put the wrong fuel into the van but then relies on events after that as being the cause of the loss or at least to doubt the level of the loss suggested.
22. The Claimant relies upon the alleged inconsistencies as to what he was told to do with the van once he made the phone call to the office to inform them of the problem.
23. Neither party has provided cogent evidence on this point. There is agreement that the Claimant made a phone call. There is agreement that the Claimant spoke to at least two individuals within the Respondent, one of whom was Ms Bingham. I am not able to find that anything was said to the Claimant which would indicate to me that anything said was the cause of the damage. At best, one person may have referenced putting the correct fuel in the van and trying to run it, which was inconsistent information, but this was not the settled view of the Respondent.
24. On the balance of probabilities, I find that the damage here was caused by the inputting of the wrong fuel into the van and that the subsequent events are not relevant to the issue. Because of one suggestion to run the van with the correct fuel and effectively hope for the best, I cannot find that this in some way interrupts the cause of the loss or otherwise causes me to doubt that the loss incurred was genuine. That is far too speculative. In any event, the decision was taken for the vehicle to be recovered. The Respondent was entitled to make that decision in the circumstances. It was the safest course of action.
25. In respect of the sums deducted, I have evidenced before me the cost of what the Respondent spent correcting the issue. No counter evidence has been put before me of alternative valuations or methods of calculation. The Respondent was correct not to charge the Claimant for recoverable VAT.
26. I accept the Respondents valuation. I have no basis upon which to go behind the figures advanced. I find therefore that the loss to the Respondent and damage to the van was £465.00 of which £387.50 was recoverable against the Claimant.

27. Clause 5.3 of the contract is the applicable clause. It identifies that it is permissible for deductions to be made from salary. It expressly references loss or damage to company property.
28. As I have found that the van in question was company property, that the Claimant caused damage which required repair, this clause authorises the deduction to be made from the Claimant's wages.
29. It follows that the two deductions that were made from the Claimant's wages were authorised by his contract of employment.
30. Therefore, the claims of unlawful deduction from wages are not well-founded and are dismissed.

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Employment Judge Anderson

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Date 27<sup>th</sup> March 2023

REASONS SENT TO THE PARTIES ON

3 April 2023

FOR THE TRIBUNAL OFFICE

[AF]