



Case No: 8000283/2023 (V)

Held at Aberdeen on 10 November

5

2023

Employment Judge J M Hendry

10

Mr R Skeffington

Claimant
In Person

15

Saipem Ltd

Respondent
Represented
by Mr A Atwell,
Solicitor

20

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

30

1. The Tribunal has no jurisdiction to entertain claims in relation to the Working Time Regulations given the territorial reach of the Regulations as the claimant's employment is in Azerbaijan, and

35

2. The claims for unlawful deduction from wages because the respondents did not pay the claimant wages for attending Covid test appointments being *res judicata* shall be dismissed, the said claims are in any event time barred.

E.T. Z4 (WR)

REASONS

- 5 1. The claimant Mr R Skeffington raised proceedings against his employers, the respondent company on 15 June 2023. In his ET1 he set out claims for unpaid holiday pay (arguing that the company did not calculate properly the holiday leave entitlement), non- payment of appointments booked by Saipem for the claimant to be tested for Covid and for breach of the Working Time
10 Regulations in relation to rest periods.
2. A preliminary hearing for case management purposes took place on 24 August 2023 and following that hearing the claimant provided more details of his claims. At that hearing a number of preliminary issues were raised by the
15 respondent's solicitors namely, *res judicata*, territorial jurisdiction over Working Time Regulations and time-bar.
3. It was hoped that an agreed statement of facts could be entered into obviating the need to hear evidence or at least cutting down on evidence but on the
20 morning of the hearing Mr Atwell indicated that it had not been possible to agree the statement of facts. He had however lodged the most recent draft JB48. I explored this further. Mr Skeffington explained that the draft was "fine" but he had wanted to add reference to the Maritime Labour Convention which the respondent's solicitors did not agree to. It was apparent that as far
25 as it went the Statement was agreed. Following the hearing Mr Skeffington wrote to the Tribunal advising that fact 9 was not agreed as there was no technical exemption in the MLC. The matter is of no consequence to the Judgment but the concession was made by the claimant so the fact is included. **Accordingly, I repeat the agreed statement of facts herewith.**

30

Respondent circumstances

4. The respondent is a company incorporated and registered in England. The respondent is a contractor in oil and gas construction and renewables industries, and is part of the Saipem group. The respondent is a freestanding corporate entity.
5. The respondent does not have a place of business outside of the United Kingdom.
6. The respondent provides personnel and assets to Saipem Group projects worldwide.
7. The SCV Khankendi is a subsea construction vessel which the Saipem group is using to install subsea structures, umbilical's and perform survey activities further to a contract with BP.
8. The SCV Khankendi is a vessel registered in Azerbaijan. The SCV Khankendi flies the flag of Azerbaijan.
9. The SCV Khankendi is based in Azerbaijan waters.
10. There are posters on the SCV Khankendi relating to UK HSE law and UK employer liability insurance matters.
11. In January 2021, the respondent changed the holiday pay rate for certain groups of employees such as the Survey and Positioning Department (which included the claimant).
12. Saipem LTD do not engage employees in technical roles (including the claimant in the Survey and Positioning Department) as seafarers and thus do not provide Seafarer employment agreements.

Claimant circumstances

13. The claimant is a British national whose home is in Aberdeen. The claimant is a registered voter.
- 5 14. The claimant owns two homes in the UK and has two Mortgages.
15. The claimant owns no property in Azerbaijan or any other country.
- 10 16. The claimant owns nothing in any other country and has no bank accounts in any other country.
17. The claimant is not expatriate and has been a resident of the UK during his entire employment.
- 15 18. The claimant is employed by the Respondent as Senior Survey Engineer within the Respondent's Survey and Positioning Department.
19. The claimant was originally employed by Saipem U.K. Limited under terms which were set out in a contract dated 3 July 2007.
- 20 20. The claimant's contract of employment states as follows: *"We are pleased to offer you an appointment with Saipem UK Ltd as an Survey Engineer on the following terms and conditions which are provided pursuant to Part 1 of the Employment Rights Act 1996. Your employment will also be subject to the Company's procedures and work instructions held on the Company Document System, which may be amended from time to time and are available on the Company's p.c. network."*
- 25 21. The claimant's written contract of employment makes no reference to any country's legislation other than that pertaining to UK.
- 30 22. The Saipem LTD Leave Work Instruction references WTR 1998 and ERA 1996.
- 35 23. The claimant's employment was transferred from Saipem U.K. Limited to the respondent on 1 July 2010 as confirmed to the claimant by letter dated 30

June 2010. While the identity of the employer changed, there was no change to the claimant's underlying terms and conditions of employment.

24. Since at least 29 March 2017, the claimant has been working on the SCV Khankendi vessel in waters off Azerbaijan. The claimant does not perform his employment duties in the UK. The claimant is not contracted to work solely on the SCV Khankendi, he has been placed by the respondent in other global locations during the course of his employment.
25. The claimant does not receive payment for local holidays observed in Azerbaijan. The claimant is not paid with reference to the Azerbaijan employment code.
26. The claimant travels to work on the SCV Khankendi for a few weeks at a time, and returns to the UK at the end of his rota. The claimant's travel to and from Aberdeen to the SCV Khankendi at the start and end of his rota is organised and paid for by the respondent.
27. The claimant is supplied by the respondent as part of the managed service provided under the contract between the Saipem group and a BP group company. The respondent charges the project for the claimant's work on the SCV Khankendi. Both Saipem LTD and the BP group are companies registered in the UK.
28. The claimant is paid by the respondent in pounds sterling with deductions for PAYE and class one National Insurance contributions made at source. The respondent pays employer National Insurance contributions on the claimant's salary. The claimant is enrolled in the respondent's UK pension scheme. The claimant's benefits in kind are reported by the respondent to HMRC via the form P11D. The claimant's salary is paid into a UK bank account.

29. HR, travel logistics, expenses and grievances in respect of the claimant are all managed by the respondent in the UK. Not by the Azerbaijan office of Saipem SCONA.

5 30. The respondent maintains employer's liability insurance in respect of the claimant

31. The claimant's contract of employment states that the claimant is entitled to receive Statutory sick pay.

10

32. The claimant was informed by the respondent on 20 June 2018 that the 28 days of holiday he was entitled to was in line with the Gov.uk website calculator (which provides a calculation for statutory leave).

15 **Claim history**

33. On 1 January 2023, the claimant submitted his claim form to the Tribunal (case number 4100001/2023) in respect of (i) underpayments of holiday pay before 1 January 2021; and (ii) non-payments of salary for attending COVID tests on 13 January 2021, 27 April 2021, 16 October 2021, 8 January 2022, 20 January 2022, 2 April 2022 and 5 April 2022 (the "**Previous Claim**").

20

34. Before the Previous Claim reached a merits hearing, the Previous Claim was withdrawn by the claimant and dismissed by the Tribunal on 14 April 2023.

25

35. On 15 June 2023, the claimant's most recent claim form was received by the Tribunal.

Evidence

30

36. The Tribunal heard evidence briefly from Mrs Julie Miller, HR Supervisor employed by the respondent company and responsible for their Aberdeen operations and for the claimant. There was really no material dispute as to

her evidence. In summary it was that Mr Skeffington has worked for Saipem for many years. His contact with the company was generally through the Aberdeen office which then deploys him to various contracts throughout the world. Mr Skeffington is a Senior Survey Engineer involved in ROV work. Latterly, he had been working in Azerbaijan for some time onboard a vessel SCV Khankandi. Mr Skeffington was unhappy about not being paid for Covid tests and about rest periods on board. He had not submitted claims for payment. The company's position was that such appointments were not paid and staff had been warned that this was the case. Mr Skeffington had made it clear that he was unhappy that he has not been given a Mariner's contract but a "technical contract" as an ROV engineer. He believes this restricts his rights to apply to the Tribunal. He has worked throughout the world but returns to his home in Aberdeen. He is mobilised through the Aberdeen office where payroll and HR functions reside. He pays UK tax and National Insurance.

37. Mr Skeffington gave evidence about the interplay between his contract and the company policies that he follows and UK law. He argued that he had a substantial connection with the UK rather than with any other place. He referred the Tribunal to the well-known case of ***Ravat v. Halliburton Manufacturing and Services Ltd*** [2012] UKSC 1.

38. Although some of the evidence given by Mr Skeffington was not accepted by the respondent broadly his description of the factual arrangements with Saipem was uncontested. One matter that Ms Milne had spoken to was the lodging by employees, such as the claimant, of timesheets which, she said, had to be done before the payroll at the end of the month. She explained that a claim could be submitted the following month but there would be a delay in payment. It seemed clear that it was the responsibility of the claimant to submit the appropriate timesheets. Mr Skeffington indicated that the timesheets were prepared on his behalf by a manager. Ms Milne indicated that no timesheets were received by her or her office in relation to the claims for attendance at the "Covid appointments".

39. There was one matter that should be added to the findings in fact namely that the correspondence discloses that the claimant, although seeking to have the first claim dismissed, indicated in correspondence with the Tribunal that he intended re-raising the proceedings. I have reviewed the digital file.

5 40. It was against this relatively uncontentious factual background I heard submissions. Mr Atwell had very helpfully prepared written submissions which he had revised during the lunchbreak and which he lodged when the hearing resumed.

10 Discussion and Decision

Territorial jurisdiction

41. The respondent's primary position was that the Tribunal did not have jurisdiction to hear any of the claims for holiday pay or rest breaks under the
15 Working Time Regulations 1998 or under the Maritime Labour Convention 2006 or the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978. These were the three bases that the claimant contended gave him a right to take these claims to the Tribunal.

20 42. I accept that the test for territorial scope of a piece of legislation depends on which statutory right is relied on, the case law has cast light on that scope and whether the right in question is derived from EU or domestic law. Mr Atwell first of all looked at the Working Time Regulations (WTR). The starting point is the terms of the Regulations themselves. These Regulations are the domestic implementation of the Working Time Directive Regulations.
25 Regulation 1(2) states "*These Regulations extend to Great Britain only*". The WTR cover rights to daily rest, weekly rest and holiday pay. The Regulations do not apply to someone to whom the Merchant Shipping (Maritime Labour Convention) Hours of Work (Regulations) 2018 apply.

30 43. The case of **Ravat** does not assist them claimant here in his submission. That case related to unfair dismissal. It is accepted that the claimant works on an Azerbaijan flagged ship in Azerbaijan waters. He has done so since March 2017. He works outside the UK. The claimant responded that he was required

to attend Covid examinations in the UK and accordingly was "working". He took the 'rest periods' in the UK and could be called on to work at any time. He pointed out that there were obligations in the Handbook (JB19) not to carry out work for other parties and that he can be mobilised to Azerbaijan or elsewhere when required. He also accrues leave throughout the year including periods when he is in the UK. Mr Atwell's position was that neither this nor the taxation of his salary or any other matters indicating some substantial connection with UK law assisted him. He noted that the Handbook makes no reference to the rules relating to the taking of annual leave.

5
10 44. Finally, Mr Skeffington had raised the Maritime Labour Convention. It is accepted that in relation to the United Nations Convention in the Law of the Sea 1982 merchant ships must be registered to a particular state i.e "flagged". The Maritime Labour Convention 2006 ("MLC") provides minimum standards. The UK is a signatory but Azerbaijan apparently is not. The MLC does not create a free standing right for minimum periods of rest in the UK. The Convention was given effect by the Seafarer's Directive which in turn was implemented in the UK by the 2018 Regulations.

15
20 45. The claimant is not working on a seagoing UK ship. The ship is a Non-Maritime Labour Convention ship which is outside the UK. Accordingly, he does not have the right to minimum rest periods under Regulation 5. In relation to the Merchant Shipping (Standards of Training, Certification and Watchkeeping (Regulations 2022) ("the 2022 Regulations") they give a general rights to Seafarers to be given specific periods of rest. The reference in the Handbook to the 2022 Regulations does not give the claimant a locus to bring a claim. The Handbook is non contractual and is designed to cover employees in a wide variety of situations.

25
30 46. The claimant's position was that he had a strong connection with the UK. It was apparent from the relationship he conducted with the employers through their Aberdeen premises where HR was located.. In his view the respondents should have given him a mariner's contract and this would have allowed him to raise proceedings here. He was given a so called 'technical' contract which did not give him the required status under the convention. He had been

deprived of his rights. In his view the WTR do apply and the Employment Tribunal is the appropriate forum for him to bring these claims. He argued that the Working Time Regulations apply when he is back in the UK during these rest periods and because more generally the contract was governed by UK labour law. He explained that his salary accrues throughout the course of the year. In his view the Working Time Regulations are clearly part of his contract.

47. Mr Atwell had accepted that the territorial jurisdiction of EU derived law such as the WTR may be extended outside the UK under the principle of **Bleuse v. MBT Transport Ltd** [2008] IRLR 26. However, the EAT has held that this **Bleuse** principle applies only to extending the scope of legislation to the territory of the European Union. The EAT in the case of **Dhunna v. Creditsights Ltd** [2013] UKEAT (paras. 58-60) find that an employee was not protected by the WTR Regulations which extend to Great Britain only when they worked in Dubai. The general rule, he submitted, is that the matter should be looked at on the basis that unless a contrary intention appears an enactment is not taken to apply to people in matters outside the territory to which it extends (**Cox v. Ergo Versicherung AG** [2014] UKSC22. I agree that this is a correct summary of the legal position.

48. Accordingly, I concluded that the Regulations do not apply to the claimant or that his connection with the UK gives him jurisdiction to raise this particular issue.

25 **Res Judicata**

49. The claimant made a claim in respect of payment for attendance of seven Covid test appointments between 13 January 2021 and 5 April 2022. His claim was made in a previous Employment Tribunal claim 4100001/2023. The claim was withdrawn and dismissed. I do not comment on the process and it is unclear if the Judge dismissing the claim considered the claimant's written intention to re-raise proceedings when deciding to dismiss. Unfortunately, these were the words he used to the Tribunal. His position was

the terms of Rule 52 allow him to re-raise proceedings. That is not how I read the Rule. If he intended re-raising proceedings he should have made it clear that he did not want the proceedings dismissed. The Judge could have refused to dismiss the proceedings and simply allowed them to be withdrawn. He did not do this and the Judgment dismissing the claim was not appealed nor was a reconsideration requested.

50. I accept that the claimant is not entitled to re-raise these proceedings. His actions act as a bar to the resurrection of the claim (*Biktasheva v. University of Liverpool* UKEAT/0253/19 states that Rule 52 of the Employment Tribunal Rules simply codifies the existing common law. The matter has been clarified in a number of cases namely, *British Airways Pic v. Boyce* [2001] IRLR 157, *Ct Sess (Inner House)*, *Budge & Atlantic Airways Ltd v. Zodiac Seats Ltd* [2013] UKSC46, *Arbour v. Staffordshire County Council* [1996] ICR 379 and *Lennon v. Birmingham City Council* [2001] IRLR 826.

Time-bar

51. in relation to the non-payment of Covid appointments Mr Atwell indicated that in any event the Tribunal does not have jurisdiction to hear the claimant's claim as it is time-barred. The claimant argues that the claim for non-payments in respect of his attendance of Covid test appointments should be viewed as connecting a series of deductions of underpayments in respect of the appointments and statutory annual leave issues he has under the WTR. Mr Atwell's submission was that these matters are wholly separate.

52. The most recent guidance on these matters comes from the case of *Chief Constable of The Police Service of Northern Ireland & Another v. Agnew & Others (Northern Ireland)* [2023] UKSC33127. It suggests that the definition of a series broadly speaking means a number of things of a kind and in this context a number of things of a kind which follow each other in time. I agree that the claims are substantially different. One is a claim for deduction in relation to the alleged breach of a contractual obligation namely to pay for the Covid test appointments and the other claim is in relation to alleged breach of a statutory obligation i.e. the obligation to pay holiday pay

in respect of 42 days of annual leave in accordance with the WTR. The claimant makes the connection that both are "wages".

53. It seemed clear that whether through his manager or by his own hand the onus on the claimant was to submit timesheets. It appears that the last "Covid appointment" was in April 2022 in which case the claim for payment arose by the latest in May 2022. Early conciliation occurred in April the following year. More than three months had elapsed between the date of the most recent alleged non-payment for attendance (being April/May 2022) and the submission of the current claim. Even if it was not reasonably practicable for the claim for non-payment for the appointments to be submitted within the primary time limits, the claimant did not submit the claim within a reasonable further period thereafter.

54. For completeness, I would add that even if the Tribunal had jurisdiction over any claim for unpaid wages arising on any basis prior to the 15 January 2021 it would be time barred because of the *Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322)* which imposes a two-year "backstop" period on holiday pay claims brought.

20
25
Employment Judge: J M Hendry
Date of Judgment: 22 November 2023
Entered in register: 23 November 2023
and copied to parties