EMPLOYMENT TRIBUNALS

Claimant: **Joanna Niemczuk**

Respondent: **3 Dimensions Ltd**

Heard at: **CVP** **On: 22 November 2023**

Before: **Employment Judge Freshwater**

Representation
Claimant: in person
Respondent: Mr G Whetton (HR Adviser)

RESERVED JUDGMENT

1. The complaint of unlawful deduction from wages is well-founded and succeeds.

2. The respondent made an unlawful deduction from the claimant's wages in the sum of £1799.00.

3. The respondent is ordered to pay the claimant the net sum of £1799.00.

REASONS

Introduction

1. The claimant is Joanna Niemczuk. The respondent is 3 Dimensions Ltd. Justin Burtenshaw is the Director of the respondent.

2. The claimant was employed by the respondent from 3 July 2017 until her resigned in February 2023.

3. The respondent deducted the sum of £1799.00 from the claimant's final wage payment. This case is about whether the deductions from her wages were lawful.

Hearing and procedure

4. The hearing took place by CVP.

5. The tribunal was referred to a bundle which was, effectively, in two parts. The claimant's bundle contained documents numbered 1 – 10a. The respondent's bundle contained documents numbered 11 - 32.

6. The claimant had prepared a witness statement. I heard oral evidence and submissions from the claimant.

7. The respondent had not prepared a witness statement. I allowed the respondent to make oral submissions and the respondent relied upon the evidence that had been filed.

8. Judgment was reserved.

Issues

9. The issue in the case is whether or not the sum of £1799.00 was unlawfully deducted from the claimant's wages by the respondent.

10. The sum of money in question relates to two training courses that the respondent had paid for. The respondent says it was entitled to deduct from the claimant's wages under a clause in her contract, and an agreement signed between the parties setting out the circumstances in which the claimant would have to reimburse the respondent.

11. The claimant's case is that the deductions were not permitted because the agreement did not cover her situation. In other words, she did not owe the respondent the money in question.

The law

12. Section 13 of the Employment Rights Act 1996 states as follows:

"(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.

(2) In this section "relevant provision" , in relation to a worker's contract, means 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.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part

as a deduction made by the employer from the worker's wages on that occasion."

13. Section 23 of the Employment Rights Act 1996 allows a complaint to be made to an Employment Tribunal that an employer has made an unlawful deduction from wages.

14. Section 24 of the Employment Rights Act 1996 states that where a tribunal finds a complaint under section 23 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. Further, where a tribunal makes a declaration that a complaint is well-founded, it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) 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.

Findings of fact

15. The claimant commenced her employment with the respondent as an Office and Project Administrator. This is reflected in her contract of employment. Over time, her role changed but she did not receive any new contracts of employment. She was a Project Manager at all times relevant to this case. Throughout her employment, she reported to Justin Burtenshaw.

16. The claimant and the respondent agreed that the claimant could undertake an NVQ Level 6 Diploma in Construction Contracting Operations Management. This was to be funded by the respondent.

17. On 27 July 2021, an agreement was signed between the claimant and the respondent. That document refers to the claimant as "Aisa Niemczuk". It was not in dispute that the claimant also uses the name Aisa and that the document related to her. The agreement is headed "Training Agreement Asia Niemczuk: NVQ Level 6 Diploma in Construction Contracting Operations Management."

18. The training agreement sets out the circumstances in which the claimant would be expected to repay some, or all, of the cost of the NVQ. The agreement states that the respondent expected the claimant to continue with her employment for at least two years following completion of the training. There is a sliding scale setting out the repayment terms, depending on the duration of employment after completion of the training.

19. The agreement sets that the claimant must reimburse the full costs of the training in two situations:

    19.1. The employee voluntarily withdraws from or terminates a course early without the Company's prior written consent;

19.2. The employee is dismissed or otherwise compulsorily discharged from a course, unless the dismissal or discharge arises out of the discontinuance generally of the course.

20. The course provider of the NVQ was Cognitia Consulting Limited. The course was paid in full on 30 June 2021, and the claimant was enrolled to start the course in September 2021. In January 2022, Cognitia Consulting Limited informed the respondent that it had changed its name to SHEC Solutions but that the changes should not affect the provision of the NVQ (see the email at document 16 in the bundle). SHEC solutions contacted the claimant in January 2022 asking her to select the modules she wished to undertake.

21. The claimant did not complete the NVQ. The reason for this was in dispute between the parties. The claimant said that it had been agreed she would be able to complete the NVQ during work time. The respondent said that it had not agreed to this and had expected her to complete the course in her own time. Essentially, the claimant said that the pressures of work meant she did not start the NVQ. I find the claimant's evidence to be credible. She clearly discussed her progress with Mr Burtenshaw (see note at document 19 in the bundle) at a meeting on 24 June 2022. It was agreed between them that she could complete an SMSTS qualification. This would cover come of the same health and safety material as part of the NVQ. This is consistent with the claimant expecting to complete her course on work time. In addition, the WhatsApp messages submitted by the respondent show that in August 2022 that claimant told a friend she was struggling to start the NVQ. The reason for this is not set out, but I find the message to be consistent with the claimant's evidence. It is a contemporaneous record that shows the claimant wanted to do her NVQ. Indeed, she felt motivated to do so in order to get another job. I do not find the fact that the claimant stated that she was unhappy in her employment to be indicative of the fact that she did not want to do her NVQ and was avoiding starting it.

22. The claimant completed the SMSTS qualification in November 2022. There was no oral or written agreement between the claimant and the respondent to suggest that the claimant agreed to the terms of the NVQ agreement applying to the SMSTS qualification.

23. The claimant's contract states as follows:

"7.3 You agree that the Company may at any time deduct from your salary or any other sum payable to you in connection with your employment any sum which is owing by you to the company at the time such deduction is made whether by reason or any default on your part or otherwise. Such sums include but are not limited to overpayment of salary or expenses any loans made by the company to you. This right is in addition to the company's rights under clause 9.6 in respect of holidays taken in excess of your entitlement.''

24. The claimant decided to resign from her employment in February 2023. She sent a letter of resignation from her position as Project Manager on 6 February 2023, stating that her calculated period of notice would end 3 March 2023.

25. The claimant received her final pay slip with a pay date of 26 February 2023. That showed a deduction of £1799.00. It was accepted by the parties that this was the amount £1200.00 for the NVQ course plus £599.00 for the SMSTS course.

Conclusions

26. The claimant's contract allowed for deductions from her salary for any sum that was owing to the respondent.

27. The training agreement applied only to the NVQ. It did not apply to the SMSTS course. The signed agreement clearly states at the top that it applies to the NVQ. There is no reference at all to any other course. There is no suggestion that there was even a discussion between the claimant and the respondent that the same terms would apply. There certainly was no agreement in writing.

28. The cost of the SMSTS course should not have been deducted from the claimant's wages because the claimant had not agreed to the making of the deduction and it was not permitted under the claimant's contract of employment.

29. The claimant did not complete the NVQ course, and so the sliding scale that applied to repayment during her employment does not apply in this case.

30. The claimant did not voluntarily withdraw from, or terminate, the NVQ course early without the Company's prior written consent. It was not suggested by the respondent that this part of the agreement was relevant, however I considered it out of completeness. The claimant did not voluntarily terminate the course early. She was unable to start the course as planned due to the pressures of work, and the confusion caused by the change in course provider.

31. The claimant was not dismissed or otherwise compulsorily discharged from a course. The reason that the claimant did not start the NVQ was because she did not have sufficient time to do so on top of her work for the respondent.

32. There was no lawful basis on which the respondent could have deducted the cost of the NVQ from the claimant's wages. It was not permitted under her contract of employment, and she had not consented to the deduction. This is because the agreement in place did not cover the circumstances in which the claimant did not complete the NVQ before leaving her employment with the respondent.

33. The complaint is therefore well-founded and succeeds. The claimant stated that she is only seeking to reclaim the money deducted and identified no other financial loss stemming from the unlawful deduction. The remedy in

this case is therefore an order that the respondent pays the sum of £1799.00 to the claimant in full.

Employment Judge **Freshwater**

Date: 13 February 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 14 February 2024

FOR EMPLOYMENT TRIBUNALS

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