



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr O Allen

AND

Crouch Logistics Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham ON 16 January 2018

EMPLOYMENT JUDGE Gilroy QC

### Representation

For the Claimant: In person  
For the Respondent: Mr Crouch (Director)

## JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimant's claim in respect of unlawful deductions from wages is well founded and succeeds.
2. The Respondent shall pay the Claimant the sum of £270.

## REASONS

1. The Tribunal heard oral evidence from the Claimant and from Mr Crouch, a director of the Respondent.
2. In his Claim Form, the Claimant sought payment of the sum of £270.00 in respect of a deduction made from his wages relating to his employment by the Respondent as a Delivery Driver.
3. The Claimant worked for the Respondent for only a very short period, from 26 June 2017 to 11 July 2017.

4. This case turns upon a construction of the terms and conditions upon which the Claimant was employed by the Respondent.
5. When the Claimant was taken on by the Respondent, he was provided with a written contract that was signed and dated by both parties on 4 July 2017. The full terms and conditions of that contract are not relevant for the purposes of this case, but it is important to record the content of Clause 24 thereof which was in the following terms:

*"24. Uniform Code: - The Company Uniform Policy is set out in the Employee Handbook.*

*The cost of the uniform, currently £270.00 will be deducted from your final pay if you leave the Company or are dismissed within the first 6 months of employment".*

6. It is the Claimant's case that upon the commencement of his employment, he had a conversation with the Depot Manager, Mr Matt Leach, to the effect that, notwithstanding Clause 24 of his contract, if, when he returned his uniform upon the conclusion of his employment, it was not destroyed or seriously damaged, no money would be deducted in respect of his uniform from his final pay slip. It is also the Claimant's case that upon the conclusion of his short period of employment, he returned his uniform in good faith, and that he was therefore taken aback to realise upon reading his final wage slip (possibly his only wage slip), dated 31 July 2017, that the sum of £270.00 had been deducted from his wages.
7. The Respondent's case is that the contract means what it says and that by virtue of Clause 24, given that Mr Allen was supplied with a uniform upon the commencement of his employment, and given that he did not work for the Respondent for a full period of 6 months, it was legitimate for the company to deduct the sum of £270.00 from his wages when he left the Respondent's employment.
8. In support of its case, the Respondent provided an undated letter from Mr Leach which stated as follows:

*"To Whom It May Concern*

*I wish to clarify that at no point during the employment of Orlando (the Claimant) at Crouch Logistics Limited based at our Tamworth Depot was he advised by myself or any other member of the Management Team that we as a company would not take deductions from his final salary for a Uniform.*

*Orlando was issued with a contract which clearly states any deductions that would be made if he was to leave the Company during his probationary period".*

The above statement was provided by Mr Leach to the Respondent on 31 August 2017, and the Tribunal was informed by Mr Crouch during the Hearing that Mr Leach was no longer with the Company, he having left in the month of November 2017.

9. In light of the above, in order to resolve this case, the Tribunal was therefore faced with a choice. In order for the claim to be upheld, the Tribunal would have to accept, on the balance of probabilities, the factual account given by the Claimant, that there was an oral variation to the written contract of employment. There was no burden on the Respondent to *disprove* the claim, the burden being at all times on the Claimant to *prove* it, but in order for the Respondent to succeed, the Tribunal would, in essence, have to accept the written word of Mr Leach above and beyond the oral word of Mr Allen delivered from the witness stand.
10. It is frequently the case that parties who might otherwise give evidence orally to the Tribunal, do not attend the Hearing and instead provide either written statements or correspondence containing their "evidence". In such circumstances, as I explained to the parties during the Hearing, the Tribunal generally adopts the practice whereby it attaches such weight to the written evidence as it deems appropriate given that the relevant individual has not attended the Tribunal and been subjected to cross-examination.
11. In the final analysis, I have concluded that I am not prepared to reject the Claimant's account based upon the written account of someone who has not attended the Tribunal to give evidence. I fully accept the difficulties faced by an employer in circumstances whereby someone has left the business and is unable to attend to give evidence, and this must be particularly difficult in this case given the relatively low value of the claim, so I sympathise with the Respondent's position.
12. However, in the final analysis, applying the burden of Proof, I accept the verbal account given by the Claimant. The net effect of my accepting that account is that on the basis of the contract between the parties as varied (as I have found it was) there was an unlawful deduction from the Claimant's wages and therefore the Tribunal finds that the claim in respect of unlawful deductions from the wages is well founded and succeeds and orders that the Respondent must pay the Claimant the sum of £270.00.

Employment Judge Gilroy QC  
16 January 2018