EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001079/2024 (V)

Held on 15 October 2024

Employment Judge J M Hendry

P MacFadyen	**Claimant** **In Person**
3rd Resource Limited	**Respondent** **Represented by,** **R Ritchie,** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. **That the respondent was entitled to deduct the training costs of the Rope Access course from the claimant's final wage and that this was not an unlawful deduction.**
2. **That the respondent company having made unlawful deductions from the claimant's wages in respect to the sum of £80 for the claimant's MST certification and the sum having now been paid to him the claim therefore is dismissed.**
3. **That the respondent company having failed to pay the claimant three weeks balance of his contractual notice and having now done so under**

deduction of PAYE and National Insurance the claim therefore is dismissed.

REASONS

1. A hearing took place by CVP on 15 October 2024 in order to consider claims made by Mr MacFadyen against his former employers, 3rd Resource Ltd. Mr MacFadyen had been employed by them as an IRM Rope Access Technician from 30 March 2024 until 14 May 2024. Mr MacFadyen claimed the balance of three weeks contractual notice pay as one week had been paid. He also alleged there had been other unlawful deductions from his wages.

2. I heard evidence from the claimant and from Mr Ritchie, a Director of the Company. I found both generally credible and reliable witnesses. There was no disagreements to the bare facts of the matter.

3. The agreed contract of employment was produced.

4. The salient facts were not in dispute. What was in dispute was what was actually legally due to be paid to the claimant both in respect of notice and wages. There is no need to record some of the background. Parties had fallen out.

5. The claimant's employment with the respondent was relatively short. He started work with the company and was almost immediately put on a Rope Access course before any deployment offshore. He completed the course on the 6 April. For personal reasons he resigned on 7 May giving 4 weeks' notice in accordance with his employment contract. The respondent argued that as he had resigned during the first full working month of his employment he was only entitled to 7 days' notice.

6. I rejected that argument. It was not in accordance with the terms of the contract. Clause 13.2 clearly states that the employee has to give 4 weeks'

written notice to terminate employment which is what the claimant did. There was no clause to allow the employer to bring the contract to an end earlier. I therefore indicated that in my view the claimant was entitled to 3 weeks wages being the balance of his notice. One week's notice had been paid. In passing I would observe that I understood that the respondents felt aggrieved at the way matters worked out but this is the contractual term that they entered into.

7. The respondent company also deducted from the claimant's last wages the cost of putting him on the training course. The contract is also clear on this matter allowing the respondent in terms of Clause 8 to deduct the costs of the training course (amounting to) if the claimant resigned within 6 months of the course, as he had done.

8. The claimant argued that the respondent company was not entitled to do this as the clause was a 'penalty clause' and secondly because in terms of Section 9 the Health & Safety at Work Act 1974 employees were not responsible for health and safety training. That section reads as follows:

''9 Duty not to charge employees for things done or provided pursuant to certain specific requirements''.

9. I rejected these arguments for three reasons. Firstly, I accepted Mr Ritchie's evidence that the rope training course was not required for someone to work offshore in the same way as say the offshore survival course is. Having the claimant qualified in this allowed the respondent to use the claimant more flexibly. It gave him a greater range of skills which would allow him to work safely offshore. It was therefore not in itself a health and safety measure or a response to one. Secondly, it appeared that the nuisance of the 1974 Act sought to address was where employers forced employees to pay for necessary health and safety training. That did not appear to be the situation here. Finally, the clause does not seem to be a penalty clause in that it seeks only to recover only the expense actually incurred and in full only during the first six months of employment. This appears to be reasonable. It is clearly framed in the contract of employment accepted by both parties. The claimant

was not able to demonstrate that the contact terms was a penalty nor in some way disproportionate. Accordingly, I rejected these arguments.

10. In the course of the hearing I explained the basis of my reasoning. Mr Ritchie accepted that he would have to pay the claimant 3 weeks' notice and to reimburse him for the MST certificate. The claimant seemed to accept that the training cots were deductable.

11. The claimant appeared content with this and I agreed not to issue a Judgment on the day of the hearing to allow payment to be made under deduction of tax envisioning that proceedings could then be dismissed.

12. On the day following the hearing the claimant indicated that he wanted to appeal or reconsider the decision. He was unhappy with the decision that the respondents were entitled to deduct the training costs from his final wages. It also appears from correspondence the Tribunal has been copied into that a dispute has arisen in relation to tax and my understanding is that the respondents have paid the sums that indicated were due and accordingly the claim is dismissed. The claimant has already been advised he is entitled to seek a reconsideration of the Judgment within 14 days of its issue or to appeal on a point of law to the EAT.

13. Another issue that arose in that the claimant asserted that he was still due three days' pay. In the course of the hearing I did observe that the contract was based on a salary paid in 12 equal monthly payments and not on actual days worked. I had understood that the employment began earlier than anticipated in the contract on the 31 March. This would mean that by the end of April a month's salary would be due. The claimant then worked 7 days as far as I understand it in May before giving notice. My understanding was that these 7 days were paid. In any event the claimant has not demonstrated that this additional payment of wages is due to him.

14. I would remind the claimant that in relation to the sums now paid to him by his former employer if he disagrees with the amount of tax deducted then that is a matter for him to resolve through HMRC.

Employment Judge: J M Hendry
Date of Judgment: 12 November 2024
Date Sent to Parties: 12 November 2024