Case No. 2413473/2020

Code V

EMPLOYMENT TRIBUNALS

Claimant: Miss L Hodgson

Respondent: Hale Franchise Limited t/a Hobs Salons

Heard at: Manchester (by CVP) **On:** 18 November 2020

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: Mrs Hudson (her mother and lay representative)
Respondent: Mr Ashton (lay representative and HR Consultant)

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent did make unlawful deductions from the claimant's wages. The total amount of unlawful deductions was £655. The respondent was entitled to make a deduction of £150 from the claimant's final payment.

2. In addition, the respondent unreasonably failed to comply with the ACAS Code of Practice on Discipline and Grievance and I therefore increase the compensation being awarded in this case by 10% under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

3. It was agreed that the amount currently unpaid to the claimant is £1,341.26. Taking into account the legitimate deduction of £150 but then the 10% uplift, that means that the respondent is required to pay the claimant the sum of £1,310.38.

4. That payment should be paid to the claimant without deduction and the claimant will then be responsible for accounting to the relevant authorities for any tax or national insurance which should be deducted from it.

REASONS

1. The claimant brought this claim for monies she says were unlawfully deducted from her pay following her resignation as a Senior Stylist from the respondent's Hair Salon on 24 June 2020 giving one week's notice.

2. This was a remote hearing which has not been objected to by the parties. The form of remote hearing was by CVP videolink. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The Law

3. In brief the relevant law relating to unlawful deductions says (section 13 of the Employment Rights Act 1996) that an employer shall not make a deduction from the wages of a worker 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 their agreement or consent to the making of the deduction.

4. Also of relevance to this case is section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("s.207A"). That gives the Employment Tribunal a power to adjust compensation where there has been an unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Compensation can be increased where it is just and equitable but by no more than 25%. That provision is relevant because in this case the claimant says that the respondent failed to deal reasonably with a grievance which she raised.

The hearing

5. I heard evidence from the claimant and, for the respondent, Ms Tomkinson, the owner of the respondent. The claimant had given a written statement and was cross examined by Mr Ashton. Ms Tomkinson's evidence in chief was given in answers to questions from Mr Ashton and she was then cross examined by Mrs Hudson on behalf of the claimant. There was an electronic bundle consisting of 84 pages.

6. I then heard submissions from Mr Ashton and Mrs Hudson. I gave oral judgment and Mr Ashton asked for the reasons to be provided in writing.

Issues

7. There were three deductions which form the basis of the complaint. The starting point was that the final payment if paid to the claimant in full without deductions would have been £1,341.26. The three deductions which the respondent said it had a right to make from that figure were (i) a deduction of £400 in relation to training courses; (ii) a deduction of £255 for an act of negligent work by the claimant and (ii) the figure of £150 for a manual which the claimant accepted that she still retained.

8. The issues in relation to each deduction were:

a. Was the respondent legally entitled to make it

b. On the facts was it entitled to do so on this occasion

c. How much was it entitled to deduct?

Findings

9. Insofar as the legal entitlement to make deductions were concerned, the respondent relied on contractual documentation which it said had been sent to the claimant. That documentation was included in the hearing bundle. The claimant accepted that she had received a document called a "Deduction Agreement".

10. I find that document allowed the respondent to make deductions for acts of negligence by the claimant, and also required her to return any property belonging to the respondent on termination of her employment. Paragraph 5 of that document at page 61 of the bundle stated that "failure to return the respondent's property will result in the cost of the items being deducted from any monies outstanding to you". In relation to negligence, paragraph 6 of that same document on that same page stated any loss to the respondent as a result of the claimant's negligent behaviour would render her liable to reimburse the full or part of the costs of the loss.

11. I am satisfied therefore that the respondent did have the power to make deductions in relation to negligent acts and for failure to return the respondent's property. I will deal later with whether the circumstances of this case meant that those deductions could be made in this case.

12. As for the third deduction, that for training courses, the respondent relied on a document which the claimant said she had not received. This was a training contract document which stated that the respondent was entitled to deduct £100 for each training course attended. The claimant accepted that she had attended four courses so potentially the respondent would be entitled to deduct £400.

13. The claimant's evidence was that she had not received this document. Ms Tomkinson was not able to give detailed direct evidence about this because the documentation for any of the respondent's new employees was sent out centrally by Hobs Salons, the franchisor of the salon at the time.

14. In support of the respondent there was a written statement from Hollie Cooper. Ms Tomkinson's evidence was that Ms Cooper was an employee of Hobs (the franchisor) who handled sending out contractual documents to new employees.

15. Ms Cooper did not give evidence at the hearing. Her statement (at page 31) is very brief and is undated. It simply says that she could confirm that on or about 5 November 2019 she posted the Hobs Salons contract of employment, deduction agreement and training costs form to Louse Hodgson.

16. I note three things about that evidence. The first is that it is, as I say, undated; the second is that Ms Cooper did not swear to the truth of the statement and did not attend to be cross examined; the third is that on Ms Tomkinson's evidence she asked for that statement to be given. That being so, I conclude that it must have been asked for after July 2020 (when this issue had arisen) and was

therefore being given about events which happened eight or nine months beforehand. I conclude that I can give the statement from Hollie Cooper little weight.

17. In contrast I found the claimant's evidence to be credible. I accept the submission that Mrs Hudson made on her behalf that she has never denied receiving the other documents in the case, and that is corroborated by her email dated 25 June 2020 to Carol Mendoza of Hobs which was at page 37 of the bundle. In that email she says that she has not signed her contract but says that she has "not seen or signed" the paperwork in relation to the training contract.

18. On balance having heard the evidence and finding the claimant to be a credible witness I accept her evidence that she did not receive the training agreement. On that basis I find that the respondent was not entitled to deduct the cost of the training contract from her final payment.

19. When it comes to the remaining two payments the question is slightly different. I find that the employer was entitled to deduct them, but the question is whether the circumstances entitled them to and if so, whether the amounts deducted were the appropriate amounts.

20. Turning first to the negligent work, this was said to arise from a complaint by a client who had had her hair done by the claimant in March 2020 prior to lockdown. Ms Tomkinson's evidence was that the client had complained immediately prior to the March lockdown and had then come in in July to have the problem fixed. However, the documentation in the bundle (at page 29) was an email from the client dated 25 September 2020. Ms Tomkinson suggested that this was a statement that the client had provided after the event but referring back to earlier complaints. Having read that email I do not find that plausible. In particular the email states at the end, "please can I ask if I can book a new appointment with Mark or yourself to sort it out?". That seems to me to be very much in the present tense rather than confirming something that had happened in the past.

21. In addition to that, I note that in her response to the claimant's grievance on page 45 of the bundle Ms Tomkinson makes no reference to the negligent act. As Mrs Hudson submitted, there was also no evidence of any contact from March 2020 from the respondent to the claimant about the negligent act.

22. I take into account Ms Tomkinson's submission that there were personal circumstances which might have made it difficult to raise such a dispute for some parts of that period. However, I do not think it is plausible that she would have failed to have raised it in the response to the claimant's grievance if the matter had only recently had to be fixed when the salons re-opened in July 2020.

23. The claimant's evidence was that the incident did not happen. As I have said, I found her to be a credible witness. I find that the documentation which is said to support the respondent's case is not convincing. On that basis I find that that negligent act did not happen and that therefore the respondent was not entitled to deduct £255 from the claimant's final payment.

24. The last item deducted was £150 for a manual which the claimant accepted was the respondent's property. On this occasion I find that the respondent was entitled to make a deduction in relation to that manual. There is a dispute as to the value of that manual. The claimant said it was not worth £150 because it is eight

years' old. Ms Tomkinson said that while it was old it represented a lot of work and was the manual that she relied on. She said it had sentimental value for her. She also said in evidence that replacing it would cost between £300 and £400.

25. I do not have any expert evidence about the worth of such a manual. On the one hand I accept the validity of the submission made by Mrs Hudson that given its age it may not be as valuable as it otherwise might be; on the other hand, its age might also reflect time spent in collating it and putting it together and therefore the cost of replacing it.

26. The claimant's position was that she had always been happy to send back the manual if the costs of doing so were paid. When I look at the wording of the deduction statement I take the view that the onus is on the employee to make sure that the respondent's property is returned to the respondent. That (it seems to me) would involve them paying any costs of doing so. That means, for example, any postal costs or any courier costs.

27. I find therefore that the respondent was entitled to deduct the sum of £150 from the claimant's final payment. I have noted the respondent has said that she would be happy to repay that £150 once the manual is returned, so if that is done that may well resolve that issue.

Conclusions

28. My starting point therefore is that the respondent was entitled to make deductions of £150 from the final payment of £1,341.26. That gives a balance by my calculation of £1,191.26. I then turn to consider whether that award should be increased under s.207A for an unreasonable failure by the respondent to comply with the ACAS Code of Practice on grievance and disciplinary matters.

29. In this case the claimant raised her grievance while she was still employed by the respondent. It was during her period of notice but was on 29 June 2020 according to the respondent's own response to that grievance. I do accept that at page 45 there is a response to the grievance by the respondent. Crucially, however, that response denies the claimant a right of appeal. What is more, when the claimant did seek to write in response to raise further matters she received a very abusive email from the respondent's (meaning Ms Tomkinson's) email account. Although I accept the email is not from Ms Tomkinson herself, the respondent must take responsibility for that email as it is clearly a response from the respondent to an employee. I therefore consider whether the employer has failed to comply with the Code of Practice on grievance matters.

30. Mr Ashton submitted that the failure to give an appeal was not a breach because by that point the claimant was not an employee. It seems to me however that there is nothing in that Code to suggest it does not apply to former employees, particularly when the grievance process started when they clearly were an employee. I take into account the fact that Ms Tomkinson did respond to the initial grievance, however the claimant was then denied a right of appeal (in any form) and when she sought to follow up she was sent a very abusive email. I do take into account and accept that Ms Tomlinson was reliant on other advisers as to the process to follow and that there was not a complete failure in this case to respond to the initial grievance.

31. The compensation can be uplifted by up to 25%. In this case taking all the factors into account I have decided the appropriate uplift to apply is 10%. That being so, and applying that to £1,191.26, by my calculation that means that the total amount I am awarding to the claimant is £1,310.38.

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Employment Judge McDonald
Date: 26 November 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
1 December 2020

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2413473/20
Miss L Hodgson v Hale Franchise Limited t/a Hobs Salons

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: 1 December 2020

"the calculation day" is: 2 December 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

Code V

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.