



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Kamieniarz  
**Respondent:** Total Security Services Limited  
**Heard at:** East London Hearing Centre  
**On:** 9 August 2018  
**Before:** Employment Judge Foxwell

## Representation

**Claimant:** Ms Dhami (Friend)  
**Respondent:** Mr Z Malik (Solicitor)

## JUDGMENT

The Claimant's claim falls outside the Tribunal's jurisdiction and is therefore dismissed.

## REASONS

1. On 15 February 2018 the Claimant, Mr Lukasz Kamieniarz, presented a claim for holiday pay to the Tribunal against the Respondent, his employer, Total Security Services Limited. It is this claim which has come before me today for hearing.
2. At the commencement of the hearing and in answer to my questions, Ms Dhami told me that the Claimant remains an employee of the Respondent (albeit on long-term sick leave since January 2016) and has not taken the holiday about which complaint is made. Rather, what is sought is a declaration of the holiday entitlement the Claimant has accrued to date and a payment in lieu of it.
3. Mr Malik told me that the Respondent contends that the Claimant is still employed. He argued that under Regulation 13(9) of the Working Time Regulations 1998 the Tribunal does not have jurisdiction to decide the claim brought. I agreed; the only circumstances in which an Employment Tribunal can order a payment in lieu of untaken holiday is where an employee or worker's employment or engagement has ended. That is not the case here. A Tribunal can award unpaid wages where an employee or worker remains employed or engaged and has taken holiday but not been paid for it; this is a claim for unpaid wages

under Part II of the Employment Rights Act 1996 and not under the 1998 Regulations. That too is not the case here.

4. For these reasons I had no option but to dismiss this claim as one falling outside the Tribunal's jurisdiction.

Employment Judge Foxwell

9 August 2018