EMPLOYMENT TRIBUNALS

Claimant: Mr Philip Trim

Respondent: Silversprint Ltd

Heard at: Southampton **On:** 9 November 2018

Before: Employment Judge Jones QC

Representation:

Claimant: In person

Respondent: Mr N Shah of Peninsula Business Services

JUDGMENT

1. The deduction made in respect of the damage to the van was not an unlawful deduction; and

2. The Respondent unlawfully deducted two hours of pay from the Claimant's final instalment of wages. The Respondent shall pay to the Claimant a sum equivalent to two hours net pay.

REASONS

1. The Claimant formerly worked for the Respondent as a "General Assistant and Driver". His employment was terminated on 8 May 2018.

2. He makes two claims, each of which relate to his final instalment of pay. He complains:

(1) His final week's pay was calculated on the basis of 46 hours of work, whereas he was entitled to be paid for 48 hours. The resulting short-payment constituted an unlawful deduction; and

(2) The Respondent made a further deduction in respect of the cost of repairing a van that had been damaged in an accident that was the Claimant's fault. The further deduction was also an unlawful deduction.

I deal with each matter below. However, I have found it helpful to deal with them in reverse order.

3. I heard from two witnesses: the Claimant; and Mr Edwards, the present owner of the Respondent.

(a) <u>The deduction relating to the vehicle accident</u>

4. The Claimant was responsible for an accident involving a van which the Respondent had hired. The accident occurred on 31 March 2017. The Respondent had to pay for repair. At that point the business was owned by a Mr Firman. The Respondent was later sold to Mr Edwards, who took over the running of the business in January 2018.

5. On 27 January 2017, the Claimant had signed a "deductions from pay" agreement which made express provision for the recovery of repair costs where he was responsible for the damage. Specifically, Clause 6 provided:

> "Any damage to vehicles … that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement.
>
> …
>
> In the event of an at fault accident whilst driving one of our vehicles you may be required to pay the cost of the insurance excess up to a maximum of £1,000.
>
> In the event of a failure to pay, such costs will be deducted from your pay."

The ordinary natural meaning of the clause is, I find, that if the Claimant carelessly or negligently damaged a vehicle he was liable to pay repair costs in full or in part. If he failed to do so, the sum could be deducted from his pay.

6. The Claimant did not contest the fact that he was responsible for the accident. The Respondent says that the cost of the damage was £1,596.01. However, as the cost of the repair was only a little over the insurance excess, a decision was taken by Mr Firman simply to pay for the repairs and not to proceed with an insurance claim. The Respondent accepted that the practice in such cases was only to seek reimbursement of the insurance excess amount, i.e. of £1,000 and not £1,596.01.

7. The Claimant says that if he had ever been asked to make the payment he would have done so. That held true even if the Respondent had waited until shortly before the termination of his employment.

8. The Claimant says that he was never asked to make a payment. He told me that Mr Firman had confirmed to him, orally, that he had not asked. He said that Mr Edwards had not asked him either. So far as he was concerned the matter simply went away until he saw that a deduction had been made from his final pay instalment. Since he was to be paid less than £1,000, that resulted in him receiving no payment at all.

9. The Respondent says that the Claimant offered to make a payment but never did so. They say that Mr Firman has confirmed, orally, that he did ask for payment. Mr Edwards told me (although it is not recorded in his witness statement) that he too asked the Claimant to pay.

10. There is a plain disagreement between the parties as to whether or not the Claimant was ever specifically asked to pay. Either Mr Firman has given each party contradictory accounts of events or one of the parties was being untruthful in their evidence. In the circumstances, however, I do not need to decide the point. The reason is that I do not read the deduction from pay agreement as requiring a specific request to pay. I accepted Mr Shah's submission that a "failure" to pay did not mean a failure to pay in the teeth of a demand, it simply meant that if the Claimant did not, as a matter of fact, make a payment, the sum could be recovered from his wages.

11. The Claimant has a right conferred on him by **Employment Rights Act 1996**, **s. 13(1)** not to suffer a deduction from his wages unless (amongst other things) the deduction is authorised to be made by virtue of a relevant provision of his contract. In order to qualify as a "relevant provision" the provision must be comprised:

> "(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question;
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion." (**s. 13(2)**).

12. The Claimant has not tried to persuade me that Clause 6 of the deductions from pay agreement that he signed did not qualify as a "relevant provision". Both he and the Respondent are agreed that it is a relevant provision: that he had agreed to the clause; that he understood it bound him; and that the effect of it had been made clear to him at the time he entered into it. That agreement was reached before the accident occurred. There is nothing in the legislation that requires that the deduction be made within any specific period. Nor do I consider that the passage of time between the accident and the deduction alone would have had the effect of impliedly waiving the obligation. The Claimant, again, accepted that it would not have done. His position was expressly that had he been asked to pay in April/May 2018 he would have done

so. In fact, he went further and accepted that a deduction could be made but only, he contended, if he had had specific prior notification of the particular deduction. His position was that the Citizens Advice Bureau had told him that without specific prior notification of the deduction it was unlawful.

13. The Claimant was not able to explain to me what the basis of the CAB's advice was. The most plausible explanation is that they were not told of the existence of Clause 6 and advised on the basis that **s. 13(1)(a)** did not apply. That would have left the Respondent having to rely on **s. 13(1)(b),** which requires written consent to the making of the specific deduction. However, that is to speculate. In a case where the deduction is authorised by a relevant provision of the worker's contract, there is no requirement that the specific deduction be further notified or authorised, it can simply be made.

14. In the circumstances, the Claimant's claim fails. The deduction was authorised by a relevant provision of a contract, namely Clause 6 of the deductions from pay agreement that he signed in January 2017.

(b) <u>The deduction relating to the two unpaid hours.</u>

15. The Respondent says that the Claimant was employed to work a 40 hour week but was often required to work longer hours up to a maximum of 48 hours a week. He was paid for each hour he worked. In the final week of his employment he worked and was paid for 46 hours. The 40 hour week is provided for in a statement of terms and conditions, an unsigned copy of which was included in the small bundle of documents provided for the hearing.

16. The Claimant said that he had never seen the statement of terms and conditions before. He was recruited to work a 48 hour week. He accepted that he only worked 46 hours in his last week. However, he says that Mr Edwards told him that if he worked less than 48 hours he would nevertheless get paid as if he had.

17. It was put to the Claimant in cross-examination that he had not been told he would be paid for 48 hours if he only worked 46. The Claimant stuck to his story. The Respondent then called Mr Edwards. Surprisingly, Mr Edwards gave no evidence at all on the point. In the circumstances, therefore, I accept the Claimant's account. It follows that two hours of pay was unlawfully deducted from his final instalment of wages.

18. Of course, had his pay been calculated on the basis of an entitlement to 48 hours, the Respondent would simply have made a larger deduction in respect of the accident. It might be argued, therefore, that the Respondent's entitlement to be reimbursed should be set off against this small sum. However, the point was not argued and I do not read the Act as permitting me to conclude that if an unlawful deduction had not been a made a lawful deduction would have been and that, for that reason, no compensation is payable. None of the provisions of **ERA 1996, s. 25** appear to me to apply.

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Employment Judge Jones QC

Date: 13 November 2018