



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Gorini

**Respondent:** Sentium Technologies Limited

**Heard at:** London Central (by CVP)

**On:** 13 March 2025

**Before:** Employment Judge Moyler

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Henry Smith, CEO, was present at the hearing

# RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

## Wages

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 1 – 20 October 2023.
2. The respondent shall pay the claimant **£1931.78**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

## Holiday Pay

3. The complaint in respect of holiday pay is well-founded. The respondent made an unauthorised deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.
4. The respondent shall pay the claimant **£691.15**. The claimant is responsible for paying any tax or National Insurance.

# REASONS

## Background

5. By claim form presented on 30 January 2024, the claimant complains of unauthorised deductions from wages and unpaid holiday pay.
6. The response was sent by the Tribunal to the respondent on 29 February 2024 and the respondent notified that a response form must be provided by 28 March 2024.
7. On 8 May 2024, no response having been provided, the Tribunal wrote again to the respondent, by email to an address provided by the claimant, seeking clarification as to whether a response had been submitted and, if not, whether it wished to defend the claim.
8. On 13 May 2024, Gohar Hovhannisyan confirmed that the respondent wished to defend the claim but had not submitted a response, seeking an extension of time in which to do so.
9. On 16 May 2024, the respondent submitted a response to the Tribunal and on the following day set out in full grounds an application for an extension of time, including reasons why the response had not been submitted in time.
10. These were not copied to the claimant as required under the Employment Tribunal Rules of Procedure 2013 (as amended) and, accordingly, the Claimant was asked to provide any reply to the application by 3 January 2025.
11. On 20 December 2024, the Claimant responded to object to the application on the basis that the respondent had adequate resources and sufficient time to respond to the claim within the requisite time limit.
12. On 6 January 2025, Employment Judge Keogh refused the respondent's application to extend time to present the response and therefore rejected the response. The parties were notified accordingly that the respondent would only be permitted to participate in proceedings to the extent that the Tribunal permits under Rule 22(3) of the Employment Tribunal Procedure Rules 2024 ("the Rules") which by that date had replaced the Employment Tribunal Rules of Procedure 2013.

## Preliminary matters and evidence

13. The hearing took place remotely by CVP. The claimant appeared in person. Mr Henry Smith, CEO, appeared on behalf of the respondent.

14. In line with rule 22(3) of the Rules, the Tribunal permitted Mr Smith to assist the Tribunal in determining matters of fact, allowing him to give oral evidence as to the claim made and the background to it, but did not afford him the opportunity, on behalf of the respondent, to cross examine the claimant or to make oral or written submissions to the Tribunal.
15. Prior to the hearing, the claimant provided the following documents to the Tribunal and the respondent:
  - a. an screenshot image of email headers between claimant and respondent;
  - b. an email from claimant to respondent dated 15 November 2023;
  - c. a screenshot showing that the respondent had cancelled the claimant's contract on the deel system with effect from October 23 2023 with a final payment amount of £0;
  - d. an "invoice" from the deel system in respect of the claimant's pay of £2995 gross for August 2023;
  - e. an "invoice" from the deel system in respect of the claimant's pay of £2995 gross for September 2023; and
  - f. an "invoice" from the deel system in respect of October 2023, showing £0.
16. These were the sole documents before the Tribunal in this matter, other than the ET1 claim form, the rejected ET3 response and an email from the claimant to the Tribunal, dated 14th May 2024, setting out his losses.
17. The claimant and Mr Smith gave oral evidence and the Tribunal heard closing submissions from the claimant.

## **The issues**

### *Jurisdiction – did the claimant present his claim in time?*

18. At the start of the hearing, the parties were asked to confirm the date on which the claimant's final payment was due to have been made.
19. The primary limitation period for the claimant's claim, if running from the effective date of termination cited in the claim form and (rejected) response, would have expired on 22 January 2024.
20. The claimant did not initiate early conciliation until 24 January 2024, two days later, such that he would not benefit from the extended deadline of 29 February 2024 that the conciliation period would otherwise afford him. The claimant submitted his claim form on 30 January 2024, which would be out of time.

21. The claimant asserted that the date of payment should have been 14 November 2023; this would mean that his claim was presented both within the primary limitation period and before the extended deadline of 29 February 2024.
22. Mr Smith disagreed, stating that payment would have been on the date the contract ended on the deel system, which was 23 October 2023; if correct, this would mean that the claimant's claim was submitted out of time and the Tribunal would lack jurisdiction to consider his complaint.
23. The Tribunal agreed to take oral evidence accordingly in order to establish when the primary limitation period for the claimant's claim expired and, accordingly, whether the Tribunal had the jurisdiction to consider the claimant's claim.

*Unauthorised deduction from wages*

24. In respect of the claim for an unauthorised deduction from wages, the issues are as follows:
  - a. Is the claimant a worker?
  - b. Is the claim in respect of wages?
  - c. Was the claim presented in time?
  - d. Has the employer made a deduction?
  - e. Was the deduction authorised by:
    - i. statutory provision, or
    - ii. relevant written contractual provision, or
    - iii. agreed to in writing by the claimant before the event giving rise to the deduction?
  - f. Was it an exempt deduction?
  - g. How much then, if anything, does the respondent owe the claimant?

*Holiday pay*

25. In respect of the claim for payment of untaken but accrued annual leave entitlement outstanding on termination of employment, the issues are:
  - a. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when his employment ended?
  - b. How much leave was outstanding by that date?

- c. Was the claim presented in time?
- d. How much then, if anything, does the respondent owe the claimant?

**The facts**

- 26. Having heard oral evidence from the claimant and Mr Smith, and having considered carefully the written evidence set out above, the Tribunal makes the following findings of fact.
- 27. The claimant began working for the respondent on 23rd June 2023 as an Account Manager. He also worked for his family business, which ran a restaurant, and on joining the company he was asked to receive his pay through the limited company that his family ran at the time, Food Global Limited. The claimant understood this to be for business convenience reasons relating to payment.
- 28. On starting work with the respondent, the claimant signed two contracts. He did not have a personal copy and both documents were lost when the respondent moved from one online document storage provider to another.
- 29. The claimant was “pretty sure” that these were both contracts relating to the personal performance of services by him for the benefit of the respondent and gave evidence that, to the best of his knowledge and belief, neither document was signed by him on behalf of Food Global Limited in a business capacity.
- 30. I find, on the balance of probabilities, that these contracts were between the claimant as an individual and the respondent for the provision of his services in a personal capacity.
- 31. The Claimant worked 5 days a week in the respondent’s London office, starting at 7am and finishing at 4pm at his request, which was agreed to by the respondent. He was entitled to a daily lunch break of one hour. He was also entitled to 35 days’ paid annual leave per year.
- 32. While there was some flexibility in where the claimant could carry out his work, he did so almost exclusively from the respondent’s London office and was present there almost all the time. He reported personally to a line manager who allocated him work and he carried out his work on company equipment, having been provided with a desk and a computer at the office.
- 33. The claimant was paid £2995 per month gross and was expected to make his own arrangements for the payment of tax and national insurance contributions.
- 34. In order to receive his pay, he was required to log onto “Deel”, a software system that managed payments. He would log onto this on the 14th day of every month and would be able to withdraw his pay. The software worked by automatically generating an invoice to the company which would be automatically paid out into the claimant’s bank account, details of which he had uploaded himself onto Deel.

35. On 17 October 2023, the claimant notified Mr Smith that he no longer wished to work for the respondent. Mr Smith informed him of the obligation to give notice as set out in the contracts that the claimant had signed, specifically 30 days' notice.
36. He did, however, agree to consider a shorter notice period, as the claimant was keen to leave sooner. By the end of that week, however, the claimant had not heard back from Mr Smith and decided to leave with immediate effect. His last working day for the respondent was Friday, 20 October 2023.
37. On 15 November 2023, the claimant logged onto the Deel software system to withdraw his final pay. The account had been closed and there was no money available for him to withdraw.
38. The final invoice generated when he attempted to withdraw his pay, showed a due date of 15 November 2023, the sum of £0 as a balance and stated "skip". Mr Smith told the Tribunal, but the claimant was unaware at the time, that "skip" meant that the respondent had decided to decline payment in respect of the month of October.
39. Accordingly, the claimant emailed both Ms Hovhannisyan and Mr Smith at the respondent, asking when payment would be made.
40. Neither recipient responded to this email and no payment was sent to the claimant.

### The law

41. Section 13 of the Employment Rights Act 1996 prohibits an employer from making a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
42. A worker is defined for the purposes of section 13 by section 230(3) of the Employment Rights Act 1996 to include both an employee and a person who undertakes to perform personally any work or services for someone else whose status is not that of a client or customer of any profession or business carried on by that person.
43. A complaint for a breach of section 13 can be presented, by a worker, to an employment tribunal under section 23 of the Employment Rights Act 1996. However, any such complaint cannot usually be considered unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made.
44. The deduction must be from the worker's wages and a deduction occurs when the employer pays less than the amount due on any given occasion and this includes a failure to make any payment at all following the case of ***Delaney v Staples (t/a De Montfort Recruitment)*** [1991] ICR 331, CA.

## Discussion and Conclusion

### *Jurisdiction – is the claim in time?*

45. In evidence, Mr Smith accepted that the final invoice generated by Deel in respect of the claimant had a due date of 15 November 2025 and confirmed that he no longer asserted that the claimant should have reasonably been aware that his final invoice would have been automatically generated and paid on the date that the contract was ended – in this case 23 October 2025.
46. The Tribunal agrees that the date on which the claimant was due to be paid his final payment was 15 November 2025. Accordingly, the primary limitation period by which his claim should have been presented was 14 February 2025.
47. The claim was presented on 30 January 2025, before this deadline, and therefore is in time and the Tribunal has jurisdiction to consider it, even without considering the extension afforded by participating in the early conciliation process.

### *Unauthorised deduction from wages*

48. The respondent denies that the claimant was an employee or worker, stating that he was a sub-contractor and that the relationship in respect of his services was provided as a business-to-business contract between the respondent and a company called Food Global Limited. The claimant was never informed that he could send in a substitute person to work for him, although Mr Smith stated in evidence that he thinks the contract on Deel did say this was permissible and, if asked by the claimant, he “would have considered” that option.
49. The Tribunal finds that the nature of the relationship between the parties was that of a worker/employer relationship. The provision of annual leave, the set working hours (albeit with some flexibility as to location and time), the provision of work equipment and supervision, and the clear expectations of Mr Smith as to granting permission to send a substitute or to decline work tasks, alongside the very different nature of the work of Food Global Limited all clearly identified that this was not an engagement that the claimant had entered into in pursuance of a pre-existing business enterprise.
50. Accordingly, the Tribunal finds that the claimant was at all material times a worker.
51. The respondent made a deduction on 15 November 2023 by not paying the claimant a pro-rated amount of his monthly wages in respect of the work done in October 2023 prior to the effective date of termination.
52. This deduction was not authorised by statutory provision or a relevant written contractual provision, nor was it agreed to in writing by the claimant in advance. It was not an exempt deduction.
53. Accordingly, the claimant suffered an unauthorised deduction from his wages.

54. The claimant worked from 1 to 20 October 2023 and therefore should have been paid the sum of £1931.78 gross.

*Holiday pay*

55. The claimant was entitled to 35 days' annual leave under his contract of employment. The claimant seeks payment in lieu of the outstanding but untaken portion of his annual leave at the time his employment terminated and claims he is owed the same under his contract.

56. Mr Smith stated in evidence that there was no provision in the sub-contractor contract for payment of accrued but untaken annual leave at the termination of the contractual relationship. Accordingly, he denies that the claimant is owed any payment in respect of annual leave.

57. However, I have already found that the relationship between the claimant and the respondent was that of worker and employer and that the contract entered into between the parties was that of a contract for personal services. This is entirely consistent with the provision of paid annual leave. I accept that the contract signed by the claimant provided for pro rata payment in respect of outstanding accrued annual leave on termination, as alleged by the claimant. Mr Smith accepted in evidence that the contracts used for personal service did contain such a provision and I have made a finding of fact that this is the type of contract entered into by the claimant.

58. Accordingly, the claimant is entitled to pay in lieu of outstanding entitlement.

59. The claimant worked for 4 months, by the end of which he had accrued one third of his full year's entitlement of 35 days. By virtue of regulation 15A(3) of the Working Time Regulations 1998, which stipulates that in the first year of employment the amount of leave accrued is to be rounded up to the nearest half day, this is to be treated as 12 days accrued leave. The claimant took 7 days' leave during his employment out of that allowance of 12 days.

60. Accordingly, he is entitled to pay in lieu of the outstanding 5 days at the rate of £138.23 per day, which equates to £691.15.

61. This is slightly higher than the sum claimed by the claimant in his schedule of loss because he had relied on an accrued entitlement of 11.89 days, which has been rounded up to 12 days.

**Employment Judge Moyler  
7 June 2025**



**Case Number: 2200898/2024**

Judgment sent to the parties on:

17 June 2025

.....

For the Tribunal:

.....