



EMPLOYMENT TRIBUNALS

Claimant: Mr C Jenkinson

Respondent: Parkmore Hotel Limited

Heard at: Teesside Justice Centre **On:** 6 April 2017

Before:

Representation

Claimant: Ms L Wilkinson (lay representative)

Respondent: Mr G Ridgeway (consultant)

JUDGMENT

1 The claimant's claim of unlawful deductions from wages pursuant to Part II of the Employment Rights Act 1996 is dismissed.

ORDER

2 The claim form and Tribunal record be amended to replace the respondent with "Parkmore Hotel Limited".

REASONS

1 The claimant, a chef presented a claim form on 2 February 2017 saying he had not been paid since 23 December 2016 but remained employed. He raised the matter with ACAS on 25 January and was issued with a certificate on 2 February 2017. He says he was referred by ACAS to a work Tribunal. He has received full remission for his fees for both issuing his complaint and this hearing.

2 The respondent set out in its response detailed factual assertions as to its reasons for its decision in January 2017, and subsequently, not to make payment of SSP to the claimant. In short the respondent says the claimant's notification on 23 December (just after having been paid) that he was unwell due to scarlet fever was untrue, and his subsequent sick notes for back pain are not reliable. The respondent doubts the voracity of the claimant's medical evidence. The claimant presented a schedule of loss which sought payments of SSP only, and compensation for consequential losses arising from the respondent's decision not to pay SSP.

3 Statutory sick pay payments are set off against an employer's national insurance payments and therefore have no direct cost to the respondent, and may, as Taylor Gordon (attached) indicates, be paid direct by HMRC following failure by an employer; and an employer may be prosecuted in connection with such failure.

4 I consider the Tribunal is bound by Taylor Gordon in this matter. Ms Wilkinson tells me that the complaint to HMRC has already been presented and that further documentation has been provided but that its resolution may take some time. In the meantime the claimant's financial position worsens.

5 I appreciate that the parties have a bigger issue to resolve, namely the claimant's ongoing health and employment. It may well be that subsequent complaints are brought before this Tribunal. It is clearly in the interests of justice for the real matters between them to be resolved and I have encouraged them to do so.

6 Nevertheless, these matters do not bear directly on the only complaint currently before the Tribunal and its resolution. It seems to me that if the Tribunal has no jurisdiction, consistent with Taylor Gordon to determine a complaint under Sections 13, 23 and 24 of the Employment Rights Act 1996, it follows that it cannot retain jurisdiction until after determination by HMRC, in order then to consider making an award in respect of consequential losses arising from a decision not to pay SSP. That was not a point directly discussed in Taylor Gordon, but it would logically appear to follow from it.

7 I also order the correct identification of the respondent company, the claimant's documentation for this hearing appearing to accept the position.

8 I attach the Judgment of Recorder Luba sitting in the Employment Appeal Tribunal below in full, taking into account that the claimant is represented by a lay representative.

Employment Judge Wade

Date 6 April 2017

JUDGMENT SENT TO THE PARTIES ON

10 April 2017

M M Richardson
FOR THE TRIBUNAL OFFICE

Status:  Positive or Neutral Judicial Treatment

**Taylor Gordon & Co Ltd (T/A Plan Personnel) v Stuart Peter
Timmons**

Appeal No.EAT/0159/03/RN

Employment Appeal Tribunal

25 September 2003

2003 WL 22257856

Before: Mr Recorder Luba QC (Sitting Alone)

Thursday 25th September, 2003

Representation

For the Appellant Mr T Brennan QC (of Counsel) Instructed by: Messrs Dawsons Solicitors 2 New Square Lincolns Inn London WC2A 3RZ.

JUDGMENT

MR RECORDER LUBA QC

1 This is an appeal from a decision made by a Chairman of the Brighton Employment Tribunal entered in the Register on 4th December 2002. The appeal concerns the legal capacity of Employment Tribunals, under their jurisdiction relating to unlawful deduction from wages, to determine questions of the entitlement of employees to Statutory Sick Pay (SSP).

Facts

2 By an Originating Application lodged on 1st May 2002, Mr Stuart Peter Timmons complained to the Employment Tribunal that he had been subject to an unlawful deduction from his wages. The unlawful deduction was alleged to have been made by an employment agency, Plan Personnel, which is the trading name of Taylor Gordon & Company Limited. The allegation was, to put it in Mr Timmons's own terms as taken from his application to the Employment Tribunal, that:

“Plan Personnel have refused to pay me Statutory Sick Pay for ... 6 weeks' absence. I have been to the DSS with Form SSP1 as I am required to do and they have confirmed that Plan Personnel should have paid me SSP. I believe Plan Personnel's refusal amounts to an unlawful deduction from wages and I therefore claim £379.50, being 6 weeks' SSP.”

3 By their Notice of Appearance in the Employment Tribunal, the Company indicated that they would resist the claim. The penultimate paragraphs of the Company's grounds were expressed in this way:

“Plan Personnel therefore rejects this claim on the basis that there has been no unlawful deduction from wages, in that Mr Timmons is not entitled to SSP and therefore it cannot constitute wages.

Plan Personnel requests a preliminary hearing to determine whether this case should proceed at all when the issue of SSP is still being investigated by the Inland Revenue.”

4 Those commendably brief and straightforward passages, in the documents submitted to the Employment Tribunal, set up for consideration the issue of whether the Employment Tribunal had jurisdiction to decide if Mr Timmons was entitled to SSP at all.

5 The matter came before the Chairman (Mr Andrew Hogarth) on 30 August 2002. Although both parties were represented, neither party was able to assist the Chairman as to any statutory provisions or authorities dealing with the matter in dispute. Not surprisingly, in those circumstances, the Chairman invited the parties to make written submissions. Those written submissions, however, did not assist the

Chairman on the crucial aspects of the statutory scheme for Statutory Sick Pay or in any other material respect. Indeed, in paragraph 4 of his extended reasons the Chairman records that no statute or statutory instrument is referred to at all in the Company's submissions as authority for the assertion that the Employment Tribunal had no jurisdiction.

6 The Chairman was, therefore, required to give unassisted consideration to his jurisdiction under [Part II of the Employment Rights Act 1996](#) . He found that the jurisdiction to determine a claim in relation to unlawful deduction from wages extended to a jurisdiction to deal with non-payment of Statutory Sick Pay, where entitlement was in issue. Having assumed that jurisdiction, he then went on to determine the issue of entitlement by reference to the provisions governing Statutory Sick Pay. He decided that the entitlement of Mr Timmons was made out as alleged and that the employers had unlawfully refused to pay. Accordingly, his decision was to uphold the claim for unpaid wages in the sum claimed of £379.50.

The Appeal

7 This appeal has taken an entirely different course. The Company, now as Appellant, has been represented by Mr Timothy Brennan QC. He has put before me not only a helpful and detailed Skeleton Argument (and Chronology) but also a formidable array of statutory provisions and relevant authorities.

8 For his part, Mr Timmons — the Respondent to this Appeal, indicated in writing to the Employment Appeal Tribunal Registrar that he would not contest Ground 1 of the Appellant's Notice of Appeal (by which the Company challenged the jurisdiction of the Employment Tribunal). In those circumstances, Mr Timmons did not put before me a Skeleton Argument nor any statutory provisions or materials. However, at the hearing of the appeal his interests were ably protected and represented by Mr A. Freer of Counsel. He, whilst maintaining the position that Mr Timmons did not oppose the appeal on the jurisdiction point, fairly and helpfully drew my attention to such statutory provisions as he considered might have a bearing on the jurisdictional question. I am grateful to both counsel for their assistance and pay particular tribute to the assistance I have received from Mr Brennan who has borne the uphill task of demonstrating that Employment Tribunals do not have the statutory jurisdiction to enter upon the task on which this Chairman felt entitled to embark.

9 Although the Notice of Appeal before me takes issue with the ultimate determination made by the Chairman (that the Applicant was entitled to Statutory Sick Pay on the facts) the primary thrust of the Notice of Appeal (at Ground 1) has been on the jurisdictional issue.

Statutory background

10 As the Tribunal Chairman found, the complaint before him was framed in terms of an application under [Part II of the Employment Rights Act 1996](#) . The provisions of that Part, dealing with the protection of wages, are derived from provisions originally contained in the

11 The first relevant provision of the 1996 Act, in [section 13\(1\)](#) , is that:

“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”.

12 Then, at [section 13\(3\)](#) it is provided that:

“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 It will immediately be seen that [section 13](#) contains a qualified prohibition on the making of a deduction from wages and deems to be “a deduction” the withholding of any wages “properly payable” to the worker.

14 Having identified what amounts to an unlawful deduction from wages, the [Employment Rights Act 1996](#) then sets out an enforcement mechanism. In [section 23](#) it is provided that:

“(1) A worker may present a complaint to an Employment Tribunal—
(a) that his employer has made a deduction from his wages in contravention of section 13 ...”.

15 The remedy available from a Tribunal, should it find the complaint well founded, is set out in [section 24](#) and includes the power (exercised in this case) to order the employer to pay the amount of any deduction made in contravention of [section 13](#) .

16 The meaning of the term “wages” is dealt with in [section 27](#) of the 1996 Act. That provides, in so far as material, (and in the form as amended by the [Employment Act 2002](#)) as follows:

“(1) In this Part “wages”, in relation to a worker, means any sum payable to the worker in connection with his employment, including
(a) ...
(b) statutory sick pay under [Part XI of the Social Security Contributions and Benefits Act 1992](#)
(c) statutory maternity pay under [Part XII](#) of that Act
(ca) statutory maternity pay under [Part 12 ZA](#) of that Act
(cb) statutory adoption pay under [Part 12 ZB](#) of that Act”.

17 The amendments which introduced [subsections 27\(1\)\(ca\) and 27\(1\)\(cb\)](#) were not in force at the time when this matter came before the Chairman. However, it is common ground before me that the question of the jurisdiction of the Employment Tribunal which arises on this appeal may potentially affect not only decisions in relation to [section 27\(1\)\(b\)](#) but also disputes arising as to entitlement to the payments mentioned in [27\(1\)\(c\), \(ca\) and \(cb\)](#) .

18 The crucial question, therefore, is: does the Tribunal have jurisdiction in relation

to [sections 27\(1\)\(b\)](#) through to [27\(1\)\(cb\)](#) to determine disputes as to whether these forms of "statutory pay" are in fact "payable to the worker" ?

19 No answer to that question is given by the terms of [section 27](#) itself nor by any other provision in [Part II of the Employment Rights Act 1996](#) . Both Counsel before me have helpfully scoured the other provisions of the lengthy [Employment Rights Act 1996](#) to see if there are any other circumstances in which issues as to the determination of rights to statutory payments are expressly withdrawn from the jurisdiction of the Employment Tribunal. One such provision is in [section 215](#) . However, that section appears in [Part XIV](#) of the 1996 Act (the interpretation part). It is to be found in [Chapter 1](#) of that Part, which deals with the definition of the term "continuous employment". Although that Chapter, at [section 215\(2\)](#) read together with [section 215\(4\)](#) , does raise an example of a case in which a question otherwise potentially falling to an Employment Tribunal shall be determined by another statutory body, it does so in a context far removed from that arising under [Part II](#) of the 1996 Act. The statute disqualifies, as a week of employment for the purposes of computation of periods of employment, a week during which the employee was employed outside Great Britain and was not an employed earner liable to pay secondary Class 1 National Insurance contributions. Not surprisingly, [section 215\(4\)](#) expressly provides that any question arising as to whether the employee was an employed earner or was liable to pay Class 1 National Insurance contributions should be determined by the appropriate statutory authorities. The clear settlement of that particular jurisdictional question on the face of the statute does not, however, answer the question whether the absence of such an express provision in [Part II](#) of the 1996 Act operates to enable the Employment Tribunal to retain, under [Part II](#) , a jurisdiction to determine the payability of the statutory payments listed in [section 27\(1\)\(b\) to \(cb\)](#) .

20 Mr Brennan's submission is not that the 1996 Act itself contains the de-limitation on the Employment Tribunal's jurisdiction for which he contends. He submits that there exists a unique, discrete, and exhaustive statutory arrangement for the determination of disputes as to the payability of the relevant statutory payments to workers. In the light of that statutory arrangement, he contends, the [Employment Rights Act 1996](#) should not be construed so as to overlap with it or run parallel to it. I turn, therefore, to consider the other statutory provisions.

21 Statutory Sick Pay was first introduced by the [Social Security and Housing Benefits Act 1982](#) . [Sections 1 to 4](#) of that Act provided for the employee's entitlement and [section 9](#) provided that the employer was entitled to recover the amounts paid out by him in SSP from National Insurance Contributions which were otherwise payable by him to the Secretary of State. In that scheme, the employer was simply a "conduit" for the transmission of SSP to the employee. The employer himself was not funding the benefits but was simply passing to the employee his statutory entitlement. Not surprisingly, SSP at that time being plainly designated a Social Security benefit, the statutory scheme made provision for the effect that entitlement to SSP would have on other Social Security benefits.

22 Issues arising as to entitlement to SSP itself were, by the 1982 Act, to be determined by what were then the two familiar adjudicating authorities in relation to Social Security benefits, i.e. the Secretary of State and the Insurance Officer. Provisions for appeal were made in respect of the decisions of either of those authorities.

23 That was the statutory arrangement as to SSP which was on foot at the time

when the [Wages Act 1986](#) was first enacted to provide protection for employees suffering unlawful deductions from their wages. Although the [Wages Act 1986 \(section 7\(1\)\(e\)\)](#) included Statutory Sick Pay — payable under [Part I of the Social Security and Housing Benefit Act 1982](#) in the definition of “wages”, nothing in it touched on the issue now before me i.e. whether the Employment Tribunal had jurisdiction to determine disputes as to whether any SSP was “properly payable”.

24 Although the [Statutory Sick Pay Act 1991](#) reduced the amount that an employer could recoup from the State in respect of payments of SSP made to the employee, none of its provisions have been suggested to me as having any bearing on the question at issue in this appeal.

25 The next legislative change occurred in 1992. In that year the statutory arrangements for the provision and administration of Social Security were dealt with by two Acts, both given Royal Assent on the same day. The [Social Security Administration Act 1992](#) , as its name suggests, brought together all the provisions necessary to ensure the orderly administration of Social Security benefits and to provide for decision-making and a system of appeals. It carried forward the familiar twin jurisdictions of the Secretary of State and the Insurance Officer (now Adjudication Officer) for decision-making on entitlement to Social Security benefits. The other Act, the [Social Security Benefits and Contributions Act 1992](#) , brought together the major Social Security benefits and set out the conditions of entitlement.

26 Although the Statutory Sick Pay Scheme was again amended by the [Statutory Sick Pay Act 1994](#) , that Act did not touch on the question of the determination of disputes as to entitlement. It dealt only with the question of the recoupment by the employer of the amount of SSP being paid out from National Insurance contributions and introduced a regulation-making power to enable the Secretary of State to identify how the employer was to be reimbursed and to what extent.

27 This was the system in place (in the Social Security arena) when the [Wages Act 1986](#) was consolidated into the [Employment Rights Act 1996](#) . At that time the administration and adjudication arrangements for SSP were firmly within the Social Security scheme and were dealt with by Social Security officials and, in particular, those designated as Adjudication Officers or the Secretary of State's representatives. The provision that initial decisions as to entitlement fell to be taken by the statutory Social Security authorities ensured a consistency of approach by them to questions of entitlement. It enabled them to deal with the interface between SSP entitlement and other Social Security benefits. Of course, ultimately, it was also the Social Security budget that was meeting the cost of SSP reimbursement to employers.

28 The [Social Security Contributions \(Transfer of Functions etc.\) Act 1999](#) transferred the responsibility for adjudication of disputes relating to SSP to the Commissioners of Inland Revenue. It is that statutory scheme which was in place at the date that Mr Timmons's complaint fell to be determined by the Chairman of the Employment Tribunal and it is the statutory scheme in place today.

29 What Mr Brennan derives from the legislative history is the proposition that SSP has at all times firmly been within the territory of the Social Security system. Within the boundaries of that system, statutory arrangements have been made for the interface between entitlement to SSP and entitlement to other Social Security benefits and arrangements have existed on the face of the statute for the determination of disputes about entitlement to SSP by the statutory adjudicating authorities. He suggests that this is a powerful indicator that over a period of almost 20 years the legislature has firmly ensured that all administration and decision-

making in relation to SSP has been under the exclusive jurisdiction of the Social Security authorities.

The modern arrangements for SSP

30 As indicated in the above historical account, at paragraph 25, provisions relating to the entitlement of an individual to Statutory Sick Pay are now to be found in the [Social Security Contributions and Benefits Act 1992](#) . [Part XI](#) of that Act (Statutory Sick Pay) makes provision — under [sections 151](#) through to 155 — for such matters as: the employer's liability to pay Statutory Sick Pay in respect of days of incapacity; qualifying conditions in relation to periods of incapacity for work; periods of entitlement; qualifying days and limitations on entitlement. Nothing turns on those particular provisions which set out the framework for SSP itself. If any material from the 1992 Act is directly helpful as bearing on the question before me, it is [section 160](#) which introduces [Schedule 12](#) and which makes express provision for the interface between SSP and other social security benefits.

31 The adjudication of disputes relating to SSP is now dealt with by the [Social Security Contributions \(Transfer of Functions etc.\) Act 1999](#) . Although the long title of that statute would appear to suggest that it is concerned only with social security contributions, the body of the statute suggests a wider reach. By [section 8](#) of the 1999 Act it is provided that:

“(1) Subject to the provisions of this Part, it shall be for an officer of the Board [of the Inland Revenue] ...

(f) subject to and in accordance with regulations made for the purposes of this paragraph by the Secretary of State with the concurrence of the Board, to decide any issue arising as to, or in connection with, entitlement to Statutory Sick Pay or Statutory Maternity Pay;

(g) to make any other decision that falls to be made under [Part XI of the Social Security Contributions and Benefits Act 1992](#) (Statutory Sick Pay) or [Part XII](#) of that Act (Statutory Maternity Pay).”

32 That section has been enlarged, consequentially upon the making of the [Employment Act 2002](#) , to provide that the same authority shall determine issues arising in relation to Statutory Adoption Pay and Statutory Maternity Pay.

33 Mr Brennan's central submission is that [section 8\(1\)](#) vests an exclusive jurisdiction in the officers of the Inland Revenue to determine issues as to entitlement to the relevant statutory payments. He relies, in particular, on the phrase “it shall be for” an officer of the Board ... etc. He submits that I should draw the inference that that terminology not only establishes a jurisdiction for the officers of the Board but indicates that it shall be for those officers (and not for any others) to determine the listed issues. The only qualification to the otherwise exclusive jurisdiction of the officers of the Board, he suggests, is given in [section 8\(1\)](#) by the words “subject to the provisions of this part”. If no provision is otherwise made in “this part” (and none is made) then the proper construction, it is submitted, is that only an officer of the Board shall decide any issue relating to entitlement to the statutory payments.

34 The 1999 Act offers a right of appeal against decisions of the officers of the Board ([section 11](#)) and makes provision as to the exercise of those rights of appeal (

[section 12](#)).

35 In exercise of the regulation-making power mentioned in [section 8\(1\)\(f\)](#) of the 1999 Act, the Secretary of State has made the [Statutory Sick Pay and Statutory Maternity Pay \(Decisions\) Regulations 1999](#) . They provide at [Regulation 2](#) :

“(1) An application for the determination of any issue arising as to, or in connection with, entitlement to Statutory Sick Pay or Statutory Maternity Pay may be submitted to an officer of the Board by (a) the Secretary of State or (b) the employee concerned.

(2) Such an issue shall be decided by an officer of the Board only on the basis of such an application or on his own initiative.”

[Regulation 3](#) then goes on to deal with the form in which applications for the determination of such an issue shall be made. An application by an employee must state the grounds on which the employer has denied liability: [reg 3\(2\)](#) .

36 It will be seen that these provisions drive the question of the determination of entitlement to Statutory Sick Pay or Statutory Maternity Pay to the officers of the Board who are given jurisdiction to resolve them by [section 8\(1\)\(f\) and \(g\)](#) . The [Social Security Contributions \(Decisions and Appeals\) Regulations 1999](#) make provision for the notification by officers of the Board of decisions reached and the allocation and distribution of responsibility for appeals from those decisions.

37 Mr Brennan submits that these Regulations, taken together with the 1999 Act itself, show that parliament has envisaged that there should be one unitary scheme for the resolution of disputes relating to entitlement to SSP. That unitary scheme should be recognised as being part of the overall statutory arrangements for the distribution of social security benefits and the resolution of disputes relating to entitlement to those benefits. He relies on the facts that (1) the statutory provisions provide an express interface between Statutory Sick Pay entitlement and entitlement to other benefits, and (2) the Inland Revenue (whose officials have to decide these questions) has wider responsibilities in relation to the management of the social security system including, indirectly, the financing of SSP as paid by employers.

38 Bringing these statutory building blocks together, the Appellant contends that there is no room left for a jurisdiction in the Employment Tribunal to determine questions of entitlement to Statutory Sick Pay or any of the other statutory payments that are listed in [section 27\(1\) of the Employment Rights Act 1996](#) .

39 The Respondent, as I have already indicated, takes no issue with Mr Brennan's analysis of the statutory provisions nor with the result urged — that the Inland Revenue authorities have exclusive jurisdiction in relation to these matters. At highest, Mr Freer contends that the Employment Tribunal should retain a residual jurisdiction in the sense that it can stay or adjourn any claim before it relating to entitlement to the statutory payments, pending resolution of the issue of entitlement by the Inland Revenue authorities.

Authorities

40 In the course of argument I expressed some surprise that the issue now before me had not previously reached this Employment Appeal Tribunal or, apparently, been considered by any other appellate court. With the assistance of counsel I was taken to such guidance as was thought to be available from the decision of the [Court of](#)

[*Appeal in Hutchings v Islington London Borough Council \[1998\] 3 All ER 445*](#) and a decision of this Tribunal in [*List Design Group v Douglas & Others \[2002\] ICR 686*](#) . I derived very little assistance from the latter which turns on entirely different provisions.

41 However, Hutchings was of more assistance. There the claimant sued in the county court for payment of sums said to be due under the terms of a superannuation scheme. The defendant contended that the dispute fell within the exclusive remit of the specialist authorities vested with jurisdiction to determine superannuation questions under the Local Government Superannuation Regulations . The Court of Appeal found that the specialist scheme did not oust the jurisdiction of the county court to determine contract disputes, as the question of the amount of superannuation to be paid fell to be determined on the construction of a contract.

42 However, in the instant case the question is one of entitlement to, or “payability” of, a statutory benefit. There is an express statutory scheme for determining entitlement and the answer to the question of payability cannot be resolved as a question of contract. In the Court of Appeal in Hutchings, Evans LJ posed the question (at p451h) as being whether there is a “positive prescription of law by statute or by statutory rules” which prohibits an individual from taking a point in a tribunal with general jurisdiction rather than in the jurisdiction prescribed expressly by the statute or statutory rules.

Conclusion

43 I am quite satisfied that the submissions made by Mr Brennan for the Appellant Company are correct. An analysis of the statutes and regulations relating to SSP shows that the appropriate authorities for the determination of disputes as to entitlement are the statutory authorities, i.e. the officers of the Board of the Inland Revenue (and on appeal the Commissioners). The jurisdiction they have is, in my view, an exclusive or exhaustive jurisdiction. I accept the submission that the inference to be drawn from the words of [section 8\(1\)](#) of the 1999 Act is that that Act prescribes a complete code for the determination of such disputes. I further accept the submission that it would lead to potential inconsistency and otherwise unsatisfactory consequences if first instance decisions on entitlement to SSP were to be made by Employment Tribunals rather than by the single statutory authority, the Board of the Inland Revenue. The possibility for inconsistency in decision-making is obvious and it is highly unlikely that the legislature envisaged that there would be two parallel schemes under which disputes as to entitlement to Statutory Sick Pay might be resolved.

44 Accordingly, I find that the Tribunal Chairman erred. He had no jurisdiction to entertain this employee's complaint that he was not being paid his Statutory Sick Pay. That is because the only issue raised by the employee was that he was entitled to that Statutory Sick Pay, a contention not accepted by the Respondent. This was not a case in which the Respondent was admitting entitlement to SSP but withholding part or all of it. No one in each the statutory authorities had determined what SSP was payable. In either of those cases there would unquestionably be jurisdiction in the Employment Tribunal to entertain a claim of unlawful deduction. However, where the only issue on the application to the Employment Tribunal is an issue as to entitlement, then there is, in my view, no jurisdiction on the part of the Employment Tribunal to determine that issue.

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45 It might be appropriate, in some cases, for the Employment Tribunal seized of a complaint of non-payment of SSP to postpone determination of it until the statutory authorities had decided the issue of entitlement to SSP, if entitlement was in dispute. However, that is likely to be the rare case. If, on the employee's referral to them of the issue of entitlement, the officials of the Inland Revenue Board find that the employer was obliged to pay, then liability will be established and payment can be expected to follow. If the employer does not thereafter pay the monies to the employee, the liability of the employer is extinguished and liability to pay falls directly on the Inland Revenue Commissioners. That is the result of the express terms of Regulation 9A of the Statutory Sick Pay (General Regulations) 1982 (as amended).

46 This ensures that where the issue of liability to pay SSP has been contested and the employee has succeeded and where, further, the employer declines to pay, the available remedy of the employee is to obtain the unpaid payments from the Commissioners of the Inland Revenue. The Inland Revenue may take such steps, including prosecution, as appropriate in relation to the fact of non-payment.

47 This last provision supplies, to the extent that it is needed at all, a final underscoring of my conclusion that the Employment Tribunal has no jurisdiction to entertain the question as to whether there is entitlement to payment of Statutory Sick Pay. That question is to be exclusively resolved under the provisions I have outlined which relate generally to SSP entitlement in the social security context. It must follow that the like result, at least prima facie, applies to the equivalent schemes in relation to Statutory Maternity Pay, Statutory Paternity Pay, and Statutory Adoption Pay. However, for the purposes of disposing of the present appeal it is not necessary for me to go any further than to indicate that I am quite satisfied that this Employment Tribunal had no jurisdiction to entertain this issue of entitlement to Statutory Sick Pay.

48 For these reasons, this appeal must be allowed. For the reasons additionally given above, this it is not, in my view, the class of case in which the proper course is for the matter to be remitted and stood-over pending the decision of the appropriate authorities as to entitlement to SSP. The right course is simply to dismiss the employee's complaint and to leave it to him to obtain a ruling from the appropriate statutory authorities as to his entitlement. If he is entitled, payment will follow either from the employer or, in default, from the Commissioners. Accordingly, I not only allow the appeal but I dismiss Mr Timmons's originating application to the Employment Tribunal