



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MR K EMMANUEL

V

HOUGH GREEN GARAGE
LIMITED

HELD REMOTELY ON: 21ST SEPTEMBER 2023

BEFORE: TRIBUNAL JUDGE MCLEESE SITTING AS AN
EMPLOYMENT JUDGE
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT:

IN PERSON

FOR THE RESPONDENT:

MR D FARRELL (ACCOMPANIED BY MRS C
FARRELL)

JUDGMENT

1. The claim of unlawful deduction from wages is well founded and is upheld.
2. The Respondent is to pay the Claimant the withheld net wages of £1,638.42 as outlined in the Judgment issued on the day of the hearing.

REASONS

3. This is a claim by Mr Emmanuel who was employed by the Respondent as a recovery driver from the 17th October 2022 until the 17th April 2023.
4. He resigned on the 6th April and ceased work on the 17th April. He brings a claim for unlawful deduction from wages.

The Hearing

5. In the course of the hearing, I heard from Mr D Farrell, director of the Respondent company who was accompanied by Mrs C Farrell.

6. I also heard from Mr Emmanuel.
7. In reaching my decision, I had regard to the written evidence I was provided with and the evidence I heard during the hearing. I also had regard to the law and briefly set out the relevant parts in respect of these claims.

The Relevant Law

Unlawful Deduction From Wages

8. The right not to suffer an unlawful deduction of wages is set out in Section 13 (1) the Employment Rights Act 1996 (ERA):

“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.”

9. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
10. The employer must show the amount of the deduction is justified and Tribunals are not to engage in a speculative exercise in the absence of concrete evidence.
11. This is illustrated in the cases of Clark v. Chapmans of Sevenoaks Ltd ET Case No.1102232/10 and Ziolkowski v JJ Food Service Ltd ET Case No.1102435/11 to which the Tribunal had regard.
12. In particular, in the former case the alleged losses or expenses said to have been relevant to the deductions made had not actually been incurred by the Respondent employer. This is also the position here in relation to some of the claims said to be relevant to the deductions made from the Claimant’s wages as set out below.

The Issues

13. The Respondent contends that the Claimant was involved in three accidents whilst employed by the company and that his negligence meant they were entitled to deduct wages.
14. In relation to the first two accidents the Claimant was driving a large vehicle that ran into the back of other vehicles. He accepts 50% liability on his own evidence for those incidents.
15. Mr Farrell, albeit having provided no proof beyond oral assertion says that £10,000 of damage was caused to company vehicles across these accidents.

16. The company does not rely on this as the reason for the unlawful deduction of wages and this was made clear in the hearing.
17. In relation to the first two accidents there are claims ongoing but at the time of the hearing on the 21st September the company had not paid any monies towards them.
18. The third accident took place on 2nd March 2023 and the Claimant does not accept liability for that accident.
19. The main reason for the unlawful deduction of wages was contended to be the £1999 that the Respondent has paid in relation to the third accident.

Findings of Fact

20. The Claimant was involved in three accidents whilst employed by the Respondent. He accepts 50% liability for two of them. He does not accept liability for the third and latest accident.
21. This is the only accident where the company has paid money to an insurance company.
22. In relation to the first two accidents the company does not rely on cost of damage to company vehicles as being the reason for the deductions.
23. In relation to the first two accidents the company had not at the time of the hearing paid any monies in relation to ongoing claims.
24. In relation to the third accident there is dashcam footage. The Claimant does not accept liability for that accident.
25. Mr Farrell asked, having seen the footage, that the claim in relation to that accident be contested. Further to this he complained to the insurance company when the insurance company chose to settle the claim.
26. The company paid £1,999 as a result of that claim.
27. Mr Farrell's actions in seeking to defend the claim and then complaining about its settlement indicate that he did not believe that the actions or negligence of the Claimant were responsible for the third accident.
28. There are several documents that relate to the Claimant's employment which he was shown and had signed.
29. Two clauses are of particular relevance. The first states that, "*Any accident/damage which is deemed to have resulted from your negligence or wilful act may result in the Company requiring you to contribute towards the cost of any such repairs. Depending on the*

situation this could be up to 100% of the full cost of the repair or the amount of the Company's insurance excess (whichever is lower)."

30. The second states, *"As set out in the deductions clause below, the company reserves the right at any time during or in any event of the termination of your employment to deduct from your remuneration any monies owed to the company in relation to costs incurred as a result of wilful or negligent damage caused to customer or company property and including but not limited to fines or penalties incurred in the course of your duties"*.
31. The Claimant may well be negligently responsible for damage to company and other vehicles as regards the first two accidents on his own evidence.
32. However, damage to company vehicles in those accidents was not relied on by the Respondent for this deduction of wages and no other monies had or have been paid out in relation to those accidents that would have allowed for a deduction from wages.
33. As regards the third accident the Respondent company did not believe it had been caused by the wilful or negligent act of the Claimant and accordingly were not entitled to make the deduction from his wages.

Submissions

34. The submissions on behalf of the parties may be summarised as follows.
35. The Claimant says the wages were unlawfully deducted and that numerous reasons had been given to him for the unlawful deduction.
36. The Respondent says that they were entitled to deduct the wages because there are claims listed on their insurance that far exceed the wages withheld and that the monies paid out in relation to the third accident were because of the Claimant causing wilful or negligent damage.

Conclusion:

37. The Tribunal heard from both Mr Farrell and Mr Emmanuel.
38. It is not for the Tribunal to provide advice to parties or to make their cases for them.
39. Mr Farrell, very fairly on one view, made clear despite being given the opportunity to comment on it, that the damage to company vehicles was not the reason that the deduction from wages was made.
40. As regards the first two accidents the Tribunal accepts the terms of the contract can allow for deductions to be made but at the time of the

hearing, a number of months post dismissal, no actual loss had been incurred.

41. The insurance excess is said to be £5,000 but the Tribunal has seen no documentary evidence of this and it has not been paid in relation to the two accidents where negligence is conceded, at least in part.
42. Where the Tribunal accepts there is likely to be a loss in due course, at the time the wages fell due it could not have been accurately identified and more significantly has still not actually been occasioned and paid such that the withholding of wages was justified.
43. As regards the accident for which costs have actually been incurred, I do not find that, having seen the dashcam footage, Mr Farell thought that the Claimant was negligent and as such the terms of the contract which would allow for the deduction were not invoked.
44. I come to this conclusion as Mr Farell gave clear evidence that the claim should be contested and further, it having been settled by the insurers, that he complained to the insurance company about this which indicates that he, rightly or wrongly, did not believe that the Claimant was negligent in the causation of the accident.
45. As such he was not entitled to rely upon the relevant clauses relating to wilful or negligent acts on the part of the Claimant contained within the contract to make the deduction from the Claimant's wages. His actions did not suggest he actually thought the Claimant responsible, wilfully or negligently, for the damage caused.
46. This judgment does not mean that the Claimant has not, or will not cause the company loss in excess of the sum deducted but in the circumstances as outlined in evidence to the Tribunal and on the basis on which the Respondent company have defended the claim they were not entitled to deduct the wages in the way they did.
47. As such, the claim of unlawful deduction of wages is well founded and is upheld.

**Tribunal Judge DS McLeese Sitting as an
Employment Judge**

Dated: 20th October 2023

Order posted to the parties on
27 Oct 2023

For Secretary of the Tribunals
Mr N Roche