EMPLOYMENT TRIBUNALS

Claimant: Mr M Heatley

Respondent: Manchester Storm Ice Hockey Club Limited

HELD AT: Manchester **ON:** 14 November 2017

BEFORE: Employment Judge Howard

REPRESENTATION:

Claimant: Not in attendance
Respondent: Mr G Flowers, Legal Representative

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unlawful deduction from pay is well-founded. The respondent is ordered to pay the claimant the sum of £411.92.

2. The claimant's claim for breach of contract arising from the purchase of hockey sticks is not well-founded and is dismissed.

3. The respondent's counter claim for breach of contract is not well-founded and is dismissed.

REASONS

1. The claimant lives in Canada and chose to participate in the hearing through written representations and documents. I read and took into account the claimant's claim form, his written representations and documents when reaching my decision. The respondent attended the hearing and submitted a witness statement for Mr Neil Russell and a bundle of documents.

2. At the outset of the hearing I identified the claims and counterclaims brought by the parties as follows:

For the claimant;

(1) a claim for breach of contract of £1,460.58; being an outstanding balance for the purchase of 30 ice hockey sticks, reimbursement for which the claimant believes he is contractually entitled.

(2) A claim for unlawful deduction from wages arising from the deduction from his wages of £60 a week in apartment expenses. The respondent conceded that the claimant was owed a refund of £46.92.

(3) A claim for unlawful deduction of wages, being the non-payment of his last week's salary (week 30) in the amount of £425.

For the respondent;

(4) The respondent's counterclaim was for damage to a company vehicle and wing mirror and for car parking fines, totalling £537.27.

Findings of Fact relevant to the Issues

3. The claimant was employed by the respondent as an ice hockey player for the 2016-2017 season. Throughout the period of his employment his terms and conditions were governed by a 'player contract of employment' signed by the claimant and the respondent on 5 May 2016 which incorporated the player handbook. All the relevant contractual terms to this dispute are contained within the contract of employment and the player handbook was not referred tor.

4. I was shown payslips for the claimant which show that the claimant was paid a net weekly salary of £365.

5. The relevant clauses in this dispute are:

'1.8 Benefits:

(1) Accommodation – single accommodation will be provided by the club.

(2) The player will be responsible for all bills, house wise. The player is responsible for his part of any damage and/or cleaning of the apartment.

(3) The club will deduct £60 per week for the player's bills. The team will reimburse the difference if the player has overpaid for bills.

(4) A car and insurance for the period of this contract.

1.9 Security Deductions:

As per clause 9.4 of the player handbook the player agrees that the employer may withhold week 30 salary until such time as the player has discharged all his obligations under his contract of employment and the player handbook.'

6. The player's obligations are laid out in section 2. The relevant section replied upon by the respondent is at 2.10:

> *'To ensure that any property, vehicle and/or equipment, if supplied to him by the employer pursuant to clause 3 and handbook clauses 3 and 4, is kept in good condition and is properly maintained. The player agrees that he shall be responsible for the cost of any wilful or reckless damage (other than by fair wear and tear), loss, repair or replacement of such property is agreed and assessed by a qualified independent expert/third party instructed by the employer unless the costs are recoverable from the third party.'*

7. The employer's obligations are laid out at clause 3. The relevant sections are as follows:

> *'3.7 To supply to the player free of charge all personal equipment necessary to enable him to perform his duties as a player under his contract of employment, including hockey sticks, tape, protective equipment, skates, team uniforms and tracksuits. All equipment provided by the employer to the player shall remain the property of the employer at all times.*
>
> *3.9 The employer agrees to discharge and pay all outstanding wages, bonuses or other entitlements after consideration of handbook clauses 9.3 and 9.4 within 28 days' expiration or termination of this contract of employment subject to having received proof from the player that all bills and expenses incurred have been settled and therefore there are no possible outstanding liabilities.'*

The Hockey Sticks

8. In accordance with clause 3.7 the respondent agreed that the claimant could purchase hockey sticks for use during the season and it would reimburse him for the cost. The claimant states that he bought and used 30 sticks over the season but that the respondent has only partially reimbursed him. The claimant relies upon an email exchange between himself and Omar Pacha, coach, in June 2016 as evidence of this agreement.

9. The emails show that Mr Pacha agreed that the claimant could purchase sticks for use in matches and that the respondent would reimburse him for a limited number at £75 per stick, and only for those used during the season. Mr Pacha stated; *'Will start by buying six and then go on from there. I think 12 will be enough?'*, to which the claimant had replied, *'Yeah, I'll probably bring 24 so I don't have to worry about running out'* and Mr Pacha reminded the claimant, *'Keep in mind the team will only buy the ones you will use during the year'*.

10. The claimant referred me to an invoice for the purchase of 30 hockey sticks dated 18 June 2016. However, the invoice was addressed to the claimant's brother, Danny Heatley, who is a professional international hockey player.

11. In his witness statement Mr Russell, General Manager of the Manchester Storm Ice Hockey Team, explained that on the final day of the season the claimant handed him the invoice for hockey sticks. He held a meeting with the claimant the

Equipment Manager, Neil Herring to discuss the invoice. Mr Herring disputed that the claimant had used 30 sticks during the season and put the number at no more than 15. Mr Russell offered to pay the claimant for 15 sticks at £90 each, the claimant accepted that offer and was paid the sum of £1,350.

12. I accepted Mr Russell's statement as accurate and found that agreement had been reached with the claimant which satisfied the respondent's contractual obligation to supply him, free of charge, with hockey sticks pursuant to clause 3.7. The claimant has not persuaded me that he used more than 15 sticks during the season; the website extracts provided by him were not convincing evidence to support his assertion. Further, there was no evidence, save the claimant's own insistence, that he had incurred any cost for those 30 hockey sticks in the first place. The documentary evidence provided by the claimant - the invoice – contradicted this assertion as it was in his brother's name and no explanation for that discrepancy was provided. As the claimant had not bought the sticks in the first place, the respondent was not in breach of 3.7 by failing to reimburse the full amount of that invoice nor of any agreement reached between them to re-imburse the cost of sticks purchased by him.

13. Taking all these matters into account the claimant had not established that the respondent owed him the sum of £1,733.84 in breach of his contractual entitlement under clause 3.7 or any agreement made between the parties as to re-imbursement and his claim in respect of the hockey sticks was dismissed.

Claim for housing deductions

14. The claimant was provided with accommodation which he shared with his girlfriend. He had agreed to the deduction of £60 per week in payment for household bills. In response to queries from the claimant, on 5th May 2017, the respondent sent him a calculation with a breakdown of the costs for gas and electric bills, council tax and water rates, totalling £1,813.08. The breakdown gives sufficient details to enable the claimant to understand the amounts attributable to each utility and over what period. A total amount had been deducted from the claimant's salary of £1,860 and the email confirmed that an excess of £46.92 was owed to the claimant which the respondent's representative conceded was still outstanding.

15. I was satisfied that the respondent had acted in accordance with its contractual entitlement to deduct sums properly attributable to the payment of gas and electric bills, council tax and water rates at the claimant's property, save for the excess amount of £46.92 which is outstanding. The respondent is not entitled to deduct that sum as it is not in payment of any of those bills and is an unlawful deduction from wages. To that extent the claimant's claim succeeds and the respondent is ordered to pay the claimant the sum of £46.92.

The withholding of the claimant's week 30 salary

16. The claimant is due the sum of £365 for being 1 week's net pay. The respondent relied upon clause 1.9 in conjunction with 2.10 in arguing that it was entitled to deduct the amount paid for repairs to the vehicle provided to the claimant and in payment of car parking fines incurred by him. However, clause 2.10 only provides that the claimant is responsible for *'the costs of any wilful or reckless*

damage, loss, repair or replacement of property as agreed and assessed by a qualified independent expert/third party'. Neither Mr Russell in his witness statement nor the respondent's representative could identify any evidence supporting the contention that the claimant had wilfully or recklessly caused the damage claimed and consequently the respondent is not entitled to rely upon that clause to withhold week 30 salary.

17. Further, the deductions for car parking fines of £40 and £50 are not matters covered by 2.10 at all. The respondent sought to rely upon the claimant's obligation to ensure that the vehicle was kept in good condition and was properly maintained. However, it was evident from Mr Russell's statement that, whilst the respondent had its suspicions that the claimant or his girlfriend were responsible for the damage to the car and the wing mirror, there was no evidence before them or me to satisfy me that the claimant had not kept the car in good condition or properly maintained. Mr Russell's evidence was that the claimant had reported criminal damage to his car wing mirror to the police and his belief that the claimant had caused the damage to the car was based on no more than speculation.

18. In those circumstances, the respondent could not rely on clause 2.10 as grounds for deducting the claimant's week 30 salary. Accordingly, the claimant's claim for a week's salary in the amount of £365 succeeds and the respondent is ordered to pay to the claimant a total sum of £411.92.

Counterclaim

19. The respondent's counterclaim was for the damage to the vehicle in the sum of £320, damage to the mirror in the sum of £127.27 and car parking fines in the amounts of £40 and £50. For the reasons identified above the respondent has not established that the claimant was in breach of any contractual obligations extant upon or arising upon the termination of the contract and accordingly the respondent's counterclaim is dismissed.

Employment Judge Howard

Date 15th November 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
22 November 2017

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2403161/2017

Name of case(s):	Mr M Heatley	v	Manchester Storm Ice Hockey Club

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 22 November 2017

"the calculation day" is: **23 November 2017**

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office