



EMPLOYMENT TRIBUNALS

Claimant: Mr Grant Broadfoot

Respondent: Mr Alex Isherwood, Service MOT Repairs

Heard at: Watford (by video) **On:** 4 November 2024

Before: Employment Judge Bradford

Representation

Claimant: Ms C Alvarez-Wilkinson, Lay Representative

Respondent: Mr B Stanton, Solicitor

JUDGMENT having been delivered orally on 4 November 2024 and 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:

REASONS

1. This is a claim for unlawful deductions from wages in contravention of s13 Employment Rights Act 1996 (ERA). The Claimant was employed by the Respondent as a vehicle technician from 10 October 2022 until his dismissal on 24 January 2024. The reason given for the dismissal was repeated failures to notify the employer of sickness absence in accordance with the terms of the contract. It was not in dispute that the Claimant was dismissed.
2. The Claimant contacted ACAS on 9 March 2024 and a certificate was issued on 2 April 2024. The ET1 was filed on 29 April 2024. There are no time-limit issues.
3. During the course of his employment, the Claimant undertook training relevant to his role, which was paid for by the Respondent. Deductions were made for this by the Respondent in the final payslip. Specifically, in subsequent correspondence deductions were said to have been made as follows:
 - MOT tester training £1,200

- VSE 1 £ 444
- MOT CPD £ 60

4. However, the actual sum deducted was £1,506.84, because this is all that was left after deductions which are not in dispute relating to 'overtaken' holiday and 2 days' sick leave.
5. At the commencement of his employment, the Claimant had signed a contract of employment. Clause 21 permitted the Respondent to recover training costs should the Claimant leave within specified timescales.
6. On 7 February 2024 the Claimant raised a formal grievance relating to the deductions. He stated that the deductions for course fees had not been authorised by his contract or a signed agreement. The Claimant had, prior to this, requested a copy of his contract and the version provided by the Respondent did not include what it relies on as the relevant clause authorising these. In evidence the Respondent explained that this had been due to a scanning issue.
7. The Respondent replied by letter of 20 February 2024 maintaining that the contract authorised the deductions. The signed, full version of the contract was sent. This stated:
 - 21.2 *Where the company pays for such training or qualifications, you will be liable to repay some or all of the fees, expenses and other associated costs should you leave within a reasonable period of completion.*
 - 21.3 *The rate of repayment is as follows*
Employee leaves within 12 months of completion – 100% repayment
Employee leaves between 12 and 24 months of completing the qualification – 50% repayment
8. The Claimant's position as stated in his evidence given to the Tribunal, was that he did not leave, rather the Respondent terminated his employment.
9. The Respondent's position, as set out in correspondence and in evidence to the Tribunal was that 'leaving' covered both voluntary and involuntary terminations. In addition the Respondent relied on an undated offer letter, which stated that courses were subject to a 'clawback agreement'. Finally, the Respondent relied on a template document entitled 'Undertaking to repay costs incurred during training courses'. This distinguished between employment being terminated by the employer, and the employee resigning from employment.
10. The Respondent's evidence was that this 'Undertaking' had been signed by the Claimant, however that was disputed by the Claimant, who did not recall ever seeing such a document. There was no signed

version, or even a version with the Claimant's name, in the evidence before the Tribunal.

Law

11. S13(1) ERA grants workers the right not to suffer an unauthorised deduction from wages. Deductions are only permitted where they are authorised by a statutory provision, a provision in the contract of employment or the worker has signified his agreement in writing.
12. There was no dispute that sums had been deducted from the Claimant's wages, as defined in s27 ERA.

Findings

13. This case turns on whether the Claimant had signified his agreement to the deductions in writing or whether in the alternative they were authorised by the contractual provision quoted above.
14. The Tribunal found that there was no signed agreement authorising the deductions. As to the template 'Undertaking' document, the tribunal was not satisfied on the balance of probabilities that this had in fact been seen or signed by the Claimant. The Tribunal did not find that the Claimant's email request on 29 January 2024 for a breakdown of deductions and "a copy of the agreement for the mot training payment plan we signed together" was evidence that he had signed the 'Undertaking' document. The Tribunal took into account the Claimant's further emails on 30 and 31 January 2024 asking for "any and all signed documentation pertaining to training courses". The Tribunal accepted, in view of these subsequent emails that the emails taken together were requests made with a view to receiving confirmation from the Respondent of whether anything had been signed authorising the deductions. The Claimant was aware that the Respondent only had a right to make a deduction which he had agreed to in writing. Asking for 'the agreement' was another way of asking for 'any agreement'. If there was nothing, the Claimant's intention was to challenge the deduction, as he has done. No signed document was produced by the Respondent. The Tribunal could not accept that the Respondent would not have kept a copy of such a document had it been signed, particularly in view of the fact that the Respondent had kept a copy of the signed contract of employment. More likely than not, if any other agreements had been signed, the Respondent would have kept them on the Claimant's file.
15. The Tribunal found that the Claimant had not signified his agreement to the deduction in writing.
16. As to the Claimant's contract, and whether this authorised the deductions, it was not disputed by the Claimant that had he voluntarily left the Respondent's employment, then training costs would have been

repayable. The issue for the Tribunal was whether 'leaving' includes being dismissed.

17. It was put to the Respondent in cross-examination that in everyday language a phrase such as "I left my job" carries a very different meaning to being dismissed. The Respondent did not accept this.
18. The Claimant's evidence was that he understood the term to mean the costs would be repayable if he chose to leave. He did not accept that leaving could be involuntary.
19. The Tribunal found that there is a clear distinction between being dismissed or 'sacked' or 'fired'; a decision made by the employer to terminate the contract of employment on the one hand, and the employee leaving, a choice on his part. This reflects everyday use of the language. An employee may, for example, leave their employment in order to avoid dismissal.
20. The Tribunal additionally noted that within the Claimant's contract, the 'Termination' clause expressly set out that the contract could be terminated by either the employee or the employer. However, in the next clause relating to training, the wording was limited to 'should you leave'. The Tribunal determined that for the clause to apply where the employer terminated the contract, that would have to be expressly stated.
21. The Tribunal concluded that the contract did not authorise the Respondent to deduct training costs in the event of dismissal because on an ordinary interpretation of the word dismiss, this is different to the employee leaving. It followed that the deductions relating to training costs were unauthorised.
22. In view of the Respondent's assertion in correspondence that a shortfall in training costs is owed by the Claimant, the Tribunal finds any such attempts at recovery contravene s15 ERA, in view of its findings that there has been a contravention of s13 ERA.

Employment Judge Bradford
26 November 2024

Reasons Sent to the Parties on
13/12/2024

For the Tribunal Office
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