



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Phillips

**Respondent:** CSC Computer Sciences Limited

**Heard at:** Manchester (by video)

**On:** 18 September 2024

**Before:** Employment Judge Childe

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms Smith (Counsel)

## REASONS

### Introduction

1. This is a claim for unlawful deduction from wages. The claimant has been absent from work on extended sick leave since 9 May 2022 because of a diagnosis of cancer. The claimant has received an extended sick pay (ESP) benefit ("ESP Benefit"), based on the respondent's insured scheme, from this date.
2. The claimant's claim is that he has not been paid the correct amount of ESP benefit since 9 May 2022, and he therefore brings a complaint of unlawful deduction from wages. The respondent says the claimant has been paid the correct amount of ESP Benefit.
3. At the outset of the hearing, I discussed with the parties if any reasonable adjustments would be required. The claimant said he required regular breaks, and this was accommodated.

4. The parties helpfully prepared a document entitled *Statement of facts not in dispute & factual questions tribunal will need to answer* ("Agreed Facts and Issues") in advance of the hearing. This document was agreed by the parties, and I have appended it to this judgment.
5. I was provided with a bundle of documents, which ran to a total of 442 pages. I heard witness evidence from the claimant himself and on behalf of the respondent, from Patricia Evans, associate manager who worked in the total rewards team.

## Issues

6. The issues to be determined in this case are set out in paragraphs 18 to 24 of the Agreed Facts and Issues. I decided that the issues at paragraphs 25 to 27 of the Agreed Facts and Issues, which were questions the claimant alone wished the tribunal to answer, were not relevant questions for me to determine as they did not relate to the issues in dispute.

## Findings of fact

7. I find that the relevant facts in this case are set out in paragraphs 1 to 17 of the Agreed Facts and Issues. These facts are agreed by the parties.

## Relevant law

8. The relevant parts of section 13 Employment Rights Act 1996 provide as follows:

### **13 Right not to suffer unauthorised deductions**

- (1) 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.
- (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
  - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
- (3) 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.
- (4) ...
- (5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
- (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
- (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.
9. It was stated in **Harlow v Artemis International Corporation Ltd** 2008 IRLR 629, QBD, that employment contracts *"are designed to be read in an informal and common-sense manner in the context of a relationship affecting ordinary people in their everyday lives"*.
10. The main starting point is that it is impermissible for a court to depart from the clear wording of a contractual document absent an argument that it contains a mistake that should be rectified (**Dean and Dean Solicitors (a firm) v Dionissiou-Moussaoui** 2011 EWCA Civ 1331, CA), or that the parties had a common intention to mislead (**Snook v London and West Riding Investment Ltd** 1967 2 QB 786, CA).
11. But an employment contract should not be interpreted in a vacuum, and that if there is an ambiguous term the Tribunal ought to have regard to the factual setting

in which the contract was made (**Adams and ors v British Airways plc 1996 IRLR 574, CA**).

12. The interpretation should be from the point of view of '*a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract*' (**Investors Compensation Scheme Ltd v West Bromwich Building Society (No.1) 1998 1 WLR 896, HL**).

13. The relevant part of regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 state:

4.— Effect of relevant transfer on contracts of employment

(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—

(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and  
(b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(4) Subject to regulation 9, any purported variation of a contract of employment that is, or will be, transferred by paragraph (1), is void if the sole or principal reason for the variation is the transfer.

(5) Paragraph (4) does not prevent a variation of the contract of employment if—

(a) the sole or principal reason for the variation is an economic, technical, or organisational reason entailing changes in the workforce, provided that the employer and employee agree that variation; or

(b) the terms of that contract permit the employer to make such a variation.

(5A) In paragraph (5), the expression “changes in the workforce” includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act<sup>2</sup>).

(5B) Paragraph (4) does not apply in respect of a variation of the contract of employment in so far as it varies a term or condition incorporated from a collective agreement, provided that—

(a) the variation of the contract takes effect on a date more than one year after the date of the transfer; and

(b) following that variation, the rights and obligations in the employee's contract, when considered together, are no less favourable to the employee than those which applied immediately before the variation.

(5C) Paragraphs (5) and (5B) do not affect any rule of law as to whether a contract of employment is effectively varied.

(6) Paragraph (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to paragraphs (9) and (11), where an employee so objects, the relevant transfer shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to regulation 9, where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.”

## Analysis and Conclusion

14. I follow the paragraph numbering set out in the Agreed Facts and Issues in my analysis and conclusion.

18. Between 4 September 2000 and 30 April 2014, was the provision of an ESP scheme by the Respondent a contractual entitlement?

15. The written contract of employment is the starting point to work out whether the provision of the ESP Benefit was a contractual entitlement.

16. The claimant's original written express contractual term was as follows:

Clause 9.4

*"After absence from work through certificated sickness for 26 weeks, you are **then eligible for benefit from the discretionary Extended Sick Pay scheme, subject to the rules from time to time in force.** Details of the core benefit are included in the CSC flex Guidebook, as is information on how to select an enhanced level of provision. The Company reserves the right to make deductions from Flex Fund or to require you to make a repayment in respect of any overpayments. The Company reserves the right to terminate your employment should incapability render you unable to undertake your duties (my emphasis)."*

17. Relevant extracts from the respondent's flexible rewards scheme, dated 13 September 2000 are as follows:

*This Guidebook introduces CSC flex. It outlines each of the benefits available to you and any restrictions that may apply.*

#### **EXTENDED SICK PAY AT A GLANCE**

*Core Level: You receive a core level of 40% of Flex Fund.*

*Options: Elect additional 10%, 27% or 35% of Flex Fund - to a maximum of £200,000 of benefit per annum.*

#### **WHAT IS THE BENEFIT?**

*Extended Sick Pay cover provides regular monthly income if you are unable to work due to an illness or injury that lasts more than 26 weeks, or the end of your short-term sick pay arrangements if later. All CSC employees receive 10% of Flex Fund cover as a core benefit. You can elect additional levels of cover as shown on your Preference Worksheet.*

*For most CSC employees, the benefit is payable for up to three years after the sickness absence commenced. If your term payable is longer than three years, this will have been communicated to you and will be indicated on your Preference Worksheet.*

18. I find that between 4 September 2000 and 30 April 2014, the provision of the ESP Benefit by the respondent was a contractual entitlement. The language of the clause itself, when read together with the details of the ESP scheme set out in paragraph 17, are one of entitlement.

19. Whilst clause 9.4 the claimant's contract may well have described the scheme as being discretionary, I find that the scheme could not have been unilaterally withdrawn by the respondent at its discretion.

20. Rather, the effect of the clause was to grant the claimant the contractual right to take part in an extended sick pay scheme, subject to the rules from time to time in force, as described in clause 9.4 the claimant contract of employment.

19. If yes, was the contractual entitlement for the provision of a scheme on benefit terms:  
(a) that applied from time to time according to the scheme rules?

21. Yes, the contractual entitlement for the provision of the ESP benefit was subject to the terms that applied from time to time according to the scheme rules, for the reason set out in paragraph 20 above.

20. From 1 May 2014 to 30 November 2021, was AT&T entitled to provide a GIP scheme to the Claimant which offered different benefit terms from the Respondent's ESP scheme, either:

- (a) Because the contractual entitlement was to participate in an ESP benefit (but not to specific benefit terms); or
- (b) Because TUPE regulation 4(5) permitted the variation.

22. In 2014, the claimant's employment transferred to AT&T. On transfer, the claimant agreed to move to the long-term disability benefit scheme offered by AT&T, as I have found in paragraph 10 of the Agreed Facts and Issues. The scheme rules which applied to that scheme entitled the claimant to the benefit of 75% of his basic salary if he was on an extended period of absence due to sickness, as I find in paragraph 9 of the Agreed Facts and Issues. This was in part since AT&T didn't operate the flexible part of the legacy scheme described in paragraph 17 above ("the Legacy Scheme").

23. The claimant's move to the new scheme was permitted under his contract of employment contract because, as I have found at paragraph 21 above, his contractual entitlement was to an ESP Benefit, subject to the rules of the scheme in force from time to time.

24. The contract novated across to AT&T in 2014 and the new scheme rules, as permitted in the contract of employment and set out in the Long-Term Disability scheme, applied from that date.
25. As I have found in paragraph 6 of the Agreed Facts and Issues, the claimant had a core ESP Benefit of 67% of his flexible fund under the Legacy Scheme.
26. The claimant was unable to point to any material detriment between the 67% ESP Benefit under the Legacy Scheme and the 75% basic salary entitlement under the AT&T long-term disability benefit scheme. He also agreed to the change at the time, as set out in paragraph 10 of the Agreed Facts and Issues.
27. I therefore conclude that from 1 May 2014 to 30 November 2021, AT&T was entitled to provide a GIP scheme to the claimant which offered different benefit terms from the Legacy Scheme because the contractual entitlement for the provision of the ESP Benefit was subject to the terms that applied from time to time according to the scheme rules, for the reason set out in paragraph 20 above.
28. Having reached this finding, I do not need to consider question 20 (b).

21 From 1 December 2021 until the present date, has the Respondent been entitled to provide an ESP scheme to the Claimant which offers different benefit terms from the Respondent's original ESP scheme or AT&T's GIP scheme, either:

- (a) because the contractual entitlement was to participate in an ESP benefit (but not to specific benefit terms); or
- (b) Because TUPE regulation 4(5) permitted the variation.

29. I have already found at paragraphs 22 and 27 above that the ESP Benefit available to the claimant on transfer of his employment back to the respondent from 1 December 2021, was 75% of his basic salary if he was on an extended period of absence due to sickness. As I find paragraph 14 of the Agreed Facts and Issues, the respondent agreed to continue to offer this benefit after the transfer.
30. I reject the argument from the claimant that he is entitled to be paid 75% of his legacy flex fund, described in paragraph 17 above, during his period of extended sickness absence. This argument is not supported by any of the documentary evidence, including the detailed scheme rules, which I have been taken to.
31. I therefore conclude that from 1 December 2021 until the present date, the respondent has been entitled to provide the ESP Benefit to the claimant which offers different benefit terms from the respondent's original ESP scheme or AT&T's GIP scheme because the contractual entitlement was to participate in an ESP



Benefit subject to the scheme rules in force from time to time, as I have found at paragraph 21 above.

32. Having reached this finding, I do not need to consider question 21 (b).

22. Depending on the answers above, is the Respondent currently providing an ESP benefit to the Claimant in accordance with his contractual entitlements?

33. As I have found in paragraph 31 above, the claimant's entitlement to ESP Benefit is as set out in the respondent's current ESP scheme which replicates AT&T's legacy long-term disability benefit scheme. As I have said at paragraph 29, the current rules of this scheme give the claimant an entitlement to 75% of his basic salary during a period of extended sickness absence.

34. The claimant agreed that he has been paid in accordance with the entitlement to the ESP Benefit described in paragraph 33 above. He has therefore been paid in accordance with his contractual entitlement and I conclude that the respondent is currently providing an ESP benefit to the claimant in accordance with his contractual entitlements. For this reason, the claimant's claim for unlawful deduction from wages fails and I do not need to go on to consider issues 23 and 24 in the Agreed Facts and Issues.

**Employment Judge Childe  
18 November 2024**

Judgment sent to the parties on:  
20 November 2024

.....  
For the Tribunal:

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