EMPLOYMENT TRIBUNALS

Claimant: Mr. C Gavaghan

Respondent: Herongrange Manpower Direct Limited

Heard at: **Nottingham by Cloud Video Audio** **On:** **5th December 2024**

Before: **Employment Judge Siddique (Sitting alone)**

Representation
Claimant: In person
Respondent: Ms Scarborough-Lang

RESERVED JUDGMENT

1. The complaint of unauthorised deductions from wages is well founded and succeeds. The Respondent made an unauthorised deduction from wages in respect of the period February to April 2024. The Respondent is ordered to pay the gross sum of £1,237.

REASONS

2. The Claimant is Mr Connor Gavaghan and the Respondent is his former employer Herongrange Manpower direct Ltd. The Claimant brings a claim for unlawful deduction of wages.

The issues

3. The issues were discussed at the start of the hearing and were confirmed to be the unauthorised deduction of wages claim said to amount to £1237, deducted between Feb-April 2024.

4. It was agreed that these deductions had been made from wages. The issue was if they were authorised by the law and which incidents they related to.

The Hearing

5. In the course of the hearing I heard evidence from the Claimant and Mr David Steve Pell, IT director at the Respondent organisation. They both adopted their statements and were cross-examined.

6. In submissions the Respondent argued that the deductions were for vehicle damage in early 2023, a sum of £1000, and £237 for the later damage to the windscreen washer stalk. The deductions were authorised both by the contract and policy signed by the Claimant on 09/01/2023.The Claimant argued that he believed the deductions were unfair as any damage claimed for was not his fault and in the absence of evidence of any losses he was not satisfied that any deductions were used for repairs or insurance excess as claimed by the Respondent.

7. In reaching my decision, I had regard to the written evidence provided in the final hearing bundle, the witness statements and the evidence I heard during the hearing.

The Relevant law

Unlawful Deduction from wages

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

13 Right not to suffer unauthorised deductions.

(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.

….

(5)For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

9. The employer must show that the amount of the deduction is justified and the Tribunal are not to engage in a speculative exercise in the absence of the concrete evidence. 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.

Findings of fact

10. I find the Claimant was employed by the Respondent from 09/01/2023 until he resigned and left on 29 March 2024. The Claimant's job entailed him installing, repairing and servicing CCTV and other security systems. His job required him to travel nationwide to customer sites to install or service these systems. As part of his job he was provided with a company vehicle.

11. I find that the Claimant signed a statement of particulars on 09/01/2024 and a company vehicle policy on the same date. These were produced in evidence.

12. The relevant part of the Statement of particulars was as follows:

> "13. Deductions
> 13.1 The company is entitled at any time during employment, or in any event on termination, to deduct from your remuneration any monies due from you to the company including, but not limited to, any outstanding loans, advances, excess annual leave, overpaid wages or expenses or losses suffered by the company as a result of your negligence or breach of company rules."

13. The relevant extracts of the company vehicle policy included the following:

> "All Incidents will be investigated by your line manager within 24 hours. Depending on the outcome of this investigation it may result in no further action being taken, a need for additional training, further disciplinary action and/or a payroll deduction equivalent to the insurance excess (please note a salary deduction can be made without the need for disciplinary action depending on the circumstances).
> The payroll deduction will be based on the following claims outcome:
> ….
> Unknown Damage – Herongrange Group Ltd reserve the right to charge up to a £1000 payroll deduction equivalent to that of the insurance excess.
> ….
> In all cases of unknown damage your line manager will suspend the investigation pending further information, if any new evidence come to light Herongrange Group Ltd reserves the right to reopen the investigation and carryout any disciplinary action it deems necessary. If during this investigation it becomes clear the driver has misrepresented the facts relating to the incident to their Line Manager the payroll deduction equivalent to that of the insurance excess will be charged.

14. The Claimant was given a company vehicle to use for his job. An inspection was completed on 10/01/2023 by Geoff Malkin, the Claimant's manager, prior to the vehicle being handed to the Claimant.

15. I find that whilst the vehicle passed the inspection, various aspects of the vehicle were documented as not being in "good condition"- including the front bumpers and bodywork/paintwork, drivers side bodyworks/paintwork/wheels and similarly for the rear doors/bumpers and passenger side.

16. Relevant to this inspection report is an email from Philip Scattergood, Quality and Compliance Director, to David Pell on 26 09/2023 which states:
"I have seen the KPI Geoff did on the day before Connor took the van, unfortunately Geoff decided not to take full pictures of the van so only partial images of the side can be seen.

This is enough to show the filler cap flap in situ and no damage at the side but doesn't shoe the whole door. I cannot stress enough the importance of doing vehicle KPI's properly and every month, again we find ourselves exposed to damage that no one is aware of. Attached is Geoff's KPI on Connors start day as it doesn't show the full side of the van we could find Connor refuting the damage and having no way to prove it wasn't there before he was handed the van."

17. Turning to the first incident which led to a deduction from wages. The Claimant accepts that his van was damaged whilst parked at a Keighley hospital site in approximately June

2023. I accept his evidence that he was not responsible for the damage but believes it was a third party at the site, possibly a forklift driver. He has been consistent on this point and there is no evidence provided that he was negligent or otherwise responsible. The Respondent classed it as unknown damage. This classification is confirmed in the statement of Mr Pell.

18. I accept that this damage was only discovered by the Respondent on 27/09/2023 and that the Claimant was requested to submit a retrospective accident form which he did on the same date.

19. The Claimant says he reported the incident to his manager Geoff Malkin at the time of the damage and filled out an accident form which he gave to Geoff Malkin when he attended the office. There is no written record of this and Geoff Malkin subsequently left the organisation and as such no evidence is available from him either. The Claimant has been broadly consistent about reporting this at the time and I am satisfied that he would have been sufficiently concerned about this damage by a third party to report it in the manner suggested to avoid being blamed for it. I accept that the Respondent checked the emails of Geoff Malkin and found no record of this conversation. However, as the Claimant says he spoke to Geoff Malkin and handed in a copy of the form I would not expect an email trail. Whilst I appreciate that several months had passed by the time the Respondent was aware of the damage and that there would be difficulties in establishing the cause it is not apparent that beyond checking emails any further investigation was carried out including possible contact with the site manager at the Hospital site for the dates when the Claimant was at the site. In any event no evidence has been produced to contradict the Claimant's account.

20. There was a further accident in November 2023 where the back of the Claimant's van was damaged. Having considered the Claimant's account and the photographs of the accident scene, I accept he was not responsible for this accident and that two vehicles collided behind him and then knocked into his van. However, I also accept the evidence of Mr Pell that no insurance claim was made for this damage and that the £1000 deduction from wages for insurance excess was not for this incident. The documentation I have seen supports this although I accept that an email from Nicol Rozic, Operations and HR Executive, was worded confusingly, and is the reason for the Claimant's misunderstanding.

21. A further vehicle inspection was completed on 16/01/2024. As part of the maintenance check it was noted that the windscreen washers did not work and a comment is made that *" The washer stalk is loose which could be why the washers don't work".* There is no evidence about the cause for the washer stalk being loose. I find there is no evidence that the washer stalk was damaged by the negligence of the Claimant. There can be a number of possible causes for damage to vehicle parts including normal wear and tear and mechanical fault. It is not for the Tribunal to speculate as to the cause.

22. On 06/02/2024 the Claimant signed a variation to his contract, via a "deductions from Pay agreement" and by email on 08/02/2024 agreed to a payment plan to pay £1000 for damage to the van spread out across 12 months. However, I also accept the Claimant's evidence in his statement and at the hearing that he felt he had no option to agree to pay as he feared losing his job. I also find that this agreement made no mention of damage to a windscreen washer stalk or set out that £237 was being deducted for damage to a windscreen washer stalk. Consequently, this agreement did not cover a deduction of wages for the damage to the windscreen washer stalk

23. The first deduction of £80 was taken from the February 2024 payslip.

24. I find the Claimant gave notice of his resignation on 04/03/2024 and last worked for the Respondent on 27th March 2024, the day before Good Friday.

25. The Respondent states that the Claimant was informed of the deduction from wages for damage to his windscreen washer stalk as part of the conversation on 13/03/2024 with Elliot Knowles (General Manager). However, I do not find that to be the case as this is not mentioned in the conversation summary which talks in very general terms about damage to the vehicle and an agreement for the deduction to be split across two paydays. I find this conversation was about the deduction for vehicle excess of £1000 which was first agreed in February as part of a 12 month repayment plan but was now being repaid across two months because the Claimant had given notice of his resignation.

26. On the 15/03/2024 the Claimant's March payslip was issued which contained a deduction of £118.50 for "Vehicle Repair", which is half the £237 deducted for the windscreen washer stalk, in addition to a deduction of £460 for insurance excess. I find that this is the first time the Claimant became aware of the deduction for vehicle repair of the windscreen washer stalk. This is consistent with the fact that on the same day he had a conversation with Elliot Knowles, documented in a conversation summary record, where the claimant stated he was not happy with the deduction for vehicle repair and was intending on contacting ACAS.

27. The Claimant followed up his concerns about the deductions with emails to Nicol Rozic and Elliot Knowles asking for proof of the repairs undertaken that were said to have required the deduction from wages. At the hearing Mr Pell confirmed that no documentary evidence of the insurance excess payment or proof for the repairs, such as invoices, was before the Tribunal and he was unable to explain why it had not been provided in response to the Claimant's requests.

Conclusions

28. Dealing firstly with the deduction of £1,000, spread across February to April 2024, broken down into instalments of £80, £460 and £460. It is agreed that these deductions were taken from wages. I have found that they were taken on the basis that they were due to cover an insurance claim for damage to the Claimant's vehicle in early 2023, which was discovered in September 2023.

29. The Respondent's position is that this deduction was authorised by S.13(1)(a) based on the particulars of claim signed on 09/01/2023 when first employed and also covered under S.13(1)(b) in respect of the terms of the company vehicle policy.

30. Turning first to the terms of the particulars of claim they authorised deductions for money due to the company for *"losses suffered by the company as a result of your negligence or breach of company rules".*

31. There is however no evidence of negligence by the Claimant and I have found that the damage to the side of the vehicle was caused by an unknown third party. This is also evident from the fact that the Respondent classed the damage as "unknown damage". I

also found that the Claimant substantively complied with the company policy to report the incident to his manager and complete a form. In any event any losses could not have been due to a breach of company policy as any losses were due to the damage to the van and not because any policy was breached. Furthermore, even if the Respondent had established negligence, they have failed to demonstrate any loss suffered as a result. In this respect it is significant that the Respondent has failed to provide documentary evidence of any insurance claim, repairs done or excess paid as a result of the incident in early 2023. Furthermore, given that the van had pre-existing damage when it was first handed over to the Claimant and poor records were kept of the condition at handover, as acknowledged in the email sent by Philip Scattergood on 26/09/2023, it is unclear how much of any damage, or resultant losses, could in any event have been attributable to the Claimant or the incident in early 2023. It is not for the Tribunal to speculate about such matters and in the absence of such evidence even if negligence had been shown the Tribunal concludes that the requirements of S.13(1)(a) ERA 1996 have not been met and the Respondent was not entitled to deduct the wages in the way they did.

32. Turning to 13(1)(b) and the company vehicle policy for "unknown damage", it simply allows the Respondent to reserve their right to deduct the equivalent of £1,000 excess. The policy is vague about what the right is based upon or in what circumstances it will be exercised. If the right was based on losses resulting from negligence, then as concluded above negligence has not been established in this case and neither have the amount of losses said to have resulted from it. The Tribunal concludes that it does not provide a lawful basis to deduct from the Claimant's wages.

33. In respect of the variation of contract signed on 06/02/2024 and the written agreement to the payment plan on 08/02/2024, as they took place after the event giving rise to the deduction S.13(5) and S.13(6) ERA 1996 respectively apply and as such that variation and agreement do not authorise the deduction.

34. Consequently, the deduction of £1,000 for the incident in early 2023 was not lawful.

35. Secondly, the deduction for £237 for damage to the windscreen washer stalk, deducted between March-April 2024, via two payments of £118.50, has not been shown to have been caused by the negligence of the Claimant. Consequently, the Respondent was not authorised by the terms of the statement of particulars or the vehicle policy signed on 09/01/2023, to deduct this from the Claimant's wages. Furthermore, the Respondent has not proven that any repairs were undertaken or cost £237, despite the Claimant's request for evidence. It is not for the Tribunal to speculate as to any losses said to have been incurred and said to justify the deductions.

36. As the damage to the windscreen washer stalk was identified on 16/01/2024 and so must have pre-dated this, it means that the variation of contract signed on 06/02/2024 and the written agreement to the payment plan on 08/02/2024, do not authorise the deduction, as they were agreed after the event giving rise to the deduction, and S.13(5) and S.13(6) ERA 1996 respectively apply. Furthermore, as found above the written agreement to the payment plan did not cover the £237 for the windscreen washer stalk.

37. For the reasons given above the claim for unauthorised deduction from wages is well-founded and succeeds.

Employment Judge **M. Siddique**

Date: 16 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....17 December 2024.....

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