



EMPLOYMENT TRIBUNALS

Claimant: Mr I Husain
Respondent: Excel Parking Services Limited

AT A HEARING

Heard at: Leeds by CVP video conferencing **On:** 12th October 2022
Before: Employment Judge Lancaster

Representation

Claimant: Did not attend, but applied for the hearing to proceed in his absence
Respondent: Mr M Attwood, technical director with Ms R Redman, HR administrator

JUDGMENT

The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay him the sum of £174.10.

REASONS

The Claimant's monthly salary in arrears was ordinarily due by the 10th of the month, and was customarily paid slightly earlier on or about the 6th.

Payment, in accordance with the Company Handbook, was made on the basis of the normal 48 hours per week, but then adjusted the following month to reflect the actual hours worked when the time sheets had been submitted.

On 6th July 2022 the Claimant was suspended pending an investigation into alleged falsification of time sheets, and therefore possible overpayment.

The contract of employment expressly provides that payment of salary may be temporarily withheld where there is a dispute as to the amount payable or where contractual deductions fall to be made.

The Respondent was therefore contractually entitled to delay the payment due for June, which would also have included any adjustments to the May figures. As at 10th July 2022 there was therefore no sum yet properly payable.

Case: 1803666/2022

On 6th July 2022 the Claimant resigned with immediate effect. A disciplinary hearing was conducted in his absence on 19th July 2022 which found that he was guilty of gross misconduct by reason of his having submitted daily reports stating that he was working at various locations but where the vehicle tracker records showed him to have been in a completely different place at those times. From that the Respondent concluded that in the Months May, June and July he had not in fact worked for a total of 104.75 hours when he said he had.

On 4th August 2022 the Claimant was notified in writing that payment for those 104.75 hours would be deducted from his final salary. No monies were paid to the Claimant on 10th August 2022, the next payroll date, and by a further letter the following day, 11 August 2022, he was notified that this deduction had been quantified at £995.13, calculated at the then hourly rate of £9.50

Section 3.4 of the Employee Handbook, which is stated to be an integral part of the contract unless otherwise indicated, is in my view to be taken to include deductions such as these for hours held after enquiry not to have actually been worked, as well as the more usual situation where discrepancies would be apparent on the face of the submitted time sheets. It is therefore an authorised deduction under section 13 (1) (a) of the Employment Rights Act.

The letter of 11th August 2022 also clearly sets out the further deductions that had also been made from the Claimant's final salary and as against a nominal payment due for 144 hours in June, assuming 48 hours per week less unpaid sickness, and a further 34 hours for the few days worked in July and a tax rebate of £248.00. That showed that in fact the Claimant owed £115.90, which is why he received no payment at all.

Although, in his letter to the Tribunal today, the Claimant appears to dispute the non-payment for days off sick, he is not here to give any evidence and the ET1 in fact also claims for only 144 hours worked in June.

The adjustment to the May salary of minus £142.50 is the standard reconciliation for hours actually rostered to be worked in that month as against the standard 48 hour week. Under clause 3.4 of the Handbook that is clearly therefore also an authorised deduction under section 13 (1) (a).

The deductions in respect of private mileage for May and June (£110.00 and £159.60 respectively) are made in accordance with the Vehicle and Driver Policy at section 10 of the Handbook and are based on the Claimant's own submitted records for those months. These are clearly therefore also an authorised deduction under section 13 (1) (a).

The deduction of £200.00 for private mileage in July is however purportedly made under section 10.2 of the Policy which claims to reserve a discretionary right to deduct £200 where no mileage report sheets are submitted for the month. This is therefore expressly a discretion and not a contractual provision. I consider that even if it were covered by the apparent consent to deductions that is in clause 11 of the Contract of Employment it is in any event governed by section 7.27 of the Handbook. This provides: "Any contractually agreed deduction from your salary or final monies will only be processed where the Company has your signed contractual approval to make such a deduction and/or where there is good reason or firm evidence to show that an actual debt or loss has been incurred". The Claimant has never given his signed approval to the making of this specific deduction. Nor is there good reason or firm evidence to show that any tax liability has in fact been incurred by the

Case: 1803666/2022

Respondent, let alone that it is as much as £200, given that the period of vehicle use in question is only 6 days and the £200 discretionary deduction is postulated upon failure to submit records for the entire month. This is therefore, on a proper construction of the provisions of the contract and the Handbook, an unauthorised deduction from wages.

The Handbook provides for the recoupment of costs incurred in remedying any damage or poor condition of the company vehicle and that the driver is personally responsible for fines and parking charges. The invoiced valeting costs of £15.00 and the motoring charges of £105.00 are therefore properly deducted.

However, the purportedly reserved right to add discretionary administration costs of up to £50.00 is in my view also subject to section 7.27. Again, there is neither signed approval for the specific deduction nor good reason or firm evidence to show that any additional cost has in fact been incurred by the Respondent: all this work will have been covered by salaried staff in the ordinary course of their duties. The three claims for administrative costs of £30.00 each are therefore all unauthorised deductions.

There is express provision for recoupment of excess holidays taken at part 6 of the Handbook. I have no reason to doubt the calculation that £197.60 is thereby recoverable.

The attachment of earnings of £40.07 is authorised under section 14 (3) of the Employment Rights Act 1996.

A total of £290.00 has therefore been deducted without proper authorisation, leaving an outstanding balance due to the Claimant of £174.10.

EMPLOYMENT JUDGE LANCASTER

Date: 12th October 2022