



EMPLOYMENT TRIBUNALS

Claimant: AMRIT REEHAL
Respondent: ESSEX COUNTY COUNCIL
Heard at: London East Hearing Centre (via video)
On: 23 May 2025
Before: Employment Judge Balroop

Representation

Claimant: James Flower of Counsel
Respondent: Kate Legh of Counsel

JUDGMENT having been sent to the parties on **29 May 2025** and reasons having been requested in accordance with Rule 60(3) of the Rules of Procedure 2024.

REASONS

The parties

1. The Respondent is a County Council. The Respondent employs the Claimant as an Analyst.

The issues

2. The Claimant alleges an unauthorised deduction from wages under Section 13 of the Employment Rights Act 1996 (ERA 1996). The crux of the matter is whether the Claimant was contractually entitled to paid sick leave based on three years' continuous service.

3. By an ET1 claim form presented on 26 September 2024, the Claimant claims: Arrears of pay because although he started employment on 27 November 2023 the continuous start date on his contract stated 13 January 2021 which means he has 3 years' service at the date of the sickness as such he is entitled to sickness benefit of 3 months full pay and 3 months half pay as per his contract.
4. The Respondent ET3 response is that the Claimant worked for the Respondent from January 2021 to March 2022 but left to work elsewhere as such when he re-joined the Respondent's employ his continuous start date was the 27 November 2023. The date in the contract was an error as such he had less than 12 months service and was not entitled to be paid his salary.
5. The issues to be decided are:-

Unauthorised Deduction from Wages

- a. Did the Claimant have a contractual right to three months' full pay and three months' half pay due to sickness absence, based on three years' continuous service?
- b. If yes, did the Respondent fail to pay this amount during his sickness absence?
- c. If yes, does that failure amount to an unauthorised deduction from wages under Section 13 ERA 1996?

Continuous Service Start Date

6. It was agreed that the sole issue in the claim is the continuous service start date for the Claimant whether it is 13 January 2021 or 27 November 2023 because this would determine whether there was an unlawful deduction of wages.

Hearing

7. The hearing was conducted by video. I heard evidence from the Claimant and Ms Janet Tindall. Then submissions from the representatives.

Findings of fact

Cause of Action Not Identified

8. The Respondent's first submission is that the Claimant's ET1 was insufficiently particularised and failed to clearly identify a cause of action.

Ms Legh argued that the Claimant was evasive regarding when he obtained legal representation. She further submitted that since the ET1 was amended in December 2024, the Claimant must either have had legal representation at that time or sufficient legal knowledge to properly plead his case, but failed to do so adequately.

9. In response, Mr Fowler submitted that there was no prejudice to the Respondent in understanding or responding to the claim. He argued that the essential elements of the claim — namely, the dispute over continuous service and the resulting entitlement to contractual sick pay — were clear from the ET1 and the correspondence that followed. Accordingly, he submitted that the Respondent was always in a position to understand the case it had to meet.
10. I agree with Mr Fowler 's submission. As such, I am satisfied that the claim was sufficiently particularised to proceed and does not warrant dismissal or adverse inference on this ground.

Proper Construction

11. The key issue in this claim turns on the proper construction of the Claimant's contract of employment, specifically whether the stated continuous start date of 13 January 2021 should be upheld, or whether this was an obvious mistake and the correct date is 27 November 2023, when the Claimant re-joined the Respondent.
12. Ms Legh submitted that it would be absurd to read the contract as granting continuity from January 2021 when the Claimant had a 20-month break in service from March 2022 to November 2023. Ms Legh argued that a reasonable observer would know that it was a mistake and that his continuous start date would be 27 November 2023.
13. Mr Fowler submits that there must be a clear mistake, it does not mean a possible mistake or the parties thought there was a mistake. The Tribunal should be looking at whether a reasonable person thought a mistake was made in the contract. He emphasised the Respondent's compliance team drafted the contract and professionals do not make mistakes in formal documents.
14. Mr Fowler argued background facts were crucial but the facts should be known to both parties as such the mechanism of transferring the previous employee number was not known to the Claimant. Ms Tindall's knowledge of how the Respondent treats continuous service at all times would not be known to the Claimant. However, he did accept that previous gaps in employment are relevant background facts.

15. Brightman LJ said in East v Pantiles Plant Hire Ltd (1981) 263 EG 61
- “It is clear on the authorities that a mistake in a written instrument can, in limited circumstances, be corrected as a matter of construction without obtaining a decree in an action for rectification. Two conditions must be satisfied: first, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction.
16. In this case, I find that both limbs of East v Pantiles are satisfied:
- First, the continuous service date of 13 January 2021 is clearly incorrect when viewed in light of the 20-month gap during which the Claimant was employed elsewhere.
 - Second, the correct date — the date on which the Claimant resumed employment, 27 November 2023 — is clear and undisputed.
17. My reasons for this are as follows:
18. The Claimant in evidence accepts that the continuous start date was not discussed in the interview or in the pre-contract emails. The Claimant’s focus is that he mentioned his previous employment with the Respondent in the interview and in the pre-contract emails and telephone calls on at least on two occasions he mentioned re-joining the Respondent. However, I find Ms Legh submission that there is marked difference between mentioning that you have previously worked for the Respondent and a discussion that your continuous start date would be 13 January 2021 not 27 November 2023, has force, when it is accepted the Claimant did not work for the Respondent from March 2022 to November 2023.
19. I find the background evidence concerning the Claimant’s 20-month gap in employment to be crucial in determining whether the stated continuous start date of 13 January 2021 was an obvious error. Taking the Claimant’s case at its highest, he asserts that because he discussed his previous employment with the Respondent at interview and referred to “re-joining” in pre-contract communications, the insertion of the 13 January 2021 date in the contract would not appear to a hypothetical observer as an error.
20. However, that argument would require one of two propositions to be accepted: either (1) that the Respondent knowingly and without discussion agreed to treat the Claimant as continuously employed throughout the 20-month period when he was employed elsewhere, or (2) that the Respondent intended to merge the Claimant’s previous period of employment (January 2021 to March 2022) with the new period starting November 2023, thereby preserving continuity.

21. I am not satisfied that either proposition can reasonably be inferred from the Claimant's general references to his past employment or statements that he was "re-joining." There is no evidence of any express or implied agreement between the parties to preserve continuity. In the absence of a discussion or communication to that effect, a reasonable observer would not conclude that the Claimant's continuous service could include a 20-month period during which he was not employed by the Respondent and was working elsewhere.
22. Accordingly, I find that the Claimant would reasonably have understood that such a significant gap in employment broke any previous continuity, and that the reference in the contract to a continuous start date of 13 January 2021 was, on its face and in context, a clear and obvious error.
23. I find that a literal reading of the contract, stating a continuous employment start date of 13 January 2021, would lead to an absurd result in light of the background evidence of a 20-month gap in employment. It is undisputed that the Claimant ceased working for the Respondent in March 2022 and did not resume employment until 27 November 2023. There is no evidence that continuity of service was discussed, preserved, or agreed upon.
24. I am satisfied that there was a clear mistake on the face of the contract. A reasonable person, considering the factual context, would recognise that the continuous service date of 13 January 2021 was inserted in error, and that the correct date should be 27 November 2023. The mistake is obvious, and the correction is equally clear. Therefore, the document is to be construed accordingly, and I make no findings on the alternative submissions concerning common or unilateral mistake, which are unnecessary in light of my conclusion on contractual construction.
25. Section 13 of the Employment Rights Act 1996 provides that an employer may not make deductions from a worker's wages unless the deduction is authorised by statute, contract, or the worker's prior written consent.
26. I find that the Respondent did not make any deduction from the Claimant's wages. The Claimant, having commenced his employment on 27 November 2023, had less than 12 months' service at the time of his sickness absence and was therefore not entitled to the enhanced contractual sick pay provisions which apply after three years of continuous service. As such, the Respondent was under no obligation to make the payments claimed, and no unlawful deduction occurred.

27. For these reasons, the Claimant's claim for unlawful deduction from wages is not well founded and is therefore dismissed.

Approved by:
Employment Judge Balroop
Dated: 4 July 2025