



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Tasker

**Respondent:** ENGIE FM Ltd

**Heard at:** Southampton      **On:** 2 August 2019

**Before:** Employment Judge Reed  
(sitting alone)

**Representation**  
**Claimant:** In person  
**Respondent:** Mr Sanders, counsel

## JUDGMENT (RESERVED IN PART)

1 The respondent did not breach the contract of the claimant by failing to reimburse him for expenses.

2 The respondent made unauthorized deductions from the wages of the claimant representing a purported overpayment.

## REASONS

1 In this case the claimant Mr Tasker made a number of claims against his former employer, ENGIE FM Ltd (“the Company”). The bulk of those claims were

ones that could not be brought before an employment tribunal and one of them (unfair dismissal) had been expressly dismissed at an earlier stage.

2 As clarified before me, it became apparent that Mr Tasker had two claims he wished to take forward, namely for reimbursement of expenses he had incurred in carrying out his duties for the Company, and for unauthorized deductions from wages in respect of sums deducted from his terminal payments.

3 I heard evidence from Mr Tasker himself and, on behalf of the Company, from Mr Diaz, account manager. In addition, my attention was directed to a number of documents and I made the following findings, which were not materially in dispute.

4 Mr Tasker began working for the Company in November 2016. Throughout his employment he incurred expenses (petrol, food etc) in order to carry out his duties. He was therefore entitled to reclaim those expenses from the Company. On at least one occasion he had made such a claim but it appeared that he had not correctly submitted his receipts. For the bulk of the expenses he had incurred, he had not made submissions at all.

5 By letter dated 17 April 2018, Mr Tasker was suspended from work on full pay. He subsequently became sick and submitted sick notes but continued to receive full pay until his employment terminated.

6 That termination was brought about by notice given by the Company on 1 August, expiring on 29 August.

7 In his original claim, Mr Tasker alleged wrongful dismissal ie that he had not been given appropriate notice. Liability in that respect was conceded by the Company in the course of proceedings. They had given him 4 weeks' notice of dismissal whereas he was entitled to 3 months'. A balancing payment had been made to him before the instant hearing and therefore no further action was required in relation to that matter.

### Expenses

8 Under the Company's expenses policy, expenses claims had to be submitted within 30 days of the expense being incurred and in the case of non-compliance with that policy the Company reserved the right to refuse payment.

9 Mr Tasker conceded that he had not complied with that requirement. He gave various explanations for that state of affairs. He said that the system whereby expenses had to be claimed was very complex and he found it difficult to comply with it. He also indicated that he was very busy at work and did not prioritize the reclaiming of his expenses.

10 It is easy to see why an organization will wish to have expenses claimed promptly. If any issue was raised in connection with them, it would become very difficult to resolve if there was an extensive delay.

11 If it had been the case that there had been some sort of insuperable obstacle that prevented Mr Tasker making a claim for expenses in a timely fashion, then it might have been possible to oblige the Company to reimburse him notwithstanding the breach of the policy. However, that was not the case

here. It might well have been somewhat difficult to make the relevant claims and inconvenient for Mr Tasker to do so, but I was satisfied that there was nothing preventing him from doing so. In those circumstances, he had lost the right to seek reimbursement and it followed that the Company was not in breach of contract by failing to reimburse him.

### Deduction from wages

12 Mr Tasker had been correctly paid at the inception of his suspension, ie full pay. The dispute between the parties related to the period after he was signed off sick. He continued to receive full pay but the Company insisted that was incorrect. His entitlement at that stage, according to the Company was, after 10 days, statutory sick pay (“SSP”). He had accidentally been overpaid and the Company was entitled to recoup that overpayment from his terminal wage payment.

13 The letter suspending Mr Tasker from work expressly stated that he was suspended “on full pay”. The letter also refers to the Company’s disciplinary policy. That document states “employees will usually continue to receive their contractual salary and benefits while suspended”. It was urged upon me that the reference to the disciplinary policy within the suspension letter implied that the suspension would be on those terms.

13 I was not inclined to agree. Firstly, the letter is directed to Mr Tasker and his specific circumstances. Insofar as it might have been inconsistent with anything stated elsewhere, the contents of the letter would take precedence. In any event, the policy itself simply states that suspended employees will “usually”

continue to receive their contractual salary and benefits. That clearly is not inconsistent with suspension on different terms ie full pay.

14 On the face of it, then, Mr Tasker was entitled to receipt of full pay until his suspension terminated. His suspension might have been terminated when he went off sick, but, apparently due to an oversight on the part of the Company, it was not.

16 The question for me was, the suspension having continued in force after Mr Tasker became sick, did the use of the expression “full pay” within that letter of suspension mean that the level of pay would properly be reduced to SSP, 10 days after Mr Tasker went sick.

17 On balance, I was not minded to accept that interpretation. In my view “full pay” meant the pay to which Mr Tasker would have been entitled had he been at work. It mattered not whether he was physically able to carry out his work during the period of suspension. Mr Sanders properly brought to my attention certain authorities that appeared to support that interpretation, namely Heatherwood and Wrexham Park Hospitals Trust v Beer and Wright v Weed Control.

18 Of course, cases of this sort must be resolved on the basis of the interpretation of the contract in question against the relevant factual background. In all the circumstances I concluded that Mr Tasker was indeed entitled to the payments he received during his period of suspension and that the attempt to recoup those payments at a later stage by the Company was unlawful.

19 It appeared that the parties agreed between themselves what sum had therefore been improperly withheld by the Company and the matter should be capable of resolution between them without further reference to the Tribunal. The parties are directed to indicate to the Tribunal within 28 days of the promulgation of this judgment whether or not the matter has been resolved.

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Employment Judge Reed

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Date 19 September 2019