



EMPLOYMENT TRIBUNALS

Claimant: Mr J King

Respondent: Moba Mobile Automation Limited

Heard at: Cardiff **On:** 16 June 2021

Before: Employment Judge R Vernon (sitting alone)

Representation:
Claimant: In person
Respondent: Mr Stuart Sargeant (Managing Director)

JUDGMENT

1. The Claimant's complaint of unlawful deduction from wages (contrary to section 13 of the Employment Rights Act 1996 is well founded and succeeds.
2. The Respondent must make payment to the Claimant of the sum deducted, namely £1,239.00.

REASONS

Introduction

1. By an ET1 Claim Form presented to the Tribunal on 31 May 2020 the Claimant, Mr King, presented a claim for arrears of pay. The detail of that claim is set out in the Claim Form in which it is said that, in the final pay received by Mr King during his employment, a sum of £1,439.70 was deducted from his pay that related to the condition of his company vehicle and alleged damage to his company mobile telephone. It is Mr King's assertion that those deductions

were unlawfully made, and he seeks to recoup those from the Respondent. In his ET1 he also raises an issue as to compensation which he seeks in respect of further financial losses which he says flow from that deduction from his wages.

2. The Claimant followed the process of ACAS Early Conciliation prior to presenting his claim and the EC Certificate shows that notification was given to ACAS on 6 March 2020 and the EC Certificate was issued on 9 March 2020.
3. The Respondent filed an ET3 Response Form indicating that the claim is resisted in full. At the time the Response was submitted, the Respondent was represented by solicitors. The Respondent now appears effectively as a litigant in person with Mr Sargeant acting as advocate and witness for the company.
4. An issue was raised in the ET3 as to the identity of the correct Respondent. A Mr Lewis, the former Managing Director of the company, had been identified as Respondent in the ET1. By agreement between the parties now it is agreed that the correct Respondent is in fact Moba Mobile Automation Limited ("Moba") and therefore an Order can be made today substituting Moba as the Respondent in place of Mr Lewis.
5. The ET3 also raises a number of other points:
 - 5.1 an assertion is made that the claim has been presented out of time;
 - 5.2 the Respondent admits that the deduction alleged by the Claimant was made from Mr King's salary but points out that the sum of £200 was subsequently reimbursed to the Claimant in a salary payment made to him in March 2020. I note that point is accepted by the Claimant;
 - 5.3 the Respondent says that the deduction was made in accordance with a provision of the Claimant's contract of employment authorising certain deductions to be made from his salary. It is asserted by the Respondent that the subject of the deductions was damage to a) the Claimant's company vehicle and b) a company mobile phone issued to the Claimant.

The hearing and evidence

6. The hearing has taken place today. It was given an allocated time of two hours. Two hours was not in fact sufficient time to deal with it, it was still possible to complete the hearing, including Judgment, time having been extended slightly to allow Judgment to be given this afternoon.
7. Mr King has attended and represented himself. Mr Sargeant has represented the Respondent. I have been provided with a bundle of documents that contains witness statements from both Mr King and from Mr Sargeant and a variety of other documentation.

8. Mr Sargeant raised at an early stage in the hearing that the evidence from Mr King had been provided to the Respondent quite late in the day and, in particular, some additional evidence was provided to the Respondent only at the beginning of this week.
9. An application was made during the hearing to adjourn the final hearing by Mr Sargeant. I heard submissions from both parties about that and refused that application and decided to proceed with the hearing. I gave reasons during the course of the hearing for that decision, but in summary it was to reflect the overriding objective and also the timing of the application. In addition, I considered the limited amount of evidence that had in fact been provided and noted that the bulk of it had been provided to the Respondent approximately 3 weeks ago.

Issues

10. At the outset of the hearing we also spent some time considering what the issues in the case actually are for determination. During the discussion with the parties it was identified that the following issues were really the main issues for the Tribunal to concentrate on:
 - 10.1 whether the claim has been presented out of time;
 - 10.2 whether the pay of Mr King in February 2020 was less than it should have been, in the sense of a deduction having been made. It is accepted by the Respondent that a deduction was made in the sum contended for by Mr King;
 - 10.3 what the terms of the Claimant's contract of employment were at the time and whether the contract included a provision authorising deductions to be made;
 - 10.4 whether any deduction made was justifiably made in accordance with that provision; and
 - 10.5 if an unlawful deduction was made, whether Mr King is entitled to recover any additional sums by way of additional losses said to be attributable to the alleged unlawful deduction. On that issue, I noted at the outset that Mr King had provided a document at page 50 of the bundle in which he gives a breakdown of the sum being claimed. That breakdown included a sum of £2,500 for stress and anxiety compensation. I explained to Mr King at the outset of the hearing that damages for that kind of loss are not recoverable in a claim for unlawful deductions from wages and therefore I have paid no further regard to it. The other two elements of the claim (which I have

concentrated on) being a) the amount of deductions from the salary paid in February 2020 and b) a claim for a sum equivalent to the interest which accrued on Mr King's mortgage during a mortgage payment holiday which he says was in some way connected to the alleged unlawful deduction from his wages.

Findings

Facts not in dispute

11. I will start by setting out a number of background factual matters which do not appear to be in dispute between the parties.
12. Mr King was employed by the Respondent, Moba, from a date in mid to late 2019 until a date in late February/early March 2020. I note from the evidence that the precise dates of the commencement of Mr King's employment and the precise date of the end of his employment are not agreed between the parties but, I do not consider those disputes to be relevant for the purposes of this claim.
13. Mr King's remuneration for his role was in the region of £37,000 per annum plus bonuses after a successful probation period was undertaken.
14. Mr King resigned from his position with the Respondent by way of resignation in mid-February 2020 and I note that he was paid up until 12 March 2020 which was Mr King's requested leaving date from his employment. He then, according to the ET1, commenced a new job as of 16 March 2020.
15. The pay paid to Mr King by the Respondent in February 2020 (and which is the focus of this claim) included deductions of a total of £1,439 in respect of a mobile phone and alleged damage to the Claimant's company van. Of that sum (again agreed between the parties) £200 was subsequently reimbursed to Mr King in his March salary payment.
16. The Claimant signed a contract of employment when he commenced his employment. There was no copy of the contract that was signed by Mr King before me. A copy is not included in the bundle. There is some dispute over the terms of the contract that was entered into and I will return to that issue later on in the Judgment.
17. The Claimant was issued, on commencement of employment, with a staff handbook. A copy of that handbook is in the bundle, and that handbook includes provisions in relation to the company vehicle and the use of it. Again, I will refer to various relevant provisions of the handbook later on.

18. On commencement of employment, Mr King was issued with a company vehicle which was a white transit style van (as I would describe it) with a 2019 registration plate. He was also issued with a Samsung mobile phone. Both of those items were brand new when they were issued to Mr King.

Facts in dispute

19. I will next move on to make findings of fact in relation to matters that are in dispute between the parties and I will start by dealing with the contract of employment and the terms of Mr King's employment that were relevant at the time.

20. The Claimant's evidence is that he signed the contract of employment when he started employment with the Respondent. A copy of a contract is included in the bundle starting at page 120. Mr King does not accept that that is the document that he signed when he started his employment. He specifically disputes the term in the agreement as to who his manager was, and he recalls there being some fairly difficult conversations or exchanges of correspondence during his employment about that issue.

21. I have not dealt very much with that issue during this Judgment because I do not consider it to be directly relevant to the claim. However, there are some provisions within the document that are relevant to the claim and I will set those out now. Firstly, the clause which is relied upon by the respondent, which is Clause 16 M a reads as follows, "*you hereby authorise Moba Limited to deduct from your pay, including your final salary on termination, any sums which you may owe to Moba Limited including, without limitation, any overpayment of salary, holiday pay, float, equipment upgrades and Moba Limited or statutory sick pay, costs representing non-return or damage of Moba Limited equipment including stock at list price, reimbursement for payments made in respect of training and/or further education, relocation costs made to you by Moba Limited.*".

22. There are two further provisions which may have some bearing on this claim. The first is paragraph 16(f) which reads, "*upon leaving the company you must return, in good order, all Moba equipment including lap top computer, tools, phone, company vehicle, clothing and the like*" and finally, Clause 7.5, which indicates in relation to a company vehicle, that "*if you are in an accident in a Moba Limited vehicle and you are found to be responsible for the accident you may be required to pay the insurance excess costs.*"

23. The question that arises in this case is whether those provisions were part of the contract that the Claimant entered into when he started his employment with the Respondent.

24. In his evidence, the Claimant told me that he had read the contract of employment which he signed before signing it, but could not really now recall whether those terms were included and specifically Clause 16 M a.
25. Mr Sargeant's evidence was that this document was a standard form of terms and conditions used by the Respondent in respect of all its employees and the only changes that are made to those standard terms and conditions are to include terms specific to the individual employee to whom the contract relates. His evidence also was that Clause 16 M a in particular is a clause that is included in all contracts of employment of the Respondent's employees.
26. Having considered all of the evidence on this point, on the balance of probabilities I am satisfied that the contract that Mr King entered into was in substantially the same terms as the document which appears at page 120 and that it is likely to have included the clauses to which I have referred, including Clause 16 M a. It is also likely, in my Judgment, to be (as it appears on its face and in accordance with Mr Sargeant's evidence) a standard form contract which is used by the Respondent for all of the Respondent's employees.
27. The next issue upon which there is a factual dispute is the date on which Mr King was paid his salary in February 2020. It is an important issue because it has a bearing upon the issue of whether the claim was presented to the Tribunal in time or not. The competing contentions are as follows:
- 27.1 the Respondent says that the Claimant was paid on 26 February;
- 27.2 the Claimant's position is, on the evidence, that he was paid on 29 February 2020.
28. The contract of employment deals with payment of remuneration (at page 121 of the bundle). At paragraph 6.2 there is a provision that indicates that payment will be made on or about the 26th day of each month. The payslip that directly relates to the payment that was made in February 2020 appears at page 82 of the bundle. In the top right-hand corner, there is a pay date of 29 February 2020. There is no evidence at all that I can see in the witness statement of the Claimant as to the date on which the payment was made to him. In oral evidence, in response to questions I asked, he initially said that the payment had been made on 26 February. When I then referred him to the payslip and pointed out the payment date on the payslip, he then suggested that the payment was in fact made on 29 February as that payslip suggests. He also gave evidence that the date on which salary payments were made did in fact vary month by month.
29. As for Mr Sargeant's evidence, I cannot see any evidence in his statement either as to the date on which the salary payment was made, although I note that he asserts that wages were never paid to any employee later than the 26th of any month and he suggests that the pay date on the payslip simply reflects

the last day of the month i.e. the payment period. He said that if, for example, one looked at the March payslip, then the pay date would read 31 March.

30. As to that latter point, I reject that suggestion for one simple reason. We have the March 2020 payslip in the bundle at page 119 which deals with the pay for the period 1 to 31 March 2020. The pay date on that payslip is 26 March, not 31 March. I find that undermines the suggestion made during the course of the hearing by Mr Sargeant as to the reason why the pay date appears as it does on 29 February 2020.
31. There is no evidence before me of the payment either leaving an account in the name of the Respondent or arriving in the Claimant's account.
32. Therefore, the evidence that I have on this issue is as I have just summarised. Looking at all that evidence, on the balance of probabilities, I have concluded that the evidence of the Claimant and the pay date on the payslip is to be preferred and I conclude the payment was in fact made on 29 February 2020. The provision in the contract of employment is not inconsistent with that conclusion because the contract provides for payment on or about the 26th day of each month, rather than it being a fixed date for payment. Furthermore, as I have said, there is no other reliable evidence of the date on which payment was in fact made in the witness statement of either person that I have heard evidence from and there is no direct evidence by way of bank statements to demonstrate when the payment was made.
33. The next factual issue that I move onto is whether the deductions were justified by a provision in the contract of employment. The relevant provision in the contract is Clause 16 M a and I have already set out that provision. The other clauses that may assist I have also read, namely Clauses 7.5 and 16F.
34. There is also a staff handbook that includes various provisions in relation to a company vehicle. The relevant provisions appear in Section 9 of the staff handbook. I will read out those parts of Section 9 that appear to me to be of assistance starting with this: "*in this role you may be entitled to a company van. Moba Limited will be responsible for all costs including all fuel in the UK, insurance, repairs, servicing, tyres and recovery service/road tax. You will be responsible to reimburse Moba Limited for private mileage.*". There are then a series of bullet points that appear, some of which again may also be of assistance. I will read out those matters which I consider are of relevance, starting with, "*for onsite technicians the vehicle is to be a van to suit the task envisaged. If you are in an accident in a Moba Vehicle and it is determined that it is your fault you may be responsible to pay for one half of the insurance excess. You must take every effort to ensure that the company vehicle is kept in the very best condition and locked. Do not leave any tools, possessions or stock in plain sight. Report any incident immediately it occurs to your manager*".

or their superior and finally complete a monthly vehicle checklist which must be submitted with your monthly expense form.”

35. During the evidence of Mr Sargeant, he accepted that an employee, such as Mr King, would not be liable to reimburse the company under Clause 16 M a for costs related to damage to equipment however that damage was caused. In terms, he accepted that the ability to recoup those costs would really be limited to instances where there had been neglect, misuse or abuse of the company property and, by contrast, if there was accidental damage caused, or more general wear and tear, then those costs would not be subject of any recoupment from the employee.
36. It is nonetheless the Respondents case that the damage that was present on the vehicle issued to Mr King and the phone issued to Mr King was of a nature and extent to be indicative of neglect, misuse or abuse of those items therefore justifying deductions from Mr King’s salary.
37. Mr King’s case on this issue is that any damage that there was to those items was not caused through any failing or fault of his and in fact reflected either the unsuitability of the van for the tasks he was required to perform, the difficult terrain which he was required to cover when attending construction sites or accidental damage.
38. I have considered the documentary evidence, written witness evidence and oral witness evidence on this point carefully and have come to the following findings. Firstly, the van that was issued to Mr King was, as I have said, a transit style vehicle. The Claimant during his employment was required to attend construction sites to perform his role. In some instances, those sites were extremely muddy and were not sites where there were any properly formed highways or traffic routes. It amounted therefore, when Mr King was on site, to off-road driving. I am satisfied of those matters by reference to the examples given in the photographs provided by Mr King of sites where he was at pages 43 and 44 of the bundle.
39. I am satisfied that there were elements of damage to the vehicle when the vehicle was returned to the Respondent by Mr King. Invoices have been produced by the Respondent showing works of repair that were required to be carried out to the vehicle starting at page 115.
40. Within the bundle at page 55 there is a message sent to Mr King by his former Manager, a Mr Hales. The message appears in a chain of messages passing between them and it appears to me, and I am satisfied on the balance of probabilities, it is a message sent during the period between the return of the vehicle to the Respondent and the end of Mr King’s employment during which Mr Hales indicates that he had told the Respondent that he had forced the Claimant on to sites that the van could not handle.

41. In addition to that I also accept the Claimant's evidence given to me today and in his witness statement that he had raised with his employer through Mr Hales the suitability of the vehicle for the tasks that he was required to undertake. His evidence on that point, in my Judgment, was clear and consistent. It was detailed as to why he had raised those issues and there is no evidence from any other individual who can contradict that point. In particular, there is no evidence from Mr Hales to say anything different.
42. I also note that there was reimbursement made to the Claimant in the sum of £200 originally deducted from his wages that related to the costs asserted to be the cost of cleaning of the van. It was the Claimant's case that he was unable to clean the van in time allowed to him after he was told to return the van to the Respondent. The reimbursement of that sum is consistent with a conclusion that the Respondent in fact accepted that the cleanliness or lack of cleanliness of the van when it was returned was not a result of any lack of care by the Claimant. It is indicative that this Claimant is an individual who took care of the property he was issued to the extent that he could. It is also consistent with the fact that there is evidence of Mr King cleaning the van on occasion (as depicted in the photograph of it in a wash facility at page 43 and in what I would describe as a fairly pristine condition in the bottom photograph on the same page).
43. For all of those reasons I am not persuaded in this case that any damage that was present on the vehicle arose from any lack of care, misuse or neglect or abuse of it on the part of Mr King and is more likely to be the result of general use of the vehicle or accidental damage.
44. As to the mobile phone, again Mr King fairly accepts that when it was returned there was some damage to the mobile phone, in particular, damage to the rear glass of the mobile phone. His evidence is that the phone was not covered at the time that that damage occurred with any kind of phone case. He says that there had been problems with reception to the phone with the case issued to him by the Respondent and so he had been told to remove the phone case by the then Managing Director. On the basis that there is no other evidence on the point I accept that evidence and I found the evidence to be clear and credible in any event. Further, there is no other obvious reason to my mind why Mr King would have chosen to remove the cover unless there was a problem being caused by it.
45. His evidence then, albeit in oral evidence only, is that the phone was then dropped whilst he was performing his duties on site. He described an occasion on which he had to climb up onto a piece of machinery to take photographs and had dropped the telephone. Again, I formed the view that his evidence on that point was clear and genuine and in my Judgment the damage therefore amounted to accidental damage caused not least because no replacement

cover had been provided to him. Again, I am not persuaded that the damage was caused through any neglect, misuse or abuse of the phone by Mr King.

Relevant law and conclusions

Time limits

46. I next have to set out some of the relevant legal principles that apply starting with the issue of time limits.
47. The Claimant's complaint is of unlawful deductions from wages which is governed by Part II of the Employment Rights Act 1996 and in particular Section 13.
48. Section 23 of the Act sets out the time period within which such a claim must be presented to the Tribunal. Section 23(2) provides that an Employment Tribunal shall not consider a complaint of this type unless it is presented before the end of the period of 3 months beginning with, in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made. It is clear from that section that the 3 month period in question begins with the date of the payment of the wages from which the deduction was made.
49. Section 23(3A) of the Act then also makes clear that Section 207B of the 1996 Act applies. That is the section which extends time limits in order to allow conciliation through ACAS in respect of a claim such as this.
50. Section 207B must then be considered. Section 207B(3) indicates that, in working out when a time limit set by a relevant provision expires, the period beginning with the day after day A and ending with day B is not to be counted. Sub Section (2) provides that day A is the day on which the complainant complies with the requirement to notify ACAS of the intention to bring a claim and day B is the date on which the ACAS Early Conciliation Certificate is issued. Therefore, for the purpose of (3) the day after notification was made to ACAS is 7 March 2020 and the day on which the certificate was issued is 9 March. That therefore provides a 3-day period (i.e. 7 to 9 March) which is not to be counted and effectively results in the extension of the 3-month time limit by a period of 3 days.
51. The question in this case is when did time start to run, or in other words, what was the date of the payment of wages from which the deduction was made. As I said earlier, I have concluded on the evidence that payment was made on 29 February 2020. Three months from 29 February would be 28 May 2020. If one then adds on the 3 days which are not to be counted as a result of the operation of Section 207B, that extends time until 31 May. That is, of course, the day on which this claim was presented to the Tribunal by Mr King.

52. For that reason, I have concluded that this claim was presented in time and the Tribunal does in fact have jurisdiction to consider it.

Unlawful deductions – section 13

53. I then turn back to Section 13 of the Act which sets out provisions as to unlawful deductions. I have already read Section 13(1)(a) of the Act which is the appropriate section.

54. As to enforcement of the right not to suffer unauthorised deductions, the determination of complaints of unlawful deductions is governed by Section 24 of the Act. Section 24 indicates that if a Tribunal finds a complaint of that type well founded it shall make a declaration to that effect and shall order the employer to pay to the worker the amount of any deduction made in contravention of Section 13. Section 24(2) then provides that where a Tribunal makes a declaration under that section it may order the employer to pay to the worker, in addition to any amount ordered to be paid under that sub section, such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

55. The conclusions I have reached in applying those relevant legal principles to the facts that I have found in this case, are as follows.

56. A deduction from the Claimant's pay was made. The Respondent concedes that the sum of £1,239 was deducted from the February pay packet (once one makes allowance for the subsequent reimbursement of the sum of £200).

57. The next issue is: was there a provision in the Claimant's contract of employment authorising any deduction? I am satisfied that there was a provision authorising deductions, namely Clause 16 M a.

58. However, that is not the end of the story because on the facts of this case one then has to consider whether that provision in fact justified the deductions that were made from Mr King's salary.

59. As I set out earlier, on the Respondent's own evidence deductions under that provision are not intended to cover situations where there is accidental damage or damage caused through general use or fair wear and tear of the items in question. On the findings that I have made, the damage that occurred in this case can only be described in one of those ways and is not damage that arose from either misuse, neglect or abuse of the items.

60. For those reasons I am not persuaded that the deductions that were made were justified in accordance with the provision of the contract relied upon by

the Respondent and I therefore conclude that the deductions that were made were unlawful contrary to Section 13 of the Act.

61. I therefore conclude the claim for unlawful deductions is well founded and succeeds and that the Respondent must repay to Mr King the sum of £1,239.00. I note with some interest that the claim is made for £1,239.70. It is not at all clear to me from the documents where the 70p comes from and the payslip does not seem to refer to a deduction of 70p in addition to the £1,239.00. Therefore, the amount that is required to be repaid to the Claimant is limited to £1,239.00.
62. Mr King then also seeks to recover additional sums in reliance on the provision in Section 24(2) of the Act which I read a moment ago. He seeks to recover a sum equal to the interest that accrued upon his mortgage during a mortgage holiday which he took in 2020. He explained that claim to me during submissions on the basis that he says he was left with insufficient funds as a result of the deductions from his wages to pay his mortgage and was effectively therefore forced to take a mortgage holiday.
63. The evidence that he has supplied from his mortgage provider shows that the period during which he took that mortgage holiday was from May 2020 to August 2020. That is a period that started approximately 6 weeks after he had ceased to be an employee of the Respondent. In those circumstances I find it difficult to accept, and I am not persuaded, that that mortgage holiday can be said to be attributable to the deductions that were made from Mr King's February salary. There is too much of a gap between those two events for the Tribunal to be satisfied of any causal link between them. In those circumstances I am not satisfied that the sum can also be recovered by Mr King under Section 24(2).

Employment Judge R Vernon

Dated: 12 July 2021

JUDGMENT SENT TO THE PARTIES ON 13 July 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche