



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Vladislav Buianov

v

DigiDoe Ltd

Heard at: London Central

On: 1 September 2025

Before: Employment Judge Hodgson

Representation

For the claimant: in person

For the respondent: Ms Sasman, money laundering risk officer

JUDGMENT

All claims are dismissed.

REASONS

Introduction

1. There are claims of failure to pay wages, failure to make payment during a notice period, and failure to pay accrued holiday.
2. This matter came before me on 1 September 2025 as a CVP hearing to determine the merits of the claim.

3. The claimant represented himself and proposed to call a witness Mr Alexandr Alexandruic.
4. The respondent was represented by its anti-money laundering officer, Ms Sasman.
5. At the hearing I ascertained that the claimant was in Argentina. His witness was currently in Turkey, and Mr Sasman was in South Africa.
6. The claimant had failed to obtain permission to give evidence. He indicated an application had been made, but he gave me no detail. His witness, who is currently in Turkey, had obtained no permission to give evidence in Turkey. Ms Sasman stated there was currently an agreement with South Africa which would allow it to participate and to give evidence.
7. It was agreed that neither the claimant nor his witness could give evidence, as the relevant permission had not been obtained.
8. I understand that I have wider discretion to allow participation in a hearing, but that would not extend to granting permission to give evidence. In the circumstances, I considered it appropriate to make limited enquiries of the parties and to consider how best to proceed.
9. I considered the parties pleaded cases and asked for some points of clarification. I will set out those matter that are not in dispute below.
10. Ms Sasman stated that she was not a witness of fact and was not prepared to give evidence. The respondent had chosen to call no witness. Neither the claimant nor his witness were permitted to give evidence.
11. All parties accepted that it was appropriate for me to consider the papers that had been filed in order to consider the appropriate way to proceed and thereafter, if appropriate, to make a decision.

The circumstances

12. The key circumstances of this case are not disputed: they are set out in the pleadings; they are reflected in the document the claimant proposed to rely on his witness statement; and they are reflected in the summaries given to me orally.
13. The claimant entered into a service agreement dated 14 June 2022 with the respondent DigiDoe Ltd, a company incorporated in England and Wales. The contract records that he was resident in Kazakhstan. They entered into a written agreement. The contract provided for continuation to be terminated by two months' notice on either side.
14. Paragraph 3.2 of the agreement states:

The Employee warrants that he is entitled to work in the United Kingdom without any additional approvals and will notify the Company immediately if he ceases to be so entitled during the Appointment.

15. Paragraph 4.1 of the agreements states he will serve the company as “head of sales will focus on both the UK and international markets.”.
16. Paragraph 5.1 records the place of work as “remote.”
17. He agrees under paragraph 5.2 to travel within the United Kingdom and abroad.
18. Paragraph 7.1 states:

The Employee shall be paid an annual salary of £60,000 per annum paid monthly.

19. Paragraph 32 purports to make the contract subject to the law of England and Wales and provides as follows:

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20. Paragraph 33 reiterates the position in the context of jurisdiction and states:

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

21. The employment started on 15 June 2022 and terminated on 24 May 2024.
22. The claimant obtained an ACAS conciliation certificate. The conciliation period was from 21 June 2024 to 30 July 2024. He submitted his claim on 26 September 2024. He alleged failure to pay during the notice period, failure to pay other wages, and failure to pay accrued holiday pay.
23. I accept that he received pay during the course of employment, albeit there were late payments. He states he received no wage slips during his employment, but received several after, following his request. I have seen a number wage slips. For example, the wage slip for April 2024 shows total gross pay £5,000 with no deduction for PAYE or National Insurance. It was common ground that no tax was deducted at source, the claimant did not pay tax in this country at any time. It is unclear to me whether the respondent made any employer’s contributions and I heard neither submissions, nor evidence on the point.
24. Both parties contend that the employment was in the UK.

25. The document which would have formed the claimant's statement records that it was always understood he would work outside the UK. It states he never visited the UK at any time nor held a UK Visa allowing him to work in this country.
26. All submissions on behalf of the respondent were to the effect that it appeared there were no checks made to ensure the claimant had a right to work within the UK, albeit Ms Sasman stated she would need to check. However, for the purposes of this decision, I can take the claimant's case at its height, as revealed in the claim form, supporting documents, and the all submissions.

Submissions

27. I informed the parties that a number of issues arose. First, whether the claimant was employed in this country. Second, whether he had a right to work in this country. Third, whether the tribunal should decline to enforce the contract given that it appeared there may be illegality in its performance.
28. I also noted that there may be obligations on the part of the respondent UK company to check the claimant had a right to work in the UK. Failure to do so may lead to civil liability and/or criminal liability, albeit any liability may not be that of Ms Sasman personally.
29. The claimant wished to proceed. The respondent elected to give no evidence but wished to proceed.

The law

30. The law relating to illegality and the performance of contracts can be involved. The observations of Underhill LJ in **Okedina v Chikale** [2019] EWCA Civ 1393 provide a useful starting point. At [12] he said:

"The essential starting-point is to recognise that there are two distinct bases on which a claim under, or arising out of, a contract may be defeated on the ground of illegality. These are nowadays generally referred to as "statutory" and "common law" illegality. Put very briefly:

- (1) Statutory illegality applies where a legislative provision either (a) prohibits the making of a contract so that it is unenforceable by either party or (b) provides that it, or some particular term, is unenforceable by one or other party. The underlying principle is straightforward: if the legislation itself has provided that the contract is unenforceable, in full or in the relevant respect, the court is bound to respect that provision. That being the rationale, the knowledge or culpability of the party who is prevented from recovering is irrelevant: it is a simple matter of obeying the statute.**
- (2) Common law illegality arises where the formation, purpose or performance of the contract involves conduct that is illegal or contrary to public policy and where to deny enforcement to one or other party is an appropriate response to that conduct...."**

31. In most cases in employment law, the tribunal is concerned with common law illegality. The current case is not complicated by any claim of discrimination. All claims concern payment under the contract itself, or rights which are dependent upon a contract. In this case, neither party seeks to argue the claimant was not an employee.
32. There may also be complexity in the context of immigration related cases. This commonly occurs when an individual has been brought from another country and required to work in this country. It may involve alleged breaches of section 15 and 21 of the Immigration, Asylum, and Nationality Act 2006, as was the case in **Okendina**. However, that is not the case here.
33. Many cases that involve consideration of common law illegality revolve around potential fraud on the Revenue.
34. As for potential illegality in this case, there are two broad issues. The first is whether the claimant had a right to work this in this country at all. Second is, in any event, was there illegality in the way the contract was performed.
35. In **Hall v Woolston Hall Leisure Ltd** [2000] IRLR 578, CA recognised, in the context of discrimination claims, that where performance of the contract is tainted with illegality, for example by failing to account for tax adequately, it may not prevent the claim from proceeding and it may be necessary to consider whether the claim is so inextricably bound up with the illegal conduct that enforcement would appear to condone that conduct.
36. However, the current case is not complicated by any claim of discrimination. It follows I do not need to consider, in detail, the case law which deals with the treatment of discrimination claims.
37. Where illegality was apparent on the face of the contract and/or by statute ('illegal in inception'), or the contract was such that it could not be performed without illegality on the part of either or both contractors ('illegal in performance'), then the contract was illegal and void *ab initio*. In that context, intention may not have been relevant. However, whilst I do not discount the possibility that is the case here, I will assume that the contract was not a void *ab initio*.
38. It follows that this is a case where there was apparent illegality in performance. In this case, I find they can be no doubt, given the pleaded cases, that there was illegal performance. It was the intention of the parties for the contract to be governed by the law of England and Wales, in accordance with the contract. In those circumstances, I do not accept the fact the claimant was resident in another country and did not visit this country, prevents the contract being a contract performed in the UK. There is clearly a potential argument that the contract was in fact formed in the claimant's local country, but that is not an argument to be put before

me and is not what I need to decide. I will assume that there is a contract governed by the law of England and Wales.

39. The general position was considered by Elias P (as was) in **Enfield Technical Services Ltd v Payne** [2007] IRLR 840 and subsequently approved by the Court of Appeal. Broadly, it was necessary for the employee to have knowledge of the facts producing the illegality, although not necessarily that it was in law illegal, and for there to be an element of active participation.
40. It is possible that the position has been modified, particularly by the Supreme Court in **Patel v Mirza** [2016] UKSC 42, albeit not in employment context. Perhaps most importantly there may now be emphasis on assessing the proportionality of striking down arrangements, leading to a complete loss of rights, in order to protect the Revenue. In that context, the emphasis may now not be on whether performance is tainted by legality, so much as on the proportionality of granting the relief; this is likely to be seen in the context of the overarching public policy which makes denial of enforcement an appropriate response.

Discussion

41. As noted, it was not possible to take evidence from the claimant. The respondent chose not to give evidence. In those circumstances, I had reservations about proceeding to determine this matter on its merits at a full merits hearing, or as a specific preliminary issue.
42. Rule 38 Employment Tribunal Procedure Rules 2024 provides:

Striking out
38.—(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—
(a) that it is scandalous or vexatious or has no reasonable prospect of success;
...
(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
43. In this case, I sought submissions from both parties as to all relevant matters. Neither party was able to give an explanation for why no tax has been paid. The claimant confirmed he had never sought, or obtained, any work visa. The respondent's submissions were that no checks were made confirming the claimant's right to work. Neither party sought to explain the provisions in the contract that specified that he has a right to work in the UK, when there is no suggestion that either party ever believed he had the right.
44. There may be cases that are so fact sensitive, it would be inappropriate to strike out the claim where there is a question of illegality of performance. I

refer above to the sensitivity which surrounds claims of discrimination. A case may be particularly fact sensitive when there are potential issues of trafficking. Article 6 may also engage arguments about right to a fair hearing, but that will not necessarily prevent summary disposal in appropriate circumstances.

45. There are occasions when it is appropriate for the tribunal to raise the question of illegality of performance. Denial of the right to enforce a contract is based firmly in public policy.
46. The parties should have an opportunity to respond, and if necessary, that may require an adjournment for evidence be filed. However, there are cases where the facts are so clear that that adjournment is unnecessary and the parties should be expected to deal with the matter when raised at the hearing. In this case, the fact that the claimant never obtained a visa to work in this country is common ground. The claimant dealt with it in his proposed statement. The respondent raised it, and dealt with it, in its response. The factual issue was before the tribunal and the party should be expected to deal with it.
47. As noted above, three broad issues arise. First, whether the claimant was employed in this country. Second, whether he had a right to work in this country. Third, whether the tribunal should decline to enforce a contract given that it appeared there may be illegality in its performance.
48. The question for me is whether there is any reasonable prospects of the claims succeeding.
49. As to the first issue, for the reasons I have already given, I will assume the claimant was employed in this country.
50. As to the second point, there is no possibility of the claimant establishing a right to work in this country. He required an appropriate work visa or permit. He neither applied for one Nor obtained one. This is contrary to the contract which stated that he had a right to work in this country. At all times both parties knew that the contractual provision, specifying that he had the right, was fundamentally, untrue.
51. The third matter to consider is whether there was illegality in performance. Assuming that the contract was not void ab initio, and that is not something I need to finally decide, at all times both parties knew that the claimant did not have a work visa and he was not allowed to work, yet they continued and the claimant received substantial remuneration, ultimately evidenced by the late wage slips. There is no doubt that performing the contract was tainted by illegality.
52. In any event, it is clear that neither party sought to account to the Revenue. The wage slips issued by the respondent demonstrate that there was a total failure to deduct tax. The claimant took no steps to ensure tax was paid in this country at any time. It is a clear fraud on the

Revenue. Both parties were fully aware of the relevant circumstances. Both parties actively participated and deliberately ensured tax was not paid. It follows the fraud on the Revenue was clear, serious, and premeditated.

53. Knowledge and participation may not be sufficient to deny the claimant his right to enforce the contract. In this case, the only rights he seeks to enforce are those which are dependent upon the legality of the contract, its performance, and the obligation to make payment either directly under the contract or in relation to holiday pay. All those claims are underpinned by the contract itself.
54. I must consider whether there is any reasonable prospects of the claimant establishing that, despite his knowledge and participation, nevertheless, the tribunal would enforce his contract. I find that the circumstances in this case are so extreme and premeditated that there is no prospect at all of the tribunal allowing enforcement of this contract. It follows these claims have no reasonable prospect of success and I dismissed them.
55. For the removal of doubt I should note that even if the claimant could establish a right to work in this country, the fraud on the Revenue is so serious it is sufficient in itself for there to be no reasonable prospect of the claims succeeding as there is no reasonable prospect of the tribunal allowing these claims to proceed.

Employment Judge Hodgson

Dated: 10 September 2025

Sent to the parties on:

17 September 2025

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For the Tribunal Office