



# EMPLOYMENT TRIBUNALS

***Claimant***

***Respondents***

**Mr A Stoica**

**v**

**S&S Consulting Services Ltd**

**Heard at: London Central**

**On: 28 April 2025**

**Before: Employment Judge Brown**

**Representation**

**For the Claimant: In person**

**For the Respondent: Mr K Chaudhuri, Consultant**

## JUDGMENT

**The judgment of the Employment Tribunal is that:-**

- 1 The Respondent made unlawful deductions from the Claimant's wages, which included an additional element for holiday pay, in the sum of £193.21 net.**
- 2 The Respondent shall pay the Claimant £193.21 net for unlawful deductions from wages, including holiday pay.**

## REASONS

**Preliminary**

- 1. By a claim presented on 10 July 2024 the Claimant brought complaints of unlawful deductions from wages and failure to pay holiday pay against the Respondent, his former employer.**

2. The Claimant also ticked the box on the form saying he was bringing a whistleblowing dismissal/detriment claim, but that claim was dismissed on withdrawal.
3. In his claim form, the Claimant said that he had approached 3D Personnel for work and that he worked for a client, the Eliot Group, at an agreed rate of £14.41 per hour. The Claimant said that he had worked from 27.7.2024 to 10.7.24. He said that he had not been paid holiday pay and that £2.97 was missing for each hour from his wages. He also said that he had been taxed “for their company insurance 10% from my wages plus company margin £16”. He also said that “they did not report my gross pay to HMRC.
4. The Claimant said that he had worked for 10 day and was claiming for an 8.5 hour day.
5. The Claimant also said that he had been paid holiday pay as part of his wages, but that this should be paid in addition to his wages.
6. The Claimant obtained an ACAS EC certificate on 17 July 2024.
7. S&S Consulting Limited, the Respondent, (“SSC”) defended the claim. It said that it was a service provider, or intermediary, to recruitment agencies. It said that it had engaged the Claimant as an “umbrella operative” – that the Claimant supplied serviced to SSC, who provided those to 3D Personnel Ltd, who provided those services to an end-user client. It therefore said that the contractual chain comprised: - Claimant (operative) – Respondent (service-provider or intermediary) – 3D Personnel (recruitment agency) – End-client.
8. It said that the Claimant had contacted SSC to register on 1 July 2024, and had signed the employment contract electronically, by a third-party platform, ‘Sign Now’, on 10 July 2024,
9. SSC accepted that the Claimant was employed by it.
10. It denied that the Claimant was paid less than was properly payable to him.
11. It said that the Claimant was paid rolled-up holiday pay, at the rate of 12.07%, as an addition to his rate of pay, in accordance with clause 8.5 of the contract.
12. 3D Personnel, who were originally named as a Respondent, also defended the claim. It said that the Claimant had been employed by SSC Consulting and not by 3D Personnel. 3D Personnel had referred the Claimant to SSC Consulting, as an umbrella company, to be supplied to 3D Personnel.
13. At a Public Preliminary Hearing on 14 February 2025, EJ Smith decided that SSC had been the Claimant’s employer and not 3D Personnel. He dismissed the claims against 3D Personnel.

14. He also dismissed the Claimant's whistleblowing complaints on withdrawal. The complaints to be decided at this final hearing are therefore (i) Unauthorised deductions from wages; (ii) Holiday pay.

15. EJ Smith summarised the claim as follows: "The claimant says he should have been paid £14.41 per hour. This is because this was the hourly rate communicated to him by the former first respondent, an employment agency, for the work. This was by text message and also the first respondent's internal communication log which stated on 26 June 2024 at 16:00 'you will be paid £14.41 per hour.....This agreement shall be deemed to have been accepted on the earlier of your: a) Written confirmation by responding to this email; or b) Commencement of your assignment'. There is no express statement that this is inclusive of any holiday pay. The Tribunal will consider whether, for example, the former first respondent was acting as agent for the respondent umbrella company in communicating the rate of pay to the claimant."

16. EJ Smith defined the issues as follows:

- a. What is the sum claimed and what is the contractual basis upon which that sum is claimed?
- b. Was the claimant paid less than was properly paid to him?
- c. How many days of holiday is it alleged the claimant is owed, how much holiday pay is the claimant said to be owed, and between which dates is it said the claimant accrued holiday for which he has not been paid?
- d. Is the claimant owed any outstanding holiday pay?

17. I heard evidence from the Claimant. I heard evidence from Holly Binns Customer Account Manager, and Joanne Louise Brookfield, Director, both for the Respondent.

18. There was a Bundle of documents. I asked for the Whatsapp chain on which the Claimant relied to be produced in full and sent to the Respondent and the Tribunal. The Claimant did this and it was added to the documents.

19. Both parties made submissions.

20. The Claimant produced a witness statement from a Mr Bucur and from the Claimant's sister. I read those statements. They did not give evidence relevant to the issues and I attached little weight to them.

### **Findings of Fact**

21. The Respondent is an umbrella payroll company.

22. On 26 June 2024 at 12.51 the Claimant contacted 3D Personnel Limited, an employment business, by Whatsapp, seeking work. He sent his name, address and email. At 13.00 that day, 3D Personnel replied, saying that the job was for Elliot Group and the location was K West Hotel, Shepherd's Bush, W14 0AX. 3D

Personnel said, "please bring full PPE, ID and CSCS card. Be there for 7.30AM for induction. Please text back to confirm."

23. At 13.02 3D Personnel WhatsApp'd the Claimant saying it had sent an email with a registration form.

24. The Claimant replied at 13.02 saying, "confirm".

25. At 13.09 he replied further saying he would go onto the website to complete the registration form. At 13.19 the Claimant WhatsApp'd saying "Done".

26. At 13.27 the WhatsApp'd saying, "How much it's paid?"

27. 3D Personnel Limited replied saying, "£14.41".

28. The Claimant replied at 13.27, asking how long he would be there for and 3D Personnel that it was ongoing work.

29. The same day, at 15.51, Ana Bucur, at 3D personnel, emailed the Claimant saying,

30. "Thank you for meeting a 3D Personnel representative and registering with our company. 3D Personnel Ltd operates as an Employment Business and we will seek to find you work as a construction operative under a contract for services.

Today you were offered Terms & Conditions for a PAYE Contract and have already chosen the payroll company you wish to use from our approved list.

You have received their Terms and Conditions and agreed to them. Their Terms supersede the Terms & Conditions we offered you. You also completed a Labour registration form with a 3D Representative.

Their Terms and conditions will cover the following:

Confirmation of the minimum rate of hourly pay and payment intervals

Confirmation that you will receive payment for work completed, whether or not 3D Personnel gets paid by its client for that work

Annual leave entitlement if working on a PAYE contract Notice Period:

Any of the Employment Business, the Agency Worker or the Hirer may terminate the Agency Worker's Assignment at any time without prior notice or liability.

You are agreeing to be paid at the hourly rate specified which is inclusive of holiday. Holiday pay will be paid in advance and shown separately on your payslip each week. There will not be a holiday accrual as you are being paid for holiday in advance.

As you have accepted their Terms and Conditions, 3D Personnel is now able to offer you work."

31. William Sylvester, from 3D Personnel, also emailed the Claimant on 26 June 2024 at 16.00 saying,

“Further to our telephone conversation, I hereby confirm that you are being placed as a labourer with Elliot Group, commencing 27/6/24.

Your general working hours will be:

Monday to Friday From 8-6 (unless otherwise instructed) less breaks and you will be paid £14.41 per hour.

All hours will be paid at the Standard Hourly Rate as shown above, unless agreed otherwise.

This agreement shall be deemed to have been accepted on the earlier of your:

- a) Written confirmation by responding to this email; or
- b) Commencement of your assignment.”

32. The Claimant did commence his assignment at the Elliot group on 27 June 2024.

33. According to the terms of Mr Sylvester’s email, he indicated his agreement to the terms set out in it, by commencing his assignment.

34. The Respondent did not communicate directly with the Claimant until 1 July 2024, when Ms Binns, the Respondent’s Customer Account Manager, spoke to the Claimant. She explained that SSC was an umbrella business and that she was calling because he had started some work for 3D Personnel.

35. She explained that the Respondent would engage him on a PAYE umbrella contract of employment and that he would be entitled to full statutory employment rights. She said that “holiday pay would be inclusive of the charge rate that we (as in SSC) received from the agency.”

36. She said that she would send him a contract of employment.

37. The written contractual arrangements between CCS and 3D are as follows: 3D Personnel Limited (“3D”) is a recruitment agency and also SSC’s client. The Respondent provides the services of its employees to clients, such as 3D, in return for a charge rate agreed with each client. The charge rate is the amount the Respondent charges to the client for the supply of services. From that charge rate, the Respondent accounts for the employer’s costs including NI and any Company margin. The charge rate paid to the Respondent is not the operative’s money. The operative is paid in line with the contract of employment between the operative and the Respondent.

38. The Respondent sent the Claimant a copy of a contract on 5 July 2024. It included the following terms: -

“ ...You are employed with effect from 27 June 2024 to work on such projects and for such periods as we may from time to time require... (clause 1.1)

“Your continuous employment with the Company commenced on 27/06/2024; (clause 2.1)

“Your rates of pay will at all times be no less than the current National Minimum Wage in force in the UK per hour worked. Enhanced rates may be applicable depending on the work you are required to perform. Where enhanced rates or overtime rates are applicable you will be notified of this prior to the commencement of the work. (clause 3.5)

“In addition you may be entitled to additional profit related pay in relation to work undertaken on each assignment. If this is applicable, you will be notified of this prior to the commencement of the work. (clause 3.6)

“You will receive holiday pay at the rate of 12.07% as an addition to the rate of pay as set out in clause 3 per hour worked. The holiday pay will be paid in addition to your hourly rate and will be paid to you weekly with your pay. This means that you will receive payment in advance each week for the time you eventually take off as holiday and you will not receive any additional payment when you are on holiday. (clause 8.5)

39. The Claimant signed that contract on 10 July 2024, after he finished working for the Respondent.

40. Acas early conciliation started on 17 July 2024 and the certificate was issued on 17 July 2024.

41. The claim was presented on 10 July 2024.

42. The Claimant worked for 10 full days for the Respondent, at 8.5 hours per day. I accepted the Respondent's calculations of the amounts due to the Claimant, if he were to be paid £14.41 per hour, rather than £11.44 per hour.

43. The Claimant confirmed that he had, in fact, received the payments shown in the payslips at pp 141 – 146 of the bundle. Those payments included payment at £11.44 per hour for 8.5 hours a day for 10 days, plus an additional payment of 12.07% for each hour, for holiday pay.

44. Those payments totalled £1,025.12 net.

45. The total the Claimant should have received at a payrate of £14.41 per hour, plus 12.07% holiday pay, was £1218.33 net.

46. The difference between those figures was £193.21 net.

## **Relevant Law**

47. *Under Regs 13 & 13A Working Time Regulations 1998* workers are entitled to take paid holidays and to be paid holiday pay. The right under *Reg 13* is 4 weeks; the right under *Reg 13A* is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday. Under *Regulation 14 WTR 1998*, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.

48. *Regulation 14(3)* provides for calculation of the amount of holiday pay due in these circumstances as follows:  $(A \times B)$  less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken.

49. *s13 Employment Rights Act 1996* a worker has the right not to suffer unauthorized deductions from wages. By *s27 ERA 1996* “wages” is defined. By *s27(1)*, “In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including: a) any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise. ...” .

50. An agent's actual authority is defined by the terms of any express or implied agreement between principal and agent. The principal is also liable for acts done within the agent's ostensible authority, *Freeman & Lockyer v Buckhurst Park Properties* [1964] 1 All ER 630..

## Discussion and Decision

51. On the facts, I found that the Respondent and 3D Personnel Limited had put in place arrangements between themselves whereby the Respondent impliedly authorised 3D Personnel to set the terms on which the Claimant was engaged to work for the Respondent.

52. On the facts, it was 3D Personnel Limited who agreed with the Claimant that he would work for the end user. It was 3D Personnel who told the Claimant to start work at 07.30 on 27 June 2024, the location he was to work at, what to bring with him and his hours of work.

53. I found that the Respondent must have permitted 3D Personnel to do that on its behalf. The Respondent had had no contact with the Claimant itself, but accepted that he was employed by it from that date. Only 3D Personnel had communicated with the Claimant at that time.

54. 3D Personnel used contractual language to the Claimant. I found that the Respondent allowed it to do so, by permitting it to undertake the engagement process on its behalf.

55. The Claimant received no other contractual terms from the Respondent before starting work for the Respondent.

56. Given that 3D Personnel Limited had informed the Claimant of the terms on which he would start work, and the Respondent accepted him as an employee from that date, but had not itself provided the Claimant with any terms of employment, I found that there was an implied agreement between the Respondent and 3D Personnel that 3D Personnel would act on its behalf in agreeing the terms on which the Claimant would start work for the Respondent.

57. That being the case, I found that the contractual rate of pay for the Claimant pursuant to his contract with the Respondent was £14.41 per hour. That was the rate which 3D Personnel repeatedly told the Claimant when setting the terms of his engagement.

58. Even when the Respondent did send further contractual terms, the terms relating to pay did not contradict what 3D Personnel had told the Claimant. The relevant clause said, "Your rates of pay will at all times be no less than the current National Minimum Wage in force in the UK per hour worked. Enhanced rates may be applicable depending on the work you are required to perform. Where enhanced rates or overtime rates are applicable you will be notified of this prior to the commencement of the work." (clause 3.5). The rate of £14.41 was indeed, "...no less than the current National Minimum Wage..." and the Claimant had been, "...notified of this prior to the commencement of the work."

59. The Respondent did not pay the Claimant at that hourly rate. It did pay him £11.44 for 8.5 hours for 10 days work, plus 12.07% on top for each hour, for holiday. The Claimant received those sums.

60. I accepted the Respondent's evidence, shown by calculations, that the total the Claimant should have received at a payrate of £14.41 per hour, plus 12.07% holiday pay, was £1218.33 net.

61. The difference between the pay the Claimant did receive and the pay he should have received was £193.21 net.

62. The Respondent made unlawful deductions from the Claimant's wages in the sum of £193.21. I order the Respondent to pay that amount to the Claimant on account of unlawful deductions from wages.

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Employment Judge Brown

Dated: ...28 April 2025.....

Judgment and Reasons sent to the parties on:

1 May 2025

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For the Tribunal Office