



EMPLOYMENT TRIBUNALS

Claimant
G Sohi

Respondent
First Great Western Limited

v

Heard at: Reading ET by CVP
Before: Employment Judge Anderson

On: 5 May 2023

Appearances

For the Claimant: C Devlin (counsel)

For the Respondent: A Baker (counsel)

JUDGMENT

1. The claimant's claim that the respondent made unauthorised deductions from her wages is dismissed.

REASONS

Background

1. The claimant is employed by the respondent, First Great Western Limited, a train operating company, as a service delivery assistant. The claimant was assaulted in the car park of Twyford Station on 1 July 2022 and commenced a period of sick leave. She brings a claim of unauthorised deductions from wages in connection with the wages she has received while on sick leave.

The hearing

2. Both parties were represented by counsel. I received a bundle of 227 pages and three witness statements, one each from the claimant, Steve Layne and Nicola Beech. All three witnesses attended the hearing. The Claimant and Ms Beech gave oral evidence. Mr Layne's statement was taken as read. In addition, Mr Baker filed a short skeleton argument and three authorities.

Findings of Fact

3. The claimant's employment with the respondent commenced on 2 February 2022.

4. On 1 July 2022 the claimant arrived at Twyford Station, her place of work, on or around 5.45pm, for a shift that started at 5.50pm. There are dedicated parking spaces for the respondent's employees at Twyford Station. Two members of the public were parked partly in a disabled parking space and partly in a staff parking space. The claimant asked them to move out of the staff parking space. The two people then racially abused the claimant and assaulted her, causing her an injury.
5. The claimant commenced a lengthy period of sick leave the following day due to mental and physical injuries.
6. Under the claimant's contract, within her first six months of employment, her sick pay entitlement is six weeks at full pay followed by six weeks at half pay.
7. There is in existence a procedural agreement known as the Blue Book. This is described by the respondent as an 'historical document covering terms and conditions'. The Blue Book, published in 1985, has a specific section at 17(b), entitled 'Staff Assaulted in the Course of their Employment' which allows for enhanced sickness pay where an employee is assaulted in the course of their employment.
8. The respondent declined to make enhanced sickness payments to the claimant under that policy. From documents in the bundle, this is said to be because the claimant's contract takes precedence over the Blue Book. In its response to this claim the respondent set out its position that the contract takes precedence but also that the assault took place before the claimant started work, so she was not entitled to enhanced pay under s17(b).
9. Mr Baker said for the respondent today that if the assault was found to have taken place within the course of the claimant's employment it accepted that s17(b) of the Blue Book applied.
10. The claimant seeks payment of her wages whilst on sick leave in accordance with s17(b).

Decision and reasons

11. The claim is brought under s13 (1) of the Employment Rights Act 1996:

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.

12. I need to decide whether the respondent has made an unauthorised deduction. In this claim, that decision turns on whether the horrific verbal and

physical assault suffered by the claimant on 1 July 2022, took place in the course of her employment.

13. In brief, Mr Baker's argument for the respondent is that the assault took place before the claimant started work. He acknowledges that she was in uniform at the time and was at the respondent's premises at the time of the assault, but states that she was not carrying out any act in connection with her duties as an employee but was parking her car before her shift commenced. For the avoidance of doubt I did not attach any relevance to whether the car park was owned or leased by the respondent, which was a matter raised in the course of the hearing. Mr Baker referred to case law, contemporaneous with the drafting of the Blue Book, relevant to vicarious liability, which he said supported the view that where the claimant was not engaged in an act that was part of her duties at the time of the assault, she was not assaulted in the course of her duties, for the purposes of s17(b).
14. Mr Devlin, for the claimant, said that case law about vicarious liability at the time the Blue Book was drafted is not relevant to the wording that was used in that document and that the words should be given their ordinary and natural meaning. He said that the claimant needed to be on the respondent's premises at the time of the assault in order to commence her shift at 5.50pm and be on the platform to meet a train at 5.52pm. He noted that she was in uniform, accessing a staff car parking space, and noted Ms Beech's oral evidence that she would expect employees to act in accordance with the respondent's values when in uniform.
15. I agree with Mr Devlin that I cannot conclude that the Blue Book drafters had in mind the case law referred to by Mr Baker at the time of drafting and note also that the phrase 'in the course of employment' was not a new phrase at that time, and therefore those authorities are of limited use.
16. I agree that the words should be given their ordinary and natural meaning and in considering what that is I have taken account of the fact that a precise phrase was used in that section of the Blue Book, undoubtedly in an attempt to draw a line between assaults that were covered by s17(b) and those that were not, whether or not any thought had been given to definitions relative to vicarious liability. Giving the words their ordinary and natural meaning I find that the assault that the claimant suffered was not suffered within the course of her employment. It took place before her shift started when she was parking her car. She was not carrying out a duty for the respondent. The journey to and from work does not generally form part of the course of employment for employees, and where it does, I would expect that to be specified in a contract of employment. That is not the case here. Furthermore, it is not uncommon for employees to wear uniform to travel to work or to park at the employer's premises and I have heard no evidence nor been taken to any authorities that suggest that either in this case specifically, or in other cases, such actions would be deemed to be in the course of employment.
17. For these reasons the claimant's claim of an unauthorised deduction from wages is dismissed.

Employment Judge Anderson

Date: 5 May 2023

Sent to the parties on: 7 June 2023

GDJ
For the Tribunal Office