



EMPLOYMENT TRIBUNALS

Claimant: Mr F Nur

Respondent: Brisk Logistics Ltd

Heard at: London Central (by video) **On:** 12 January 2022

Before: Tribunal Judge Jack, acting as an Employment Judge

Representation

Claimant: In person

Respondent: Not present or represented

RESERVED JUDGMENT ON LIABILITY

1. The Respondent made an unlawful deduction from the Claimant's wages.
2. The Respondent made an unlawful deduction from the Claimant's wages by:
 - a. failing to repay the sum of £1,000 deducted as a deposit;
 - b. deducting £30 in respect of a penalty charge;
 - c. paying the Claimant less than his daily rate of £100.
3. So that the tribunal can determine the remedy to be awarded, the Claimant is required to provide: (i) details of the payments made which were at a rate of less than £100 a day, so that the total amount of the deductions from his wages made can be determined; and (ii) details of any financial loss which he has suffered (e.g. interest or late payment charges) and an explanation of why he considers that they are due to the unlawful deductions which the Respondent made. **The Claimant must provide these details no later than 4 February 2022.**

REASONS

Claims

1. By a claim form dated 7 October 2021 the claimant brought a claim for unlawful deduction of wages. The complaint was that: (i) a £1,000 deposit had been deducted from his wages; (ii) a £30 bus lane charge had been deducted from his wages; (iii) more than £1,000 had been deducted from his wages as a result of his being paid less than the agreed rate of £100 a day. The Claim Form also stated that the claimant had been in debt as a result.

Procedure

2. The Tribunal sent a copy of the Claim Form to Mr Andre Raposo, director of the Respondent, on 3 November 2021. No response was received. The Tribunal sent a letter to the Respondent on 6 December 2021. No response has been received and the Respondent did not attend the hearing. I therefore considered, under rule 21, whether on the available material a determination could properly be made of the claim or part of it.
3. Various aspects of the claim were not clear to me, so I clarified them with the Claimant at the hearing and reserved judgement.

Findings of Fact

4. The Claimant first started working for the Respondent as a driver on 21 October 2020. The arrangement at that time was that the Claimant was driving his own van.
5. The Claimant began working for the Respondent again on 1 July 2021, and worked until 20 September 2021. The arrangement this time was that the Claimant drove a van supplied by the Respondent. The wages which were agreed verbally were £100 a day.
6. The Claimant was not expecting a deposit to be deducted from his wages in respect of the van that he was driving. However a total deposit of £1,000 was deducted from his first two weeks wages (i.e. £500 was deducted in each of his first two weeks).
7. A deduction of £30 was made from the Claimant's wages in respect of a penalty notice for 5 July 2021 for vehicle BT18 DNY. However, the claimant was driving a different vehicle with a different registration number on that day, and pointed this out to the Respondent.
8. The Claimant was on occasion paid less than £100 a day. On occasion he was only paid £50 a day.
9. When the Claimant returned the van that he had been driving, the Respondent's initial assessment was that there was no problem with its condition. The Respondent has not since then communicated a different assessment to the Claimant.

The Law

10. Section 13(1) of the ERA states:

“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. Section 13(1)(a) permits deductions if they are ‘*required or authorised to be made by virtue of a statutory provision*’.

12. Section 13(3) ERA provides:

“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

13. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Where a tribunal finds a complaint under section 23 ERA well founded it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deductions made in contravention of section 13 ERA (s24(1)(a) ERA).

14. The essential characteristic of wages is that they are consideration for work done: *Delaney v Staples* [1992] IRLR 191.

Conclusions

15. The Claimant did work personally for the Respondent, as a driver. He was therefore a worker for the purposes of the provisions relating to unlawful deduction of wages.

16. Even if there was a contract permitting a deduction of a deposit for the van, it was clearly an implied term of the contract that the wages from which the deduction was made would be paid when the van was returned, unless there was a dispute about its condition. The van was returned, and there was no dispute about its condition. So even if the initial deduction of the deposit was lawful, the wages paid after the van was returned were less than the total amount of wages properly payable to the Claimant on that occasion. That is, a deduction of £1,000 was made after the van was returned. That deduction was not authorised by a statutory provision. For the reasons just given, it was not authorised by the contract. Nor was it one to which the Claimant had agreed to in writing. It was therefore unlawful.

17. It would be wrong to think that the failure to pay the deposit to the Claimant on the return of the vehicle is not a failure to pay *wages* and is instead simply the failure to repay a deposit. The amount of £1,000 is

consideration for work already done for the Respondent, and so the failure to pay the £1,000 is a failure to pay wages.

18. Even if there was a contract permitting a deduction of a penalty charge, it was clearly an implied term of the contract that deductions would only be made in respect of penalties imposed in respect of vehicles which the Claimant was driving. Here a deduction was made in respect of a charge imposed for one vehicle when the Claimant was driving a different vehicle on the day in question. That deduction was not authorised by a statutory provision. For the reasons just given, it was not authorised by the contract. Nor was it one to which the Claimant had agreed to in writing. It was therefore unlawful.
19. The wages which had been agreed were £100 a day. On occasion he was paid less than the £100 a day which was properly payable to him. The amount of the shortfall on these occasions is a deduction. These shortfalls were not authorised by statute, or by the contract, and were not deductions to which the Claimant had signified his agreement in writing. They were therefore unlawful.

Remedy

20. Under rule 21 I can require the parties to provide further information, if it is needed to properly determine the claim.
21. The claim form says that more than £1,000 was deducted from the Claimant's wages as a result of his being paid less than the agreed rate of £100 a day. However the Claimant has not said specifically how much was deducted. The Claimant is therefore required to provide details of the payments made which were at a rate of less than £100 a day, so that the total amount of the deductions made can be determined. **The Claimant must provide these details no later than 4 February 2022.**
22. The claim form also says that the claimant has been in debt as a result of the deductions which I have found to be unlawful. The tribunal is able to order the Respondent to pay to the Claimant an amount to compensate the Claimant for any financial loss which he has suffered which is due to the unlawful deductions from his wages: s. 24(23) ERA. The Claimant is therefore required to provide details of any interest or late payment charges which he has paid and to say why he considers that they are due to the unlawful deductions which the Respondent made. **The Claimant must provide these details no later than 4 February 2022.**

Tribunal Judge Jack

14 January 2022

JUDGMENT SENT TO THE PARTIES ON

17th Jan 2022.

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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