

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No S/4104592/17**

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**Held in Glasgow on 26 January 2018**

**Employment Judge: Lucy Wiseman**

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**Ms Rebecca Williams**

**Claimant  
In Person**

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**Mrs Nicola Brown  
t/a Zeste Beauty**

**Respondent  
In Person**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

I decided the complaint regarding an unauthorised deduction from wages was well founded, and I order Mrs Brown, trading as Zeste Beauty, to pay to the claimant the sum of £386.30 (Three Hundred and Eighty Six Pounds, Thirty Pence).

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**REASONS**

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1. The claimant presented a claim to the Employment Tribunal alleging there had been an unauthorised deduction from her wages.

2. The respondent entered a response admitting training costs had been deducted from the claimant's final salary, but denying the deduction was unauthorised.

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3. I heard evidence from the claimant and the respondent, and I was referred to a number of documents produced by each party.

4. I, on the basis of the evidence before me, made the following material findings of fact.

**Findings of fact**

5. Mrs Nicola Brown is the owner of Zeste Beauty.

6. The claimant commenced employment with the respondent on 2 August 2016. The claimant was employed as a (qualified) Beauty Therapist. She worked an average of 31 hours per week at the rate of £6.70 per hour, and took home a net monthly pay of, on average, £933.

7. The claimant signed an Employment Contract (R1). The contract contained the following clauses:-

*“ Notice - .. following the successful completion of this trial period, you will be required to give thirty days’ notice to terminate your employment. ..Moneys due to Zeste Beauty will be deducted if the notice period is not worked by the employee. Any moneys due to Zeste Beauty will be deducted from any outstanding salary due paid. This will include failure to work notice, training costs, treatment and product costs. By signing the copy of this letter you are confirming your agreement to Zeste Beauty to automatically deduct any outstanding balance from your salary.*

*Benefits – Staff training course and qualification costs will be paid by Zeste Beauty and the staff qualification will remain with Zeste Beauty for 2 years. If you leave employment within 2 years of receiving the qualification the full training cost will be paid by yourself to Zeste Beauty.”*

8. The respondent used Dermalogica products in the salon. The products were used in treatments and were available for clients to purchase. Mrs Brown entered into an agreement with Dermalogica which meant that in return for purchasing products to the value of £2,500, she was authorised to use the products for treatments in the salon, and entitled to free training for herself and her employees.
9. Mrs Brown and one other employee have attended Dermalogica training courses.
10. Mrs Brown and the claimant agreed she would attend a four day intensive course at Dermalogica. This took place on 31 October, 1, 2 and 3 November 2016.
11. The claimant thereafter took advantage of the free training and booked herself on to a further 13 courses. The claimant attended these courses in her own time, either on her day off or having taken a day's annual leave.
12. The claimant was offered and accepted a new job which would provide better opportunities for earning more money.
13. The claimant informed Mrs Brown on Saturday 22 April 2017 that she was going to leave to take up other employment. Mrs Brown told the claimant she would consider whether she could match the terms the claimant was being offered, but also reminded the claimant she would need to work her period of notice. The claimant confirmed she was happy to do so.
14. Mrs Brown spoke to the claimant on Tuesday 25 April to confirm she could offer her more hours and money to stay. The claimant agreed to stay, but later that night, she phoned Mrs Brown to say her mind was made up about leaving.

15. Mrs Brown told the claimant, on Wednesday 26 April, that she was disappointed about the claimant's decision. She told the claimant she would need to do the clients with appointments already booked on the system. The claimant agreed and said she would work her notice.

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16. Mrs Brown operates a live booking system for appointments in the salon. Mrs Brown blocked off time when the claimant did not have any appointments, so that customers were not able to access the system online or via Facebook and make an appointment with the claimant. Mrs Brown intended to ask the claimant to carry out other duties in the salon during the period of her notice.

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17. The claimant took exception to Mrs Brown blocking her off the system. The claimant felt she was being prevented from doing her job, and did not want to sit doing nothing for the period of notice.

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18. Mrs Brown received a voicemail message from the claimant's mother on Wednesday evening, informing her the claimant would not be returning to work.

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19. The claimant's mother delivered a letter (R4) to Mrs Brown the following day. The letter stated:-

*"Having advised you on Saturday 22<sup>nd</sup> April that I wished to terminate my employment with you, I now wish to let you know that I shall end my employment with effect today, Wednesday 26<sup>th</sup> April. I am aware that I shall forego my weeks lying time, but as you are no doubt aware, I am entitled to full payment up to close of business, Wednesday 26<sup>th</sup> April, in addition to payment in lieu for annual leave accrued. ..."*

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20. The claimant commenced alternative employment the following day (27 April 2017).

21. The claimant received a letter from Mrs Brown dated 18 May, but received on 13 June (R5). The letter informed that claimant that as she had failed to give the required period of notice, this would result in the loss of one week lying time. Further, that deductions would be made from the final salary.

22. The letter enclosed a final pay slip (C9) showing the claimant's wages, holiday pay and commission amounted to £386.30, but a deduction of £440 had been made from this in respect of training costs.

23. Mrs Brown calculated the sum of £440 by multiplying the number of days training the claimant had attended (11 days = 22 sessions) by the cancellation fee charged by Dermalogica (£20 per session).

#### **Claimant's submissions**

24. The claimant considered it was not correct to deduct a sum of money from her wages in respect of training costs, when the employer had not paid for the courses. The claimant sought payment of the sum of £386.30 plus one weeks lying time (£200) and two days loss of earnings (£115.50).

#### **Respondent's submissions**

25. Mrs Brown was disappointed the case had come this far. She considered the contract made clear that training costs had to be paid. She acknowledged there had been no direct cost for the training the claimant had attended, but argued the £2,500 sum she had had to pay for the account to be opened with Dermalogica had a benefit for all staff. She calculated the fairest way to work out the cost had been to base it on the cancellation fee because this reflected the value Dermalogica attached to it.

#### **Decision and notes on the evidence**

26. I firstly had regard to the terms of Section 13 Employment Rights Act which provides that an employer shall not make a deduction from wages of a worker employed by him. However, this prohibition does not include deductions authorised by statute or contract, or where the worker has previously agreed in writing to the making of the deduction.

27. The claimant's case is that an unauthorised deduction was made from her wages when Mrs Brown deducted the sum of £440 from her final pay in respect of training costs. Mrs Brown accepted she had made this deduction but relied on the contract entitling her to do so.

28. There was no dispute between the parties regarding the fact the training courses attended by the claimant did not directly cost the respondent. The courses were free because Mrs Brown had an account.

29. I acknowledged the logic of Mrs Brown's position which was that the courses were only free because she had paid money to open an account, accordingly there was an indirect cost to the business. I also acknowledged that there was a rationale for the calculation of £440.

30. I, however, could not accept Mrs Brown's position that she was entitled to make a deduction from wages for a sum which had not been paid, or a cost which had not been incurred. This was not a case where a training cost had to be paid by Mrs Brown to enable the claimant to attend the courses. Furthermore, whilst there was an explanation for the way in which the sum of £440 had been calculated, the fact was that the claimant had not cancelled attendance at the course and the cost had not been incurred by the respondent.

31. I acknowledged the contract entitles Mrs Brown to recover "*the full training costs*" if an employee leaves within two years, however, in order to rely on that clause there must be an actual cost, rather than a notional cost.

32. I was satisfied final salary properly payable to the claimant was the sum of £386.30 as per the final pay slip. The deduction was £440 was unauthorised.
- 5 33. There was some discussion during the Hearing about notice; however, I noted there had been no deduction from wages in respect of notice, and accordingly it is not a matter I have to consider further.
34. The claimant sought payment of one weeks lying time. The evidence  
10 regarding lying time was thoroughly confused. The claimant invited me to accept that there had been no discussion of lying time at the commencement of her employment, but, in October 2016, she had been paid only three weeks wages because a lying time week had been put into place.
- 15 35. Mrs Brown invited me to accept there had not been a lying time week at the commencement of employment, and she knew nothing of any change to that in October.
- 20 36. The confusion surrounding this matter was compounded by the fact that in the claimant's letter of 26 April (R4) she stated "*I am aware that I shall forego my weeks lying time ..*". In Mrs Brown's response dated 18 May (R5) it was stated "*..you were contracted to give 28 [sic] days notice which you confirmed you were unable to commit to, resulting in the loss of one weeks lying time.*"
- 25 37. I considered the documents pointed to the fact the parties knew there was a week lying time, and that the claimant knew she would forfeit the week lying time when she failed to give/work the period of notice.
- 30 38. I therefore concluded the claimant would not have been entitled to receive payment of one week's lying time in addition to the final salary.

39. The claimant also sought payment of two days lost earnings for attending the Tribunal. I decided I could not deal with this matter because the issue to be determined is one of unauthorised deductions from wages, and lost earnings does not fall within that jurisdiction.

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40. I, in conclusion, decided the complaint was well founded. Mrs Brown made an unauthorised deduction from the claimant's wages when she deducted notional training costs of £440. I accordingly order Mrs Brown trading as Zeste Beauty to pay to the claimant the sum of £386.30.

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**Employment Judge: Lucy Wiseman**  
**Date of Judgment: 05 February 2018**  
**Entered in register: 05 February 2018**  
**and copied to parties**

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