



EMPLOYMENT TRIBUNALS

Claimant: Mr T Ellis

Respondent: M4 Recruitment Ltd

Heard at: Leeds (by video) **On:** 21 October 2024

Before: Employment Judge T Knowles

Appearances

For the claimant: In person

For the respondent: Ms V Hall, Litigation Consultant

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim of unauthorised deductions from wages is well founded.
2. The Respondent is ordered to pay to the Claimant:
 - a. £227.85 (2 days' pay unlawfully deducted),
 - b. £969.24 (6 days holiday pay unlawfully deducted), and
 - c. £403.00 (car damage costs unlawfully deducted).
3. The above are gross sums deducted. The Claimant is responsible for the payment of any tax or National Insurance.

RESERVED REASONS

Issues

1. The Claimant is claiming unlawful deductions were made from his termination payments, firstly in relation to the number of days pay in his final pay, secondly in relation to the Respondent's decision not to make a payment to him for accrued but untaken holiday pay and thirdly in relation to a deduction made the Respondent for costs that they were charged by their leasing company for damage to the Claimant's company car.

2. The issues for me to determine are:
 - a. Did the Respondent fail to pay the Claimant for annual leave the claimant had accrued but not taken when their employment ended?
 - b. Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

Evidence

3. I heard evidence from the Claimant who produced a written witness statement.
4. On behalf of the Respondent, I heard evidence from their Operations Director Mrs M Lampo who also produced a written witness statement.
5. The parties produced an agreed bundle of documents, 167 pages.

Findings of fact

6. These findings of fact are the key points I found on the balance of probabilities relevant to the issues. This is not intended to set out all of the evidence that I heard and read.
7. The Claimant was employed by the Respondent as a Regional Hub manager from 6 June 2022 until he was dismissed on written notice with an effective date of termination of 9 February 2024.
8. The Claimant's terms and conditions of employment included a term that where he was working his notice his "*full remaining annual leave entitlement should be taken during your notice period in agreement with your line manager*".
9. On 28 June 2022 the Claimant took delivery of a company vehicle and signed a letter to confirm his agreement that the vehicle "*must be returned to the Employer in a satisfactory condition upon termination of employment. Where there is any damage to the company [...] vehicle other than acceptable and normal wear and tear, the cost to repair any such damage or, where necessary, to replace the said company [...] vehicle will be deducted from the Employee's last salary*".
10. There are later provisions in the letter which appear to limit the scope of that clause, in that it states "*I understand that I am responsible for any excess amounts that the insurance policy in force may carry at such time and covering such vehicle should I be the responsible party for any accident damage to the vehicle howsoever caused*".
11. The Claimant was dismissed by a letter dated 12 January 2024 which he received that day.
12. The effective date of termination is the expiry of the period of notice given exclusive of the working day on which notice was given.

13. The Respondent opted to give to the Claimant 4 weeks notice, albeit his statutory and contractual entitlement was to only 1 weeks notice.
14. 4 weeks from 13 January 2024 means that the period of notice expired on 9 February 2024 which was the Claimant's last day of work for pay purposes.
15. The Respondent attempted to retrospectively dismiss the Claimant, making the date of dismissal on notice run from 10 January 2024, which is the day that the Claimant met with the Respondent to discuss work issues.
16. I accepted the Claimant's evidence that on 10 January 2024, he was not told he would be dismissed, he was only told that they would look into the issues further.
17. Mrs Lampo could not give evidence on what the Claimant was told on 10 January 2024 as she was not present at the meeting.
18. She prepared the letter of dismissal acting on the instructions of Mr Adams, Managing Director, who has not given evidence.
19. The Claimant's evidence that he was not dismissed at the meeting are supported by the wording of the letter itself; "Following our discussions, we have decided to dismiss you...".
20. The letter of 12 January 2024 also states that the Claimant will be paid for his accrued but untaken annual leave with his termination pay.
21. The Claimant states that Mr Adams also confirmed that to him when he returned his company car.
22. The Claimant booked no annual leave during his notice period.
23. The Respondent did not contact the Claimant during his notice period requiring him to take holiday leave, nor did they put him on notice that he would be taking holiday leave during his notice period.
24. The Claimant and the Respondent both agree that the Claimant had 6 days accrued but untaken leave when his employment ended.
25. On 31 January 2024, the Claimant returned his company car. No checks were undertaken on the vehicle's condition when he returned it.
26. The Respondent paid the Claimant wages up until 7 February 2024.
27. The Respondent has not disputed the Claimant's evidence that his rate of pay was £42,000 per annum, paid at £3,500 per month, which equates to £161.54 per working day based on a 5/7 working day pattern. Divided between 365 days in a year (see my conclusions below as to why this is necessary), the daily accrual rate is £115.06 per calendar day.
28. The Respondent did not pay to the Claimant his accrued but untaken

holiday pay on termination. Mrs Lampo believes that their terms and conditions allow them to make that deduction as the Claimant must use up his holidays during the notice period.

29. The Respondent made a deduction of £403 in relation to vehicle damage.

30. The Claimant has challenged that there was any new damage to the vehicle when he returned it.

31. The inspection report from the lease company (154) provides photographic evidence of the damage. The report is dated 21 February 2024, whereas the Claimant returned the vehicle 31 January 2024.

32. The Respondent has not provided evidence that the damage found by the lease company was the responsibility of the Claimant.

33. The Respondent gave no evidence as to the scope of the insurance policy or the extent to which it may cover the damage found to the vehicle.

Submissions

34. The Respondent submitted that the effective date of termination was 10 January 2024 and the Claimant's 4 week notice period therefore ended on 7 February 2024. He was paid to that date and no more wages are due. Page 116 sets out the holiday pay policy; holidays are to be taken during the notice period. The company vehicle letter provides the consent to make deductions for damage to a company vehicle and the Claimant has not provided evidence as to the condition of the vehicle when it was returned.

35. The Claimant submitted that his letter of termination says he would be paid for his accrued holidays and this was supported by his discussions with Mr Adams. He was never contacted and told he must use up his holidays during his notice period. His notice period, he was told, ran to 9 February 2024 which was the date originally scheduled as the date by which he must return his company vehicle and company property. The Respondent does not know when or where the vehicle was inspected by the lease company. The vehicle inspection report suggests that the vehicle was inspected 3 weeks after he returned it and a considerable distance from the office he returned the car to. It could have been driven considerably in the intervening period.

The Law

1. Section 13 of the Employment Rights Act 1996 contains the right not to suffer unauthorised deductions from wages and provides 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.*
- (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.*

36. The Working Time Regulations 1998 provides the following in relation to accrued but untaken holiday leave:

- 14. (1) *Paragraphs (1) to (4) of this regulation apply where—*
 - (a) *a worker’s employment is terminated during the course of his leave year, and*
 - (b) *on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.*
- (2) *Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).*

Conclusions

37. Concerning the Claimant’s claim that he was paid insufficient wages, I conclude that the Claimant’s claim is well founded.

38. The Respondent has through its dismissal letter attempted to back-date the Claimant’s notice of termination of employment.

39. Correctly calculated from the date of the letter, 12 January 2024, which is the date the Claimant claims he received the letter, excluding that day, 4 weeks notice expired on 9 February 2024.

40. The Claimant was paid until 7 February 2024.

41. The Respondent made an unauthorised deduction from his wages of 2 days

pay.

42. However in a wages claim, as distinct from a holiday pay claim, wages accrue day-to-day including non-working days under the Apportionment Act 1870 unless the contract includes a different mechanism for accrual.

43. The Claimant's contract does not provide for any specific daily accrual, it simply states £42,000 per annum paid monthly.

44. This means that in relation to basic pay for February, the Claimant accrued an entitlement to 9 days at £115.06. 9 times £115.06 is £1,035.54. The Claimant received £807.69. The shortfall was £227.85.

45. The Respondent is ordered to pay to the Claimant £227.85 wages.

46. Whilst the Respondent's policy provides that when working their notice employees "should" take their remaining holiday entitlement in agreement with their line manager, this does not mean that employees are deemed to have used up their leave during their notice period, nor does this provision state what will happen if the employee fails to take their leave during that period.

47. In the absence of the Claimant expressly seeking his line manager's agreement to him taking holiday leave during his notice period, and in the absence of the Respondent having put the Claimant on notice that they were forcing him to take a particular amount of leave at a particular time, the Claimant's 6 days accrued holidays remained outstanding at the termination date.

48. The Respondent has made an unauthorised deduction of 6 days holiday pay from the Claimant's final salary.

49. The shortfall is 6 days pay calculated (unlike the wages calculation above) at £161.54 per day. 6 times £161.54 is £969.24.

50. The Respondent is ordered to pay to the Claimant £969.24 in lieu of accrued but untaken holiday leave.

51. The Respondent's letter concerning damage to company vehicles is unclear as to whether the Claimant is liable for any damage howsoever caused or only for the insurance excess where he was responsible for the damage.

52. This ambiguity and inconsistency falls to be construed against the employer.

53. This means that the Respondent can rely on the clause at its minimum provision, meaning that they are only entitled to rely on the clause so far as they seek to recover insurance excess for damage which the Claimant was responsible for.

54. It does not appear that the Respondent attempted to claim on their insurance and I have not been provided with their insurance excess for company vehicles.

55. I have no evidence before me that the Claimant was responsible for the damage.

56. The deduction of £403 was consequently not authorised by the contractual provisions which have been presented to me.

57. The Respondent has made an unauthorised deduction from the Claimant's wages in the sum of £403 and is ordered to pay to the Claimant that amount.

Employment Judge T Knowles

21 October 2024

RESERVED JUDGMENT AND RESERVED REASONS
SENT TO THE PARTIES ON

22 October 2024

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FOR THE TRIBUNAL OFFICE

Notes

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>