



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101346/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 23 May 2023

Employment Judge L Wiseman

10 **Mr John Wallace**

**Claimant
Not present and
Not represented**

15 **Falkirk Car Carriers Ltd**

**Respondent
Represented by:
Ms Y Guild -
Owner**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 1 February 25 2023 alleging there had been an unauthorised deduction from wages.
2. The respondent entered a response in which it accepted wages had been due to be paid to the claimant, but that an authorised deduction had been made from those wages in respect of payment for the repair of damage to the vehicle driven by the claimant.
- 30 3. The claimant, by email of 19 May 2023, sought a postponement of the hearing because he was in Spain. The claimant had initially thought he could participate in the hearing which was being conducted remotely by CVP. The claimant was advised this was not possible and upon learning this he made

the application for a postponement. An Employment Judge refused the application for a postponement because he considered it was not in the interests of justice to grant it.

4. The claimant acknowledged the hearing would proceed in his absence. The claimant, in an email dated 20 May, provided some further information to be taken into account at the hearing.
5. I heard evidence from Ms Guild, the owner of the company and I was referred to a number of productions which she had sent in prior to the hearing. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

6. The respondent is a car transport company which employs 18 employees. Ms Guild is the owner of the company.
7. The claimant commenced employment with the respondent on the 24 November 2022. The claimant was employed on a six month probationary period. He was employed as a Driver.
8. The claimant was issued with a new employee pack on Tuesday 29th November, which included the contract of employment. Ms Guild's daughter went through the pack with the claimant and drew his attention to the contract.
9. The contract included the following clauses:
- Clause 3 – confirming the probationary period was 6 months and stating that “during the probationary period this employment may be terminated by either party giving 2 weeks’ notice to the other in writing.
 - Clause 8 – “The employer reserves the right and the employee irrevocably authorises the employer at any time during the employee’s employment, or in any event upon termination, to deduct from the

employee's wages ... an amount equivalent to any of the following - ...
negligent or wilful damage caused by the employee ...”

10. The claimant worked until Saturday 3 December, when he returned to the site and telephoned Ms Guild. The claimant informed Ms Guild that he had had a bad experience whilst working away, that he found the job too stressful and was leaving. Ms Guild told the claimant he required to give two weeks' notice in terms of his contract and that she had work booked in for the following weeks and would need to pay someone else to cover it. The claimant insisted on leaving immediately.
11. Ms Guild was subsequently made aware that the truck which the claimant had been driving was damaged. The fifth wheel (where the trailer fits on to the truck) had been damaged and this was only noticed when the trailer and vehicle were unhitched for service. The cost of the repair was £989.77 (including VAT).
12. Ms Guild calculated the wages due to be paid to the claimant were £1015.10 (which included the sum of £33 expenses for a parking ticket). The net sum due to the claimant was £772.18.
13. Ms Guild, relying on clause 8 of the contract, deducted the cost of the repair to the damage to the claimant's vehicle from the wages due to him.
14. Ms Guild paid the sum of £33 to the claimant in respect of the parking ticket.

Discussion and Decision

15. I had regard firstly to the statutory provisions relating to these circumstances. Section 13 of the Employment Rights Act provides that 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.

16. The term “relevant provision” means a provision of the contract comprised 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.
- 5 17. I noted there was no dispute regarding the fact the claimant had carried out work for the respondent and was entitled to be paid wages of £1015.10 gross, giving a net take home pay of £772.18.
18. The dispute between the parties related to the issue of the contract of employment. Ms Guild insisted the claimant had been provided with a contract
10 of employment. The claimant’s position was that he had not been provided with a contract.
19. I preferred the evidence of Ms Guild regarding this matter because she provided evidence beyond a mere assertion that a contract had been given to the claimant. Ms Guild provided evidence regarding the date the contract had
15 been provided and that it had been provided as part of a welcome pack. Ms Guild supported her evidence by referring to all employees being provided with a contract of employment.
20. I acknowledged there was only a short period of time between the claimant being given the contract of employment (Tuesday) and his last day of
20 employment (Saturday) and I further acknowledged the claimant may not have had time to read the contract. I accepted he had not signed and returned it to the employer. However, in terms of section 13 Employment Rights Act, as set out above, the key issue is that the employee must have been given a copy of the contract prior to the deduction being made. I was satisfied the
25 claimant was given a copy of the contract on the 29th November, which was prior to the deduction being made.
21. I concluded the contract entitled the employer to make a deduction from wages in respect of negligent damage caused to a vehicle. The claimant was provided with a copy of the contract prior to his leaving on the 3 December. I
30 concluded the respondent was authorised to make a deduction from the

wages of the claimant, and they did so when they off-set the cost of the repair to the damage to the claimant's vehicle from his outstanding wages.

22. I decided for these reasons that the deduction to the claimant's wages was authorised and I decided to dismiss the claim.

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10 **Employment Judge: L Wiseman**
Date of Judgment: 23 May 2023
Entered in register: 23 May 2023
and copied to parties