



EMPLOYMENT TRIBUNALS

Claimant: Miss C J Gubby

Respondent: Trinity Care Beds and Northants Ltd

Heard at: Watford Employment Tribunal **On:** 5 March 2024

Before: Employment Judge Scott

Representation

Claimant: Miss C Gubby (In person)

Respondent: Sanjiv Melvin / Samrah Bhandari

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The respondent's name is amended to Trinity Care Beds and Northants Ltd.
2. The respondent made unauthorised deductions to the claimant's wages and must pay the claimant **£1749.99** gross.
3. The claimants claim for travel costs is not well founded and does not succeed.

REASONS

1. By a claim form presented on 25 August 2023 the claimant, Ms Gubby, complained of unlawful deductions from her wages for the period 1 July 2023 to 24 July 2023.
2. By a response form dated 15 October 2023, the respondent (Trinity CareM Beds and Northants Ltd) responded to the claim form and resisted the claim. Their case was that the claimant had breached her contract and the company was therefore entitled to deduct up to £3600 for breach of contract.

3. The claimant lodged a claim for early conciliation with ACAS on 1 August 2023 and a certificate was issued on 3 August 2023. This claim was therefore brought within time.
4. The Respondent was served with the application and was able to submit a response. The Claimant confirmed the correct respondent was Trinity Care Beds and Northants.
5. Mr Bhandari, an investor in Trinity Care Beds and Northants has been named as Respondent, but was not separately served with the claim form and I accept he had been unaware of the proceedings until the day before the hearing. The Claimant confirmed she did not pursue a claim against Mr Bhandari or Mr Melvin as individuals and was removed as a Respondent. He continued to participate in the hearing as a representative of Trinity Care Beds and Northants.
6. I identified the following issues for determination:
 - a. Was the claimant an employee of Trinity Care Beds and Northants Ltd?
 - b. Did the claimant receive wages for 1 July 2023 until 24 July 2023 and mileage?
 - c. Was the claimant entitled to those things?
 - d. Did the respondent make unauthorised deductions from the claimant's wages and if so, how much was deducted?
 - i. Was any deduction required or authorised by statute?
 - ii. Was any deduction required or authorised by a written term of the contract?
 - iii. Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
 - iv. Did the claimant agree in writing to the deduction before it was made?
 - v. How much is the claimant owed?

Evidence

7. By order dated 20 December 2023 the parties were sent standard directions, including for the parties to send each other relevant documents by 3 January 2024. By 17 January 2024, the respondent was required to provide a bundle to the Tribunal and claimant.
8. The claimant provided evidence for the bundle by email to the respondent by the deadline specified by the Tribunal. The respondent failed to provide any documents or to provide a bundle. No bundle was provided for the final hearing.

9. Mr Melvin, CEO of the Respondent explained that he had been out of the country for a funeral in India at the time the bundle was to be provided and therefore failed to comply with directions. He returned to the UK on 3 February 2024. He had taken no steps to rectify comply with directions from that date to any time prior to the start of the hearing, nor had any application for an adjournment been received.
10. The claimant provided the following documents at the outset of the hearing:
- a. A witness statement dated
 - b. Pay slip dated 30 June 2023 from Trinity Care Beds and Northants Ltd.
 - c. Covering email from Trinity Care Beds and Northants dated 30 June 2023
 - d. Pay slip dated 31 May 2023 from Trinity Care Beds and Northants Ltd.
 - e. Covering email from Trinity Care Beds and Northants dated 31 May 2023
 - f. Emailed letter before action from Aamevol Legal Services dated 28 July 2023 on behalf of Trinity Care Legal Services asserting breach of contract and claiming £142,500 in damages from Ms Gubby.
 - g. Email chain between Ms Gubby and Mr Bhandari from Trinity Care Beds Ltd.
 - h. Employment contract Visiting Angels dated 24 July 2023
 - i. Tupe Transfer letter dated 16 August 2023
 - j. Bank statement dated July 2023.
 - k. Service agreement between Cheyenne Gubby and Trinity Care beds dated 19 May 2023.
11. The Respondent had not provided any documents, and submitted a franchise agreement during the course of the hearing and requested it be admitted as late evidence. Ms Gubby did not object to the admission of the document.
12. I considered it was in the interests of justice for the Respondent to have the opportunity to present their case, and therefore allowed the submission of these late documents.

Background matters and findings of fact

13. It is common ground that the Claimant commenced employment on 19 May 2023, having been interviewed by Deborah King a manager at Trinity Care Beds and Northants.
14. The Claimant was provided with a contract of employment, entitled service agreement and made between Cheyenne Gubby and Trinity Care beds.
15. It is the Respondents case at the hearing that the Claimant had never been employed by Trinity Care Beds and Northants, but had always been an employee of the umbrella company of Visiting Angels, rather than Trinity Care Beds and Northants as Trinity Care Beds and Northants were a franchisee.

16. However, in its ET3, Respondent stated that the Claimant had resigned and had caused the Respondent loss due to breach of contract, seeking damages in response.
17. The Claimant asserted that she had been an employee of Trinity Care Beds and Northants until 24 July 2024, and had not been paid her salary. She provided pay slips to evidence her claim for her rate of pay and correspondence from the Respondent threatening legal action for the way she left the company.
18. The pay slips, and service agreement between Trinity Care Beds and Northants clearly identify Trinity Care Beds and Northants as her employer. The Respondent argued that clauses in the Franchise Agreement showed that Visiting Angels retained control over the employment of staff. The relevant clauses are as follows:

5.2. Training

- 5.2.1. you, selected members of your staff, or your Principal if you are a company, must attend any course that we specifically notify to you in writing, and in addition to training we will provide guidance and support to you in the operation of the System by whatever means we choose. This will include the provision of training courses or conferences at selected places in the UK and we have the right to require you to contribute to the expenses of these courses or conferences on written demand;

And

5.5. Staffing

- 5.5.1. you must ensure that all of your staff adhere at all times to the Visiting Angels Top Ten Charter and to our culture of being carer-centric as detailed in the Manual when providing the Services;
- 5.5.2. you must ensure that there are sufficient trained staff available to your Franchised Business at all times in order to provide the Services to our System standards;
- 5.5.3. you must ensure that all staff enter into such contracts of engagement as we may specify in order to protect our Intellectual Property and forward us copies of such contracts on request.

19. The Respondent argue that these extracts of the franchise agreement show that employees were employed by Visiting Angels rather than by Trinity Care beds and Northants trading as Visiting Angels. However, at 5.2.1, and 5.5.1 the franchise agreement refers to 'your staff'.
20. By email dated 28 July 2023 the Respondent, through their representative Aamevol legal services stated the following:

“As you are aware, you were employed by Trinity Care Beds and Northants Ltd under valid employment contracts. By leaving your employment without providing proper notice, you have breached the terms of your contracts.”
21. Having considered both the representations of the Respondent, and the wording of the franchise agreement, together with the emails from the

Respondent stating that the Claimant had left the employment with Trinity Care Beds and Northants, I find that I am not persuaded by the Respondent's evidence.

22. I conclude that the staff were not employed by Visiting Angels until 24 July 2023, but by the Franchisee, Trinity Care Beds and Northants. The Franchise agreement does not therefore assist the Respondent and I conclude that between 19 May 2023 and 24 July 2023, Ms Gubby was employed by Trinity Care Beds and Northants.
23. It is common ground that the Respondent had not paid the Claimant for the period 1 July 2023 to 24 July 2023. The parties agree that the Claimant's salary for the period in question is £1749.99 gross.
24. The Claimant also asserts she should be paid £250 for mileage for the relevant period.
25. On 28 July 2023, the Respondent's legal representatives Aamevol Legal Services wrote to Ms Gubby seeking damages of £144,400 for breach of contract.
26. On 16 August 2023, Visiting Angels provided the Claimant with a letter stating that Trinity Care Group T/A Visiting Angels Care Ltd were proposing to transfer the company workforce to Visiting Angels Care Ltd from 24 July 2023. That letter stated:

"We are committed to continuing to deliver care services in these territories and therefore, we wish to maintain both your employment and the client services and in order to do this we wish to gain your agreement to transfer your employment into Visiting Angels Care Ltd with immediate effect."

Legal Provisions

27. The Employment Rights Act 1996 at section 13 sets out an employees right not to suffer unauthorised deductions from their wages, as follows:

13.— Right not to suffer unauthorised deductions.

(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, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

28. The Court of Appeal in *Delaney v Staples (t/a De Montfort Recruitment) 1991 ICR 331, CA* confirmed that there is no distinction between a deduction of part of the contractual entitlement and a complete failure to pay wages.

29. The Transfer of Undertakings (Protection of Employment) Regulations (“TUPE regulations”) 2006/246 regulation 4 indicates that all liabilities and duties under the Employees contract shall transfer with a relevant transfer:

(1) *Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.*

(2) *Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—*

(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

30. Accordingly, if there had been a qualifying transfer between Trinity Care beds and Northants and Visiting Angels Ltd, then it would Visiting Angels who would be liable for the payment to the Claimant.

Discussion and conclusions

31. The Claimant asserted she was owed her salary pro rata for that period at £1749.99 gross plus her mileage for travel to work.

32. As detailed above, I find that the contract of employment between Ms Gubby and Trinity Care Beds and Northants, together with the pay slips provided in May 2023 and June 2023, sent by Trinity Care Beds and Northants and naming Trinity Care Beds and Northants show that until 24 July 2023, Ms Gubby was indeed employed by Trinity Care Beds and Northants.

33. Ms Gubby asserts that she is owed her salary from 1 – 24 July 2023 when her employment with Trinity Care Beds and Northants terminated. Mr Melvin accepts that he did not pay her for this period, but asserted that she had never been employed by Trinity Care Beds and Northants.

34. At the hearing, the Respondent sought to argue that the Claimant had been paid for this period by Visiting Angels. The Claimant provided a bank statement showing that no such payment had been made in July. The Respondent asserted that the Claimant may have received such payment later than July, but had no evidence to support this claim. The Claimant gave evidence that she had not received payment for this period from Visiting Angels. The Respondent on its own case has no evidence to suggest Ms Gubby had been paid for the period 1 – 24 July 2023, but asserts that another employee has been paid in similar circumstances. I find Ms Gubby to have been a frank and persuasive witness. I therefore accept her evidence that she had not been paid for the period 1 – 24 July 2023 by Visiting Angels.

35. In the course of disclosure, by the deadline of 3 January 2024, the Claimant provided a letter from Visiting Angels dated 16 August 2023 stating that she had been subject to a TUPE transfer. It is the Respondent's case that no TUPE transfer has taken place. In response to questioning, the Claimant confirmed that she had been subject to a TUPE transfer.
36. It is notable that this letter was not provided at the date when Ms Gubby was proposed to have been transferred, but was provided some weeks after the transfer had occurred. Furthermore, the letter states that:
- “that Trinity Care Group T/A Visiting Angels Care Ltd is proposing to transfer the entire Company workforce to Visiting Angels Care Ltd”*
37. Mr Melvin stated that Visiting Angels seized all items with the logo on it, and this version of events is broadly corroborated by Ms Gubby, due to the serious allegations made against Mr Melvin and Mr Bhandari. However, it appears from Mr Melvin and Mr Bhandari that Trinity Care Beds and Northants continues to be a going concern, providing the same services as before the proposed transfer, with a proposed name change to Aamevol care.
38. The letter dated 16 August 2023 also indicates that the terms of Ms Gubby's employment had changed, in relation to arrangements but in place for her childcare and mileage. Her oral evidence was that she had left employment with Trinity Care Beds and Northants and had started work for Visiting Angels on 24 July 2023 but in response to questioning that she had been subject to a TUPE transfer to Visiting Angels and her employment had been transferred.
39. I asked the Respondent whether they wished to rely on a TUPE transfer having taken place. Mr Melvin for the Respondent expressly stated that no TUPE transfer had taken place and reiterated that Ms Gubby had never been employed by Trinity Care Beds and Northants.
40. However, in evidence, Mr Melvin confirmed that all assets of Trinity Care Beds and Northants had been taken by Visiting Angels, together with all intellectual property and staff, on 24 July 2023. He stated that all profits had been taken by Visiting Angels and all documentation had been transferred.
41. At the end of the hearing, Mr Bhandari and Mr Melvin requested that Visiting Angels be added as a party to the proceedings, to evidence their belief that Visiting Angels Ltd had paid the Claimant wages for the period 1 – 24 July 2024. The Claimant provided bank statements demonstrating that this was not the case. The Respondent had failed to provide any disclosure by the deadline stated in the order of 20 December 2024 and had failed to make any application for specific disclosure ahead of the hearing. This application was made at the end of the hearing, following witnesses giving evidence. Having considered the timing of the application, and the merits of the disclosure requested, and the impact on the Claimant of an adjournment to serve papers on Visiting Angels to respond to this point, I am not satisfied that granting the application would be in the interest of justice and the application is refused.

42. Had the Respondent sought to make an application to join Visiting Angels on the basis that there had been a TUPE transfer and Visiting Angels were liable for the Claimant's salary as a result of that transfer, that application may have had merit. However, given that the Respondent's position is expressly that there has been no TUPE transfer, and, as evidenced by their emails in July 2023, the Respondent has had the benefit of legal advice, I accept that they do not assert that there has been a relevant transfer. Furthermore, the Respondent in its ET3 did not deny being the Claimant's employer, either at all, as the case advanced at the hearing, or on the basis of a TUPE transfer. The Respondent has made no application to amend its defence either to argue that the Claimant has never been an Employee of the Respondent, or to argue that her employment transferred.
43. The evidence before me is insufficient to conclude that there has been a relevant transfer and I therefore conclude there has not. The correspondence from Aamevol Legal Services dated 28 July 2023 indicates there has not been such as transfer, and this is the most contemporaneous evidence and supports the Respondent's position in the ET3. The letter from Visiting Angels dated 16 August 2023 states that there has been a TUPE transfer, however, the letter is not internally consistent. Furthermore, the Claimant asserts that Trinity Care Beds and Northants are liable for her salary, rather than Visiting Angels.
44. I have considered whether it is in line with the overriding objective to add Visiting Angels as a respondent in this matter at this late stage in order to explore whether a qualifying transfer had taken place. Given that neither party is asserting that Visiting Angels Ltd is responsible for paying the Claimant's salary as a result of a transfer protected by the TUPE regulations (the Respondent argues only that the Claimant has always been employed by Visiting Angels, and the Claimant argues that the Respondent is liable for her pay up until 24 July 2023) I conclude that given the sums involved, it is not proportionate in this case to make such an order, in the absence of such a request from either party.
45. I therefore conclude that Trinity Care Beds and Northants was the Claimant's employer at the relevant time.
46. As set out above, I have found that Ms Gubby has not been paid for the period 1 – 24 July 2023, and the parties agree both that she should have been paid her salary for that period, and that the outstanding pay is £1749.99 gross.

Mileage

47. The Claimant asserts she had an oral agreement with the Respondent to pay her mileage for travel to the Northampton office on the basis that she was to be employed in Bedford.
48. The Claimant accepts that there is no evidence of payment of mileage on her previous pay slips, nor any provision for such payment in her contract.
49. The Respondent does not accept that there was an agreement in place for her to be paid mileage as indicated by her pay slips. I found Mr Melvin's

evidence in this regard persuasive, and accept that he was not aware of any agreement to pay the Claimant's mileage.

50. There is no evidence before the Tribunal that the Claimant was entitled to payment for her mileage, either through a written or verbal contract. I therefore do not accept that the Claimant is owed any monies for mileage, and this aspect of her claim fails.

Deductions

51. Turning to the list of issues, the remaining question is whether the Respondent made unauthorised deductions from the Claimant's wages.

52. The Respondent accepts that there is no statutory basis for deductions to the Claimant's salary and does not assert that the Claimant agreed in writing to any deduction.

53. The Respondent argued that it was entitled to recover money due to the damage to her laptop. The Respondent accepts that the laptop was returned but asserts that data was removed prior to the laptop being returned. The Respondent claimed it had cost £800 to repair the damage to the laptop.

54. It is the Claimant's case that she returned the laptop to her employer in the same state as she received it and it was not damaged. She asserted that the laptop when given to her did not have appropriate software provided by the Respondent, and with the Respondent's express permission she added her own Microsoft account to the laptop to access word processing, email and other software. When returning the laptop, she took steps to remove her personal account from the laptop.

55. The employment contract dated 19 May 2023 includes provision for deductions to be made for monies owing to the company, at clause 8.4 and provides for electronic devices to be returned at clause 17. Unfortunately, the copy of the contract scanned did not include full extracts of those clauses.

56. In any event, the Respondent has not provided any evidence to show that the laptop was damaged, or that the Respondent incurred costs of £800 to repair it. A receipt or other such evidence of the repair should reasonably have been available to the Respondent to provide as evidence, and the Respondent was provided with the opportunity to provide any relevant evidence at the outset of the hearing.

57. I have found the Claimant to be believable, and place weight on her evidence that she returned the laptop in the condition it was provided to her in. I therefore do not accept that any deduction is owed to the Respondent under the terms of the contract.

58. I therefore conclude that there is no lawful basis to the Respondent's deduction in her salary and her claim for payment of £1749.99 succeeds.

Employment Judge **Scott**

Date: 16/05/2024

RESERVED JUDGMENT & REASONS SENT TO THE
PARTIES ON

16 May 2024.....

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FOR EMPLOYMENT TRIBUNALS

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