



EMPLOYMENT TRIBUNALS

Claimant: Mr. G Williams

Respondent: Danik Group Ltd

Heard at: London South

Date: 06 September 2023

Before: Employment Judge D Wright (Sitting Alone)

Representation

Claimant: In Person

Respondent: Ms. Suleman, Solicitor

JUDGMENT

1. By consent, the Respondent's name be amended to Danik Group Ltd.
2. The Respondent has made unlawful deductions from the Claimant's wages in the sum of £250.
3. The Respondent is to pay the Claimant the sum of £250 forthwith.

REASONS

1. The claimant commenced early conciliation with ACAS on 28 February 2023. The early conciliation certificate was issued on 02 March 2023. The claimant then commenced proceedings on 13 March 2023 by issuing an ET1.
2. In the claim form, the claimant has ticked the box to say that he's claiming arrears of pay and also misrepresentation and fraud. In discussion before we got into the substance of the hearing it was agreed that the misrepresentation and fraud were not being pursued as standalone claims but were rather elements to support his claim for arrears. Had such a concession not been made I would have struck out the claims for misrepresentation and fraud as having no prospect of succeeding.
3. The arrears of pay claim was largely a matter of the claimant having deductions made from his final pay after leaving the company. I'll go on to the actual amounts in some more detail shortly.
4. The claimant applied to add a claim for loss of earnings, partly relating to

his inability to get a new job due to references and partly his inability to claim Universal Credit due to the respondent not informing HMRC that he's no longer working for them.

5. That application was refused on the basis that it was significantly out of time and furthermore, there was no evidence to support it.
6. The respondent accepts that they made deductions from the claimant's final wages and that is set out in their response. The ET3 was dated 14 April 2023. In the attached grounds of resistance, they set out the background to the claimant's dismissal.
7. They say that the claimant was due to receive £2763.27 in his final salary. However, deductions were made of £2670.55. These were made up of:
 - a. Unpaid time off £1561.56
 - b. salary advance payment of £250
 - c. the company phone £719.99
 - d. AirPods £139 pounds.
8. This meant the final salary came to £93.72 pounds, which was paid on 13 of April 2023.
9. I heard evidence from the claimant and I heard evidence from director of the respondent. I saw a witness statement from the secretary, however, due to technical difficulties she was not able to give oral evidence or be cross examined and therefore I give limited weight to her witness statements.
10. This case had been on the float list, and we did not have time for judgment on the day. I therefore reserved my decision, and as such give full reasons below.

Unpaid time off

11. This was based on a mixture of annual leave taken but unaccrued and unauthorised absences. The respondent says that the appellant had accrued six days annual leave by this point but that he had taken eight days between December 2022 and February 2023.
12. Furthermore, there were five days unauthorised absence in January and February 2023.
13. The claimant says that actually he was working on the annual leave days and they should have been cancelled. He has provided no evidence of the annual leave being cancelled. Just because he has chosen to do some work, if he has, it doesn't mean that the whole holiday is cancelled. The claimant has provided insufficient evidence to show that these holidays were cancelled and when taken into account with his credibility, which I deal with below, I find that he has not proved, on the balance of probabilities, that the two holiday days were cancelled. I therefore find that those two days were lawfully deducted from his final pay, as per the contract.
14. In relation to the unauthorised absence days, the claimant says that these were days in lieu from working at weekends. No evidence was provided of any agreement for him to have time off in lieu if he did work the weekends in general, nor was any evidence provided for any agreement or notification

of these specific days. The respondent denies such an agreement was made and relies on the claimant texting in sick on one of these days to support their assertion that he was not using time off in lieu. The claimant says that this was done to protect his time off and have the day as sick a sick day, but this is not mentioned in the messages.

15. In coming to my decision on this point I take into account the credibility issues below and also the claimant's chequered attendance history. It is clear that the claimant was going through some extremely difficult personal matters at this point in time, and I don't dwell too deeply on those, but it was clearly impacting on his ability to function at work. He was absent without leave on a regular basis and often, even though he was logged into the system, he was not responding to messages. It appears that he was potentially homeless during this time and moving between friend's premises and temporary accommodation.
16. When I balance everything together, I find on the balance of probabilities, that claimant was not showing up to work during this period. There was no arrangement for time off in lieu and he simply wasn't attending. Therefore, the deductions for annual leave and non-attendance were lawfully made.

Salary advance

17. The claimant requested a salary advance he contacted his Daniel Burnham, the respondent's director and asked for a salary advance to help pay for some accommodation. The manager responded saying:

I'll do it from my own account. As we can't make another payment through sage. It's a massive ball ache for accounts to make payments outside out payroll system. So I'll do it personally and you have to transfer it back.

18. The claimant says that this was a personal arrangement between him and Mr. Burnham. The respondent says it was an arrangement between the claimant and the respondent. The claimant accepts that in any event this was a loan, not a gift, and would need to be repaid.
19. I find that the message makes it clear to the reasonable person that the arrangement was a personal one between the claimant and Mr. Burnham and not the respondent company. As such the respondent did not have any standing to deduct the money from the claimant's final pay and has made an unlawful deduction from the claimant's wages in the sum of £250
20. This may well be a Pyrrhic victory for the claimant as should Mr. Burnham commence proceedings in the County Court for repayment of the £250, he would almost certainly succeed, along with interest and court fees (which do not apply in the Tribunal). As such I would encourage the parties to take a reasonable approach to the final destination of this money.

Phone and AirPods

21. The amount deducted for the company phone was £719.99 and for the air pods £139 pounds which is a total of £858.99. The respondent relies on two grounds which entitle them to recover this money.
22. It is common ground that the claimant had a company phone and airpods. It is also common ground that the claimant refused to return said items at

the conclusion of his employment, saying he was aware that there was likely to be some difficulty obtaining full payment from the respondent because of previous issues with payment, and therefore he was keeping them as collateral until he was paid in full.

23. The respondent says that this refusal meant that they were entitled to recover the cost of replacement.
24. There was no specific clause in the contract, which allows this however, the respondent relies on a separate document which they say the claimant signed on the 18th of November 2022 which says:
I acknowledge that while I'm working for Danik Group Limited I will take proper care of all company equipment that I am entrusted with. I further understand that upon termination, I will return all Danik Group Limited property and that the property will be returned in proper working order. I understand I may be held financially responsible for lost or damaged property. This agreement includes but is not limited to laptops, mobile phones and other equipment. I understand the failure to return equipment will be considered theft and may lead to criminal prosecution by the company.
25. Before I get on to the detail of the signature and the issues relating to that, I note that the agreement says, "I understand that I may be held financially responsible for lost or damaged property". It doesn't explicitly say that there can be a deduction from any final wages for the same thing. This is a point that was not taken at the hearing. And I take the view that any reasonable person reading this would see it as agreeing for the money to be taken out of their wages should they not returned the property.
26. However, it's not as simple as that. The claimant says he never signed this document. The document that has been presented to the Tribunal has the paragraph I've just stated and underneath some spaces for Employee Name, Employee Signature and Date.
27. Typed in these sections are ROBERT COPP, RCOPP and 03/11/2022 respectively. Also in these sections, handwritten in red ink is GARETH WILLIAMS, a signature, and 18/11/2022 respectively. The respondent's evidence is that the claimant signed this document when he came to collect the equipment and that by accident, he signed a printed copy of an electronic agreement provided by Mr. Copp. The respondent determined that this was still valid, but for the purposes of the electronic file they edited out the typed references to RCopp.
28. This is supported by a statement from Mr. Copp who said he was informed of this and agreed to the respondent printing a fresh copy of his form. I give limited weight to his statement as he did not attend to give evidence.
29. The claimant denies signing this document at all. He says he couldn't have signed to confirm receipt of the phone on the 18th as he didn't receive it until the 21st. However, I find that this was not a receipt for the equipment, rather a general agreement to a policy and therefore it does not take us far.
30. In pre-action correspondence the claimant highlighted that the document originally sent to him had been doctored (which was agreed by the

respondent as above) and that his signature had been added to the document by them. He implied that they took it from another document he signed. This being a handwritten note on 18 November acknowledging receipt of the company car and laptop. He also relies on writing this receipt as evidence he wouldn't have signed the other document. I don't accept that argument, it's very common to sign multiple documents on the same day when joining a company.

31. In oral evidence, the claimant went further and denied that the signature on the document was even his. The claimant is essentially making an allegation that the respondent has fraudulently produced documents to send firstly to him, and secondly to this Tribunal. This is an extremely serious allegation.
32. The claimant has produced some documents where he has marked up parts of screenshots of documents but has produced no expert evidence of tampering. Furthermore, he has changed his story, at no point in the run up to trial does he say that this is not his signature. The implication has always been that the respondent has lifted his signature from another document. To now say that this is not even his signature is internally inconsistent.
33. To the untrained eye the signature on the respondent's form looks similar to the signature on the handwritten form the claimant says he signed.
34. I find, on the balance of probabilities, that the claimant is an unreliable historian at best on this point. I do not accept that the respondent has attempted to mislead anybody. I find that, in an attempt to evade liability for the deductions, the claimant has cynically jumped on an, admittedly unwise, decision by the respondent to edit the scanned copy of the form to remove the reference to Mr. Copp. I find that the claimant knew exactly what he was doing in making such an argument and I find that he knew, or reasonably suspected that he had signed such a document. I find that this seriously affects the claimant's credibility. Whilst it is not fatal to other points, it is something that I take into account in the above points, particularly where something is unevicenced.
35. I find that the claimant did sign this document and that therefore the respondent had the right to make the deduction they did.
36. To head off any application for a costs order on the above findings, I would have a lot of sympathy for such an application if it were not for the fact that it took the respondent a long time to provide the original document to the claimant, along with an explanation for why they removed Mr. Copp's details. In Mr. Burnhams evidence, when asked why he didn't advise the claimant of the existence of this document between 13 March and 13 April 2023 he said "By this point I was just letting it play out". Essentially the respondent was trying to give the claimant enough rope to hang themselves on before revealing their trump card. This is not how litigation should be conducted and therefore any application for a costs order, which would ordinarily be forthcoming with the finding above, would have a very high hurdle to overcome as in many ways the respondent has been the author of their own misfortune on costs. Had this explanation been given earlier the claimant may not have pursued this part of the claim, however, by the time it was provided to him he was so deep into his version that he kept

going.

37. However, if I am wrong on the point about the claimant signing this document, he accepts that he subsequently sent an email on 23 February 2023 where he agreed to a deduction of £899 for the phone. The email does not explicitly refer to the airpods, but the chain of emails makes it clear that they were talking about the equipment, and I find that the agreement here was clearly in relation to the phone and airpods. In any event, the claimant agreed to a deduction of £899 when only £859.99 was taken in total. Therefore, if I am wrong that the respondent was able to deduct the sums in reliance on the document signed on 18 November, I would find that the claimant agreed to the deduction.
38. I note that he said he only agreed to this under duress but find that he created the duress in the first place by holding onto the equipment as collateral, rather than returning it in the first place.
39. Therefore, in summary the deductions from the claimant's final pay were all lawful deductions with the exception of £250 for the pay advance. I make an order that the respondent repays the sum of £250 pounds and leave it up to Mr. Burnham to determine whether to make a claim against the claimant for recovery of the money to him personally.

Employment Judge **D Wright**

Date: 11 September 2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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