Case Number: 2300679/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms B Lloyd	and	Kaspian Enterprise Ltd t/a Eclipz salon

Held at Ashford on 3 May 2017

Representation	**Claimant:**	In person and assisted by the Claimant's father
	Respondent:	Mr B Hendley, consultant

Employment Judge Wallis

JUDGMENT

1. The Respondent is ordered to pay the Claimant £208 in respect of unauthorised deductions;

2. The Respondent is ordered to reimburse the Claimant £390 in respect of the Tribunal fees paid by the Claimant.

REASONS

Oral reasons were given at the end of the hearing. The Respondent requested written reasons.

Issues

1. The Claimant claimed that the Respondent had deducted an hour's pay from each day that she had worked, for an unpaid break, when in fact she had very few breaks. She also disputed the deduction made by the Respondent which was said to be in respect of loss of profit because the Claimant had not worked her notice period. The Respondent's case was that they were entitled to make those deductions.

2. The issues to be decided were:-

(i) did the Claimant have breaks or was she entitled to be paid for work done during breaks;

(ii) was there a contractual right for the Respondent to deduct £180 in respect of loss of profit during the notice period.

Brief summary of the relevant law

3. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement to that deduction.

4. Sub section (3) provides that where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of the wages properly payable by him on that occasion, the amount of the deficiency shall be treated as a deduction from the worker's wages.

5. Section 27 defines 'wages' as any fee, bonus, commission, holiday pay or other emolument referable to the worker's employment, whether payable under his contract or otherwise.

Documents & Evidence

6. The Respondent produced a bundle of documents, some held together with a tag. The pages were numbered but there was no index. The Claimant produced some documents, neither numbered nor indexed. There were no witness statements.

7. During the course of the hearing it became apparent that some relevant documents in respect of the loss of profit were stored on the Respondent's telephone. I adjourned for those documents to be emailed to the Tribunal office, copied, and the Claimant to have the opportunity to read them.

8. I heard evidence from the Claimant Ms Bonnie Lloyd and from the owner of the Respondent business Ms Natalie Bradshaw.

Findings of fact & calculations

9. There was no dispute that the Claimant had worked for the Respondent as a newly-qualified stylist in the Respondent's hairdressing salon from 14 October 2016 until she left on 3 December 2016.

10. I found that there was a written contract of employment which had been signed by the Claimant on 24 October 2016. The Claimant worked different days and hours each week; no record of the hours or days that she had worked shown to the Tribunal.

11. The contract provided that 'when you work for more than 6 hours continuously you will be entitled to a 20 minute unpaid break'. However, Ms Bradshaw said in evidence that she always deducted one hour from pay, per day, because the employees had the opportunity to have an hour's break, which might be made up of various short breaks. She explained that if an employee was booked to work for say 6 hours, they would be paid for 5 hours, and so on.

12. Ms Bradshaw worked part-time in the salon, so was not always there to observe whether breaks were taken. She had no records to show that breaks were actually taken. The Claimant denied that this arrangement had been explained to her. I found that it was incumbent upon an employer to ensure that breaks were taken, even in a small business where, I accept, there is a certain amount of 'walk in ' business. In addition, if one hour's pay per day was to be deducted automatically for an unpaid break, the contract should state this in terms.

13. I accepted the Claimant's evidence, in the absence of any evidence of recorded breaks, that during periods when she was not assigned clients, she would assist her colleague (only two of them worked in the salon), undertook cleaning tasks, made tea and so on. I found from the limited number of pages from the appointment diary that were produced that the Claimant had a break of 20 minutes each day that she worked, and that should have been the limit of the deduction. I found that simply 'having the opportunity' for a longer break was not sufficient to show that a break had been taken.

14. In any event, the contract was clear about the nature of breaks, and I found that the Respondent could not rely on an alleged, disputed conversation about a different arrangement to support a larger deduction in contradiction of the written contract.

15. The Claimant had calculated that she was owed 27 hours 40 minutes amounting to £197.55 in respect of deductions for breaks. The Respondent had not checked those figures and had no figures to offer; no payslips were produced. There was agreement that the Claimant was paid £5.55 per hour (she was aged 19 at the time).

16. Doing the best that I could with such limited information, I calculated that the Claimant worked for 7 weeks. On average she worked for 4 days a week. She had therefore worked for 28 days. 28 x 20 minute unpaid breaks = 560 minutes or 9.3 hours. 9.3 x £5.55 = £51.61. Therefore, the deductions for unpaid breaks should have been £51.61. Assuming the Claimant was correct that £197.55 had been deducted, and the Respondent had not put forward any alternative figure, I calculated that the balance of £145.94 should be paid to the Claimant (£197.55 - £51.61 = £145.94).

17. Turning to the deductions for loss of profit, I found that the contract provided that 'if you do not give a notice period of one month deductions from your

wages and week in hand will be made to cover the costs incurred by your breach of contract'.

18. I found that the Claimant was dismissed by text, a copy of which was in the bundle. The Respondent gave her four weeks notice. The Claimant responded that she would 'prefer not to work'. The Respondent reminded her about the right to deduct loss of profit, and suggested one week's notice. The Claimant declined to work.

19. It was the Claimant's case that she had been dismissed for gross misconduct and therefore was not obliged to work her notice. I found that the Claimant had misunderstood the legal situation. She said in evidence that she had an email from the Respondent referring to gross misconduct, although that was not produced at the hearing, and she understood that there was no need to work notice if dismissed for gross misconduct. The point is that even if the reason for dismissal was gross misconduct, if an employer gives notice then the employee is expected to work it, and if they do not, they have terminated the employment themselves by leaving before the notice period expired (subject to complications involving constructive dismissal which are not relevant here).

20. I found that even if there had been an email as referred to by the Claimant, the text was clear that the Claimant was given notice by the Respondent. That text was received by the Claimant, because she responded to it. By refusing to work her notice, and leaving immediately, the provision in the contract was activated.

21. I considered the documents produced by the Respondent during the hearing (referred to above). I found that there had been clients allocated to the Claimant in the following week. I accepted the Respondent's evidence that she had telephoned the clients to cancel their appointments.

22. I noted that, quite fairly, the Respondent had limited the calculation of loss to two days of the following week, and had excluded her sister's appointment from the calculation. However, she had simply added up the price of the booked treatments, and deducted the cost of products to be used, and had not made any allowance for the Claimant's wages on those days.

23. I calculated that the lost revenue, from the prices to be charged to clients as set out in the diary, was £202. The Respondent gave evidence that the Claimant was booked to work 6 hours on 8 December and 7 hours on 6 December. I calculated that her wages would have been £72.

24. I calculated that £202 - £72 = £130, less say £5 for products.

25. I found therefore that the Respondent was entitled to deduct £125.

26. There was no dispute that the Respondent had paid the Claimant £473.40 in the week before the hearing.

27. There was no dispute that the Claimant was owed £532.80 wages; £44.40 holiday pay; and £83.25 week in hand. I added those together = £660.45. I deducted £125 for the loss of profit in respect of the Claimant's failure to work her notice period = £535.45.

28. I added £145.94 for the deductions for breaks that had not been taken = £681.39. I then deducted the £473.40 paid recently by the Respondent = £208.

29. Accordingly, I ordered the Respondent to pay the Claimant £208 in respect of the claims.

30. In addition, I ordered the Respondent to reimburse the Claimant for her Tribunal fees of £390.

Employment Judge Wallis
5 May 2017