Case No: 2501145/2022

EMPLOYMENT TRIBUNALS

Claimant: N Ahitan

Respondent: One Oilfield Services Limited

Heard at: **Newcastle Upon Tyne (by CVP)** **On: 7-8 March 2023**

Before: Employment Judge O'Dempsey

Representation
Claimant: Self
Respondent: Mr Neba (director of respondent)

REASONS

1) At the end of the hearing the claimant asked for written reasons for my brief oral reasons as to why his claim succeeds. I concluded that the claimant's claim for unlawful deductions from his wages succeeded as the tribunal had both temporal and territorial jurisdiction, and that the wages he was not paid at all were properly payable on the regular date set out in the contract of employment. These are the written reasons.

2) The case came before me for final hearing on 7th -8th March 2023 and the parties were both represented by lay representatives. I heard evidence from the claimant and from Mr Neba. There was a witness statement but no oral evidence from Mr Cobain.

That the claimant was an employee for the purposes of the unlawful deductions from wages claim.

The law
3) The claim is brought under section 23 of the Employment Rights Act 1996 1996. The claimant alleges under section 13 that his employer has made a deduction from his wages contrary to section 13 (1) and the other provisions of section 13. By section 27 "wages" includes any emolument referrable to the employment whether payable under his contract or otherwise. Under section 13 (3) "where the 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 should be treated for the purposes of this Part as a deduction made by the employer from the workers wages on that occasion."

4) In order to qualify for this protection the claimant must be able to show that he is an "employee" for the purposes of section 230 (3) (b). This requires the claimant to show that he entered into or works under a contract aside from the contract of employment, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

5) The case must fall under the temporal jurisdiction of the tribunal.

6) By section 23(2) and (3) the claim must be presented within 3 months of the last in the series of deductions (if there is a series of deductions). That period is subject to the effects of the early conciliation regime. The requirements and effects are set out in the Employment Tribunals Act 1996 s 18A, and section 207B of the ERA 1996.

7) The case must also fall within the territorial jurisdiction of the tribunal.

8) The Employment Rights Act 1996 is silent as to territorial scope and so I have considered the principles developed in cases such as **Lawson v Serco** and **Smania v Standard Chartered Bank** 2015 ICR 436 and which related to detriments for public interest disclosure. The latter case suggests to me that similar principles should be applied in cases of unlawful deductions from wages.

9) In the **Lawson** case, the House of Lords gave examples of where parliament intended that employees should be within the scope of the ERA 1996 (there for unfair dismissal purposes). The standard case is the employee ordinarily works in the UK. One can generalise that test to amount to the question of where, at the time of the statutory tort of making unlawful deductions from wages the claimant was working ordinarily (category 1). Category 2 relates to properly peripatetic employees where their base was to be treated as the place of employment, and that is where they should be regard as working despite the fact that they might spend days, weeks or months working overseas. In this context the context of what happens in practice should be considered and not simply what the contract states. The House of Lords pointed to a number of factors which it said would illuminate whether employees were based under this 2nd category. One would be where the employee has their headquarters; where travel begins and ends. This was said to be a likely decisive factor. Another factor would be where the worker's home was. The third factor would be where the employee has their salary paid what currency and whether they were subject to national insurance contributions. These were examples of factors that the tribunal could take into account in relation to that 2nd category.

10) There is also a third category which is case of ex-patriot employees: people who work and live entirely almost entirely abroad. The House of Lords indicated a series of factors to be considered there, such as whether there was recruitment by a British employer in Britain. That in itself is not enough to bring the person within scope and there would need to be something more for example, working in an extraterritorial conclave some sort.

11) That is the starting point for consideration of these matters, and there are other cases which refer to this. In **Duncan v Secretary Of State For Children,**

Schools & Families, (No 2) [2011] IRLR 84 the House of Lords pointed out that would be a mistake to try to simply see whether the circumstances of the particular case fit one of the examples I have just given. What the House of Lords said was that these are merely examples of application of the general principle.

12) In the 2012 case of **Ravat v Haliburton Manufacturing & Services Ltd** [2012] IRLR 315, the Supreme Court stated the general principle, as follows: "the question of law is whether [in that case], the unfair dismissal principle applies to this particular employment. The question of fact is whether the connection between the circumstances of the employment in Great Britain and with British employment law was sufficiently strong to enable it to be said that it would be appropriate for the employee to have a claim for [in that case] unfair dismissal in Great Britain".

13) There has been further guidance given by the UK Employment Appeal Tribunal in **Ravisy v Simmons and Simmons LLP** UKEAT 0085/18 (consider also in Crew Employment Services Camelot v Gould [2021] UKEAT 0330/19 (15 January 2021), in relation to the question of connection and I have taken into account the principles from those cases. In a case where it is contended that the claimant is in fact working outside the UK, the proportion of time spent habitually and actually working in the UK during the relevant period is relevant.

14) There are cases where the claimant works outside GB where the factors point against jurisdiction and unless there was something that put the case in an exceptional category where the claimant is exclusively working outside the UK that will point away from jurisdiction. Then there are cases where a claimant lives and works for at least part of the relevant period in Great Britain. There the case does not have to be truly exceptional for jurisdiction to be established. It is not .necessary to carry out any kind of comparative exercise that is required where the person is working outside Great Britain exclusively.

15) So the question in such cases appears to turn on whether there is a sufficiently strong connection with GB or British law. Factors such as nationality and the subjective explanation of the employer are not to be taken into account as they are irrelevant (see **Green v SIG Trading ltd** 2017 UKEAT 0282/16/2405).

16) The principles to be applied are principally therefore set out in **Lawson v Serco** [2006] UKHL 3; **Duncombe v Secretary of State for Children, Schools and Families (No.2)** [2011] ICR 1312, SC; **Ravat v Halliburton** [2012] UKSC 1.

The facts

17) I heard evidence from the claimant and from Mr Neba who also represented the respondent. I make the following findings of fact based on the evidence which was before me.

1. The parties agree that they entered into some form of written agreement on 31 July 2021. The interpretation of that agreement was in dispute. However the parties agree that it was the product of an interview and a further conversation (with Mr Cobain), shortly before that date. On 30 July 2021 Mr Cobain emailed the contract with the date of 1 August 2021 in it to the Claimant.
2. I consider the nature and interpretation of that agreement extensively below.
3. The claimant was performing valuable duties which involved him personally

doing things for the respondent during the period for which a claim for wages is made. These were duties which needed to be carried out **before** the commencement of the work referred to below in the Republic of Equatorial Guinea.

4. The contract envisaged the employee carrying out, in this case certain duties before the project in REG started, and certain others after it had started. An example of this was p 25 of the bundle. The date of this was difficult to read but appears to be from August 2021. Regardless of the date however it is apparent that several matters relating to training had to be prepared before the commencement of the project. On 26 August 2021, p 36 of the bundle, a detailed email was sent to the claimant concerning preparation to meet training requirements.

5. It is clear that the claimant was being requested to send in his timesheets during this period. See e.g. p94, and these made clear he was working remotely (see e.g. p105). I find that he was working from his home and that this was acceptable to the respondent.

6. The respondent regarded itself as owing monies to the claimant as at 1 December 2021 (see p112).

7. I was not shown any evidence that there was any agreement that the claimant would wait to be paid until the draw down payments were made and it was not argued that the claimant had waived the right to payment on any particular occasion. There is no evidence of this in the documentation I have seen. There was evidence that the employer had expressed a wish for the claimant to work for no pay for a period, and that the claimant had gone along with that wish, but it is clear that he was not waiving his entitlement to payment altogether nor was he varying his entitlement to be paid on the dates stipulated in the contract. Rather the evidence shows (see e.g. p116) that the claimant was being told that money to pay him was coming as the draw down was coming: "they say it's days away then we hear it's weeks away. The lack of adequate updates and information is not acceptable and it has come to the point where I do not trust anything [AMGH] say". He continues "I need to know that OOS [the respondent] has a plan in place to pay my salary. I have a contract in place that states I would be paid my salary on the last day of each month, which was signed on 1st August 2021" (emphasis in the original).

8. On 13 May 2022 the claimant wrote to the respondent asking to be paid as per his contract (p114) and stating that he had "adhered to the wishes of OOS and worked for no wages".

18) I refer to other relevant findings in the discussion below.

Discussion of whether the claimant was a limb b worker

19) The first question for me was whether the claimant was an "employee" within the meaning of that term under the Employment Rights Act 1996 1996, as applicable to unlawful deductions from wages.

20) It appeared not to be in dispute that if the contract was a contract of a limb b worker the sums set out in that document were payable properly at the times set out in the document.

21) The claimant was an employee in that sense under the contract of employment which I have been shown. Although it is not determinative of the issue the primary question is what may be the correct interpretation of the contract that the parties entered into.

22) Looking at clause 1 of that agreement I have no doubt at all that the correct interpretation is that the claimant was employed as an employee from 1 August 2021. The clause itself states “employees employment with the company shall commence on 1 August 2021 or such other date as confirmed by the company and agreed between the parties subject to a written confirmation from AMIRA USA to One Oilfield Services Limited of mobilisation funds drawdown for the Gulf of Guinea refinery project”.

23) I had regard to clause 6 on page 12 of the bundle which was supplied to me. This is as follows.

“This agreement commences with the commencement date as noted on page 1 of this agreement taking into consideration provisions in clause 1 and is open ended and is subject to the following conditions”

24) There then follow conditions which in my view, do not affect the interpretation of clause 1 because they are to do with other matters that needed to be done if there was a movement of the employee to the area of work.

25) The contract contained clause 7, which had provisions relating to compensation and clause 8 which related to the method of payment. This made reference to timesheets. There were provisions relating to termination and various other matters, but the only reference to the commencement date (which sometimes receives capital letters and sometimes does not) is in clause 6 where the contract says that the agreement *commences* with the commencement date as noted on page 1 taking into consideration the provisions in clause 1. There is also mentioned as the “date of commencement" under clause 8, relating to method of payment and here the context is that compensation shall commence as from the employee’s date of commencement as noted on page 1 of the agreement, taking into consideration provisions in clause 1.

26) At clause 21 the contract says that the employee will carry out the services with effect from the commencement date. Here “commencement date” receives capital letters and it continues “using the standard of care, skill, diligence, workmanship and safety. That could be expected from provider of services with a similar skill set and experience, et cetera”

27) So I have to ask what the correct interpretation is, principally of clause 1, but taking into account the other contractual provisions. It seems to me that at best, it is ambiguous. I have considered the expressed intentions of the parties to the contract and clause 21c which states expressly that the agreement supersedes all previous employment agreements that the employee may have with the company.

28) I have to consider what the parties’ intention was, as expressed in that contract so doing that I have considered the linguistic interpretation of it, but I have also gone outside the contract to see whether they reveal anything about a commonly shared intention. Ultimately I concluded that it was not possible to discern a common intention from them or to resolve the factual dispute about what was said at interview (as relevant to interpretation) so therefore it was not possible to see any information relevant to the interpretation of the contract (and bearing in mind the agreement that it should supersede any prior agreement). I have taken into account the timing of the sending of the written agreement to the claimant as this does reflect upon the probable intention of the parties at the time

but consideration of those further factors (including that timing point) does not alter my view based on the linguistic interpretation of the contract and its business intent.

29) Linguistically the contract clause appears to me to mean that the employee's employment started on 1 August 2021. First, the contract says that it will commence on that date. This is the only date that is noted in clause 1. Second, the part of the clause, "employees employment with the company shall commence on 1 August 2021" would be wholly unnecessary if the contract actually meant that the employment would commence on the date "to be confirmed by the company and agreed between the parties subject to a written confirmation from AMIRA USA to One Oilfield Services Limited of mobilisation funds drawn down drawdown from the Gulf of Guinea refinery project".

30) The first part of the clause must be doing something. Having heard both parties submissions I have reached the conclusion that the words "shall commence on 1 August 2021" are the default date on which the employment was to start. The remainder of the clause then deals with the situation where mobilisation funding drawdown came before the nominated date. The parties could have agreed on any date other than 1 August 2021.

31) If the intention had been that the contract should primarily be linked to the obtaining and confirming of written confirmation of mobilisation funds drawdown, et cetera, then any later date would have done. Moreover if funding was not certain as at the date the contract was drawn up, the intention claimed by the respondent (that the employment would only start when the drawdown funding came) would have been achieved simply by omitting the first part of the clause.

32) The other date (relating to the draw down) needed to be confirmed by the company and agreed between the parties.

33) An earlier date than that nominated or noted in clause 1 could be agreed between the parties and that would be subject to written confirmation, et cetera.

34) There is also the repeat reference throughout the contract to the date noted in clause 1 which confirms me in the view that 1 August 2021 was the intended date.

35) Also, on 30th of July 2021 Mr Cobain emailed the contract with the date of 1 August 2021 in it to the claimant. The respondent submitted that this was because the respondent was assuming that funding would come in, but I do not believe that it was the intention of Mr Cobain when he sent the contract with the date of first of August 2021 in it. X

36) As to 30th July, there was no evidence led before me that Mr Cobain had an expectation that funding would go live within a couple of days at that stage. So there was no reason for the parties to put 1 August 2021 into the contract if the intention actually was that the contract would only take effect when drawdown funding was confirmed as per the 2nd part of clause 1.

37) So that piece of extraneous evidence to the contract does not indicate to me that the wording of the contract should bear any other interpretation than the one I have given it by showing that there was a different mutual intention as expressed in the written contract performing as a result of negotiations. The

parties chose to reduce their agreement to a written agreement, and so therefore primarily it is the interpretation of that document that I should look at.

38) I have concluded that looking at the substance of what the claimant did, which I can only deduce from the evidence he gave and the documents to which his statement refers, that the claimant was a limb b worker and hence an employee for the purposes of section 13 through to 23 and 24 et cetera of the ERA 1996.

39) I have concluded that he was an employee. Accordingly under the contract there were sums of money properly payable to him on the dates stipulated in the contract. These sums were not paid to him. There was therefore a series of dates on which payment ought to have been made and was not made which runs right way through to April of 2022, for which the claimant has claimed 39 weeks pay. This sum appears to be a matter of agreement between the parties: £131,235 gross. If the tribunal has territorial jurisdiction (as the respondent is a Belize registered company, and says that it is not domiciled in the UK), then, subject to limitation arguments, the claimant is entitled to recover that sum.

Time limits

40) Section 23(2) and (3) ERA 1996 sets out the relevant time limit principles. The last deduction in the series of deductions ran through to April 2022. The claim was presented on 2nd of September 2022. Early conciliation started in respect of the company on 14 June, 2022 and it ended on the 26th of July 2022 so the if the last unlawful deduction is either 30 April 2022 or later, the claim has been presented within time. This is because the claimant contacted Acas on 14 June and received the certificate on 26th of July. So the last date on which would be possible for him to issue claim would have been 9th September. He issued that claim successfully by presenting a claim on the 2nd of September.

Jurisdiction

41) Originally I had thought I was going to need to adjourn this case on this question because it had been represented to me that there had not been compliance with the tribunal's directions. However overnight it turned out that the respondent had in fact complied with the tribunal's directions by sending a letter of 24th November, which was duly copied to the claimant. Both parties seemed to have forgotten this on day one. The claimant had in fact replied to it.

42) I therefore had written submissions from both sides and so it was possible to deal with those oral submissions on the morning of the second day.

43) The respondent's document sets out its grounds, the first of which is that the agreement had not gone into effect given clause 1. I have already dealt with this point in relation to the question of interpretation and this was essentially an argument that the contract was not effective without certain preconditions been fulfilled. I have determined against the respondent. Secondly, in relation to jurisdiction itself, the respondent has stated that as per the contemplated opportunity and agreement executed by both parties, subject to other provisions, the employer was intended to be One Oilfield Services, a Belize registered company. The submission goes on to give its certificate and address and states that the regular place of work was to be the Republic of Equatorial Guinea. The respondent states that the claimant acknowledged that his employer would be One Oilfield Services and that his regular place of work will be the Republic of

Equatorial Guinea. The respondent submits that nowhere in the contract was it mentioned that the claimant was going to be working in the UK, given that the claimant was still waiting on specific conditions to be met in August for the employment to commence.

44) The respondent said that it had no control over where the claimant was spending his life before the employment begins, and refers to the fact of it continuing to provide updates on when the down drawdown funds would be available. It said that the claimant decided on his own accord to dial into the update meetings from his home in England, like all the others that had been joining the project update calls in different countries around the world.

45) So the respondent argues that the claimant cannot sue, because the company that he was potentially going to work for was not registered in the UK and does not trade or operate in the UK.

46) Secondly, the place of work contemplated in contract when it eventually did go live was Republic of Equatorial Guinea not the UK. Thirdly, the contemplated contract did not have UK as a work location. The respondent argued that it has no right over where the claimant decides to join a conference from and joining those calls from the UK, it says, does not give the right to for the claimant.

47) I have considered these arguments and also considered the claimant's arguments which are set out in his letter and to which he did not substantially add.

48) I have considered the factors in relation to the facts this case. The employment agreement dated 30th of July 2021 gives the employee's home address in the "home country". It specifies a work area being the Republic of Equatorial Guinea.

49) The contract states that the employee agrees to perform the duties of training manager in accordance according to the job description which was supposed to be attached to the contract.

50) I did not see the job description. The employee was to report to the HR director. I did not hear any details of how that actually operated in this case. The contract goes on to say, notwithstanding the referenced job title, that the company may require the employee, at its discretion, whether on a temporary or permanent basis to perform other roles within the organisation and to work for or on an assignment to any 3rd party allies that the company may direct company will consider and agree any appropriate alterations to the remuneration and benefits to reflect the circumstances of the new position.

51) The contract then says the employee's place of work is Republic of Equatorial Guinea and it goes on to say that the company reserves the right to require the employee, at its discretion, whether on a temporary or permanent basis to work at any location or locations, as the company may direct. So it seems to me that the company had retained the right to direct that the claimant can work in any location.

52) In Clause 6 the conditions apart from those to which I have already referred, include the issuing validity of all work residence permits required for the work area and all work and residence permits would be applied, and paid, for by the

company. Secondly it was necessary for the claimant to pass the company scheduled medical examination The only point at which those requirements became necessary was when the claimant was sent to the work area.

53) Clause 7 dealt with the fact that compensation was to be paid in US dollars and monthly compensation which gives the monthly payment point; salary was to be paid in arrears, net of any mandatory stoppages or deductions that might apply.

54) The contract said that the salary would be paid into the claimant's nominated bank in the UK or at their own bank in the country of their choice and it gives the date on which payment will would be made last working day of each calendar month. The default bank account appears to have been one in the UK.

55) Consistently with the fact that this was a contract personally to execute work and not a contract of service, the employee was to be solely responsible personal taxes and social security payments imposed by the home country or by countries outside the work area or for the taxes imposed by the country of the work area on employees' income or property unrelated to the company's activities in the work area. The contract stated that although it was only relevant some employees, the employee, namely claimant was solely responsible for registering for national taxation status and it goes on to say that where the employee is not considered a UK citizen their country of residence, tax and any other deduction should be deemed to be their responsibility.

56) The implication of this is that if the employees UK citizen then they are not responsible for tax another deductions. I do not know the claimant's nationality. Under clause 8 provisions were made for the method of payment. This includes provisions on pay, which includes reference to p60 forms a deductions of national insurance and national tax status, compliance issues. This clause also makes provision for the provision of timesheets.

57) Clause 11 makes provision for mobilisation, accommodation and travel and introduces new concept of the capitalised assignment in which I heard submissions Mr Neba submitted to me that this might well be simply a formatting error where an assignment is referred to means the same thing throughout, whether or not it has a capital or not.

58) In any event and the employee was to provide certain things before the commencement of the assignment in the work location. Mr Neba submitted to me that "assignment" in this context meant assignment to a particular geographical location and that may be the case. It is difficult to tell from the wording of the contract.

59) It was ambiguous, given that a lot of the terms used simply not defined. In any event, the employee was to include things like copy of their passport, passport photograph evidence the right to work and that was to be supplied to the company prior to mobilisation. They were to provide a scanned copies of relevant education and training certificates and in addition, a fitness to work medical certificate.

60) Clause 11 also makes provision for background screening checks which are to be undertaken and the employee was not to be able to commence the

assignment until such checks had been passed.

61) Clause 15 says that the claimant agreed to comply with all governmental laws of the country of the work area and countries travelled through while on company business to comply with the company client regulations, procedures, rules and regulations applicable in work area.

62) So it is in that context that we come to clause 18, which states, and I quote "this agreement shall be interpreted and enforced in accordance with the laws of England and Wales where such interpretation or enforcement does not contradict or contravene the rules of the work"

63) I think "work area" means that whatever work area was given to an employee, you look at whatever the laws have to be in that area, but the default position was that laws of England and Wales would apply.

64) I was not told and I think about any potential contradiction between the laws of the work area to which it was said the claimant was assigned or where his place of work was, according to the wording of the contract. In any event, it seems to me that the contract was at the very least to be interpreted and enforced before any court in accordance with the laws of England and Wales. This clause could be construed as meaning that the laws of England and Wales will apply. But having heard Mr Neba's submissions I am prepared to accept the true interpretation is that it is a reference to the system of law to be applied.

65) Nonetheless, it seems to me that this gives a very strong link to the laws of England and Wales, hence those of Great Britain continuing on with the analysis of the contract.

66) Clause 20 goes on to say that the agreement supersedes all previous employment agreements that the employee may have with the company. In this light, it is important to note that the parties intended the agreement to supersede any other agreement that had been reached. So for example if there had been an oral agreement in the interview about which there was conflicting evidence, shortly after the interviews, this written agreement was supposed to supersede that oral agreement.

67) So therefore it becomes irrelevant, what was and what was not said at interview or what was said by any party or representative of the respondent for example after the interview. I was unable to get to the bottom of exchanges between Mr Cobain and the claimant for 2 reasons. One is that the claimant simply had not mentioned the content or sought to rely on a subsequent exchange which must have happened during the meeting or shortly after the meeting between himself and Mr Cobain. But secondly because Mr Cobain in his witness statement simply did not deal with meeting which obviously must have happened and he was not called to give evidence and so could not be asked any questions in any event. I did not accept the claimant's account of the meeting, but for reasons which will become apparent, I do not consider what was said in the meeting particularly relevant to the true state of the parties' intentions in this working relationship (expressed as they are in writing).

68) The contract finishes by saying that if the claimant wished to accept its offer, he was to sign and return it, and sign and return documents which are mentioned just now. Mystifyingly the contract says that it was made subject to the

company's terms of business. I say “mystifyingly” because no one showed me the company's terms of business. I assume therefore that they have absolutely no impact on the proper interpretation of the contract.

69) The claimant was told to sign both copies of what was described as this contract offer letter and return one to the company, along with completed employee details and retain the second for his records. So that is what the contract says, as far as it appears to me to be material.

70) It shows in my view, a strong connection with the laws of England and Wales. It also permitted the respondent to have the claimant work within UK and there are a couple of other clauses which I have cited and which were the subject some discussion during submissions which also support that view that the claimant could be required and the contract envisaged situations in which the claimant would be doing work within the UK.

71) In any event, I have to look at the way in which the contract was operated. Very clearly this involved the claimant doing work from the UK and is quite apparent to me that for the period of August 2021 until April/May 2022 he operated from his home in the UK. That is apparent from the timesheets he was doing and working from home appeared to be an option given to employees on the timesheets. The respondent accepted before me that it was acceptable for the claimant to work from home. It was said on behalf the company that this was on the basis that it was essentially speculative working. I have rejected that argument and I consider that the proper construction of the relationship was that it was one of employment for the purposes of section 13 and following of the ERA 1996. The claimant acknowledged that he did not have to turn up to the team meetings taking place, and in this sense they were voluntary, but he added that there was an expectation from the representatives of the company that he would.

72) There is some correspondence concerning the job description which takes place in June 2021. I have to treat that as a neutral factor because I have not seen what it says and not one gave evidence on its contents.

73) The documentation with which I have been provided, however, clearly indicates that there was work which the claimant was being expected to do *in preparation for* the project in Equatorial Guinea. For example on page 36 of the bundle there is an email of 26 August 2021. Clearly planning was going on in respect of training. The claimant was involved in this and it appears to me to be simple common sense that preparation for training would be made prior to the start of a project like this in Equatorial Guinea otherwise the employer would end up having to do the work on day one of the project actually starting in Equatorial Guinea and that simply does not make business sense (as it would delay the project).

74) The respondent needed preparation work to be done prior to the start of the project.

75) There was also evidence on page 44 that on 28 October 2021 the claimant was involved in gathering together information on pricing packages.

76) The contract itself therefore has a strong connection with the laws of England and Wales. There was no evidence presented to me that any of the provisions conflicted with the laws of the work area. Therefore the contract

appears to me either to be governed by the laws of England and Wales or having this very strong connection with them. The strength of connection between the circumstances of the employment for the relevant period of time with Great Britain and with British employment law is, in my view very strong.

77) I have considered where the claimant was recruited have considered whether work, during this time for which the lawful deductions are claimed, was done and I concluded it was. I considered where the employee was based, during this time. The fact that in the future he might be required to go to the work area and that the Republic of Equatorial Guinea was named as the location (i) did not reflect the reality of the work that was being done, but (ii) was not the only thing that the contract said about location and the power of the company to stipulate where the claimant was to work.

78) There is no evidence that location of the work was ever changed. It appears to me to always have been within Great Britain. The parties chose a very close connection with the laws of England and Wales. The employee's home was in Great Britain and that is where he had accommodation. He was to be paid in the UK, albeit in US dollars and the burden of paying tax and social security was placed on him. That is consistent with him being a local, limb (b) worker for the purposes of the ERA 1996. For what it is worth, which is not a very strong factor, it seems to me the taxation position was taxation position under the laws of England and Wales.

79) The question of where the employer was registered is a factor which points away from jurisdiction and I accept Mr Neba's submission that it was not in the UK. However it is only one factor in the balance that I need to consider. I have considered the guidance from Powell v OMT Exploration and Production ltd UKEAT 0131/13. I consider that the point about registration is outweighed by the other factors to which I have already made reference. The essential work that was being carried out by the claimant in this case was not performed in another country, but in the UK and if drawdown funding was achieved, he might be required to travel to the work area. The contract appeared to make the UK the place work and the majority if not all of the work, the claimant had done in this case was done while at home in the UK.

80) So taking all those factors into account in considering the purpose of legislation and applying those tests, I have reached the conclusion that the claimant can bring his claim for unlawful deductions from wages within the jurisdiction of the tribunal.

81) In the light of that, I ordered that the claimant is entitled to recover and that the respondent must pay to the claimant the agreed sum of £131, 235.

Employment Judge O'Dempsey
Date: 27 March 2023