Case no. 2301155/2017

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT (sitting alone)**
BETWEEN:

Mr C Skillicorn

Claimant

AND

Centronic Ltd

Respondent

ON: **13 October 2017**
Appearances:
For the Claimant: **In person**
For the Respondent: **Ms S Haynes, Finance Director**

JUDGMENT

The Judgment of the Tribunal is that the claim succeeds and the respondent shall pay to the claimant the sum of **£1,676.82.**

REASONS

1. This decision was delivered orally on 13 October 2017. The respondent requested written reasons.

2. By a claim form presented on 25 April 2017 the claimant Mr Craig Skillicorn claimed holiday pay, breach of contract and unlawful deductions from wages.

The issues

3. The issues were clarified with the parties at the outset of this hearing as follows:

4. Did the respondent make an unlawful deduction from wages by failing to reimburse the claimant for £294.46 of expense relating to flight upgrades and expenses incurred on company business?

5. Did the respondent make an unlawful deduction from wages by failing to reimburse the claimant for £107.51 of expense relating to alcohol purchases?

6. Has the respondent failed to pay the claimant the sum of £1,083.25 for holiday pay?

7. Does the respondent owe the claimant the sum of £591.60 for vehicle repairs? The claimant accepts that the respondent is entitled to retain an amount for "careless driving" under the terms of his contract of employment but says that this does not amount to £591.60. The claimant accepts that around £250-£300 would be attributable to this.

Witnesses and documents

8. The tribunal heard from the claimant. For the respondent the tribunal heard from Ms Sian Haynes, Finance Director and from Mr Darryl Horn, HR Manager.

9. There was a well prepared bundle of documents of 198 pages which included the witness statements.

Findings of fact

10. The claimant worked for the respondent as a commercial director from May 2013 until 6 January 2017. There is a dispute as to the claimant's start date as to whether it was 15 or 28 May 2013 but it is not material to the determination of the matters in issue in this case.

11. The respondent is a manufacturer of radiation detectors and is based in Croydon. It employs 118 employees at its Croydon site.

Background

12. On 8 August 2016 Ms Sian Haynes joined the respondent as Finance Director. In September 2016 she reviewed all the respondent's company credit card expenses and identified some anomalies within the claimant's expenditure.

13. On 20 September 2016 Ms Haynes issued a new Expenses Policy to all members of staff. This set out details of what the respondent would reimburse. The Expenses Policy in place when the claimant joined the respondent was issued in March 2010.

14. On 24 October 2016 the respondent's HR and finance manager Ms Bromley and Finance Director Ms Haynes had a meeting with the claimant to discuss his expenses. This postdates the dates upon which the expenses in question in these proceedings were incurred.

15. On 26 October 2016 the claimant resigned from the respondent's employment. He was placed on garden leave on 27 October 2016. Taking into account his notice period, his last day of service was 6 January 2017.

Cost of flight "upgrades"

16. The claimant claims what was described in the pleadings as the cost of two flight "upgrades".

17. The Expenses Policy of March 2010 in place at the relevant time (page 49-50) states "*Travel to be by the most economical route/class".* There was no evidence from the respondent to show that the claimant was issued with the March 2010 policy. His evidence was that he was not. I find that he was not issued with the policy but he knew that he should travel by the most economical route or class.

18. The factual background is that in late March 2016 the claimant missed an Air Canada flight to Toronto as he was stuck on the M25. It was part of a wider business trip including the States and China. At the airport the claimant was told that he could re-route via Montreal. This was a two part cost, firstly an admin fee for the change of ticket and secondly the balance due as the ticket to Montreal was more expensive. The claimant's evidence was that he flew economy class.

19. The sum deducted by the respondent in respect of these flight charges is £294.46. Included within these charges is the sum of £100 in respect of the claimant booking his preferred seat in economy namely an aisle seat at £50 per booking, one on 23 February 2016 and one on 29 March 2016.

20. I find that the claimant flew economy and he did not upgrade either to economy plus (if this class exists on Air Canada) or business class. The sum of £194.46 is a reasonable amount that an airline is likely to charge for a missed flight and rebooking via a different route on the day and when the ticket price for the alternative flight is slightly more expensive. This was not the claimant seeking to travel in a more expensive class within the aircraft but dealing with the immediate problem of having missed a flight due to being stuck on the M25 and making sure that he could complete his business trip.

21. I find that as the claimant was aware that he needed to travel by the most economical class and route possible, and that he took a risk in booking his preferred choice of an aisle seat, that the respondent would not reimburse the £50 booking fee. I therefore find that the claimant legitimately expended £194.46 on the flight change and that this sum was unlawfully deducted from his wages. The sum of £100 for seat choice was a recovery of expenses overpaid.

Purchase of alcoholic beverages

22. The Expenses Policy states that employees are not permitted to claim reimbursement of the purchase of alcohol unless they are entertaining clients or customers. The policy states (page 50 bullet point 4) "*The company will only allow alcohol as a reimburseable expense whilst entertaining customers/clients or when accompanying an evening meal".*

23. Although conversations took place with the claimant about his expenditure after Ms Haynes joined the respondent company, the expenses in question predate those conversations.

24. The bundle contained some receipts for expenditure whilst travelling and a copy of the claimant's company credit card account. One of the expenses was for $28.07 at Carmel Valley Spirits in California (page 170). The respondent admits that it has not looked up this organisation and has simply assumed that expenditure at an organisation including the word "Spirits", must be a purchase of alcohol. There is nothing in the receipt to show what was actually purchased on 28 March 2016 at that outlet. It was not raised with the claimant until two or three days before the deduction from salary was made in December 2016. I find that it is a step too far to look at the amount and the name of the outlet and assume that this was for the purchase of alcohol.

25. The same applies to a purchase at Lee Kitchen in Ontario for $26.04, to the Sloe Bar in Victoria (London) on 6 July 2016 and to purchases made at a bar in Terminal 3 at Heathrow (page 167). Just because purchases are made at an airport bar does not automatically mean it is the purchase of alcohol. The claimant could have bought a soft drink and a sandwich. The purchase amounts are around the £10 mark.

26. No attempt was made to query these items of expenditure with the claimant prior to his final salary payment. All of the payments in question were at least six months old and in many cases significantly predated this.

27. I find that the respondent cannot make the evidential connection that the claimant has been purchasing alcohol when he should not have been doing so. Attempts were not made at the relevant time to check it with him. The more time that passes, the more difficult it is to recall what he spent for a relatively small amount during travels on a particular day. I therefore find that these charges were unlawfully deducted from his wages.

<u>Holiday pay</u>

28. Holiday forms are made available to the respondent's employees at the start of the year. A copy is held by payroll to record holidays taken. The holiday year runs from 1 April to 31 March in each year.

29. The procedure for booking annual leave is that the employee completes the form and passes it to their line manager for approval. The line manager signs his/her approval and the form is passed to payroll so that the holiday can be recorded within their records.

30. At the termination of employment, a final holiday pay calculation is undertaken by payroll.

31. The respondent calculated that the claimant had taken 25 hours of holiday in excess of his entitlement at the rate of £43.33 per hour causing them to make the deduction of £1,083.25.

32. The respondent accepts that the discrepancy lies in the fact that in September 2015 the claimant took his second period of paternity leave from the respondent. He took his first paternity leave in November 2013 and was paid full pay for this. Although the respondent said there was a paternity leave policy at the respondent it was not in the bundle and the claimant had never seen it.

33. When the claimant was on paternity leave in September 2015 he received an email from Ms Gina Bromley of HR telling him that his pay would be reduced to Statutory Paternity Pay. Being on paternity leave at the time, the claimant asked that this not be deducted from his salary and that in the meantime it be classified as annual leave, which meant he would be paid in full, and he would discuss it with the respondent when he got back from paternity leave.

34. The claimant subsequently had a discussion with Ms Bromley and the Managing Director Mr Crawford. They agreed that his paternity leave would not be taken from his annual leave.

35. The respondent suggests that the claimant should not receive full paternity pay when other employees do not receive this. I can make no finding as to what other employees do or do not receive when the policy was not in the bundle before me. I accept the claimant's evidence that he did not know what other employees did or did not receive when on paternity leave.

36. The claimant draws to my attention inconsistencies in written evidence from Ms Bromley and Mr Crawford neither of whom gave evidence to this tribunal. Their written statements contradict each other as to whether or not discussions were held with the claimant. I have to prefer the claimant's first-hand evidence as he was the live witness before me and Ms Bromley and Mr Crawford were not.

37. I accept the claimant's evidence and find that there was no discussion with him about the rate of his pay during paternity leave and all he had to base this on was his experience of taking paternity leave in November 2013 when he had received full pay. I find based on his evidence, that he was never told that he would only receive Statutory Paternity Pay for his second period of paternity leave.

38. The deduction of holiday relates to paternity leave which the claimant was entitled to take under the Paternity and Adoption Leave Regulations 2002. Statutory paternity leave cannot be converted into annual leave and I therefore find that the claimant should not be treated as having taken annual leave when he was on paternity leave. The respondent has the benefit of HR advisers. The deduction of his holiday pay in this respect was therefore unlawful.

Damage to company vehicle

39. The respondent provided the claimant with a lease car. This was a six-month old Jaguar XF-R Sport D. It was collected by the respondent from the claimant on 14 December 2016 and was found to have sustained damage to the front bumper, one of the alloy wheels, the wheel arch and the driver's seat. The lease company told the respondent that it would be cheaper to carry out the repairs independently rather than returning the lease car in a damaged condition.

40. The respondent arranged for the repairs to be carried out independently at a cost of £591.60.

41. The Expenses Policy of September 2016 states at clause 11.2 (page 56) "*Company cars belong to the company under lease agreement, and as such, any careless damage caused to the vehicle by the driver (i.e. not a third party) will be expected to be paid for by the driver. It is the responsibility of the main driver of the company car or holder of a car allowance to maintain their vehicle to a reasonable level of repair, maintenance, appearance and cleanliness".* This policy was not issued to the claimant. The claimant accepts in his claim form that he was responsible for the damage to the front bumper because he hit a kerb when parking and he accepts that this was caused by careless driving.

42. The respondent says that the repair company Panelcraft made one typographical error in the estimate in relation to the number plate from HN16 XZV to HN16 XZU (page 153). At the relevant time the respondent only had six lease cars, only one of which was a Jaguar, the one driven by the claimant. The claimant accepted in evidence that this document was the estimate in respect of his company car repairs.

43. To limit the cost of the repairs the respondent arranged for the driver's seat to be touched up by a member of their maintenance team. This was not therefore covered by the repairs carried out by Panelcraft.

44. The claimant accepts that he should be responsible for the damage to the front bumper and he puts this in the region of £250-£300. I agree with the claimant that he is not responsible for the VAT on the repair invoice. This was a service provided to the respondent company which is a VAT registered company and they are able therefore to deal with the VAT through their own accounting procedures. To charge this to the claimant would result in double recovery. The amount of the VAT is £98.60.

45. In his witness statement Mr Horn said: "*Much of this damage was deemed to be acceptable wear and tear".* From this I find that the respondent accepts a proportion of the damage being down to wear and tear for which they are responsible and the claimant accepts that some of the damage was down to his parking incident for which he is responsible. The repair invoice shows £115 for specialist work of polishing and touching up the

vehicle and wheel refurbishment. This should not be attributed to the claimant.

46. Labour and materials, minus specialist items and the VAT, amount to £378. Based on the claimant accepting responsibility for £250-£300 and Mr Horn accepting that much of the damage was due to acceptable wear and tear, I find that the amount lawfully deducted from the claimant was the sum of £300 and the balance of the invoice of £291.60 was unlawfully deducted.

The law

47. Section 13(1) of the Employment Rights Act 1996 (ERA) provides an employer shall not make a deduction from wages of a worker employed by him 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 his agreement or consent to the making of the deduction.

48. Section 14 ERA gives exceptions to the right not to suffer unlawful deductions where the purpose of the deduction is the reimbursement by the employer in respect of an overpayment of wages or an overpayment of expenses incurred by the worker in carrying out his employment.

49. Under Regulation 13 and 13A of the Working Time Regulations 1998 (as amended) (WTR) the aggregate amount of annual leave entitlement is a maximum of 28 days. Under Regulation 13(9) it may only be taken in the leave year in respect of which it is due and may not be replaced by a payment in lieu except on termination.

50. Regulation 14 WTR provides that on termination a worker is entitled to a payment in lieu where his employment is terminated in the course of the holiday year and the proportion of statutory leave taken is less than the period that has expired. The payment in lieu is either determined by a relevant agreement or by the statutory formula in Regulation 14(3). This only applies to the statutory amount of annual leave and not to any additional contractual leave.

Conclusions

51. Based on the above findings the claimant recovers the following: (1) the sum deducted in respect of alcoholic beverages in the sum of £107.51 (2) the sum for flight changes in the sum of £194.46 (3) holiday pay in the sum of £1,083.25 and (4) the sum for vehicle repairs in the sum of £291.60. The parties agree that the mathematical total of these four sums is £1,676.82.

52. The claimant will recover his tribunal fees through the Government scheme for this.

Employment Judge Elliott
Date: 13 October 2017