



EMPLOYMENT TRIBUNALS

Claimant: Mr D Flagg

Respondent: Freightforce Distribution Ltd

Heard at: Watford (CVP)

On: 10 July 2024

Before: Tribunal Judge Peer acting as an Employment Judge

Representation:

Claimant: In person

Respondent: Mr Andy Dyble of the respondent

JUDGMENT

- (1) The respondent's name is amended to Freightforce Distribution Ltd.
- (2) The claimant's claim for unauthorised deductions from wages is not well-founded. The claim is dismissed.

JUDGMENT having been given orally on 10 July 2024 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:

REASONS

INTRODUCTION AND CLAIM

1. The claimant presented his claim form on 8 January 2024 after a period of early conciliation between 20 November 2023 and 21 November 2023. The respondent presented its response on 7 March 2024. Notice of hearing listing the hearing on 10 July 2024 by video with case management orders was sent to the parties on 7 May 2024.
2. At the start of the hearing, it was confirmed that the claimant's claim was for unauthorised deductions from wages on the basis that he had not received his wages for the final week of his employment.

HEARING

3. The hearing was a fully remote hearing by cloud video platform. Neither party objected to the hearing proceeding in this format. There were no connection difficulties experienced during the hearing and the hearing proceeded effectively as a remote hearing.
4. Neither party was legally represented. I therefore took time to explain points of procedure and law.
5. I had available to me the pleadings being the claim form and response form. The claimant told me he did not have a copy of the response and so arrangements were made to have this sent to him. The response from included two photos, email quote of costs and a copy of a Deduction from Pay Agreement. During the hearing, a copy of final payslip details, dismissal letter dated 30 October 2023 and claimant's contract of employment was provided.
6. The case management orders made had not been complied with by either party. The claimant told me had received the Notice of Hearing. The respondent told me that they had not received any Notice of Hearing. In all the circumstances, I considered that it was fair and in the interests of justice to proceed with the hearing taking account of the overriding objective and in particular that dealing with cases fairly and justly includes dealing with cases in ways that are proportionate to the complexity and importance of the issues and avoiding unnecessary formality and delay.
7. I heard evidence from Mr Dyble for the respondent. I heard evidence from the claimant.

ISSUES FOR DETERMINATION

8. At the start of the hearing, there was discussion as to what needed to be established and decided in order to determine a claim for unauthorised deductions from wages. Further to this discussion certain matters were agreed namely that there had been a deduction from wages and the amount of that deduction. The issue for determination was therefore:
 - a. Was the deduction made to the claimant's pay for the period 3 November 2023 to 10 November 2023 of £442.89 an authorised deduction?

FINDINGS

9. I considered all of the evidence before me and I found the following facts on a balance of probabilities. I have recorded the findings of fact that are relevant to the legal issues and so not everything that was referred to by the parties before me is recorded.
10. The claimant started work on 27 February 2023 for the respondent, a freight distribution company, as a shunter. The claimant's employment ended on 10 November 2023 after a notice period of two weeks. Notice was given by letter dated 30 October 2023.

11. For the period 3 November to 10 November 2023, which was the claimant's final week, the claimant worked 57.3 hours and was entitled to be paid at a rate of £12 per hour for that work. The claimant was thus entitled to be paid £687.60 gross. This recorded on his final payslip.
12. The respondent made a deduction of £442.89. The respondent says that this deduction was authorised by way of a Deductions from Pay Agreement signed by the claimant on 27 February 2023 and was to cover part of the costs arising from damage caused by the claimant to a barrier due to carelessness. The Deduction from Pay agreement included the following provision:

“Any damage to vehicles, stock or property that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement....in the event of failure to pay such costs will be deducted from your pay”
13. The claimant accepts that he signed the agreement and the copy before the tribunal bears his signature. The claimant told us that he had signed lots of paperwork when starting employment. He also told us he had no training and could not effectively access an online HR app. The respondent told me that the claimant would have received hard copies, had time to consider the documents and had been taken through them at induction which Andy Dyble said he had done himself for the claimant. There must have been a hard copy in existence given the handwritten signature. I accept Andy Dyble's evidence regarding this. I am satisfied the claimant had access to and was aware of the provision in the Deduction from Pay agreement and by signing had signified his consent or agreement to the making of the deduction in the circumstances covered by the provision.
14. The respondent says that on 7 November 2023 the claimant hit a pole/barrier causing damage. The costs associated are £549 based on a quote, the email for which is in the bundle. The claimant did not directly dispute these costs per se. I find the costs of repair amount to £549. The respondent also says there was further damage to the vehicle the claimant drove to the rear light on 8 November 2023 but does not say the deduction was for any costs associated with that. The claimant accepts the photo of the vehicle on 8 November 2023 was the vehicle he used but does not accept he should be blamed for that damage in any event.
15. The claimant told me that there had been no barrier there for the two weeks prior. The claimant said there were no lights on the barrier which there should have been as per the red light on the barrier on the other side seen on the photo of the incident time stamped 7 November 2023 @ 1644. The claimant told me it was dark at the time. The claimant told me he thought he had hit a branch when he went through. The claimant explained that he had then been told the barrier had been put up 20 minutes before he went through.
16. The claimant explained to me how the barrier worked. The claimant explained that the barrier on the outgoing side lifts automatically when a vehicle approaches the barrier and when in the box for the vehicle to pass through. I accept this explanation. I find the claimant was aware that when

passing through this barrier, he needed to slow down on approach to allow for the barrier to lift. I make the reasonable inference that the claimant assumed the barrier was not there as it had not been there for a period prior to the incident and therefore drove through without slowing on approach for the barrier to lift.

17. The respondent referred to the training all drivers have and the expectation they drive with due care. The respondent noted that a person without high vis clothing might have been hit in these circumstances. The respondent said the photo showed the incident during /after the vehicle had hit the barrier. The claimant must have been driving through at speed.
18. The claimant said he thought he had hit a branch. The claimant therefore accepts an impact and accepts that he hit something. I find the claimant did hit something when driving the vehicle. The claimant says it was dark. The claimant must and/or should have had his front lights on to provide him with sufficient visibility of the road ahead when driving. I find that the claimant must have been driving in manner or at a speed which did not enable him to accommodate for the barrier or, indeed, any branch or other hazard, and was at the least careless about this.
19. The claimant explained to me that he had no warning of the deduction and raised queries about it. The claimant also told me that until the day of the hearing he had not seen the photos as the response had not been provided to him in advance of the hearing. He had not had any explanation about this. The claimant does not accept he is responsible for the damage due to the incident on 7 November 2023 or indeed the damage identified to the vehicle on 8 November 2023.

LAW

20. Section 13 (Right not to suffer unauthorised deductions) of the Employment Rights Act 1996 is as follows:

(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.

ANALYSIS AND CONCLUSIONS

21. There is no dispute about the amount of wages to which the claimant was entitled on the relevant date or as to the fact of the deduction of £442.89 that was made by the respondent. I refer to my findings above and I

conclude that there was a deduction made by the respondent from the claimant's wages. The dispute is as to whether the deduction was authorised or not.

22. There was discussion at the hearing as to whether the respondent was relying on the deduction as authorised in accordance with section 13(1)(a) or section 13(1)(b). The respondent understood the provision was contractual but submitted that it was certainly the case that the claimant had signified in writing his agreement or consent to the making of the deduction by signing the Deduction from Pay Agreement. I refer to my findings above. I concluded that the claimant had signed the Deduction from Pay Agreement on 27 February 2023 which authorises deductions in the circumstances outlined.
23. The circumstances are somewhat unfortunate. I found both witnesses gave forthright evidence to me as to how they saw matters. I acknowledge that the claimant considers the incident on 7 November 2023 and the damage was not his fault for the reasons he set out in evidence namely that it was dark and there had not been a barrier there previously.
24. The claimant accepts he hit something; he thought it was a branch. He understood there was no barrier there as there had not been one for a period of time prior and the barrier was not visible in the expected way as there were no lights on the barrier.
25. The respondent contends that driving with due care and attention including at an appropriate speed the claimant ought to have been in a position not to hit the barrier.
26. The claimant's evidence and submissions put forward reasons why what occurred was not because of his driving conduct. I find it somewhat unfortunate that the circumstances were such that the deduction may not have been taken up directly with the claimant prior to the respondent's conclusion and the deduction.
27. I refer to my findings above. I concluded that there was carelessness in the situation in which the claimant understood he had driven into a branch but in fact he had driven through at a speed which did not enable him to allow for the barrier or seemingly see or be aware he had hit the barrier. Even if the barrier may not have been there or fully operational on the preceding occasion for the claimant, it was ordinarily supposed to be there and the point at which it crosses is marked out by yellow poles and the claimant should have been driving in a way in which he could accommodate for the barrier.
28. In all the circumstances, I have concluded applying the provisions of section 13(1) to the facts found that the claimant had previously signified in writing his agreement or consent to the making of the deduction and as such the deduction was an authorised deduction.
29. Accordingly, the claimant's claim for unauthorised deductions from wages is not well-founded and is dismissed.

Case No: 3300344/2024

JUDGMENT SENT TO THE PARTIES ON
27 August 2024

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