Case No: 1308162/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr F Acheampong

Respondent: Exterius Facilities Management Ltd

Heard at: West Midlands Employment Tribunal (by video)

On: 13 June 2023

Before: Employment Judge Chivers

Representation

Claimant: Unrepresented
Respondent: Ms Kennedy-Curnow, Litigation Consultant

RESERVED JUDGMENT

The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 for deductions made by the Respondent from the Claimant's pay of 31 August 2022 in respect of the costs for the provision of uniform in the sum of £37.50 is not well founded and is dismissed.

The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 for deductions made by the Respondent for damage to a vehicle is well-founded. The Respondent made an unauthorised deduction of £627.70 from the Claimant's pay of 31 August 2022. The Respondent is ordered to pay to the Claimant the gross sum of £627.70 deducted from pay.

The Claimant's claim for holiday pay is withdrawn and dismissed on withdrawal.

REASONS

1. The Claimant submitted a claim form to the Tribunal on 11 October 2022. His claim alleged non-payment of holiday pay in paragraph 8.1 of his Claim Form but paragraph 8.2 of his Claim set out that his complaint was for deductions made by the Respondent from his final wages. The Respondent submitted a response on 14 November 2022. At the heart of this dispute is a deduction made by the Respondent from the Claimant's final pay of 31 August 2022 totalling £665.20.

Preliminary Matters

2. At the outset of the hearing, the Respondent's representative explained that a witness statement of Clare Edwards, the Respondent's Finance Director and some additional documents had been filed with the Tribunal yesterday. The Claimant had been sent these documents. I had not had sight of these and arranged for them to be located and sent to me.

3. Also at the outset of the hearing, the Claimant confirmed that he was participating in the hearing from his mobile device in his car. We experienced one instance where his internet connection was lost. I explained to the Claimant that it would be preferable for him to participate in a more private location. He was not able to go home but did indicate that he would be able to use an alternative and private location nearby. The hearing was therefore paused for 10 minutes whilst the Claimant travelled to this location. During this time, I reviewed the additional documents and witness statement as referred to above.

Issues

4. I agreed with the parties the issues that the Tribunal had to determine. It was accepted that the Respondent had made deductions from the Claimant's wages in the Claimant's payslip of 31 August 2022 in respect of –

   (a) Provision of uniform (in the sum of £37.50); and

   (b) Damage to a vehicle of a Respondent's customer (in the sum of £627.70).

5. The Respondent's Response confirms the Respondent's defence is that these deductions were authorised under section 13 Employment Rights Act 1996. The Claimant disputed this. The Respondent does not assert the deductions were excepted deductions.

6. The Claimant ticked the box at 8.1 of the ET1 that he was pursuing a claim for holiday pay. I asked the Claimant at the outset whether he intended to pursue this claim and he confirmed that he did not. His claim was for unlawful deduction of wages for the £665.20 only.

Evidence

7. In terms of documents,

   (a) I reviewed a final hearing bundle of 112 pages which had been prepared by the Respondent's representative and had been forwarded to the Tribunal (copied to the Claimant) on Friday 9 June;

   (b) The Claimant forwarded a number of documents in an email to the Tribunal dated 2 June. Each of these documents were contained in the final hearing bundle;

   (c) As referred to above, I was also provided with a copy of a witness statement of Claire Edwards and an updated bundle containing 3 additional pages.

8. I heard evidence from the Claimant and from Claire Edwards.

Findings of Fact

9. I make the following findings of fact. I decided each of these findings on the balance of probability, having considered all of the evidence given by both witnesses during the hearing, together with documents referred to by them. I have only made those findings of fact necessary to determine the issues.

10. The Claimant worked as a Security Officer for the Respondent from 15 September 2021. He was issued with a Statement of Mains Terms of Employment on 15 September 2021 ("the Statement"). This Statement provides in the heading that it – along with the Employee Handbook – forms *"part of your Contract of Employment (except where the contrary is expressly stated)…."*

11. The signature at the end of the document provides

"I acknowledge receipt of this statement and agree that, for the purpose of the Working Time Regulations, any applicable entitlements and provisions constitute a Relevant Agreement."

12. The Claimant signed this document on 20 September 2021.

13. There is also an Employee Handbook ("the Handbook"). Under the section *"Wastage"*, it provides –

"3) The following provision is an express written term of your contract of employment:

a) any damage to vehicles, stock or property (including non-statutory safety equipment) that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement; ….

4) In the event of failure to pay, we have the contractual right to deduct such costs from your pay."

14. The Claimant accepts that he was sent an email containing the Handbook at the start of his employment.

15. The Respondent also issued the Claimant a Security Officer Uniform Agreement. This document purports to be a relevant provision of the contract and provides that the cost of the uniform supplied to employees is £75 and if an employee leaves within a specified period, then that employee agrees to have an appropriate amount deducted from pay. This is –

"0-6 months from issue, 100% of the cost will be deducted; 6-12 months of issue, 50% of the cost will be deducted from my final wages and I retain the uniform."

16. The Claimant signed this document on 14 September 2021.

17. The Respondent did require the Claimant to wear uniform and the Claimant, whilst he initially wanted to wear and did wear his own uniform, was subsequently provided with and wore the Respondent's uniform.

18. On 28 February 2022 there was an incident at the Langley Brook site of one of the Respondent's clients, Paul Archer Transport (“Archers”). This is a vehicle storage site. The Claimant was driving a vehicle of Archers and reversed the vehicle into a flatbed trailer on the site. The vehicle itself only had one wing mirror and the front windscreen heater was faulty. The vehicle was provided for use by Archers to the Respondent because the site was muddy and so security staff would undertake their work by driving rather than walking. The lack of wing mirror had been reported to Archers.

19. The driving conditions at the time of the incident were difficult. It was dark. It was also raining and the surface muddy.

20. The Claimant accepted that he had seen the flatbed trailer before he entered the vehicle and also accepted that once he entered the vehicle he could not see the flatbed trailer well. The Claimant was reversing back through a slim space. The Claimant did not request assistance in turns of carrying out the manoeuvre and as he attempted the manoeuvre the Claimant's vehicle reversed into the flatbed trailer. The Claimant stated in evidence that this was an accident and stated that he was careful when reversing.

21. After the incident, the Claimant emailed the Respondent on 1 March 2022 06:43 stating

"The accident happened, basically I was parked infront of the cabin and the flatbed trailer was parked on the way facing his back to me, he was going to remove his car from where he park his trail and park the trailer well. So I was reversing back through a slim space and I hit the edge of his flatbed trailer, I couldn't see his flatbed trailer well tbh. His trailer was alright."

22. There was also another email from Harry Mayer dated 1 March 2022 09:04 which stated

"*Sir yesterday between 18 30 to 18 45 i was entered in the yard to park my truck and trailer. I was stop my truck and take off my car from the parking so then i can. Park the truck in the parking. But unfortunately the same time one of your worker who is working a night shift as a door supervisor. He reverse archer's van and hit my trailer. Its nothing happened to the trailer but van behind doors was damaged. I was take some pic's that time i am sending to you. I just want to report the incident. Thank you."*

23. On 2 March Gavin Traynor emailed *"Archers Security Report"* which contained an entry for 1 March 2022 –

"18:00 clocked in, vehicles checks, Van back door is damaged."

24. On 4 March, Jenny Keeton, the Finance Manager from Archers emailed the Respondent attaching images of the damage to the vehicle and stating –

"Please see attached images and the email below regarding an incident at our Langley Brook site. One of the security guards supplied by yourselves reversed the vehicle they use for their rounds into a trailer on site causing damage as evidenced in the pictures.

We have assessed the damage and would like to claim £550 for repairs. Could you please let me know what you need to facilitate this or if you can raise a credit to our account?"

25. On 4 March 2022 Archers invoiced the Respondent for £550 plus £110 VAT. This is not an invoice for the repairs themselves. The narrative for the invoice states –

"Repairs to BG04 WYC after incident at Langley Brook 28/2/22 – email 4/3/22 refers".

26. The Respondent did not carry out any further enquiries into the incident of 28 February 2022. Their view was that the Claimant had made an admission of fault in his email of 1 March 2022.

27. The Claimant was informed verbally by Wayne Cawley, the Respondent's Security Manager in or around 1 March 2022 that the Claimant would be liable to pay the cost of the repair. Subsequently, attempts were made by the Respondent to liaise with Archers about the invoice they had received dated 4 March 2022 but without

success. The Claimant was not kept informed of nor was he involved in these discussions.

28. The Respondent ultimately agreed to pay the invoice to Archers on 24 May 2022. On 27 June the Claimant requested annual leave for the period 7 July to 8 August and although this holiday was not granted, he went absent from work from 8 July in any event. The Respondent did attempt to contact the Claimant by telephoning him but without success.

29. The Claimant's employment came to an end following his email to the Respondent dated 18 August 2022 where he stated he was resigning with immediate effect. The Claimant's effective date of termination was 18 August 2022.

30. When the Claimant's employment came to an end, the Respondent made 2 deductions from his final payslip in August 2022. The final payslip was for £831.60 but from this there was a deduction on of £37.50 (marked on the payslip for "uniform") and there was a deduction of £627.70 (marked on the payslip for "damage"). After statutory deductions, this left payment payable to the Claimant in his final pay slip of £0.

Law

31. Section 13 (1) of the Employment Rights Act 1996 ("ERA") 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.

32. In the event that a deduction is authorised by a relevant provision of the contract or written agreement by the Claimant obtained before the event giving rise to the deduction, the Tribunal must then consider whether the deduction made is justified.

33. In Y*orkshire Maintenance Company Ltd v Farr UKEAT/0084/09,* the Employment Appeal Tribunal cautions employers against acting as "judge and jury" when requiring an employee to repay certain costs and expenses and considered such terms should be *"subject to a considerable degree of scrutiny"* given the disparity in economic power between employer and employee.

34. An employee has a right to complain to the Employment Tribunal in respect of an unauthorised deduction from wages pursuant to section 23 ERA.

Analysis and Conclusion

35. In respect of the uniform, I am satisfied that the Respondent was permitted by the contract and/or by the Claimant having previously signified in writing his agreement to the making of a deduction from the Claimant's wages. The Security Uniform Agreement was stated to form part of the employment contract and this was signed by the Claimant on 14 September 2021. The sums provided in the agreement are reduced by reference to the time that has elapsed since the issue of the uniform. By the time of the Claimant’s termination, the amount payable was £37.50. I find this deduction was justified.

36. In respect of the deduction for the uniform therefore I do not find that the £37.50 deduction by the Respondent constituted an unlawful deduction of wages.

37. In respect of the damage to the vehicle, it is accepted by the Claimant that he signed the Contract of Employment (which refers to the Employee Handbook) and also had had sight of the Employee Handbook itself. The Employee Handbook provides that it is an express term of the Claimant's contract of employment that *"any damage to vehicles …. that is the result of [your] carelessness …. will render you liable to pay the full or part of the cost of repair or replacement"* and in the event of a failure to pay, the Respondent have *"the contractual right to deduct such costs from your pay."*

38. The Respondent asserts that the reason why the deduction was made was because the Claimant was careless in respect of the way the vehicle was damaged.

39. I am not satisfied that the information the Respondent had available to them justified them taking the decision that the Claimant had been careless in respect of the incident. It is not disputed that the Claimant was driving the vehicle when the incident occurred or that the vehicle was damaged. The Claimant was open in his email of 1 March in stating that that he could not see the flatbed trailer well while he was reversing. However, this does not mean that he acted carelessly.

40. There is no evidence of the Respondent interviewing the Claimant to get his version of events, to allow him to expand on the content of his email or to put to the Claimant that they believed his driving of the vehicle had been careless. They did not commence any informal or formal action against him under the Capability or Disciplinary Policy. They did not make any attempts to interview any other witness to the incident. The Respondent did not request CCTV footage of the incident from Archers.

41. The Claimant accepts that his vehicle hit the trailer. However, he strongly denies that he was careless. He was allocated a van that had a missing wing mirror and faulty heating system. The fault with the wing mirror had been reported by the Respondent to Archers previously but the fault remained. The Claimant was driving in difficult conditions both in terms of the weather and the surface of the site. The fact that the Claimant elected not to look for assistance in making the manoeuvre or request other vehicles were moved to perhaps make the manoeuvre easier does not mean that the Claimant acted carelessly in attempting the manoeuvre. There is no witness to the incident who states that the Claimant's driving was careless.

42. Whilst the Respondent did verbally state to the Claimant that he was going to be liable for the damage on 1 March, there was then no written communication with the Claimant about the fact that these deductions were then going to be made until he received his payslip on 31 August 2022 – some 6 months after the incident and over 3 months since 24 May 2022 when the Respondent stated that they had arranged to pay the invoice received from Archers. It is acknowledged that initially the Respondent was attempting to deal with Archers direct and keep the Claimant apart from these discussions. However by 24 May the Respondent had made a payment of £650 to Archers. The Claimant was absent from work for significant periods after 24 May, but his absence does not cover the entirety of this period or explain why there was no written correspondence on this informing the Claimant that the Respondent intended to take sums from his salary in respect of the sums paid to Archers because they believed his carelessness had caused the accident.

43. Finally, the invoice itself is not an invoice of the repairs that were carried out to the vehicle but the costs that the Respondent had been charged by Archers based on their assessment of the cost of the damage to the vehicle. It is unclear as to whether this assessment did reflect the actual cost of repair to the vehicle as a result of the damage due to the accident. It may be the case that this was

information that Archers were not prepared to provide further details of, but no evidence has been presented to suggest that any attempts were made by the Respondent to establish this with Archers.

44. In the circumstances I find that the deduction of £627.70 was not justified and the Respondent has made an unauthorised deduction of wages of this sum.

45. In closing submissions, the Respondent's representative submitted that in the event monies were awarded to the Claimant, the Tribunal should take into account and offset a sum of £396 against such monies to reflect holiday payments made to the Respondent which the Respondent asserted the Claimant was not entitled. There is no basis for equitable set off within the protection of wages provisions (Asif v Key People Ltd EAT 0246/7). There is no reference to any overpayment in any correspondence with the Claimant at the time of his resignation or subsequently. It is also not referred to in the Response. The purpose of the deductions made by the Respondent in this case was not reimbursement of the Respondent in respect of any overpayment but because of the sums the Respondent believed they were owed as a result of the provision of uniform and damage to the vehicle. As a result, no offset is made.

Employment Judge Chivers
29 June 2023