



## EMPLOYMENT TRIBUNALS (SCOTLAND)

5

**Case No: 4104245/2022 Hearing by Cloud Video Platform at Edinburgh on 11  
October 2022**

10

**Employment Judge: M A Macleod**

**Lynzi Miller**

**Claimant  
In Person**

15

**Beyond Medispa**

**Respondent  
Represented by  
Mr C Wilkinson  
Commercial Manager**

20

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

**The Judgment of the Employment Tribunal is that the respondent made an  
unlawful deduction from the claimant's salary; and that they are therefore  
ordered to pay to the claimant the sum of Seven Hundred and Eighty Eight  
Pounds and Twenty Eight Pence (£788.28).**

30

### REASONS

35

1. The claimant presented a claim to the Employment Tribunal on 28 July 2022 in which she complained that the respondent had unlawfully deprived her of pay.
2. The respondent submitted an ET3 response resisting the claimant's claim.
3. A Hearing was listed to take place by Cloud Video Platform on 11 October 2022. The claimant appeared on her own behalf, and Mr Wilkinson appeared for the respondent.

4. The claimant gave evidence on her own account, and Mr Wilkinson gave evidence for the respondent.
5. Based on the evidence led the Tribunal was able to find the following facts proved.

## 5 Findings in Fact

6. The claimant, whose date of birth is 10 July 1993, applied for a position with the respondent as an Aesthetician/Beauty Therapist, and in approximately February 2022 was interviewed by them. She was offered the position and commenced employment on 28 March 2022.
- 10 7. Prior to commencing her employment, the claimant was required by the respondent to attend certain training. At the time, she was self-employed, and had to bring that business to an end earlier than she would have wished, in order to undergo the training.
8. On 22 February 2022, Jade Bejaoui, a manager employed by the  
15 respondent, emailed the claimant in the following terms:

*“Hi Lynzi,*

*Hope your well,*

*I have emailed Jenny the HydraFacial Trainer for the start and end time for this session with you. this training will be onside within the clinic for practical part and we have a online portal HydraFacial ask you to complete prior to  
20 practical which I will send you. we will provide you with models, however if there is models you'd like to bring along please just let me know and I can book them in for you.*

*To follow on from your questions:*

- 25
  - *No there isn't parking specifically for Harvey Nichols but there is a discount provided for a multi car park near by.*
  - *Yes when you work on a Sunday you will be without a receptionist.*

- *Yes we pay for the training however if you leave within 2 years of training you will be asked to pay all training back.*
- *Hourly pay are you asking me what your hourly rate will be?*

5 *That's great regarding doing an Intro event we can discuss this further when your in the clinic.*

*If there is anything else please don't hesitate to email myself."*

9. When the claimant met with Mr Wilkinson, she asked if she would be paid for training time, he confirmed that she would not.
10. The claimant completed training as scheduled. The respondent required to pay for that training. For the purposes of this claim, the only training under examination is that relating to medical device training conducted by Novus Medical Ltd, for which the respondent received an invoice dated 11 March 2022 in the sum of £950 plus VAT, a total of £1,140.
11. Having commenced employment with the respondent on 28 March 2022, the claimant's employment came to an end a week later on 4 April 2022. She was duly paid for that work, but the payment made to her on termination of employment was nil. She was due to receive the sum of £788.28, but it was reduced to nil by the deduction of the £950 plus VAT in respect of the training received.
12. The claimant inquired of Mr Wilkinson why her pay had been so reduced but received no reply.

### **Discussion and Decision**

13. This is a straightforward claim. The claimant submits that she should have been paid £788.28 in respect of her week's work with the respondent. The respondent argues that she was due that money, but that it was reduced to nil because of the cost of providing training to her. As I understand it, the respondent argues that there was a contractual right to deduct that sum from her salary, and therefore that there was no unlawful deduction from her wages.

14. Section 13 of the Employment Rights Act 1996 provides:

(1) *“An employer shall not make a deduction from wages of a worker employed by him unless –*

5                   *(a) the deduction is required or authorised to be made by virtue of a statutory 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.”*

15. In this case, no contract of employment was provided to the claimant, and none was exhibited to the Tribunal. As a result, there is no evidence that the  
10                   respondent had the contractual right to make the deduction on the basis of a provision in the contract of employment.

16. Further, there is no evidence that the claimant signified in writing her agreement or consent to the making of the deduction.

17. The only evidence about the employer’s right to make a deduction comes in  
15                   the email by Ms Bejaoui on 22 February 2022 to the claimant, which included the phrase: *“Yes we pay for the training however if you leave within 2 years of training you will be asked to pay all training back.”*

18. The respondent relies upon this as giving them the right under contract to deduct the full sum of the claimant’s wages from her upon termination of her  
20                   employment after a week.

19. There are two problems with this.

20. Firstly, this is not part of a contractual document, but contained in an email by the respondent to the claimant stating the respondent’s position on this, that if the employee were to leave their employment within 2 years, they  
25                   would be asked to pay the cost of training back to the employer. However, the claimant is not recorded as having replied to this email, and there is no evidence that she gave consent to the inclusion of this provision within her contract. She did not signify in writing that she was prepared to agree to this. In these circumstances, there is no agreement between the parties that

if she left within a week she would have to repay the training costs to the respondent.

21. Secondly, even if this were a contractual statement, it does not, in my judgment, amount to a provision which entitles the respondent to deduct the training cost at source from the claimant's salary without further ado. The provision states that she would be asked to repay the training cost. Being asked to pay something is quite a different matter from being required to do so. The respondent has not stated clearly that if she were to leave her employment within 2 years they would deduct the training costs from her salary. They have said that they would ask her to repay the training costs.

22. That provision does not entitle the respondent to deduct the training costs from her final salary unilaterally.

23. Accordingly, it is my judgment that the respondent had no right under contract to deduct the sum of £788.28 from the claimant's final salary in repayment of the training costs, and that that amounted to an unlawful deduction from her wages. The respondent is therefore ordered to pay the sum of £788.28 to the claimant.

24. I anticipate that the respondent may consider that it is only fair that an employee who receives the benefit of training from the company, which is an expensive outlay for them, and then leaves the business shortly afterwards so that the business does not receive any benefit from that training, should repay the costs to the business. However, it is not purely a question of fairness. It is a question of law. The law here requires that any deduction from an employee's wages is justified, based on a condition of the contract of employment or a written confirmation by the claimant making it clear that they have agreed to the deduction in these circumstances. As a result, the claimant's case must succeed.

25. I must thank the claimant and Mr Wilkinson for their courtesy to the Tribunal and to each other in the manner in which they conducted this hearing.

Employment Judge: Murdo Macleod  
Date of Judgment: 24 October 2022  
Entered in register: 25 October 2022  
and copied to parties