



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Ms D Marchel

Sixth Sense Hair and Beauty Limited t/a Sixth Sense Salon

HELD AT Birmingham

ON 21st March 2018

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Miss S Phillips - Consultant

JUDGMENT

The claimant's claim for unlawful deduction of wages succeeds and the respondent is ordered to pay the claimant the sum of £387.50.

REASONS

Background

1. The claimant brought a claim for unlawful deduction of wages, following the termination of her contract of employment by the Respondent on 7th September 2017 by reason of conduct.
2. The respondent is a hair and beauty salon based in Sutton Coldfield.

3. At the commencement of the hearing the claimant confirmed that the only sums which were outstanding to her were in respect of the deduction of £348 made from her wages in respect of training and travel costs for attending a course on 11th April 2017 and an underpayment of £39.50 in respect of her week in hand wages. Following an adjournment to enable me to consider the claimant's witness statement Ms Phillips conceded that the claimant was entitled to the sum of £39.50 in respect of the week in hand wage. As such the only matter for me to consider was whether or not there had been an unlawful deduction from the claimant's wages in respect of the training course and travel expenses relating to the course.

Evidence and documents

4. I heard evidence from the claimant and for the respondent from Mr Dean Robertson (Director). In addition, I was presented with a bundle of some 111 pages.
5. At the commencement of the hearing I sought confirmation from the parties as to whether the bundle was agreed. This was confirmed subject to the proviso that the claimant's copy of the bundle did not contain a signed copy of pages 81 and 82.

Issues

6. The issue for me to determine is whether the respondent have the prior agreement or consent of the claimant in writing to deduct the sum of £348.

Facts

7. I make the following findings of fact:
 - 7.1 The claimant commenced employment with the Respondent on 5th January 2017 and was employed as a Front of House Manager.
 - 7.2 On 4th January 2017 the claimant signed her statement of main terms of employment ("Statement") which makes it clear that the respondent's employee handbook forms part of her contract of employment. The Statement does not contain an entire agreement clause.
 - 7.3 Paragraph H of the Employee Handbook states:
"The Salon has a policy of encouraging its employees to undertake training in order to further their career and/or development within the organisation along with maintain existing qualifications where appropriate. This will include assisting with costs of the training. However, in the event of termination of employment, for whatever reason, the Salon

will seek reimbursement of the costs in line with the Training Agreement. Further details are available separately”.

7.4 The Claimant was due to go on a training course on 11th April 2017. On or around 6th April 2017 the claimant signed a training agreement which stated:

“Can I remind you that under your Contract of Employment if you leave the employment of Sixth Sense Hair and Beauty Ltd within a period of 2 years of completing the training, the costs (including any travel and accommodation) will be recovered from your final salary”.

7.5 The Training Agreement then listed the items which would be recovered. The form had headings for the recovery of course fees, travel and accommodation costs to be filled in.

7.6 It was originally envisaged that the claimant would drive to the course. However, early on 10th April 2017 the claimant emailed Mr Robertson to ask if she could travel by train. Mr Robertson agreed to the claimant’s request and on the claimant’s arrival at work he printed a further copy of the Training Agreement for the claimant to sign. This provided for the recovery of the course fee of £180 and travel costs of £168. This was signed by the claimant. The form before me was still dated 6th April 2017 and I accept Mr Robertson’s evidence that he forgot to re-date the original form when he printed off another copy to include travel costs. The rest of the wording was the same as the agreement signed on 6th April 2017.

7.7 The claimant was dismissed by the respondent on 7th September 2017 on the grounds of capability and the respondent sought to recover the sum of £348 from monies owed to the claimant.

Applicable law

8. Section 13 (1) Employment Rights Act 1996 provides:

“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.*

Conclusions

9. In reaching my conclusions I have considered all the evidence I have heard and considered the pages of the bundle to which I

have been referred. I also considered the oral submissions made by the claimant and for the respondent by Miss Phillips.

10. Miss Phillips submits that the respondent had the contractual right to make the deduction from the claimant's wages by virtue of the Training Agreement which the claimant signed. The claimant disputes this on the basis that the Training Agreement only allows a deduction to be made if she decided to leave and she did not leave but was dismissed.
11. I am satisfied that whilst clause H of the Employee Handbook gave the respondent the right to make a deduction in respect of training costs in the event of termination for any reason this agreement was varied when the claimant signed the Training Agreement. The Training Agreement only permitted a deduction to be made if the claimant decided to leave. I agree with the claimant that she did not decide to leave but was dismissed.
12. As such the respondent did not have the claimant's agreement or consent to make the deduction in the circumstances of her dismissal and the respondent has made an unlawful deduction from the claimant's wages of £348. In addition, to the conceded underpayment of £39.50 the respondent is ordered to pay the claimant the sum of £387.50.

Employment Judge Choudry
08 April 2018