



## EMPLOYMENT TRIBUNALS

**claimant: Mr L Gaviano**

**respondent: Glyn Hopkin Ltd**

**Full Merits Hearing**

**Heard at: Cambridge**

**On: 2 February 2023**

**Before: Employment Judge Boyes (Sitting Alone)**

Representation

claimant: In Person

respondent: Mr Paul Bond, Human Resources Manager

### RESERVED JUDGMENT

- 1. The respondent has made an unauthorised deduction from the claimant's wages in respect of the sum deducted following a refund given to a customer. The respondent is ordered to pay to the claimant the gross sum of £467.96 in respect of the amount unlawfully deducted.**
- 2. The claimant's remaining claims in respect of unpaid wages/notice pay are dismissed.**

### REASONS

1. The claimant claims that he is owed notice pay, arrears of pay and that unauthorised deductions were made from his wages. The respondent denies all claims
2. Early conciliation took place from 30 March 2202 to 9 May 2022. The claim form (ET1) was lodged with Tribunal on the 9 May 2022. The respondent has filed a response to the claim (ET3).

### Hearing

3. The respondent applied for the claim to be struck out on the basis that the claimant had not provided a witness statement and so had not complied with

the Tribunal's order in this respect. The respondent submitted that the claim should be struck out because of the way in which proceedings have been conducted by the claimant, because of non compliance with the rules and because the claimant had not actively pursued the claim.

4. It became apparent during the hearing that that the respondent had used an incorrect email for the claimant who had not consequently received all of the correspondence from the respondent. This included the email from the respondent enclosing the strike out application. The claimant stated that he had not prepared a witness statement because he had not got legal advice, because he believed that the evidence demonstrated what his claim was about and did not understand that he needed to prepare a written statement.
5. I dismissed the strike out application. I was not satisfied that the claimant was aware of the strike out application prior to the hearing. Having heard from the claimant, I was satisfied that he was not aware of the importance of providing a written witness statement, that he did not properly understand the procedure and that he had not intentionally failed to engage with the proceedings. I considered that it would not be proportionate, and hence not in the interests of justice and fairness, to strike out the claim.
6. Whilst there is reference to unfair dismissal and discrimination in the claim form, the claimant confirmed that he only intended to claim unlawful deduction from wages and notice pay.
7. As the claimant had not provided a witness statement, I asked him a series of questions to establish what his evidence was. He was cross examined by the respondent and asked further questions by me.
8. The respondent called Mark Goddard as a witness. He is the respondent's service director. He has been employed by the respondent since 1 December 2014. He adopted his witness statement and was cross examined by the claimant. He was also asked further questions by me.
9. There was insufficient time on the day of the hearing to give my judgment and reasons orally. I therefore reserved Judgment.

## **Documents**

10. The Tribunal had before it an unpaginated bundle of documents prepared by the respondent.

## **Findings of Fact**

11. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.
12. My findings of fact are as follows:

### The respondent

13. The respondent's business is a new and used car dealership with over 50 dealerships in the south east of England. The claimant worked at its Nissan Cambridge dealership.

The claimant

14. The claimant was employed by the respondent as a vehicle service technician. His gross salary was £25,000 per annum.

Chronology of Events

15. The claimant commenced employment with the respondent on the 31 January 2022.
16. On the 31 January 2022, the claimant signed a document confirming that he had been given a copy of the Company Handbook and that he would take time to read and understand the Company policies contained within.
17. The claimant's contract of employment is dated 2 February 2022. It states that the claimant's employment began on 31 January 2022. It is signed by the claimant on the 4 February 2022.
18. On the 11 March 2022, a customer brought their car in for a major service. The total cost of the service was £467.96.
19. There is a handwritten note signed by Anthony Kent, the claimant's line manager, which mentions the claimant's name and states "*failed probation 18/3/2022*".
20. There was a discussion between the service manager, Anthony Kent and Mark Goddard on the 18 March 2022. During that conversation it was decided that the claimant's contract would be terminated because he had failed his probation.
21. The respondent states that the claimant failed his probation because he had failed to correctly tighten the wheel nuts of the customer's car. (For ease of reference I call this "the wheel nut incident".)
22. The claimant was dismissed with immediate effect on the 18 March 2022. The respondent confirmed that he was to be paid one week's pay in lieu of notice.
23. There is a dispute of fact as to whether or not the claimant admitted that he had failed to correctly tighten the wheel nuts of the customer's car. The claimant's case is that he did not admit to the respondent prior to his dismissal that he failed to tighten the wheel nuts or was responsible for any loss to the company. The respondent's case is that during the meeting with the claimant on the 18 March 2022, the claimant accepted that he worked on the car concerned and that he was responsible for the failure to tighten the wheel nuts.
24. In live evidence, the claimant stated that he could not remember from the registration number if he worked on the car and that it is not clear that he had worked on it. He later indicated that he explained that two technicians would have worked on the car concerned, so it would have been him and another technician called Romeo. Romeo would have conducted the MOT. When this contradiction was explored further in cross examination, the claimant stated that what he was trying to explain was that he was not working on cars alone but rather with another technician. Having considered the claimant's evidence

overall and in context, I am satisfied that he was not specifically admitting that he worked on the car concerned but rather that he was explaining that, generally, there would be more than one person working on a car in such circumstances.

25. In live evidence, Mark Goddard stated that he spoke to Anthony Kent by telephone on the 18 March 2022. He could not remember whether or not he spoke to him about the claimant before the 18 March 2022. He thought it was quite possible. He could not remember if the call took place before or after Antony Kent's meeting with the claimant. He thought it was before but could not remember because it was a year ago. He stated that Antony Kent expressed his concerns regarding the claimant's ability given the issue that had arisen with the wheel nuts which was potentially very dangerous. Antony Kent was very clear that he believed that it was the claimant working on the car. The decision to dismiss him was due to the severity of the situation and his lack of remorse when he was told about it. These were the facts that were presented to him.
26. He stated that he is the service manager for around 3000 people and 44 departments and so does not get involved in every detail. He understood that there was an admission from the claimant and that there was enough evidence for them to be confident about the decision. He accepted that no evidence has been provided to the claimant to show that he was responsible for the wheel nut incident. He understood that this was because the claimant had admitted that he was responsible.
27. The claimant stated that the respondent did not provide him with any proof that he had worked on the car concerned or was responsible. He queried why there was no proof of the wheel nuts being ordered and no proof of the refund to the customer. Further, he stated that the authority to deduct was not signed by him.
28. The claimant's evidence was that a technician could work on up to up eight cars in a day although it may be less. The work on the car concerned would have taken around 3 hours. When a mechanic works on a car, a record is kept of that. For each car there should be a job card with initials for every step with the date and time that the work was carried out. In any event, he would not have carried out all of the work on the car because it involved a full service and MOT. He is not an MOT tester and is not trained to do air-conditioning work. His involvement would include changing the oil, pollen filters, screen wash and possibly the brake fluid. I asked him why the wheel nuts are taken off and put back on again. He stated that the brake service would consist of taking the wheels off to clean the brake part before putting the wheels back on and tightening the nut to a specific torque.
29. The claimant sent an email to a generic human resources email address on 18 March 2022 at 8:36pm. The email included the following:

*"Recently employed in the Nissan Cambridge workshop as Service technician, have been informed today by Mr. Early Anthony, my current manager of his decision to terminate my employment within your company on the 25th of this current month in a week of time.*

*Mr Early's decision seems to be my lack of skills towards my role. I will also provide my full cover letter and curriculum in a separate email so you can check*

*my background and skill set and education. I find Mr. Early's decision totally unfair and unjustified. Mr. Early is accusing me of having left some wheel nuts undone and caused issues to a customer's car. He threatened to withhold money from my next pay check. Mr Early refused to provide me with any substantial evidence at all even though I refuted to believe so and explicitly asked few times in front of a witness such evidences. [...]*

*I here ask if this instance ever happened to gather proofs of it and to provide this to me and to gather comments towards myself and Mr Early from the staff all.” [The references to Mr Early are references to Anthony Kent]*

30. In respect of whether or not the claimant admitted that he was responsible for the wheel nut incident in his meeting with Antony Kent on the 18 March 2022, I prefer the claimant's evidence to the evidence of Mark Goddard. This is because it is clear from the claimant's email, sent on the same date, that he refuted this allegation and was asking for evidence that he was responsible. He maintained this stance throughout his email correspondence with the respondent and repeatedly asking for proof that he was responsible. I consider it very unlikely that he would have continued to do so had he simply admitted from the outset that he was responsible. There is no documentary evidence from the respondent to the contrary. Indeed there is no written record of the meeting. There is no statement from Anthony Kent (who I understand has now left the company) or other written record confirming that the claimant stated that he was responsible. Whilst Mark Goddard's evidence was that he understood that the claimant had admitted that he made the error, he was not present at the meeting and his evidence regarding his telephone call with Anthony Kent was lacking in detail. I find that the claimant did not admit that he was responsible for the wheel nut incident during the meeting or at any point.
31. The claimant sent an email to a generic human resources email address on 20 March 2022 at 5.33pm. There is reference in that email to him being told that the reason for his dismissal was his 'lack of skills'. He asserted, in terms, that his dismissal was unfair. He stated that there was no record of the conversation concerned and that there should have been a witness present. He stated that he wanted to appeal against his dismissal.
32. The Human Resources Manager, Paul Bond, replied on the 21 March 2022 at 10.36am. He stated that there was no entitlement to a 'fair dismissal', or redress for lack of a fair dismissal, until a person has two years' qualifying service. Further, there was no requirement for any record of the conversation to be kept or for a witness to be present. He stated that he had considered the claimant's appeal but did not uphold it. No reasons are given. There is no suggestion in the email that any form of investigation was carried out by Paul Bond.
33. On the 21 March 2022, the claimant sent an email in which he asked that his accrued holidays be paid. The claimant also stated, in terms, that he had not been provided with clarification and proof regarding the threat of deductions from his wages.
34. On the 29 March 2022, the claimant sent an email to Paul Bond requesting a copy of his contract and payslips. He stated that he had been in contact with

ACAS and was entitled to be paid without any unlawful deduction or monies missing from his wages.

35. On 29 March 2022, Paul Bond replied attaching a copy of the claimant's contract and telling him how to access his payslips online.
36. There is a letter from the respondent to the claimant dated 30 March 2022. It is headed 'Unsuccessful completion of the probationary period'. It states that the claimant's performance had not reached a satisfactory standard during his probationary period, that he would be paid in lieu of notice from 18 March 2022 plus any outstanding accrued holiday payments.
37. On the 30 March 2022, the claimant emailed Paul Bond. In his email he said "*I have just received a deduction of about £437 in my salary for no reason can you please clarify this matter with me*".
38. On 30 March 2022, Paul Bond replied to the claimant stating that he would need to liaise with his manager as payroll would only make deductions on instruction. He asked Anthony Kent to investigate with payroll and respond to the claimant.
39. On 30 March 2022, the claimant emailed Paul Bond. He stated that he had been in touch with payroll and they did not know why the deduction had been made but justified it with some issues at work. He stated that an issue at work was not lawful justification for making a deduction from his wages. He stated that he had spoken to ACAS who had informed him that even if there was provision in his contract for there to be a lawful deduction, there had to be proof of the damage and proof that the deduction is equal to the damages. He has never been provided with this though he has explicitly asked for it.
40. In a further email of the same date, the claimant again queried the amount that he had been paid, stated that his wages were £767 short and that he had not been paid for accrued holidays. There were then two further emails on the same date requesting that full payment be made and the correct payslips issued, as well as chasing a response from Anthony Kent.
41. Anthony Kent replied to the claimant on 30 March 2022 as follows:

*"As previously discussed with you on the 18/03/2022 when I had to terminate your employment, you worked on [registration number specified] and failed to correctly tighten the wheel nuts.*

*This resulted in a very dangerous situation for our customer (the wheel only had two wheel nuts left holding the wheel on the car).*

*Due to the customer quite rightly complaining, we had to make a full refund of the work carried out (£467.96) We had to collect her car and re service the car to satisfy our customer that her vehicle was once again safe to be driven by her.*

*As discussed with you, the. company policy is to initiate a salary deduction request. I understand that you are not happy with this but this is the contract of employment that you have signed and procedures that the company follows."*
42. The claimant sent a further email on 30 March 2022. He stated that there was a lack of proof and no substantial evidence of the damage or that it was him who had damaged the car. He asserted that the company could not withhold money from his wages without tangible proof, which has not been provided to him. He

said “you just stated a car I worked on and that you claim you refunded without giving me again any physical evidence of this damage therefore accusing me and unlawfully withholding monies I have worked for and accrued without any legal right to do so again is not sustained by any proof. [...] Once again your deductions are unjustified, not backed up any accusation made cannot be proven”. He also queried why there was a further £300 missing from his wages in addition to the £467.96 refunded to the customer.

43. There is an undated document entitled ‘Authority to Deduct from Salary’. It states that the sum to be deducted is £467.96 from final March pay and that the reason for deduction “*left wheel nuts loose on customer car*”. There is space on the document for it to be signed and dated by the employee. Those sections are blank: they are not signed by the claimant. It is signed as being approved by the department manager. It is not clear from the signature who signed the document.
44. On the 29 April 2022, Anthony Kent replied to an email from Paul Bond who had requested “*more specifics on the vehicle cost deduction as I don’t want to be going back and on this & I believe he is disputing the vehicle/proof it was him etc*”
45. Anthony Kent replied on the same date as follows:  
“*Invoice Number 59284 Total Invoice Value £467.96*  
*Customer Reg* [registration number provided]  
*Customer* [name provided]  
*Customer had to be given a full refund + rechecking of car and replacement of missing wheel nuts*  
*Romeo had Luca working with him and observed Luca going around car supposedly tightening wheels Romeo asked if wheels were tight and Luca replied yes.*”
46. There is a letter from Paul Bond to the claimant dated the 8 June 2022 which breaks down the claimant’s pay and deductions for each month that he worked. In relation to the deduction of £467.96 it reads:  
“*Damage to customer vehicle registration* [registration number specified] *and failed to correctly tighten the wheel nut causing serious damage and cost to the company.*”
47. The claimant wrote to the respondent’s solicitors on 18 August 2022. Referring to the earlier emails, which were attached, the claimant stated “*so this is the whole conversation where I asked actual evidence concrete evidence like video any tangible proof of guilt of the alleged damage which I have unlawfully received a deduction of [...]*”.
48. The respondent has not provided any documentary evidence to demonstrate that the customer was given a full refund, although I have no reason to doubt that this occurred.
49. Mark Goddard stated that he authorised the full refund to the customer. The respondent is a subscriber to the Motor Ombudsman Scheme. He spoke to their

customer care department. He also found an example of a similar case in which a wheel was left loose. They repaired it to a satisfactory standard and provided a partial refund. The Ombudsman found that they were clearly in breach of contract. They acted upon their contractual obligations to the customer.

50. Enquiries were made by the respondent during the course of the hearing regarding the cost of replacing wheel nuts. Mark Goddard stated that the only charge was an internal charge of £18.60 net of vat. The work would typically take an hour including necessary checks and a test drive. The hourly charge out rate for such work would be £115 plus vat.

#### Final salary payments

51. It is not in dispute that the claimant's gross monthly salary is £2083.33. He was paid £1826.85 for March 2022 on the basis that he worked 19 days in that month. This is based upon a five day working week.

#### Contract of Employment

52. Paragraph 4 of the contract includes the following:

*“By countersigning this letter you authorise the Company to deduct from your pay (including holiday pay, sick pay, bonuses or commission (if any), or payments in lieu of notice) any amounts which are owed by you to the Company or any company in the Group.”*

53. Paragraph 24 of the contract provided for the claimant to be given one weeks' notice during the probationary period. There is provision for pay in lieu of notice.

54. The Company Handbook contains a section entitled 'Company Property' the relevant parts of which read as follows:

*“The following provision is an express written term of your Contract of Employment*

- *Any damage to Company property including vehicles or stock that is as a result of your carelessness, negligence or deliberate vandalism will render you liable to repay the Company in full (or part) the cost of repair or replacement of the item and;*
- *Any loss to the Company that is as a result of your failure to observe rules, procedures or instructions or is as a result of your carelessness or negligent behaviour or which is as a result of your unsatisfactory standards of work will render you liable to reimburse the Company in full (or part) of the cost of the loss;*
- *In the event that any loss or damage to any Company property, including vehicles, which is deemed due to your carelessness or negligence and the Company is unable to recover the full value of the loss or damage from the Company's insurance policy in whole (or in part), you shall be responsible for any excess or sums not recoverable by the Company and in particular the Company may deduct from your salary such costs or any excess charge made by the Company's insurers and;*



- *In the event that you fail to repay the Company for any loss or damage, the Company reserves the right to deduct such sums from your salary and/or from any other money owing to you.”*

## The Relevant Law

55. Section 13(1)-(2) of the Employment Rights Act 1996 (“the ERA”) provides for circumstances in which deductions may be made from a worker’s wages. The relevant parts are 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.*

*(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. [...]*

56. Section 14 of the ERA lists the exceptions to section 13. None of the exceptions listed apply in this case.

57. If there is ambiguity in the contractual term(s) which purports to authorise a deduction from wages, in other words if the scope of the authorisation is unclear, then that ambiguity will ordinarily be resolved in favour of the worker [*Potter v Hunt Contracts Ltd* 1992 ICR 337, EAT]

58. If the Tribunal establishes that there is a contractual or statutory provision or written agreement from the worker authorising the deduction, it must then decide whether the actual deduction is justified [*Fairfield Ltd v Skinner* 1992 ICR 836, EAT].

## My Conclusions

### Were the deductions from the claimant’s wages unauthorised?

59. It is not disputed by the claimant that his contract authorises deductions from wages where the respondent incurs loss because of an employee’s failure to observe rules, procedures or instructions or as a result of your carelessness or

negligent behaviour or which is as a result of their unsatisfactory standards of work.

60. However, that is not the end of the matter. The Tribunal must also be satisfied, on a factual basis, that the deduction is justified.
61. The claimant does not accept that the respondent has shown he caused the damage concerned. He referred to it in the claim form as 'alleged damage'. He did not sign the document entitled 'Authority to Deduct from Salary'. I have found as a fact that he did not admit that it was his mistake in his meeting with Anthony Kent on the 18 March 2022. He has persistently maintained this position subsequent to his dismissal and has repeatedly requested that the respondent provide evidence to demonstrate that he was responsible.
62. There is no documentary evidence whatsoever before the Tribunal to show that the claimant was responsible for the wheel nut incident. This is despite the respondent being fully aware, as a consequence of the claimant's ongoing correspondence, that he disputed that it was his error. The respondent had the opportunity to produce documentary evidence in form of written records or logs, video evidence or statements from other employees. It has put forward no documentary evidence whatsoever to demonstrate how it reached the conclusion that the claimant was responsible for the wheel nut incident.
63. The claimant stated that he wished to appeal against the decision in his email sent at 5.33pm on the 18 March 2022. Paul Bond replied at 10.36am the next morning. Taking into account the speed with which Paul Bond replied, the lack of documentary evidence regarding the wheel nut incident and considering all of the evidence before me in the round, I am not satisfied that the respondent had fully investigated the circumstances of the incident.
64. The employer must show that the amount of the deduction is justified. It has not done so. It has not shown that the claimant worked on the car concerned, or even if he did, that he was the technician responsible for the error, especially as more than one technician may be working on a car at any particular time. It has not shown that the claimant caused the loss concerned. The deduction from the claimant's salary was therefore unlawful.

Was the claimant's gross final salary correct? / Was he paid the correct pay in lieu of notice?

65. The claimant was paid for 19 working days for the month of March 2022. This covers the period 1 March 2022 to 25 March 2022. As the claimant's last working day was 18 March 2022, this means that he was paid his salary from 1 March 2022 to 18 March 2022 and then paid one week's pay in lieu of notice, as required by his contract, from 19 March 2022 to 25 March 2022. The gross salary and pay in lieu of notice paid by the respondent for March 2022 was therefore correct.

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**Date: 17 April 2023**

**Reserved Judgment and Reasons Sent to The Parties On**

20/4/2023

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**FOR EMPLOYMENT TRIBUNALS**

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