



EMPLOYMENT TRIBUNALS

Claimant: Mr D Witts
Respondent: Martindales Ltd
Heard at: Bristol (by Video Hearing Service)
On: 8 September 2023
Before: Employment Judge Hastie

Representation

Claimant: In person,
Respondent: Ms Martin, HR & Payroll Manager.

JUDGMENT

The Judgment of the tribunal is that,

1. The claim for unpaid Holiday pay is dismissed on withdrawal.
2. The claim for unpaid Notice pay is dismissed on withdrawal.
3. The claims for unlawful deductions from wages partially succeed as follows,
4. The Respondent made the following unlawful deductions from the Claimants wages,
 - a) Replacement van key **£160**
 - b) Replacement padlock **£55.29**
 - c) Dallas Key **£7**
 - d) Replacement depot locks **£205.43**
 - e) Deep clean of van **£40**
 - f) Compensation for sideboard **£100**
 - g) Recruitment costs **£39.10**
5. The Respondent is ordered to pay to the Claimant the gross sum of **£606.82**
6. The following claims for unlawful deductions from wages are not well founded and are dismissed.
 - Missing Stepladders £90

- Missing Hoover £120
- Missing transformer £74.99
- Damaged wing mirror £27.68
- Incorrect measurement of unit £94.06

Reserved Reasons

Introduction and issues

1. In this case, the Claimant, Mr Witts, brings claims for unpaid holiday pay, unpaid notice pay, and unlawful deductions from wages, against his former employer, Martindales Ltd. The Respondent denies the claims.
2. The hearing took place by remote platform which was consented to by the parties. The form of remote hearing was by video hearing service (VHS). A face to face hearing was not held because no one requested the same and all issues could be determined in a remote hearing. The Claimant was present via video link and supported by his wife, Ms Winter. The hearing was put back briefly so that the video hearings officer could assist the Claimant with his connection. The issue was quickly resolved, and no further technical issues arose. The Respondent was represented by Ms Martin, the Respondent's HR & Payroll Manager. The documents that I was referred to are in a bundle of approximately 77 pages.
3. At the start of the hearing, the Claimant confirmed that he wanted to withdraw the claims for unpaid holiday and notice pay as these had been settled. The claims were dismissed upon withdrawal.
4. The claim for unlawful deductions from wages remained. The tribunal judge discussed and agreed that the issues were,

Whether the Respondent was entitled to make the following twelve deductions from the Claimants final pay,

- a) Replacement Van Key - £160
- b) Van Padlock £55.29
- c) Dallas Key £7
- d) Replacement locks at Gloucester depot £205.43
- e) Van Deep Clean £40
- f) Missing Transformer £74.99

- g) Missing Stepladders £90
- h) Missing Hoover £120
- i) Repair to wing mirror £27.68
- j) Compensation to customer (sideboard damage) £100
- k) Incorrect survey of glazed unit £94.06
- l) Recruitment costs £39.10

5. The total sum deducted from the Claimants pay is therefore £1013.55

The Facts

6. I heard from Mr Butler and Mr Bolton for the Respondent. I heard from the Claimant. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
7. The Respondent, Martindales Ltd, is a double glazing company based in Gloucester. The Claimant was employed as a window fitter and surveyor from 1 May 2022.
8. The Claimant signed a form headed 'Deductions from Wages' on or about 11 April 2022. The parts of that form which are relevant to this claim state,

The Company has a right to deduct from your pay,

- a) If you are a surveyor, your negligence in measuring incorrectly products which as a consequence are made up to be the wrong size.*
- b) If you are a product fitter, your negligence damaging a product during installation.*
- c) If you are a vehicle driver, for the first £750 of any damage or claim caused by your negligence.*
- d) If you resign from your position within 12 months of the date of joining, the cost of checks undertaken as part of the recruitment formalities will be deducted from your final pay.*

9. The Claimant signed a form headed 'Van Checks' on or about 11 April 2022. The form states '*It is the fitters/trainees in control of the van's responsibility to ensure that all tools supplied for the vans are in the van at all times.*'
10. The 'Van Checks' form requires fitters/trainees to carry out a weekly van check to verify all tools are present on the van. The form states that, '*any tools which are lost will be replaced by the company at the cost of the fitter/trainee.*'
11. On 22 November 2022, the Claimant gave notice of his resignation. The Claimant offered to work beyond his 7 days' notice but received no formal response to his resignation from the Respondent. The Claimant's last working day was 28 November 2022.
12. During his employment, the Claimant had the use of a van belonging to the Respondent. Once the Claimant's employment with the Respondent had ceased, the Claimant secured the van and parked it near his home in Topsham, Devon. The Respondent requested the return of the van keys and depot keys on 1 December 2022. The Claimant confirmed with the Respondent on 1 December 2022 that the keys could be collected.
13. The Respondent retrieved the van from Topsham on 30 November 2022 using the spare keys. The Claimant was not at home and his set of keys could not be retrieved by the Respondent. The van was driven back to the Respondent's Gloucester depot by a member of the Respondent's staff.
14. On 30 November 2022 the Respondent cut the padlock from the back of the van as they had no spare key. The Respondent states that the Hoover, stepladders, and transformer were missing.
15. The Respondent took the view that the state of the van was unacceptable and arranged for it to be deep cleaned.
16. The wing mirror of the van was damaged when it was recovered from Topsham. The Respondent had the damage repaired.

17. On 1 December 2022, the Respondent engaged a locksmith to change the locks at the Gloucester depot.
18. Mr Butler, the Branch Manager for the Respondent, travelled to Topsham on 2 December 2022. The Claimant had not at that stage informed the Respondent that the keys were in the shoe cupboard in the porch/communal hallway of his property. No prior arrangement had been made between the Claimant and the Respondent to meet in Topsham to handover the keys. The Claimant was not at home. Mr Butler was not aware the keys were in the porch/hallway. Mr Butler did not enter the Claimant's property and he left Topsham at approximately 1.30pm.
19. The Claimant informed the Respondent by text at 2.05pm on 2 December 2022 that the keys were in a shoe cupboard in the porch/hallway of his property.
20. On 5 December 2022, the Claimant sent the Respondent a photograph of the keys in the shoe cupboard.
21. There was no evidence to show that the Respondent took any further action to retrieve the keys.
22. On 11 November 2022 the Respondent compensated a customer £100 for damage to a sideboard.
23. On 22 November 2022 a glazed unit was incorrectly measured. This cost the respondent £94.06 to rectify.
24. The Respondent made the twelve deductions from the Claimants final pay.

The Law and submissions

25. Part 2 of Employment Rights Act 1996 (ERA) makes provisions with respect to deductions from pay. In broad terms, the worker has the right not to suffer "unlawful deductions" except in limited circumstances.

26. Section 13 of the Employment Rights Act 1996 states that:

“(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...

(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.”

27. An employment tribunal shall not consider a complaint unless it is made within three months of the deduction, unless it finds it was not reasonably practicable for the complaint to be made in time. Section 23 Employment Rights Act 1996.

28. The Respondent submitted that it was entitled to make the deductions from the Claimants wages on the basis of the Deductions from Wages form and the Van Checks form signed in April 2022. The Respondent maintained that they did all they could to retrieve the keys. As they were unable to do so, they had little option but to have the depot locks changed in order to secure the site.

29. The Claimant submitted that,

a) He communicated with the Respondent between 1 December and 5 December 2022 about the collection of the keys. This communication was sometimes delayed by a lack of mobile phone signal in Cornwall where he was working. He did not withhold the keys from the

Respondent and was not negligent in his efforts to return the keys to the Respondent.

- b) The stepladders and the 110v Power Breaker were on the vehicle when he secured it in Topsham on 28 November 2022. There was no reference to a transformer on the weekly checklist.
- c) The Hoover had previously been left at the Gloucester depot as it was broken.
- d) The Dallas key was in the footwell of the van when the Respondent recovered it on 30 November 2022.
- e) There was nothing extraordinary in the state of the van in circumstances where the Claimant drove up to 2000 miles per week, had nowhere to store equipment local to his home until just before he resigned, and he only returned to the depot in Gloucester once per week to drop off and collect supplies.
- f) There was no damage to the wing mirror when he secured the vehicle.
- g) He was not responsible for any damage to a customer's sideboard.
- h) He was not the person who incorrectly measured the glazed unit.

Conclusions

30. The Claimant's ET1 was received by the Tribunal on 19 February 2023. The claims are therefore brought within the time limit and the Tribunal has jurisdiction to hear them.

31. I was not referred to the Claimants contract of employment. In resisting the claims, the Respondent relied on the Deductions from Wages form and the Van Checks form, both signed by the Claimant in April 2022.

32. Van Key, Padlock, Dallas Key and replacement of the depot locks.

The Claimant's complaint of unlawful deductions from wages with respect to the keys, padlock and replacement locks succeeds. The Respondent asserts that the Deductions from Wages form provided the Claimant's consent to the deductions for the keys and replacement locks. The form states '*If you are a vehicle driver, for the first £750 of any damage or claim caused by your negligence.*'

The Claimant communicated with the Respondent between 1 December and 5 December 2022 about the collection of the keys. The van was recovered by using the spare key on 30 November 2022. The padlock was broken off the van door on 30 November 2022. The locks at the depot were changed on 1 December 2022. There was ongoing communication between the parties in the days after 1 December. I was not referred to any evidence to show that the Respondent had arranged with the Claimant to collect the keys on 2 December. The Claimant did not withhold the keys from the Respondent. The Respondent did not make a clear arrangement for retrieval of the keys, whether for collection, or by requesting that the Claimant return the keys in another manner, such as by post. I was not referred to any evidence that the Respondent contacted the Claimant in the days after his notice was given on 22 November 2022 to arrange return of the Respondent's property. I do not find that the Claimant was negligent in respect of the keys or the depot locks, and he did not consent to the deductions for these items.

33. Deep clean of van

The Claimant's complaint of unlawful deductions from wages with respect to the deep clean of the van succeeds. There was a reference by Mr Butler about glue in the cab, and the bundle contained photographs of the interior of the van. The evidence did not establish that the state of the van was due to the Claimant's negligence. The Claimant was mainly based in the far southwest of England, covering up to 2000 miles per week in the van, and only returning to the Gloucester depot once a week to collect supplies. The Claimant was not provided with a local 'lock up' facility for storage purposes

until just prior to his resignation. I was not referred to the Claimants contract. The deductions from wages form states, '*If you are a vehicle driver, for the first £750 of any damage or claim caused by your negligence.*' I do not find that the state of the van was such that it was caused by the Claimants negligence.

34. The missing stepladders, Hoover, and transformer.

The Claimant's complaint of unlawful deductions from wages with respect to the missing items is not well founded and is dismissed. On the Claimant's own evidence, the van was secured in Topsham on 28 November and a padlock attached to the back of the van. The padlock was broken off by the Respondent on 30 November. There is a weekly checklist dated 24 November 2022 that confirms the items were on the van. The Claimant said that the trainee had completed the checklist. I accept the Respondent's evidence that the Claimant was responsible for supervising the trainee, and ensuring the items were on the van, even if the trainee completed the form. The Claimant said that he had left the Hoover at the Gloucester depot as it was broken. There is no evidence to support this assertion by the Claimant and I accept the completed weekly checklist form as showing that the Hoover was on the van on 24 November 2022. There is no reference to a transformer on the weekly checklist. I accept the evidence of Mr Butler that the '110v Power Breaker' referred to on the weekly checklist is a transformer and it is this item that was missing from the van on 30 November 2022. The Van Checks form signed by the claimant in April 2022 states that lost items will be replaced by the company at the cost to the fitter/trainee.

35. Repair of wing mirror

The Claimants complaint of unlawful deductions from wages with respect to the repair of the wing mirror is not well founded and is dismissed. The photograph dated 30 November 2022 shows a damaged wing mirror. The receipt for repairing the damaged wing mirror is dated 1 December 2022. The Deductions from Wages form states '*If you are a vehicle driver, for the first £750 of any damage or claim caused by your negligence*'.

The Claimant had the van in his control until it was recovered by the

Respondent. I accept the evidence of the Respondent that the mirror was already damaged when it was recovered. The Claimant said he folded the mirrors in when he secured the van on 28 November. I find that the damage to the mirror had occurred on or prior to the 28 November the Claimant was responsible for the damage.

36. Compensation for sideboard damage

The Claimant's complaint of unlawful deductions from wages with respect to the compensation succeeds. There was no evidence that the Claimant had damaged the sideboard or how the damage was caused. The Claimant accepted that he had been at the property but stated he did not enter. I do not find that the Claimant was responsible for the damage, and he is therefore not responsible for the compensation. The Deductions from Wages form states '*If you are a product fitter, your negligence damaging a product during installation.*' I find this provision to be ambiguous and likely refers to products belonging to the Respondent rather than possessions belonging to customers. The Deductions from Wages form states, '*If you are a vehicle driver, for the first £750 of any damage or claim caused by your negligence*'. The Claimant was a vehicle driver and arguably this provision could apply to damage not relating to the vehicle. I find that this provision ambiguous and likely relates to the Respondent's vehicle and any negligent acts pertaining to the use of the vehicle. I do not find that this provision applies to damage to the sideboard. In any event, I do not find that the Claimant caused the damage.

37. Compensation for incorrectly measured glazed unit

The Claimants complaint of unlawful deductions from wages in respect of compensation for the glazed unit is not well founded and is dismissed. The Deductions from Wages form states, '*If you are a surveyor, your negligence in measuring incorrectly products which as a consequence are made up to be the wrong size*'. I accept the Respondent's evidence that the Claimant was responsible for the measuring on 22 November 2022 and that an error had to be rectified by the Respondent. The Claimant does not assert that the calculations were correct but states that the measuring App was faulty. I accept the evidence of the Respondent that the Claimant was responsible for the

miscalculation.

38. Recruitment costs

The Claimants complaint of unlawful deductions of wages in respect of recruitment costs succeeds. The Deductions from Wages form states ‘ *If you resign from your position within 12 months of the date of joining, the cost of checks undertaken as part of the recruitment formalities will be deducted from your final pay*’. Although the Claimant resigned before he had worked for the Respondent for 12 months, I was not referred to any evidence of what the recruitment checks were, or how they were quantified. I do not find any factual basis for this deduction from the Claimants wages.

39. The Respondent has made unlawful deductions from the Claimants wages totalling £606.82

40. Accordingly, the Respondent is ordered to pay the Claimant the gross sum of **£606.82**.

Employment Judge Hastie
Date 8 October 2023

Judgment sent to the Parties: 27 October 2023

FOR THE TRIBUNAL OFFICE

Notes

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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