



EMPLOYMENT TRIBUNALS

Claimant: A Cummings

Respondent: High Trees Community Development Trust

Heard at: London South Employment Tribunal by CVP (Video)

On: 14 July 2022

Before: Employment Judge C M Macey

Representation

Claimant: In person

Respondent: Mrs Afriyie (Senior Litigation Consultant)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The claimant's claim of an unauthorised deduction from wages is well-founded and the respondent shall pay to the claimant the sum of £134.99 being the gross sum due.

REASONS

CLAIMS AND ISSUES

1. The claimant claimed unauthorised deductions from wages in relation to a deduction of £134.99 made from her gross salary.
2. The issues to be determined were agreed to be as follows:
 - 2.1 Did the respondent make an unauthorised deduction from the claimant's wages? It is not disputed that £134.99 had been deducted from the claimant's wages.
 - 2.2 Did the claimant agree in writing to the deduction before it was made? It is not disputed that the claimant had signed a mobile phone agreement on 22 March 2021 and that this was prior to the deduction on 28 September 2021. The issue in dispute was whether the

deduction fell within the scope of the mobile phone agreement. The claimant's case is that she returned the mobile phone undamaged, and the respondent's case is that it was not returned in a satisfactory condition and this entitled the respondent to make the deduction.

2.3 How much is the claimant owed? It is not in dispute that if the deduction was unauthorised the claimant is owed £134.99.

PROCEDURE, DOCUMENTS AND EVIDENCE HEARD

3. The form of this hearing was a remote hearing by CVP.
4. There was a small bundle of documents. There were written witness statements and oral evidence from the claimant, Anna Coffey (Co-Chief Executive Officer of the respondent), Mohammed Meho (Operations Manager for the respondent) and Giuseppe Grauso (Data and Performance Coordinator for the Education and Training Team for the respondent). Miss Coffey, Mr Meho and Mr Grauso gave evidence for the respondent. The claimant was the only witness for herself. The claimant produced a Schedule of Loss.

FACTS

5. The claimant worked as a Quality and Curriculum Coordinator at the respondent between 24 June 2019 and 24 September 2021. The respondent is a charity which delivers a range of services in 5 interlinked areas: children; young people and family services; education and training; employment and careers; community action and partnerships. The claimant's gross weekly pay was £591.23 and the claimant's net weekly pay was £453.46
6. The respondent provided the claimant with a laptop computer and mobile phone. The mobile phone did have a passcode (a PIN number). The respondent's employee handbook [74] states the following:

“On the termination of your employment you must return all our property which is in your possession or for which you have responsibility. Failure to return such items will result in the cost of the items being deducted from any monies outstanding to you. This is an express written term of your contract of employment.”

7. The claimant also signed a mobile phone agreement (“Agreement”) [79-79] with the respondent on 22 March 2021. The Agreement states the following:

“On termination of employment or if the handset is requested to be returned, the mobile handset should be returned in a satisfactory condition. Any damage done to the handset will result in costs being deducted. Failure to return the handset will result in the cost of the unit being deducted from any final money owed to the employee”

8. There is no definition of satisfactory condition in the employee handbook or the Agreement.
9. The claimant tendered her resignation on 24 June 2021 providing three months' notice. On 15 September 2021 the claimant became ill with

migraines, and her ill- health absence continued until the last day of her employment with the respondent on 24 September 2021.

10. Due to her sickness absence the claimant did not return the laptop computer and mobile phone to the respondent on 24 September 2021.
11. Mohammed Meho assigns equipment to staff members at the respondent and receives the equipment from staff members when they leave the respondent. Mohammed Meho would usually collect the equipment in person and ensure that it was in good working order and accessible in front of the member of staff.
12. The claimant had planned to return the laptop computer and mobile phone on 27 September 2021, but unfortunately due to a hospital appointment taking longer than anticipated the claimant did not return the items on that date.
13. Anna Coffey emailed the claimant on 27 September 2021[85] informing the claimant that the claimant had retained the laptop computer and mobile phone, and further that if the claimant did not return the items by Wednesday (29 September 2021) the respondent would withhold the sum of £500 from the claimant's pay.
14. On 28 September 2021 a sum of £500 was withheld from the claimant's pay. The claimant received a final salary payment of £1,300 NET on 28 September 2021. The claimant did not receive a payslip for September 2021 on or around 28 September 2021. The £500 was withheld because the respondent did not know if the laptop computer and mobile phone would be returned by the claimant, or if they were returned whether they would be undamaged.
15. The claimant returned the laptop computer and the mobile phone on 28 September 2021, at approximately 14.00, to Giuseppe Grauso at the respondent's training centre. The claimant's case is that Giuseppe Grauso checked both the laptop computer and the mobile phone and informed the claimant that they were in good condition and signed them off. Further that when she handed the mobile phone to Giuseppe Grauso the mobile phone was on, and she had opened it. The respondent's case is that Giuseppe Grauso simply took the items from the claimant and did not check them. Given that it was part of Mohammed Meho's duties (and not Giuseppe Grauso's) to check any equipment that was returned to the respondent I accept the respondent's evidence on this point.
16. The claimant then collected her personal belongings from Giuseppe Grauso.
17. The claimant directed all further emails from the respondent to her junk folder and on 28 September 2021 she switched off her mobile phone.
18. Giuseppe Grauso gave the laptop computer and the mobile phone to Mohammed Meho approximately an hour or an hour and a half later in the afternoon on 28 September 2021. Mohammed Meho checked the laptop computer and found it was in good working order. When he checked the

mobile phone he discovered that it had a passcode on it. Mohammed Meho sent a WhatsApp message [92] to the claimant at 16.46 on 28 September 2021 requesting the passcode for the mobile phone so that he could “wipe it”.

19. The respondent's case is that the passcode could not be overridden by either a soft reset or a hard reset and Mohammed Meho spoke to support at Samsung (either on 28 September 2021 or 29 September 2021) and they recommended that the mobile phone would need to be taken to a Samsung store (and the nearest store was an hour away from the respondent) for a specialist to look at the mobile phone. Further that taking the mobile phone to a local mobile phone store would invalidate the mobile phone's guarantee.
20. The claimant's case is that a reset of a mobile phone when the passcode is unknown is in fact possible, and the claimant has had experience of this when she previously lost a mobile phone. Also, the claimant was aware that learners at the respondent have used the respondent's mobile phones and the mobile phones have been reset and then reused. Further the claimant's case is that a passcode reset could have been undertaken by a local mobile phone shop and the cost is in the region of £10 and that the guarantee is only invalidated if the mobile phone undergoes repairs. Neither the claimant nor the respondent have provided supporting evidence to back up their differing cases on this point. I accept the claimant's case that it was unnecessary to take the mobile phone to a Samsung Store for the mobile phone to be unlocked and reset.
21. The respondent emailed the claimant on 29 September 2021 [84] requesting the passcode for the mobile phone. Further warning the claimant that without this passcode the mobile phone was unusable and that if the claimant did not provide it imminently a new phone would need to be ordered for the team and the cost of this would be deducted from the claimant's salary. The claimant did not see this email because it went into her junk folder.
22. The claimant's case is that she returned the mobile phone undamaged. The respondent's case is that it could not check whether the mobile phone was undamaged without first overriding the passcode.
23. On 12 October 2021 the claimant received a payment of £365.49 from the respondent. The claimant requested a copy of her September 2021 payslip from the respondent. The claimant received the September payslip [103] near the end of October 2021. This showed deductions of £300 for unpaid sick days and £134.99 for “equipment replace”. The payslip also mistakenly brought the claimant's last day of employment forward by one day to 23 September 2021. The claimant emailed the respondent on 2 November 2021 [94-95] querying these issues.
24. Anna Coffey emailed the claimant on 15 November 2021 [93] accepting that the respondent's accountant had incorrectly logged the claimant's last day. Referencing the previous email to the claimant on 29 September 2021 Anna Coffey explained that as the claimant had not responded to that email by providing the passcode the respondent had had no option but to purchase a

new mobile phone. The respondent did not provide evidence of a receipt or invoice of the purchase of the mobile phone to the claimant. Nor is there a receipt or invoice or any other documentary evidence of the purchase of the new mobile phone in the Bundle.

25. The respondent's case is that it was cheaper to buy a new mobile phone than to send one of its employees to the nearest Samsung Store and have someone at the Samsung Store unlock the mobile phone. The respondent has not detailed these costs, nor have they provided documentary evidence to support their case on this point. I, therefore, find that it was not cheaper to purchase a new mobile phone than arranging for the mobile phone to be unlocked.
26. On 22 December 2021 the respondent deposited £125 into the claimant's account, this is equal to the amount of a day's pay.
27. The claimant presented her claim on 22 February 2022.

LAW

28. Section 13(9) of the Employment Rights Act 1996 (ERA) provides that 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 a deduction. An employee has the right to complain to an Employment Tribunal of an unauthorised deduction from wages pursuant to section 23 ERA.
29. In **Fairfield Ltd -v- Skinner [1993] IRLR 4** the EAT confirmed that the employment tribunal must, where there is a dispute as to the justification of the deduction, embark upon a resolution of that dispute.
30. The Court of Appeal in **Agarwal -v- Cardiff University and another [2018] EWCA CIV 1434** confirmed that employment tribunals have the power to interpret the relevant provisions of a contract in claims for unlawful deductions from wages.
31. In **Investors Compensation Scheme v West Bromwich Building Society [1998] 1 All ER 98**, Lord Hoffmann said:

“Almost all the old intellectual baggage of ‘legal’ interpretation has been discarded. The principles may be summarised as follows:

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the “matrix of fact”, but this phrase is if anything an understated description of what the background may include. Subject to the

requirement that it should be reasonably available to the parties and to the exception mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of a document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax...

(5) The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

32. These five principles were later summarised by Lord Bingham in **BCCI v Ali [2001] UKHL 8:**

"To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified."

CONCLUSIONS

33. It is not disputed that the respondent made a deduction of £134.99 from the claimant's gross pay on 28 September 2021.

34. It is also not disputed that the claimant signed the Agreement on 22 March 2021 prior to the deduction and the events surrounding the deduction.

35. What is disputed is whether the deduction was justified under the Agreement.

36. Firstly, the Agreement required the claimant to return the mobile phone in a satisfactory condition.
37. Secondly, the Agreement sets out two events that would lead to deductions from the claimant's salary. The first being the mobile phone being returned damaged and then any costs would be deducted. The second being the mobile phone not being returned to the respondent and then the cost of a new unit would be deducted.
38. The claimant's case is that "satisfactory condition" meant that the mobile phone should be undamaged. The respondent's case is that "satisfactory condition" also includes that it should be in a useable condition. I conclude that a reasonable person would interpret satisfactory condition as including that the mobile phone be useable.
39. The Agreement, however, is specific about what will lead to a deduction from the claimant's salary. The mobile phone was returned to the respondent on 28 September 2021 so, I conclude that no deduction could be made for not returning the mobile phone.
40. In respect of whether the mobile phone was damaged the respondent has not presented any evidence that the mobile phone was in fact damaged. I also do not accept that it was necessary to take the mobile phone to the Samsung store to unlock it to then ascertain whether it was damaged. This could have been achieved at a local mobile phone store, I conclude the respondent was not entitled to make deductions from the claimant's salary under the Agreement.
41. As a final point the respondent has not provided a receipt or invoice for the purchase of the replacement mobile phone so, I conclude that they have not demonstrated that they in fact incurred this cost.
42. I conclude that the respondent made an unauthorised deduction from wages by deducting £134.99 from the claimant's gross salary.
43. The amount due is calculated on a gross basis, but the respondent is entitled to make deductions which are due for tax and national insurance contributions before payment is made to the claimant.

Employment Judge Macey

Date: 1 August 2022