



# EMPLOYMENT TRIBUNALS

## Claimant

Mr P Lewczuk

## Respondent

Rapid Transport Ltd

v

**Heard at:** Norwich

**On:** 9 March 2022

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms AM Makepeace

## JUDGMENT

**The claim for unlawful deduction of wages succeeds in the sum of £500.**

## REASONS

1. This is a claim for unlawful deduction of wages pursuant to section 13 Employment Rights Act 1996 ("ERA") in the sum of £500. I heard evidence from the Claimant and Ms Anne-Marie Makepeace, and I was also referred to witness statements of Mr Ross Morton and Mr Antonio Cuifo (both on behalf of the Respondent).

### The Facts

2. The Claimant was employed by the Respondent as a driver from 7 September 2020 until he resigned with effect from 18 June 2021.
3. Prior to being offered employment by the Respondent, the Claimant had to complete a form declaring his driving record and he declared he had previously been convicted of a serious motoring offence. As a result, the Respondent's insurers initially agreed to add the Claimant to the Respondent's insurance policy only on condition a double excess of £2,000 applied to any claim made in respect of the Claimant. In the event, that

excess was later reduced to the standard excess of £1,000, however in the course of discussions with the insurers and the Claimant, Ms Makepeace says the Claimant was told that if an insurance claim for a major accident had to be instigated, he would be responsible for 50% of the excess. The Claimant did not contest this assertion, and I accept Ms Makepeace's evidence in this respect.

4. The Claimant commenced his employment with the Respondent on 7 September 2020. He was not given a written contract of employment. He was given a copy of the Vehicle Driver Handbook ("the VDH"), which he signed and dated on 6 September 2020, however the VDH does not contain any provision relevant to the Claimant's deductions claim.

5. The Claimant accepts that he was also aware of the existence of the Rapid Dispatch Handbook ("the RDH") which was kept in the Operations Office, though he never had occasion to look at it. The RDH applies to all the Respondent's employees, not just drivers, and Ms Makepeace relies on paragraphs 2.1, 2.6 and 2.7 thereof, which provide as follows:

2.1 The company reserves the right to make deductions from wages and /or salary for the following items:

...

2.6 Loss of damage to company/customer property, and/or vehicles/equipment up to the value of the damage or loss may be charged due to negligent or careless actions by the employee. The cause of any incidents will be determined by an internal investigation in accordance with the disciplinary procedure. The amount of the monthly deduction from pay will be by agreement with the employee concerned.

2.7 To recover the full cost of any vehicle damage or property loss from any final wages due if an employee leaves the Company or their employment is terminated.

6. Ms Makepeace says that notwithstanding the wording of paragraphs 2.6 and 2.7, where a driver had an accident that resulted in an insurance claim, the Respondent's policy was to require the driver to pay half of the excess and that the Respondent would pay the remaining half. This is why the Claimant was told he would be responsible for half of the excess if he had an accident that resulted in an insurance claim.

7. In March 2021 the Claimant had a minor accident, which resulted in repairs to the van costing £300. Since the costs of the repairs was below the excess threshold, no insurance claim was made. The Claimant was asked to sign, and did sign, a document headed Authorisation for Voluntary Payroll Deduction, authorising the Respondent to deduct the sum of £300 from his wages, to be paid at the rate of £100 per week.

8. On 19 April 2021 the Claimant had a major accident that involved a collision with a motorbike and resulted in an insurance claim. The Claimant was asked to sign a further Authorisation for Voluntary Payroll Deduction, this

time in the sum of £500 – being half of the £1,000 excess insurance claim – however he refused to do so.

9. The Claimant subsequently resigned, leaving the Respondent with effect from 18 June 2021, and the Respondent deducted the sum of £500 from his final wages.

### Conclusions

10. Section 13(1) ERA provides
  - (1) 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,
    - (b) The worker has previously signified in writing his agreement or consent to the making of the deduction.
11. The Claimant plainly did not signify in writing his agreement or consent to the making of the deduction for the purposes of section 13(1)(b) and the deduction was not required or authorised by virtue of a statutory provision for the purposes of the first limb of section 13(1)(a). Accordingly, the question is whether the deduction was required or authorised by virtue of a relevant provision of the workers' contract for the purposes of the second limb of section 13(1)(a).
12. A relevant provision of a worker's contract is defined in section 13(2) ERA as meaning a provision of the contract comprised:
  - (a) In one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
  - (b) In one or more terms of the contract (whether express or implied and, if express whether oral or in writing), the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
13. The Claimant was plainly not given a copy of a contract containing a written term that the Respondent had the right to deduct half of an insurance claim excess from his wages for the purposes of section 13(2)(a).
14. As regards section 13(2)(b) I have found that the Claimant was told about the potential for such a deduction when his employment commenced, and since the Claimant accepted employment on those terms, I find that there was an oral term of his contract to that effect. The issue is therefore whether the existence and effect of that term was notified to him in writing. In this respect the Respondent relies on paragraph 2.6 & 2.7 of the RDH and the fact that the Claimant had previously signed an Authorisation for Voluntary Payroll Deduction for the sum of £300.

15. The problem, from the Respondent's perspective, of the RDH is twofold. First, paragraphs 2.6 and 2.7 are very general and make no reference to insurance claims, still less to a right on the part of the Respondent to deduct half of an insurance claim excess. Secondly, and in any event, the Claimant had not been given a copy of the RDH, or even seen it, prior to the deduction being made. Accordingly it cannot be said he had been notified in writing of any such term.
16. Further, as regards the previous Authorisation for Voluntary Payroll Deduction which the Claimant signed in April 2021, this document doesn't contain any reference to a contractual term entitling the Respondent to deduct half of an insurance claim excess from the Claimant's wages (and, indeed, was a deduction for actual repair costs, rather than a deduction in respect of an insurance claim). So again, it cannot be said that by signing this document the Claimant was notified in writing of such a term.
17. It follows that the deduction of £500 from Claimant's final pay was an unauthorised deduction for the purposes of section 13(1) ERA, and the claim therefore succeeds.

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Employment Judge S Moore

Date: 9/3/2022

Sent to the parties on:23/3/2022

N Gotecha  
For the Tribunal Office