



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr G Embleton

AND

DP Plant Hire Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Teesside

On: 14 March 2017

Before: Employment Judge Johnson (sitting alone)

Appearances

For the Claimant: In person (Assisted by his father Ian Embleton)

For the Respondent: Mr W Pickering (Site Manager)

JUDGMENT

- 1 The claimant's complaint of unauthorised deduction from wages is well-founded and succeeds. The respondent is ordered to pay to the claimant the sum of £1,000 in respect of wages unlawfully deducted. This is a net amount and the respondent shall be responsible for the payment of any income tax and national insurance contributions thereon.
- 2 The claimant's complaint of breach of contract (failure to pay notice pay) is dismissed upon withdrawal by the claimant.
- 3 The respondent is ordered to pay to the claimant the further sum of £390 by way of reimbursement of the Employment Tribunal fees.

REASONS

- 1 By claim form presented on 27 December 2016, the claimant brought complaints of unauthorised deduction from wages and breach of contract (failure to pay notice pay). The respondent defended the claims. The claimant alleges that during the last four weeks of his employment in October 2016, the respondent deducted from his wages the total sum of £1,000 and further that he was not paid in lieu of notice when his employment was terminated by the respondent. The respondent's case is that in October 2015, the claimant was absent from work for four weeks, during which he would ordinarily have been in receipt of statutory sick pay. The respondent says that it agreed to loan to the claimant the sum of £500 for each of those weeks, on condition that it would be repaid by the claimant as and when he was able to do so.
- 2 The claimant's employment with the respondent began on 3 March 2014. This was the second occasion when the claimant had been employed by the respondent. Mr Pickering confirmed that on this latter occasion, the claimant had not been provided with a statement of his terms and conditions of employment, although Mr Pickering insisted that the claimant had received a copy during his first period of employment with the respondent. Mr Pickering was unable to produce today a copy of any statement of terms and conditions of employment relating to the claimant. The Tribunal accepted that this failure was no more than an oversight on the part of the respondent.
- 3 The claimant was employed as a scaffolder. His weekly gross pay varied between £520 per week and £620 per week. Mr Pickering produced a document marked R1 which was described as an "employee history report (detail)" relating to the claimant. The first entry is 10 April 2015 and the last entry is 28 October 2016. The document shows the sums paid to the claimant each week between those dates and includes the gross pay, employer's national insurance contributions, employee's national insurance contributions, income tax deducted and net pay for that week.
- 4 The document R1 shows that the claimant was paid the sum of £500 on each of 16 October 2015, 23 October 2015, 30 October 2015 and 6 November 2015. Mr Embleton confirmed to me that he had not been at work during those weeks as he was unable to work due to illness, although he had attempted to work on one day but had been unable to do so.
- 5 Mr Embleton and Mr Pickering both confirmed that the respondent does not have any contractual sick pay scheme, the effect of which is that employees who are absent due to illness would only receive statutory sick pay for the relevant period of absence. In October 2015 the rate of statutory sick pay was approximately £63.00 per week. Mr Embleton confirmed that ordinarily during the period of absence in question, he would have received £63.00 per week.
- 6 The claimant accepts that he received from the respondent for each of those four weeks when he was absent, the sum of £500, which after deductions left him with £320.83. The claimant informed me today that the respondent had agreed to pay him his full wages during his period of absence because he has three children and would otherwise have been unable to support them. Mr Pickering insisted that, at the claimant's request, the respondent had agreed to loan him

the sum of £500 each week and that the claimant had agreed to repay that load “as and when he was able to do so.”

- 7 Mr Pickering accepted that the respondent had recorded these payments as “wages” in its statutory records. Mr Pickering agreed that the respondent had never asked the claimant to start repaying that money until he handed in his notice in October 2016. Most importantly, Mr Pickering accepted that there was no written record of any such loan agreement. It had never been reduced to writing and had never been recorded in any exchange of letters or other documents between the claimant and the respondent. Mr Pickering confirmed that the claimant had never signed any document confirming that this was a loan, confirming that he had agreed to repay the loan and critically, confirming that any outstanding sums could be deducted from his wages.
- 8 At the beginning of October 2016, the claimant informed the respondent that he was handing in his notice and that his employment would come to an end at the end of October 2016. It was only then that the respondent sought to recover from the claimant those sums which had been paid to him in October 2015. The respondent deducted from the claimant’s wages for the week ending 7 October the sum of £200, for the week ending 14 October the sum of £200, for the week ending 21 October the sum of £200 and for the week ending 28 October, the sum of £400. The total sum deducted was £1,000.
- 9 Mr Pickering confirmed that the respondent had made those deductions from the claimant’s wages. Mr Pickering informed me that, once the claimant handed in his notice, Mr Pickering had asked him how he proposed to repay the loan and that Mr Embleton had agreed to the money being deducted from his wages. Mr Embleton denied ever agreeing to the sums being deducted from his wages. Mr Embleton maintained that the monies had been paid to him as wages and had never been a load. Mr Pickering again confirmed that, even at this juncture, the claimant had not confirmed in writing his agreement to any sums being deducted from his wages.
- 10 Section 13 of the Employment Rights Act 1996 states:-
 - “(1) An employer shall not make a deduction from wages of a worker employed by him unless –
 - (a) 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
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction”.
- 11 Mr Pickering was unable to produce any contract of employment between the respondent and the claimant which contained a provision whereby the respondent could make any deductions from the claimant’s wages in these circumstances. Mr Pickering confirmed that there was no such provision in any contract. Mr Pickering was unable to produce any document signed by the

claimant confirming his agreement in writing to the making of any such deductions. Mr Pickering confirmed that the respondent did not possess any such document.

- 12 In all the circumstances of this case, it is unnecessary for me to make any finding as to whether or not the sums paid to the claimant in October 2015 were paid by way of wages or by way of a loan. Should the respondent wish to recover any of those sums on the basis that they were indeed a loan, then the appropriate proceedings will have to be commenced in the County Court and the respondent will have to satisfy the County Court that it is more likely than not that the sums in question were paid to the claimant by way of a loan and not in respect of wages. In these proceedings before the Employment Tribunal, I only require to be satisfied that the provisions of section 13 of the Employment Rights Act 1996 have been met. The claimant was a worker employed by the respondent. The claimant carried out work for the respondent and in return for that work he was entitled to be paid his wages. Sums were deducted from the claimant's wages in circumstances where there was no contractual provision which entitled the respondent to do so and in circumstances where the claimant had not previously signified in writing his agreement or consent to the making of any payment or deductions. The deductions made by the respondent are therefore unauthorised deductions from the claimant's wages.
- 13 Mr Embleton confirmed that he had suffered no loss from the alleged early termination of his notice period and that claim is dismissed upon withdrawal by him.
- 14 The respondent is ordered to repay to the claimant the sums deducted which total £1,000. The claimant has paid Employment Tribunal fees in the sum of £390 to bring these proceedings and I am satisfied that the respondent should reimburse the claimant those fees.
- 15 I am not satisfied that this a case where there should be any uplift on the sums awarded to the claimant, due to the respondent's failure to provide a written statement of terms and conditions of employment. I accept Mr Pickering's explanation that this was an oversight only.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
20 March 2017**

Case Number: 2500034/2017

**JUDGMENT SENT TO THE PARTIES ON
22 March 2017
AND ENTERED IN THE REGISTER
G Palmer
FOR THE TRIBUNAL**