EMPLOYMENT TRIBUNALS

Claimant	**Mr A Scott**
Respondent	**Bryn Thomas Cranes Limited**
Heard at Cardiff (by vide (CVP))	**On 21 July 2023**
Before	**Employment Judge R Brace**
Representation:	
Claimant	Did not attend
Respondent	Mr Liam Curtis (Finance Director)

JUDGMENT

1. The name of the Respondent is amended to Bryn Thomas Cranes Limited.
2. The complaint brought by the Claimant in respect of deduction from wages is not well-founded and is dismissed.

Written Reasons

1. Early conciliation in this case commenced on 21 February 2023 and ended on 20 March 2023. On 20 March 2023, the Claimant filed an ET1 claim in which he complains that the sum of £668.40 was deducted from his final pay for an NVQ course that he never attended. He also seeks compensation for the inconvenience for having to borrow money to make up the money not paid to him, although this is not quantified by the Claimant in financial terms in his ET1.
2. In its ET3 Response, the Respondent admits such a deduction but contends that the Claimant signed paperwork agreeing to deductions in respect of training costs at the time of leaving its employment, that the deduction of £668.40 was taken from his final salary for training costs incurred by the company and that the Claimant was aware of deduction before the final salary was paid to him.
3. The day prior to the hearing, the Claimant had emailed the Tribunal indicating that he would not be attending today, confirming that he was happy for the hearing to proceed in his absence due to work commitments and stating that he was relying of evidence from the Respondent's Managing Director, indicating that the NVQ course would be placed on hold until all paperwork had been signed. The Claimant disputed

that he had ever signed such paperwork, or attended the NVQ course. He did not request a postponement of the hearing despite being asked if that is what he was seeking.

4. Before me today, I have a statement from the Claimant in the form of an email to the Respondent dated 20 July 2023 and a copy of the email that he relies on that was sent to him by the Respondent's Managing Director, Mr Dylan Thomas.

5. I also have a copy of a statement on behalf of the Respondent from Mr Thomas in the form of an email dated 17 July 2023, together with a copy of:

    a) A document dated 8 August 2022 entitled 'Employee Personal Details' in respect of the Claimant; and

    b) A document dated 8 August 2022 entitled 'Statement of Employment terms' again in respect of the Claimant and what appears to be a signature of the employee and signed on behalf of the Respondent.

6. In addition to the Claimant not attending this hearing, neither did Mr Dylan Thomas. Rather, Mr Liam Curtis, Finance Director for the Respondent, attended and gave evidence on affirmation on behalf of the Respondent.

7. Findings of fact are based on the live evidence given by Mr Curtis in response to questions asked by me and consideration of the statement from the Claimant and Mr Thomas. However, little to no weight was placed on witness statements of witnesses who do not attend to be questioned in live evidence. I also made findings of fact based on my consideration of the documents provided by both parties in conjunction with evidence from Mr Curtis, documents which also included:

    a) a copy of an invoice dated 29 January 2023 in the sum of £1,100 plus VAT amounting to £1.320 in respect of training provided by ASU Construction Services Ltd to the Respondent in respect of the Claimant for a 601/5664/8 ProQual Level 4 NVQ Diploma; and

    b) a copy of a credit note dated 11 March 2023 in the sum of £413.60 plus VAT amounting to £496.32 in respect of the training costs for the Claimant.

The Law

8. Section 23(1) ERA 1996 gives workers the right to complain to an employment tribunal about deductions from wages or payments received by employers that are not permitted under the Act and to seek reimbursement of the sums involved.

9. s.13(1) ERA 1996 which 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 agreement to the deduction

10. The second limb of S.13(1)(a) ERA 1996 permits deductions where they are authorised by 'a relevant provision of the worker's contract'. This phrase is defined in S.13(2) as a provision contained in:

    a) one or more written contractual terms of which the employer has given the worker a copy before the deduction is made; or

b) one or more contractual terms (whether express or implied and, if express, whether oral or in writing) whose existence and effect (or combined effect) the employer has notified to the worker in writing before the deduction is made — S.13(2)(b).

11. Section 13(2)(a) ERA 1996 applies to written terms authorising deductions which have been entered into before the deduction has been made. The provision is satisfied if the employer gives a copy of the contract containing the relevant term to the worker.

12. When analysing repayment clauses, employment tribunals should bear in mind **Yorkshire Maintenance Company Ltd** v **Farr** EAT 0084/09, a case that cautioned employers against acting as 'judge and jury' when requiring an employee to repay certain costs and expenses and considered that such terms should be 'subject to a considerable degree of scrutiny' because of the vast disparity in economic power between employer and employee.

Facts

13. The Claimant was employed by the Respondent as a mobile crane operator from 8 August 2022 to 17 February 2023.

14. On 8 August 2022, the Claimant signed a contract of employment, a contract which included at clause 17 the following terms:

'17.Training & Costs

I. If there are any training costs incurred by the company you shall repay Bryn Thomas Cranes Ltd as follows

I. If you cease employment before you attend the training course but the Employer has already incurred liability for the costs, [100]% of the cost or such proportion of the costs that the Company cannot recover from the course provider shall be repaid;

II. If you cease employment during the training course or within 12 months of completing the training course, [100]% of the costs shall be repaid;

III. If you cease employment more than 12 months but no more than 24 months after the completion of the training course, [50]% of the costs shall be repaid;

IV. You agree that any costs repayable may be deducted from your salary or other remuneration due to you by Bryn Thomas Cranes Ltd.'

15. Mr Curtis tells me that the Claimant wished to become a Lift Supervisor. Even if the Claimant were to disagree with that, I found that at some point it was agreed between the parties that the Claimant would undertake a Controlling Lifting Operations Diploma.

16. Mr Curtis tells me that the training was divided into two parts:

    a. a week-long course when the individual would be qualified as a lift supervisor, known in the industry as a 'Red Card'; and

    b. a second, NVQ element of training, to demonstrate that the individual is experienced. This element was an on-site assessment by an independent NVQ assessor.

17. The Respondent agreed to pay for the Claimant's training and contracted with ASU Construction Services Limited ("ASU") to provide that training for the Claimant. The Claimant completed the week long training and on 29 January 2023, the Respondent was invoiced in the sum of £1,100 plus VAT in the sum of £1,320 by ("ASU"), an invoice which covered both elements of the training i.e. the week-long course and the NVQ assessment.

18. The Claimant completed the course but resigned prior to the NVQ assessment. His employment terminated on 17 February 2023 and the sum of £668.40 was deducted from the Claimant's final wage. This is admitted by the Respondent and I accepted Mr Curtis' evidence that this was in relation to the training costs for the NVQ course.

19. As a result of the termination of the Claimant's employment, the Respondent cancelled the NVQ assessment for the Claimant and, on 11 March 2023, ASU provided a credit note in respect of the NVQ assessment element of the Diploma in the sum of £413.60 plus VAT in the sum of £496.32.

20. This resulted in the Respondent having paid the net sum of £686.40 plus VAT in respect of the training costs in respect of the Claimant from August 2022.

21. The Respondent deducted the sum of £686.40 from the Claimant's final salary in respect of the ASU costs incurred by the Respondent for the training for the Claimant for the Controlling Lifting Operations Diploma.

Conclusions

22. I was satisfied that the Claimant had signed a contract of employment that included provisions relating to deductions from wages in respect of training, specifically clause 17, which provided that if there were any training costs incurred the employee had agreed to repay the Respondent 100% of the costs if they ceased employment during the training course or within 12 months of completing the course (Clause 17(II)).

23. I was also satisfied that the effect of clause 17(IV), was that the Claimant had agreed at the commencement of his employment that any costs repayable could be deducted from his salary by the Respondent.

24. I therefore concluded that the Respondent was permitted, by reason of the second limb of s.13(1)(a) ERA 1996, to make a deduction from the Claimant's salary as it had been authorised by 'a relevant provision of the worker's contract' in respect of training costs.

25. Having accepted the Respondent's evidence, I further concluded that the deduction related to the NVQ costs element of the Claimant's training course, provided by ASU to the Respondent, in respect of the Claimant's training i.e. a Level 4 NVQ Diploma in Controlling Lifting Operations – Supervising Lifts (Construction).

26. I was further satisfied and concluded that the actual deduction made from the Claimant's final pay was in fact justified and was in respect of training costs that the Respondent had in fact incurred and that the Claimant's employment had ceased during that training course (and in any event within 12 months,) the Claimant having already undertaken the week-long course since August 2022 and prior to the NVQ element of the training required to complete the Diploma.

27. The Respondent had obtained credit for the NVQ element of the training from ASU and I concluded that the deductions that were made were in respect of costs incurred by the Respondent for that element of the training that that the Claimant had in fact received, albeit that my calculations, the costs incurred were in fact £686.40 not £668.40. I considered this to be inconsequential and likely a result of an error either by the Claimant in his ET1 claim or by the Respondent in its initial calculations.

28. Either way, it was my conclusion, that the deduction from the Claimant's wages of £668.40 or, for the sake of clarity, £686.40 if that was the actual amount deducted, would fall within the provisions of Clause 17 of the employment contract and that the Respondent was entitled to make a deduction in respect of such costs.

29. I therefore concluded that the claim was not well founded and is dismissed.

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Employment Judge R Brace

Date 21 July 2023

JUDGMENT and WRITTEN REASONS
SENT TO THE PARTIES ON 24 July 2023

FOR THE TRIBUNAL OFFICE Mr N Roche