



EMPLOYMENT TRIBUNALS

Claimant: Mrs. T Tanday

Respondent: Active Kids (Yeadon) LLP t/a Active Kids Day Nursery (and sued as Active Kids Day Nursery)

HELD AT: Leeds Employment Tribunal (By CVP) **ON:** 7 September 2023

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: In person

Respondent: In person (Mrs McPhee)

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

WRITTEN REASONS

1. This is a claim for unlawful deduction from wages. I heard evidence from the claimant and Mrs McPhee on behalf of the respondent.

Findings of fact

2. There was little dispute over the facts.
3. The claimant was employed by the respondent as an apprentice from 22 March 2021 until she resigned with effect from 25 February 2023. The claimant was also a customer of the respondent nursery, because her child had a place at the nursery. The claimant paid nursery fees to the respondent for her child's attendance.

4. The claimant resigned with notice on 20 January 2023. Mrs McPhee wrote to the claimant on 26 January 2023 setting out the nursery fees that the respondent said were owed by the claimant in relation to her daughter's attendance at the respondent nursery in the sum of £866.25. The email states:

“Your pay this month would have been £1151.44 but after I take the £866.25 off there will only be £265.19 to pay and that is including the holiday entitlement of 1.7 days.”

5. The claimant's reply of the same date simply stated, 'pay any remaining funds'.
6. The respondent deducted £886.25 from the claimant's January 2023 wages. Although this amount is different to that initially claimed in the claim form, £886.25 was agreed between the parties and I find that this was the amount deducted. This represented the unpaid nursery fees that the respondent says the claimant owed to the respondent.
7. For the purposes of this hearing I do not need to decide whether or not the claimant did owe the respondent £886.25 in unpaid nursery fees.
8. At the start of her employment the claimant was given a copy of the employee handbook which included the following:

“The right to deduct wages, either as a result of this clause or any other clause within your statement or this handbook is an express term of your contract of employment.

The nursery will make deductions from your pay in certain circumstances, for example where deduction is legally required such as income tax and National Insurance. You will receive a form P60 on an annual basis explaining deductions made for income tax and National Insurance. While you receive non salary benefits from us, you will also receive a form P11D.

If you are overpaid for any reason we will normally seek to deduct the amount of overpayment at your next payday. However if the amount to be deducted would cause hardship, we may arrange for repayment over a longer period.

We may also make other deductions from pay as permitted by relevant sections in this handbook and our other policies.”

9. The claimant knew that the handbook formed part of her contract of employment.

The law

10. Section 13 of the Employment Rights Act 1996 provides as follows:

Deductions by employer

13 Right not to suffer unauthorised deductions

(1) 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.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

...

Application of the law to the facts

11. The statutory provisions on unlawful deductions in the Employment Rights Act 1996 offer important protection to workers who might otherwise be vulnerable to exploitation. It is important to note that I have no power to consider the rights of wrongs of a debt i.e. whether money is rightly owed to the respondent for unpaid

nursery fees. Nor is it my role to determine whether it is fair to allow the employer to deduct the nursery fees in the light of the history of events.

12. There are two potential statutory conditions that might authorise the deduction in this case. First, I must ask whether the deduction is required or authorised to be made by virtue of a relevant provision of the claimant's contract. Second, I must ask whether the claimant had previously signified in writing her agreement or consent to the making of the deduction.
13. In relation to agreement or consent in writing, Mrs McPhee relies on email of 26 January 2023, which she says amounts to an agreement by the claimant that the fees could be deduction.
14. As set out in the findings of fact above, Mrs McPhee wrote to the claimant on 26 January 2023 setting out the nursery fees owed in the sum of £866.25 and stating:

“Your pay this month would have been £1151.44 but after I take the £866.25 off there will only be £265.19 to pay and that is including the holiday entitlement of 1.7 days”.
15. The claimant replied ‘pay any remaining funds’
16. In my view, the email from the claimant is too ambiguous to amount to an agreement that the respondent could deduct the nursery fees from her salary.
17. The term “remaining funds” is ambiguous. It could refer to the unpaid fees, or it could refer to the last payment of the claimant’s normal wages or it could refer to the wages after deductions. The term “pay” is also ambiguous. It could mean pay the remaining wages (in full or with deductions) to me, or could mean pay the remaining fees to the nursery.
18. The email could be read as meaning, “No, you have to pay me what you owe me in full”.
19. I find that the email is simply not clear enough to form a written authority for a deduction under the statute. It is not clear from this email that the claimant agrees to the nursery fees being deducted from her wages.
20. Was the deduction authorised by a provision of the claimant’s contract?
21. The relevant provision is in the handbook, which forms part of the claimant’s contract, because the handbook makes that clear:

“The right to deduct wages, either as a result of this clause or any other clause within your statement or this handbook is an express term of your contract of employment.”
22. The claimant was given a copy of the handbook and she knew it formed part of her contract.

23. The term itself reads as follows:

“The nursery will make deductions from your pay in certain circumstances, for example where deduction is legally required such as income tax and National Insurance. You will receive a form P60 on an annual basis explaining deductions made for income tax and National Insurance. While you receive non salary benefits from us, you will also receive a form P11D.

If you are overpaid for any reason we will normally seek to deduct the amount of overpayment at your next payday. However if the amount to be deducted would cause hardship, we may arrange for repayment over a longer period.

We may also make other deductions from pay as permitted by relevant sections in this handbook and our other policies.”

24. The first sentence states that the nursery will make deductions from pay in ‘certain circumstances’. This does not give the respondent a right to deduct pay in all circumstances. It does not say that. It says certain circumstances.
25. The paragraph then goes on to give two specific examples of what those circumstances are. The first is where a deduction is legally required, such as income tax and national insurance. This is not applicable to this case. The second is overpayments of salary. This case is not about an overpayment of salary.
26. The paragraph finishes by stating the other circumstances in which employer is entitled to make deductions that are not covered by those two specific examples:
- “as permitted by relevant sections of this handbook and our other policies”
27. The deduction of unpaid nursery fees from wages is not permitted by any other sections of the handbook, nor is it permitted by any other of the respondent’s policies.
28. I find that this term of the contract does not authorise the respondent to deduct unpaid nursery fees from the wages of an employee.
29. Without such a term, that deduction is an unauthorised deduction made in contravention of section 13 and I order the Respondent to pay the Claimant the sum of £886.25.
30. The claimant has claimed consequential financial losses, but I cannot order a general sum to compensate for an effect on the claimant’s credit score, and the claimant has suffered no losses from taking out an interest free loan, therefore I make no other order for compensation for financial losses.

Employment Judge Buckley

Date 16 October 2023

REASONS SENT TO THE PARTIES ON
17 October 2023

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.