



EMPLOYMENT TRIBUNALS

Claimant: Mrs Margaret Loveday

Respondent: Essex County Council

Heard at: East London Hearing Centre

On: 12 November 2020

Before: Employment Judge S Knight

Representation

Claimant: In person, unrepresented

Respondent: Benjamin Phelps, Counsel

JUDGMENT

- 1. The claim for unauthorised deductions from wages is struck out for want of jurisdiction.**
- 2. The Claimant may make any application for an order for her costs or preparation time within 28 days of the date that this Judgment is sent to the parties. Any such application is to be emailed to the Tribunal and copied to the Respondent's representative.**
- 3. Any application for costs must include fully itemised bills from any legal representative instructed.**
- 4. Any application for preparation time must state (i) the hours spent on preparation of the claim and (ii) the work carried out during each of those hours.**

REASONS

Introduction

The parties

1. The Claimant was a Senior Specialist Teacher for autism and social communication employed by the Respondent from 1 January 2012 until 19 December 2019. The Respondent is a local authority with approximately 7,500 employees.

The claims

2. The Claimant claims for an unauthorised deduction from wages, which was taken from her redundancy payment. The Claimant left her employment on 19 December 2020.
3. On 16 January 2020 ACAS was notified under the early conciliation procedure. On 16 February 2020 ACAS issued the certificate. On 16 March 2020 the ET1 was presented. On 2 June 2020 the ET3 was received by the Tribunal.

The application considered today

4. The Respondent has today applied to strike out the claim for want of jurisdiction. For the reasons below, and which I gave at the hearing, that application is granted.

Procedure, documents, and evidence heard, etc.

Procedure

5. The case was listed today for a final hearing via Cloud Video Platform.
6. At the start of the hearing I checked whether any reasonable adjustments were required. Those in attendance confirmed that none were required.
7. I explained to those present how the hearing would be conducted. There were no questions or objections.

Documents

8. The Tribunal considered the following material it had received from the parties:
 - (1) From the Claimant, a witness statement.
 - (2) From the Respondent a bundle of papers for the hearing comprising 165 pages, with the final page number being 114 due to the bundle having been renumbered after it was originally compiled; along with witness statements from Anthony Sale and Karen Robson.

9. The Respondent had been ordered to serve a skeleton argument but failed to do so.

Application to strike out

10. At the outset of the hearing I was asked by the Respondent to consider the question of jurisdiction as a preliminary matter, and to strike out the claim for want of jurisdiction.

The Respondent's submissions

11. The Respondent's counsel submitted that this was a claim for unauthorised deductions from wages under s 13 Employment Rights Act 1996. However, under s 27 Employment Rights Act 1996, "wages" do not include "*any payment referable to the worker's redundancy*". The Claimant's case is that there was a deduction from her redundancy payment. As such, the deduction was not from wages. Therefore, the Tribunal lacks jurisdiction.
12. The Respondent's counsel submitted that if the claim was struck out for want of jurisdiction, Mrs Loveday could still bring a claim in the County Court, which the Respondent would not oppose for want of jurisdiction. The Respondent's counsel confirmed that the Claimant could raise estoppel in the County Court, as she had intended to do in the Employment Tribunal. After a break to speak to the Respondent to take explicit instructions, the Respondent's counsel on behalf of the Respondent gave an undertaking in the clearest possible terms that in the County Court, the Respondent would not take any point in relation to opposing the County Court having jurisdiction: a County Court claim would be opposed only on its substantive merits.
13. The Respondent's counsel informed me that if I proceeded to hear the claim today and found against the Respondent, then the Respondent would apply for permission to appeal.

The Claimant's submissions

14. The Claimant noted that she had not prepared for this issue, but that she thought the claim was within the Tribunal's jurisdiction, because she was challenging under the law of estoppel, and because when she left employment she was given a payslip which made no reference to a deduction to be made.

Findings

The timing of the application to strike out

15. The issue of jurisdiction has been raised unacceptably late. It should have been raised in the ET3. It should have been raised at the Telephone Preliminary Hearing before Employment Judge Lewis on 28 September 2020, at which the Respondent was represented by counsel. It should have been raised in the skeleton argument which Employment Judge Lewis directed at the Telephone Preliminary Hearing the Respondent must file by 5 November 2020, but which the Respondent never filed. The Respondent's counsel told me today that, although the case management order from the Telephone Preliminary Hearing

was sent to the Respondent's solicitor, it was missed by them. It is inconceivable how a solicitor would miss both a case management order, and the report from their counsel who had attended the hearing, requiring a skeleton argument to be filed. As a result of the issue not having been raised sooner, the Claimant had no advance notice of the jurisdiction issue.

16. This comes against the background of the Claimant, on any analysis, having been treated poorly by the Respondent. The letters provided by the Respondent which they had sent to the Claimant are riddled with factual errors, and would have made any recipient stressed and scared. Some of the letters treat the Claimant as having been in the wrong for being overpaid, whereas the documentary evidence served by the Respondent suggests that this was the fault of the Respondent, and a matter which the Claimant raised with the Respondent. It appears that the Respondent's payroll processes made multiple errors over the course of several years.
17. However, the lateness of the issue and any unreasonable conduct of the Respondent does not impact on the jurisdiction of the Employment Tribunal.

The law

18. This is a claim for unauthorised deduction from wages. Wages are defined in the Employment Rights Act 1996 s 27 as follows:

“(1) In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—

[there then follows a list of included matters]

but excluding any payments within subsection (2).

(2) Those payments are— [...]

(d) any payment referable to the worker's redundancy [...]

19. This wording is wide enough to cover both contractual and statutory redundancy payments. As a result, disputes in relation to these entitlements cannot be resolved by means of a claim in the Employment Tribunal in relation to an unauthorised deduction from wages.

20. The Employment Tribunal has a limited jurisdiction to hear breach of contract claims. That jurisdiction is restricted to claims arising or outstanding on the termination of employment. In this regard, The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides at article 3 that:

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if- [...]

(c) the claim arises or is outstanding on the termination of the employee's employment.”

21. In *Peninsula Business Services Ltd v Sweeney* [2004] IRLR 49 the EAT considered this provision and held at [50] that:

“a claim will only be ‘outstanding’ at such date [the EDT] if it is in the nature of a claim which, as at that date, was immediately enforceable but remained unsatisfied [...]”

Discussion

22. The parties agree that the Claimant left her job on 19 December 2019. The Claimant’s case is that she received a letter informing her of the deduction on 21 December 2019, and the deduction was made from the redundancy payment when it was paid on 23 December 2019. As such, the deduction was made from a redundancy payment which did not constitute wages. Under s 27 Employment Rights Act 1996, this was not a deduction from wages. Therefore, the Tribunal lacks jurisdiction to deal with an unauthorised deduction from wages claim.
23. I could allow the Claimant to amend her claim to allege breach of contract instead of unauthorised deductions from wages.
24. However, any breach of contract (if that is what it was) arose after the end of the employment. As such, this Tribunal would not have jurisdiction even on a breach of contract claim.
25. If I was to proceed today to hear the case without jurisdiction, then the Respondent would inevitably and successfully appeal against any judgment I made against them.

Conclusions

26. The Employment Tribunal lacks jurisdiction to deal with the claim for unauthorised deductions from wages. The Employment Tribunal would also lack jurisdiction to deal with a claim for breach of contract.
27. The correct venue for each of these claims is the County Court. I note that the Respondent, through their counsel, has given an undertaking in the clearest terms that if the claim is struck out for want of jurisdiction, the Claimant could still bring a claim in the County Court, which the Respondent would not oppose for want of jurisdiction, and that the claim would be contested only on its substantive merits.
28. The claim is therefore struck out for want of jurisdiction.

Costs

29. Given what I have said about the timing of the application to strike out for want of jurisdiction, the Tribunal will entertain any application for costs (if the Claimant has received legal representation) or preparation time (if the Claimant has not received legal representation) incurred by the Claimant. Preparation time is payable at a fixed hourly rate.

30. The Claimant has 28 days from the date on which this judgment is sent to the parties to make any application for an order to cover her costs or preparation time.

**Employment Judge S Knight
Date: 18 November 2020**