



EMPLOYMENT TRIBUNALS

Claimant: Mr J Higgins

Respondent: Jackson Electronics Ltd

Heard at: Tribunals Hearing Centre,
50 Carrington Street,
Nottingham, NG1 7FG

On: 27 July, 28 June 2023

Before: Employment Judge McTigue

Representation

Claimant: Mr I Higgins, Father

Respondent: Mr B Jackson

JUDGMENT

1. The claim of unfair dismissal is not well founded and is dismissed.
2. The claim of unlawful deductions from wages is not well founded and is dismissed.

REASONS

Introduction

1. The claimant was employed as a drone pilot / inspection engineer by the Respondent from 14 January 2019. He claims that he suffered unlawful deductions from his wages and that he was unfairly dismissed by means of constructive dismissal on 4 October 2022. ACAS was notified of the early conciliation procedure on 20 October 2022 and the certificate was issued on 24 October 2022. The ET1 was presented on 28 December 2022. The ET3 was received by the tribunal on 31 January 2023.

Claims and Issues

2. The claimant brought claims for unauthorised deductions from wages and unfair dismissal. The tribunal was required to determine the following issues which had been agreed with the parties by my colleague Employment Judge Heap when she held a preliminary hearing with them on 2 May 2023:

Unauthorised deductions from wages –Section 13 and 14 Employment Rights Act 1996

- (a) Was the deduction of £51.58 made from the Claimant's wages in September 2022 in respect of overtime which the Respondent says that it had previously paid in July 2022;
- (b) If so, was the Claimant's overtime which was paid to him in July 2022 authorised by the Respondent by way of agreement reached between him and Ben and David Jackson at a meeting on 8th July 2022;
- (c) If the overtime was not authorised by the Respondent on 8th July 2022 was that an overpayment of wages paid to the Claimant;
- (d) If the Respondent did make an overpayment of wages to the Claimant in July 2022 was the deduction an excepted deduction under Section 14(1)(a) Employment Rights Act 1996;
- (e) If not, was the deduction of £51.58 an unauthorised deduction from wages and whether the Respondent should be Ordered to pay that sum to the Claimant;
- (f) Should there be any adjustment to compensation under Section 207A Trade Union and Labour Relations (Consolidation) Act 1992 if the Claimant raised a grievance on 3rd October 2022 and the Respondent unreasonably failed to deal with that. That will require the Tribunal to consider whether the Claimant's email amounted to a grievance, if it did whether there was a failure to deal with it and, if so, whether that failure was unreasonable; and
- (g) If there should be an adjustment, what percentage adjustment should be made.

Constructive dismissal contrary to Section 95 Employment Rights Act 1996

(h) Did the following things occur and if so did they, either singularly or cumulatively, amount to a fundamental breach of the Claimant's contract of employment:

- Making a deduction from his wages in September 2022. It is not in dispute that this happened;
- Failing to deal with the issues in the Claimant's grievance on 3 October 2022 timed at 11.04 a.m.; and
- Raising previously unraised issues about performance in retaliation to the grievance.

(i) If the Respondent did fundamentally breach the Claimant's contract of employment then did the Claimant resign in response;

(j) If the Claimant was constructively dismissed what compensation should the Respondent be Ordered to pay to the Claimant taking into account any losses incurred and what is just and equitable.

Procedure, documents and evidence heard

3. The tribunal heard evidence from the claimant and his mother, Mrs Pauline Higgins. Evidence was also heard from Mr Ben Jackson, Mr David Jackson and Mr Jonas Harris on behalf of the respondent. There was a bundle of 136 pages which the respondent had prepared and a bundle of 178 pages which the

claimant had prepared. Oral submissions were made by both parties. Both parties also helpfully provided their submissions in writing to the tribunal.

4. After my colleague EJ Heap held a closed preliminary hearing on 2 May 2023 to case manage this matter, she wrote to the parties and stated:

The issues in this claim are very straightforward and I have urged the parties to stick to them and to not make the case any more complicated than it needs to be. Much of the information currently provided by the parties goes far beyond what is required to deal with what the actual issues in the claim are. The Tribunal will only consider the core issues and not any wider disputes or arguments that the parties have with each other that are not relevant. If the parties do not focus on what the real issues are then they risk losing sight of the wood for the trees and wasting both Tribunal and their own time dealing with irrelevant matters.

5. Unfortunately, those comments were not taken on board especially when it came to the contents of the bundle. The parties entered into a protracted dispute with regard to the contents of the hearing bundle which unfortunately continued on the day of the hearing itself. The claimant would not agree to the contents of the bundle that the respondents had prepared and my colleague Employment Judge V Butler directed on 5 June 2023 that the claimant should produce a separate file of documents if he thought the respondent had excluded important documents from the bundle. The claimant did produce an additional bundle. Reasons for the claimant producing an additional bundle of documents included the fact that Mr J Higgins said that parts of key documents had been altered in the bundle prepared by the respondent, and that key documents had been removed from bundle prepared by the respondent. In the event, I was not satisfied that any documents in the main bundle had been altered or falsified. In addition, a considerable number of documents which appeared in the claimant's bundle were of no relevance to the issues in the case.
6. The claimant also raised numerous issues which were of no relevance to the case. For example, an allegation that drugs had been found at the respondent's premises and an allegation that the Managing Director of the respondents had been removed from a flight. This did not assist the Tribunal's fact-finding in relation to the issues that were pertinent in this case. I should also state that these are allegations which are of no relevance to this case and I did not make any findings of fact in relation to those alleged incidents.
7. In terms of the witness evidence, the respondent's witnesses were credible and gave clear and cogent evidence. I was particularly swayed by the evidence of Mr. Jonas Harris. Turning to the claimant's witnesses; with respect to Mrs. Pauline Higgins I found that her evidence did not assist me greatly in answering the relevant issues in this case. With regard to Mr. Jon Higgins, I did not find him to be a credible witness. He was evasive and failed to directly address the questions that had been put to him, preferring to discuss matters that were of questionable relevance to the issues the Tribunal was required to determine. One example of this is one of the first questions that was asked of him by the respondent's representative, Mr Ben Jackson. Mr Ben Jackson asked the

claimant if he accepted it was not in dispute that he could travel to Torness. The claimant replied that he could not answer it without speaking to his representative. This was implausible. The claimant had been asked a perfectly reasonable question about something which he had direct knowledge of. In addition, the representative in question was his father, not a trained legal representative, and the question was not one which would have required discussion with any representative.

8. On the first day of the hearing, I took a reduced lunch and sat late. Despite this, the matter went part heard and was relisted for a second day. On the second day, I heard submissions from both parties which I limited to 15 minutes each and then gave judgment and oral reasons. Both parties requested written reasons at the conclusion of the hearing.

Fact-findings

9. The respondent is an electrical company. A large part of their work is carrying out remote visual inspections of power plants.
10. On 8 July 2022 Mr Ben Jackson of the respondent provided the claimant with instructions about his forthcoming trip to complete a job at Torness power station in Scotland. Mr Ben Jackson explained to the claimant that he was to proceed to Torness at the start of the next week in order to commence work at the power station there on 12 July 2022.
11. Mr Ben Jackson explained to the claimant that the respondent had ordered some subsea camera inspection equipment which might need collecting from Peterhead. This however was only a possibility as the respondent had not yet been invoiced for equipment in question and so the item had not yet been fully paid for. Mr Ben Jackson gave clear instructions to the claimant that after finishing his job at Torness, the claimant was not to proceed up to Peterhead without first contacting the respondent's office and obtaining consent. This conversation was overheard by Mr Jonas Harris.
12. On the afternoon of 8 July 2022 Mr Ben Jackson also provided the claimant with an email from the seller of the subsea camera equipment which stated that an invoice for the equipment would likely not be issued until early the following week and it might be difficult to collect the equipment the following Wednesday or Thursday, i.e. 13 or 14 July 2022. Mr Ben Jackson again made clear to the claimant that he was not to proceed up to Peterhead without first contacting the respondent's office and obtaining consent.
13. On 12 July 2022 the claimant undertook work at Torness power station. He finished the work that same day and headed north towards Peterhead. He had not made contact with the respondent's office or obtained consent to proceed onwards to Peterhead.
14. As is apparent, from an email from Mr Newman of Hawk Consultants of 13 July 2022, the claimant arrived at Peterhead at some point before 1.23 pm on 13 July 2023. This was in clear breach of the instructions he had been provided with.
15. On 13 July 2022 Mr Ben Jackson had a text message exchange with the claimant. Given the instructions Mr Ben Jackson had previously given the claimant about not travelling past Torness without the consent of the

respondent, Mr Ben Jackson was under the impression was still at Torness. The text message exchange was as follows:

10.28 AM Mr B Jackson – Hope job at Torness is going well, I wouldn't travel up to Aberdeen without calling office to see if it is ready to pick up

Mr Jon Higgins – I'm at Peterhead! Told your dad to let me know if anything changes. Tried to ring on leaving Torness but got no answer!

2.26 PM Mr B Jackson – Nothing had changed we hadn't been able to pay for it on Friday and still not got an invoice.

16. On 27 September 2022 the claimant noticed a discrepancy in his September wages and approached the respondent about this matter. He raised the matter with the respondent's accountant and was informed that the deduction related to unauthorised overtime payments relating to his trip to Peterhead in July 2022.
17. On 3rd October 2022 at 11.04 am the claimant sent an email to Mr. David Jackson, the Managing Director of the Respondent of the respondent, raising a grievance. The email stated:

"Hi David

on the evening of Tuesday 27th of September I noticed a discrepancy in my pay for this period, a minus figure! I sent Claire a text as she said she would run it through with me on Thursday morning. On Thursday you had deducted my pay for the incident of 13 July in which I ended up going to Peterhead after completing a successful job at Torness nuclear power station under the miscommunication between yourself, Ben and I to collect equipment you had purchased, (I still have the paperwork and details as handed to me before setting off, plus emails, text, etc.). On my return to the office (14th July) we had a small friendly discussion regarding the miscommunication and I made the suggestion of written, signed job cards to prevent a similar situation in the future. Beyond this no more had been sent to me about the matter.

My biggest grievance is not the small sum of money you have deducted, but the accusation you've placed against me, and the underhand nature in which the deduction has been made 11 weeks / 3 pay periods later without any warning or discussion! In direct violation to the Jackson Electronics employee handbook. If you had a grievance against me it should have been raised as per the procedure.

Sadly I feel this has severely undermined the trust and working relationship I have built up over the 3 years and 10 months I have been employed by Jackson Electronics Ltd.

I await your written response of how we proceed with resolving my grievance.

Yours sincerely

Jon Higgins”

18. On the same day at 4.19 pm Mr. David Jackson replied to the claimant’s email. Mr David Jackson stated:

“Hi Jon

thanks for your email, unfortunately I was not well the other week and thought I had sent my explanation as to why we were deducting some pay from you but I hadn’t, so apologies for this.

However, there are certain aspects of your performance that we are not happy with and want you to work on, so perhaps a meeting would be the best way to move things forward. These are mainly around following instructions.

I’m going to pass this over to Ben to organise a meeting with you.

Best regards

David Jackson”

19. On 4th October 2022 at 9.24am in the morning the claimant emailed his resignation to the respondent. This stated:

“Hi David

Thank you for your response and admission of not following procedure, breaking the Jackson Electronics company rules and further to that in my opinion the 1996 Employment Rights Act. Even if you had sent the email as you claim you were intending to last week, it would have been after the fact as payroll was confirmed by Monday 26th with payment clearing on Wednesday 28th, and as you state a decision to deduct my pay had already been made without any consultation. Both on the Thursday and Friday you made light passing conversation with me in the office and discuss them but you chose not to.

I feel your email of yesterday stating that you are unhappy with aspects of my performance is retrospective and in response to my email of grievance made against yourself, as again no prior mention of dissatisfaction as to my services has been previously made by anyone at Jackson Electronics or by a site I have worked on in my 3 years and 10 months in the job. I feel this is a way to attempt to deflect and discredit myself in light of the seriousness of the accusation I have raised.

Sadly I feel that your actions have made it untenable for me to remain employed with Jackson Electronics Ltd as procedure has been grossly ignored. This has generated an irreversible distrust in Jackson Electronics as a whole and has instilled in me no confidence that you will adhere to the rules and act in a just manner into the future. I no longer feel comfortable to be placed within that environment,

therefore I am left with no choice to but seek constructive dismissal enacted immediately. (sic)

Yours sincerely
Jon Higgins

PS I will make arrangements to return my company.... card and workshop key.”

Law

20. For the unfair dismissal claim, the claimant relies on section 95(1)(c) of the Employment Rights Act 1996 (“ERA”) to establish that she was dismissed. It reads:

**(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.**

21. Section 95(1)(c) ERA refer to something colloquially known as “constructive dismissal”. In order to prove constructive dismissal, the employee must prove:

- that the employer has committed a serious breach of contract and
- that the employee resigned because of that breach (or at least partly because of that breach; it does not necessarily have to be the only reason) and
- that the employee must also prove they has not waived the breach by affirming the contract.

22. In **London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493**, the court, at paragraph 14, stated that:

The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: *Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761*

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, *Malik v Bank of Credit and Commerce International SA [1998] AC 20*, 34H–35D (Lord Nicholls) and 45C–46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”.

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666*, 672A. The very essence of the breach of the implied term is that it is calculated or likely to *destroy or seriously damage the relationship* (emphasis added).

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in *Malik* at page 35C, the conduct relied on as constituting the breach must “impinge on the relationship in the sense that, looked at *objectively*, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer” (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at paragraph [480] of Harvey on Industrial Relations and Employment Law:

“[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the ‘last straw’ which causes the employee to terminate a deteriorating relationship.”

23. With regard to the claim for unlawful deductions from wages. Section 27(1)(a) ERA provides that wages include:

any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise

24. Section 13(1) ERA provides:

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.**

25. Section 13(3) ERA provides:

Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

26. Some deductions are however excepted deductions. For example, section 14 (1) (a) ERA provides:

Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

- (a) an overpayment of wages, or**

Submissions

27. In submission, the claimant stated that the respondent removed evidence 109.1, 109.2 and 109.3 from the bundle of documents. The claimant asserted this was a manipulation of the bundle. For the sake of clarity, it should be pointed out that this is one documents which appears in the claimant's additional bundle of documents at pages 176 - 178. I looked at this document during the course of the hearing and again after the submission was made. The Tribunal does not think there is any reason why this document need have appeared in the main bundle and the respondent was within its rights to remove this document from the main bundle. In any event the tribunal heard witness evidence from both parties about the matters contained in the document in question. The tribunal has also made findings of fact in relation to the same.
28. The respondent also submitted that the witness statements of a number of a number of individuals should be struck out as not containing the correct statement of truth. To be clear, in reaching its decision the tribunal has had regard to the following evidence:
- 28.1. The bundle of documents prepared by the respondent which runs to 136 pages
 - 28.2. The bundle of documents prepared by the claimant which runs to 178 pages.
 - 28.3. The witness evidence of Mr. David Jackson, Mr. Ben Jackson and Mr. Jonas Harris for the respondent
 - 28.4. The witness evidence of the claimant and his mother, Mrs. Pauline Higgins.
 - 28.5. The tribunal also had closing submissions from both parties.

The tribunal attaches no weight to the evidence of those individuals who prepared statements but who did not attend and give evidence under oath. However, those witnesses of the respondent who did attend and gave evidence either gave evidence under oath or affirmed. They were also cross examined by the claimant. Consequently, there is no justification for me to strike out the witness statements of Mr. David Jackson, Mr. Ben Jackson and Mr. Jonas Harris.

29. Dealing briefly with one other point in the claimant's submissions, the claimant submits, that there was coaching of the respondents witnesses whilst they were giving evidence. I certainly did not observe this and do not find the allegation well founded.
30. The claimant also submits that there was collusion between the respondent's witnesses when they prepared their witness statements. No evidence was supplied but the reason for making the assertion was based on the fact that the respondent's witnesses had all signed their statements on the same day. Mr Jonas Harris gave a plausible explanation for this during evidence. He stated that the witness statements were prepared by each individual alone and then formatted by the respondent so that they would all have the same visual appearance together at the end of that process. The statements were then signed afterwards.

Conclusions

31. In order to reach its conclusions regarding the claimant's unfair dismissal claim, the Tribunal returns to the issues.

Unauthorised deductions from wages – Section 13 and 14 Employment Rights Act 1996

32. Was the deduction of £51.58 made from the Claimant's wages in September 2022 in respect of overtime which the Respondent says that it had previously paid in July 2022. This was not in dispute between the parties. The deduction was in respect of overtime.
33. If so, was the Claimant's overtime which was paid to him in July 2022 authorised by the Respondent by way of agreement reached between him and Ben and David Jackson at a meeting on 8th July 2022? On the evidence the Tribunal the Claimant was not authorised to proceed past Torness without seeking the approval of the respondent. I preferred the Respondent's witness evidence on this point. That evidence is also consistent with pages 72 and 73 of the respondents bundle of documents, that is the text message exchange which Mr Ben Jackson had with the claimant on the morning of 13 July 2022 and the email which Mr Ben Jackson received from Hawk Consultants on 13 July 2022. The witness evidence of Mr Ben Jackson and Mr Jonas Harris together with these documents demonstrate to me that the claimant was aware he was not to travel past Torness without first seeking the approval of the respondent. He did not do that and, in the Tribunal's opinion, there was no good reason for him not doing so.
34. If the overtime was not authorised by the Respondent on 8th July 2022 was that an overpayment of wages paid to the Claimant? The Tribunal finds that this was an overpayment of wages to the claimant. He should not have been paid for journey past Torness.
35. If the Respondent did make an overpayment of wages to the Claimant in July 2022 was the deduction an excepted deduction under Section 14(1)(a) Employment Rights Act 1996? The Tribunal finds that this was an excepted deduction under section 14(1)(a) as it related to an overpayment of wages. There is no need to address the remaining issues relating to the deductions from wages claim as that claim fails.

Constructive dismissal contrary to Section 95 Employment Rights Act 1996

36. Did the following things occur and if so did they, either singularly or cumulatively, amount to a fundamental breach of the Claimant's contract of employment?:
- Making a deduction from his wages in September 2022. It is not in dispute that this happened;
 - Failing to deal with the issues in the Claimant's grievance on 3rd October 2022 timed at 11.04 a.m.; and

- Raising previously unraised issues about performance in retaliation to the grievance.
37. Turning to this issue, in relation to the deduction, the Tribunal finds that it was lawful and an excepted deduction. The Tribunal does not consider it to amount to a breach of the claimant’s contract of employment.
38. With regard to the raising of the grievance, the claimant’s case is that the respondent failed to deal with the issues that he raised in his grievance on the 3 of October at 11:04am. In David Jackson’s reply to the claimant, he did state that there were certain aspects of the claimant’s performance that the respondent was not happy with but at no point did he say he was not going to deal with the claimant’s grievance. Indeed, what he said was that he was going to pass the matter on to Mr. Ben Jackson so that a meeting could be organised.
39. Before any meeting could be organised between the claimant and Mr. Ben Jackson to investigate the claimant’s grievance, the claimant resigned. Indeed, the claimant resigned less than one working day after Mr David Jackson suggested a meeting be organised. Consequently, there was no reasonable opportunity for the respondent to deal with the claimant’s grievance and this was not a breach of contract.
40. The Tribunal also finds that Mr. David Jackson politely raising certain aspects of the claimant’s performance that he was not happy with does not amount to a breach of any term of the contract of employment.
41. In short, these allegations did not singularly or cumulatively breach any term of the Respondent’s contract of employment. Consequently, there was no constructive dismissal. This was simply a resignation by the claimant. The claim of unfair dismissal is not well founded.

Employment Judge McTigue

Date 9 August 2023

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE