



# EMPLOYMENT TRIBUNALS

**Claimant:** James Spence

**Respondent:** Environmental Products and Services Limited

**Heard at:** East London Hearing Centre

**On:** 24 November 2023

**Before:** Employment Judge Farrall

**Representation**

**Claimant:** In person

**Respondent:** Mr O'Neill (in person, not represented)

## RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Tribunal has jurisdiction to hear this claim.
2. The Claimant's claim of unauthorised deduction from wages in respect of the period between 23 December 2022 and 1 February 2023 is well founded and succeeds. The Respondent is ordered to pay the Claimant £2041.97 (gross).
3. The Claimant's claim of unauthorised deduction from wages in respect of payment in lieu of accrued leave (holiday pay) is not well founded and is dismissed.

## REASONS

### Background

1. By a claim form presented to the Tribunal on 18 March 2023, after an ACAS early conciliation period between 10 January 2023 and 21 February 2023, the Claimant complained of unauthorised deduction from wages.

2. The Claimant claims that the Respondent refused to allow him back to work after a period of certified sick leave, requiring positive medical evidence of his fitness to work. He was paid Statutory Sick Pay (SSP) between 23 December 2022 and 31 January 2023. The Claimant claims that he is therefore entitled to five weeks' unpaid salary, minus the SSP received, and unpaid accrued holiday pay.
3. In its ET3, dated 21 April 2023, the Respondent claims that this Tribunal does not have jurisdiction to hear the claim as it should have been issued in Northern Ireland. It referred to the terms of the contract, which has a jurisdiction clause limiting all matters arising out of the contract to the Courts of Northern Ireland. The Respondent denies that there has been any unauthorised deduction from wages in any event. The Respondent states that it acted out of its duty of care to employees in not allowing the Claimant to return to work.
4. The matter was listed before me for a substantive hearing on 24 November 2023, having been part heard before Employment Judge Jones on 7 July 2023. The previous hearing had been adjourned as the Claimant lost connection with the CVP platform while giving his evidence and the Tribunal was not able to re-establish a connection with the Claimant.
5. At the hearing before me on 24 November 2023 there was insufficient time to resolve this matter on the day as it was listed for one hour and the Respondent arrived late having forgotten the hearing date. I therefore reserved judgment and made the following directions at the hearing which were issued to the parties in writing on 6 December 2023:
  1. **The Claimant must serve on the Respondent, copying in the Tribunal, is calculations of monies owed within 7 days of receipt of this Order.**
  2. **The Respondent has 14 days from receipt of the above to respond, copying in the Tribunal, to state whether the amounts claimed are agreed.**
  3. **If the claim succeeds and the amounts are agreed, judgment will be issued to include remedy.**
  4. **If the amounts are not agreed the matter will be listed for a hearing in relation to remedy.**
6. On 6 December 2023 the Claimant emailed the Tribunal, copying in the Respondent to state:

***There were 27 workdays from the point of me notifying them of my return to work, up to the 31/01/2023. That works out to £2908.  
SSP has been a total of £874 So £2034 is what I am still owed up to the end of January.***

7. To date the Respondent has not replied to state whether the amount claimed is agreed or not and has not replied to further correspondence with the Tribunal.

### **The Hearing**

8. The hearing took place via CVP.
9. There was no hearing bundle, but I have had sight of the papers submitted by the parties including the ET1, ET3, contract of employment, payslips from January 2023 and February 2023 and emails between the parties.
10. I read the contemporaneous note of Judge Jones from the previous adjourned hearing of 7 July 2023.
11. I also heard evidence from the Claimant who adopted the contents of his ET1 and the Mr O'Neill on behalf of the Respondent who adopted the contents of his ET3. Both parties also made submissions. I asked questions of both parties as necessary to assist me in deciding on the issue of jurisdiction.

### **Issues**

12. Does this Tribunal have jurisdiction to consider the Claimant's claim?
13. Did the Respondent make unauthorised deductions from the Claimant's wages for the period 23 December 2022 to 31 January 2023?
14. Did the Respondent make unauthorised deductions from the claimant's wages in respect of accrued holiday pay?

### **Relevant Findings of Fact**

15. The Respondent is a manufacturing company primarily based in Newry, Northern Ireland. The company exports plumbing material all over England and Wales and has employees who are based there. The company has an office in Stockport, England from which sales are conducted. There is also a testing lab, a design unit, and a warehouse in Stockport.
16. The Claimant was employed by the Respondent as a Field Technician. He was living in Essex at the time and applied for the role which was advertised as covering London and that area.
17. The Claimant started working for the Respondent on 3 November 2022. He attended training in Northern Ireland until 24 November 2023 when he returned to England. It was the intention of both parties that the Claimant would be based in England and work from there, which he did subject to the periods of sick leave set out below.
18. The parties agreed a contract of employment, signed on 24 October 2023. This provided a clause limiting jurisdiction over all matters arising out of the agreement to the Courts of Northern Ireland as follows:

*“For the avoidance of doubt this agreement shall be governed by the laws of Northern Ireland and you consent to the exclusive Jurisdiction of the Courts in Northern Ireland in all matters regarding it.”*

19. The Claimant was contracted to work 38 hours a week, with a salary of £2333 per month (gross).
20. The Claimant was deployed to jobs by the Respondent via an app which he no longer has access to.
21. The Claimant injured his knee and as a result took sick leave on 9 and 10 November 2022 and again on 28 until 30 November 2022. On 5 December 2022 the Claimant provided the Respondent with a Statement of Fitness to Work from his GP which stated that he was not fit to work between 5 and 23 December 2022.
22. On 23 December 2023 the Claimant emailed the Respondent's HR Department to say that he was fit to return to work.
23. The Respondent replied via email on 3 January 2023 that his fit note did not specify what type of work he was able to do. They advised that they wanted a doctor to confirm that he was fit for the role of Field Technician before he could return to work.
24. The Claimant objected to this and on 4 January 2023 the Respondent replied to state that they would like to obtain a private Occupational Health report and that the Claimant would remain on SSP unless he could provide doctor's letter saying that he was fit for the work that he was required to perform as part of his role.
25. On 12 January 2023 the Claimant emailed the Respondent to say that he had received a referral to a Trauma and Orthopaedic Unit in relation to his knee. This caused the Respondent to believe that the Claimant was not telling the truth about being fit to return to work.
26. The Respondent emailed the Claimant on 20 January 2023 requiring a statement from a medical practitioner to say that he was fit to return to work.
27. On 24 January 2023 the Claimant sent a further statement of fitness to work from his GP which stated that his knee is fine now, and he can return to work as from 23 December 2022.
28. The Respondent did not accept that the Claimant was fit to return to work and did not allow him to do so.
29. The contract of employment was never formally terminated. However, the Claimant received a P45 form with his last payslip which was issued on 5 February 2022.

30. I therefore find that the effective date of termination was 31 January 2023 as he was paid until that date by the Respondent.
31. In January and February 2023, the Claimant was paid £437.14 in SSP each month, totalling £874.28.
32. The February 2023 payslip shows that the Claimant was paid for his accrued holiday, marked on the payslip as “holiday day rate 2.5 days” amounting to £277.84 in addition to SSP.

## The Law

### Jurisdiction

#### Jurisdiction of the Employment Tribunal in England and Wales

33. The jurisdiction of the Tribunal in England and Wales is provided for by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the ET Regulations”), Rule 8 of which provides:

**8(2) A claim may be presented in England and Wales if—**

**(a) the respondent, or one of the respondents, resides or carries on business in England and Wales;**

**(b) one or more of the acts or omissions complained of took place in England and Wales;**

**(c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or**

**(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.**

#### Territorial Reach of the Employment Rights Act 1996 (the “ERA”)

34. The Employment Rights Act is silent as to its territorial scope, save for section 244(1) which provides that the Act “*extends*” to England and Wales and Scotland (“*Great Britain*”). This means that it forms part of the law of Great Britain and not Northern Ireland.
35. The connection required between the employee and their employment with Great Britain for the ERA to apply has been explored in several authorities. For present purposes the notable judgment is that of the House of Lords in Lawson v Serco [2006] UKHL 3. In *Lawson* Lord Hoffman held that Parliament must have intended, as a general principle, for the unfair dismissal rules to apply to ‘*the employee who was working in Great Britain*’. This was described by Lord Hoffman as the “*standard case*” (para 25) which would fall within the territorial reach of the ERA.

36. In *Ravat v Halliburton Manufacturing and Services Ltd [2012] UKSC 1* the Supreme Court confirmed that it is not necessary to examine the connection with Great Britain in these cases and emphasised that the language of exceptionality as required in some cases was intended to apply to cases where the employee was truly an expatriate because they lived and worked abroad. Cases where the employee works partly here but mainly abroad, and/or lives here, are not true expatriate cases. It will therefore not necessarily require an exceptional case for such an employee to be protected by the ERA.

#### Unauthorised Deduction from Wages

37. S.13 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, 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.**

#### Conclusions

#### Jurisdiction

38. In light of the above findings, I conclude that the Claimant is entitled to present his claim in this jurisdiction, as the following requirements of Regulation 8 of the ET Regulations are met:

- i. The Respondent carries out business in England and Wales, from premises in Stockport where sales are conducted, testing and design occurs, and products are stored in warehouses. Other technicians such as this Claimant are based in despatched throughout England and Wales in furtherance of carrying out business in this area (R. 8(2)(a)).
- ii. The claim relates to a contract under which the work is or has been performed partly in England and Wales as the Claimant was based in England and the intention of the parties was that he would perform the duties of his role in England, which he did save during the periods of training and sick leave set out above (R 8(2)(c)).
- iii. There is plainly a connection with England and Wales considering the Claimant lives and performed his duties in England, and the Respondent carries out business in England and Wales. This gives this Tribunal jurisdiction to hear the claim (R 8(2)(d)).

### **Enforceability of the Jurisdiction Clause in the Contract of Employment**

39. It is not necessary for me to consider whether the Claimant is entitled to bring a claim for breach of contract in this jurisdiction if the Claimant has statutory rights.
40. The jurisdiction clause in the contract of employment does not negate the statutory rights which are conferred upon the Claimant who was working in Great Britain.

### **Territorial reach of the ERA**

41. I have applied the principles in *Lawson v Serco* and conclude that this is a standard case to which the ERA applies as the Claimant was working in England.
42. He was based in Essex and recruited to conduct work in this area, which he did.
43. There is no need to explore the connection with England any further in the complex body of case law on the issue of territorial jurisdiction as the claimant is not an expatriate worker.

### **Unlawful Deduction From Wages**

#### **Refusing to allow the Claimant to return to work and keeping him on SSP after 23 December 2023**

44. The Claimant was fit to return to work from 23 December 2023 onwards. Therefore, there was no basis for the Respondent to refuse to allow him to return to work. There was no requirement for the Claimant to provide conclusive specific medical evidence to support his assertion that he was able to perform his duties. If the Respondent had concerns about its duty

of care to the Claimant, the appropriate course of action would have been an occupational health referral and consideration of a phased return to work and/or reasonable adjustments.

45. The Respondent was not entitled to keep the Claimant on SSP while this matter was resolved as he was no longer certified as unfit to work by reason of sickness.
46. The claim for unlawful deduction of wages from 23 December 2022 – 31 January 2023 is therefore well founded and succeeds. This amounts to a period of 5.5 weeks and £2916.25 salary (gross) minus SSP of £874.28 which was paid, the Claimant is owed £2041.97 (gross).
47. The Respondent has not made any representations further to the directions of 6 December 2023. I do not consider it proportionate to re-list this matter for a hearing to decide on remedy as there is sufficient evidence before me and no indication that these are in dispute. Either party can apply for reconsideration of these calculations if necessary.

Unpaid accrued annual leave

48. The Claimant was paid his accrued holiday pay in the February payslip and therefore this claim is not well founded and is dismissed.

**Employment Judge Farrall  
14 March 2024**