



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Tench

**Respondent:** For The Road Limited

**UPON APPLICATION** made by letter dated **23 February 2023** to reconsider the judgment dated **25 January 2023** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the respondent's application for reconsideration is successful, in that the order that the respondent pay the claimant £3699.90 gross is revoked.

Having considered the respondent's pleadings and the findings of fact in the reserved judgment, whilst the claim for unauthorized deductions (loans, cars, cash advances) is well founded and succeeds as stated at point 5 of the judgment, the order for payment of £3699.90 gross in respect of that claim is revoked because Section 25(3) Employment Rights Act 1996 (ERA) provides that an employer shall not be ordered to pay a worker in respect of a deduction in so far as it appears to the Tribunal that the employer has already paid any such amount to a worker.

All other sums ordered to be paid by the respondent to the claimant remain payable.

The application for reconsideration is not successful in so far as it relates to the claim for reconsideration of the decision that the employer's counterclaim is dismissed on the basis that it is not well founded.

## JUDGMENT

1. The respondent, acting in person, wrote to the Tribunal on 23 February 2023 seeking reconsideration of the reserved judgment dated 25 January 2023. The respondent claimed that the decision was inconsistent in terms of the findings of fact in relation to agreements between the respondent and the claimant regarding the claim for deduction of wages, and the findings that the employer's counterclaim was not well founded.
2. On 1 March 2023 the Tribunal wrote to the parties, indicating my initial view that the application for reconsideration should proceed, albeit on the basis that Section 25(3) ERA may apply to the claims for unauthorized deductions at point 5 of the reserved judgment (loans, cars, cash advances), given my findings of fact that the respondent had paid those sums to the claimant. The letter dated 1 March 2023 stated that I did not consider that there was any reasonable prospect of the decision with regard to the employer's counterclaim being varied or revoked.

3. My provisional view as stated in the letter dated 1 March 2023 was that a hearing would not be necessary given the evidence heard at the substantive hearings on 27 September and 27 October 2023, and my related findings of fact. The respondent was invited to provide any further points or details about the application for reconsideration, including in relation to my provisional view that Section 25(3) ERA may apply, by 7 March 2023. The claimant was invited to write to the Tribunal, giving reasons, by 28 March 2023 should he think that the judgment should not be reconsidered. Both parties were asked to write to the Tribunal by 4 April 2023 setting out their views on whether the application could be determined without a hearing.
4. Nothing was received from the claimant or the respondent until 4 April 2023. In particular, the respondent did not provide any further points or details about the application for reconsideration, and the claimant did not provide any reasons why the judgment should not be reconsidered.
5. On 4 April 2023, the respondent wrote to the Tribunal requesting a hearing on the basis that the outcome would determine its “eventual survival as a company. The case is pivotal for FTR and we need to discuss every single penny [the claimant] has taken already or not”.
6. Also on 4 April 2023, and in response to the respondent’s request for a hearing, the claimant’s representative wrote to the Tribunal stating that the claimant wished to avoid further delays on the basis that “due to FTR’s failure to comply with the minimum wage, he has suffered significant financial distress”. The claimant’s representative also drew the Tribunal’s attention to a previous judgment against the respondent for making unlawful deductions. I did not consider that the previous judgment assisted in my consideration of the current reconsideration application.
7. On 25 April 2023, the claimant’s representative wrote to the Tribunal asking for an indication of when a decision might be received.
8. I was sent the emails dated 4 April 2023 and 25 April 2023 on 26 April 2023. I wrote to the parties on 26 April 2023, asking them to confirm by 9am on 3 May 2023 that these emails were everything they had sent to the Tribunal in response to the letter dated 1 March 2023. The letter indicated that in the absence of a reply by this date, I would proceed in any event.
9. On 19 May 2023 I received confirmation from the Tribunal that no response was received from either party in response to the letter dated 26 April 2023.
10. I note the respondent’s request for a hearing and the claimant’s wish to proceed without delay. Given the extensive evidence heard at the substantive hearings and the detailed findings of fact that I made in the reserved judgment, and my continued view that there was no reasonable prospect of the decision with regard to the employer’s counterclaim being varied or revoked, I found that a further hearing was not required and in particular that no further evidence was needed for me to proceed to the reconsideration; I also found that a further hearing would not be in accordance with the overriding objective, in particular given the likely delay and the lack of need for further evidence.
11. The judgment dated 25 January 2023 found at paragraph 30 that the claimant had requested advances of his pay and other loans from the respondent, and that the respondent had made the payments to the claimant. I found that there was no prior written agreement by the claimant to the respondent making those deductions, and that the respondent believed, wrongly, that it was entitled to make the deductions under the contract of employment. At paragraph 31 I found that

the deductions made by the respondent in relation to loans, cars, cash advances were unauthorized deductions. That finding is not affected by this reconsideration; the deductions were unauthorized deductions. This reconsideration relates only to the order that the respondent should pay the claimant £3699.90 gross with regard to those unauthorized deductions.

12. Whilst the respondent's application for reconsideration was founded in the employer's counterclaim, it highlighted an inconsistency between the findings that the claimant had received the payments which formed the basis of the unauthorized deductions referred to at point 5 of the reserved judgment, and the respondent then being ordered to pay monies to the claimant in respect of the findings that it had made the unauthorized deductions at point 5 of the reserved judgment. In considering the application for reconsideration, as indicated in my letter dated 1 March 2023, I therefore referred myself to Section 25(3) ERA.
  13. Section 25(3) ERA states as follows: "*An employer shall not under Section 24 be ordered by a tribunal to pay or repay a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker*". Section 24(1)(a) ERA relates to the Tribunal's power to order an employer to pay the amount of any deduction made in contravention of Section 13 ERA. Section 13 ERA relates to a worker's right not to suffer unauthorized deductions made by their employer.
  14. Given the findings of fact at paragraph 30, the order made at point 5 of the reserved judgment is therefore inconsistent with the provisions of Section 25(3) ERA, as in effect the order at point 5 would mean that the claimant would receive the payment of £3699.90 gross twice, once during the course of his employment as found in paragraph 30, and then again as ordered by point 5 of the judgment. The order at point 5 of the reserved judgment that the respondent pay the claimant the sum of £3699.90 gross is therefore revoked and that sum is no longer payable by the respondent to the claimant.
  15. For the avoidance of doubt, this reconsideration and Section 25(3) ERA does not apply to any of the other sums that the respondent is ordered to pay to the claimant. In particular, the following sums remain payable by the respondent to the claimant as ordered on 25 January 2023:
    - a. The sum of £970.38 gross in respect to the unauthorized deduction for two weeks work in hand (paragraph 27), which the respondent accepted that it had not paid to the claimant, ordered at point 2 of the reserved judgment.
    - b. The sum of £1754.40 net for holiday pay, ordered at point 4 of the reserved judgment remains payable, given the findings at paragraphs 35 and 36.
    - c. The sum of £3387.34 net in respect of breach of contract (underpayment), (paragraphs 32 and 33), ordered at point 7 of the reserved judgment.
    - d. The sum of £1225.00 net in respect of breach of contract (notice pay) (paragraph 34), which the respondent accepted that it owed to the claimant, as ordered at point 8 of the reserved judgment.
  16. The decision at point 10 in the reserved judgment that the employer's counterclaim was not well founded, failed, and was dismissed is not affected by this reconsideration. As set out in detail at paragraphs 39-51 and as found at paragraph 52 of the reserved judgment, the employer's counterclaim failed as none of the claims set out in the employer's counterclaim amounted to breaches of the contract of employment by the claimant.
-

**Case No: 2304927/2021**

**Employment Judge Swaffer  
6 June 2023**