Case Number: 2221546/2024

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondent**
Mr B Akponah		**Wilson James Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 10-12 September 2025**

BEFORE: Employment Judge A M Snelson **MEMBERS: Dr V Weerasinghe**
Ms S Coles

On hearing Mr L Lennard, lay representative, on behalf of the Claimant and Mr P Chadwick, consultant, on behalf of the Respondent, the Tribunal determines that:

(1) The Claimant's complaint of unauthorised deductions from wages is not well-founded.
(2) The Claimant's complaint of unfair dismissal not well-founded.
(3) All other claims brought by the Claimant are dismissed on withdrawal.
(4) Accordingly, the proceedings as a whole are dismissed.

REASONS

Introduction

1 The Respondent describes itself as a provider of security, aviation and construction services. According to the response form, it employs 5,200 people in Great Britain.

2 The Claimant was first employed by the Respondent in July 2013 and dismissed on the stated ground of redundancy on notice expiring on 30 April 2024. The parties disagree as to whether the employment was continuous between those two dates, the Claimant maintaining that it was and the Respondent that continuity was broken between May and July 2014.

3 The Claimant worked throughout as a security officer.

4 By a claim form presented on 19 June 2024 the Claimant brought claims for unauthorised deductions from wages and unfair dismissal together with various complaints under the Equality Act 2010 ('the 2010 Act'). The unauthorised deductions claim was put on the basis that the notice given wrongly failed to credit the Claimant for his service between 2013 and 2014.

5 All claims were resisted.

6 The matter came before Employment Judge Elliott on 22 October 2024 in the form of a preliminary hearing for case management, at which both parties were represented. So far as now material, she identified complaints of unfair dismissal and unauthorised deductions from wages. As to the latter, she noted in an appendix to her order the following points and issues:

> **13. Did the respondent make any unlawful deductions from the [claimant's] wages? The [claimant] relies on a failure to pay the full amount of notice pay and relies on section 27(1)(a) ERA 1996 and his case that notice pay is encompassed within this definition of wages.**
>
> **14. What was the claimant's length of service, the respondent says it was 9 years and the [claimant] says it was 11 years. This affected the calculation of the notice pay.**
>
> **15. This is not brought as a breach of contract claim.**

7 The case came before us in the form of a 'remote' final hearing by CVP on 10 September this year with six days allowed. The Claimant was represented by an experienced lay representative who gave the name of Leonard Lennard and bore a striking resemblance to a lay representative who used to appear before the Employment Tribunals under the name of Leonard Ogilvy.[1] Mindful of the strict claims management rules, we asked Mr Lennard to clarify on what basis he was acting for the Claimant. He replied that he was offering his services entirely free of charge and that there was no question of him receiving any reward for them, whatever the outcome of the proceedings. This might be thought somewhat surprising given that Mr Lennard is recorded as having attended the preliminary hearing before Employment Judge Elliott in the capacity of a 'consultant with the [claimant's] solicitors'. Our exchange happened before the Claimant made effective contact with the Tribunal (he experienced a number of technical difficulties in the course of the hearing). Once we were properly in touch with him we asked him whether he agreed with Mr Lennard's characterisation of the relationship. After some hesitation, he told us that he did. We decided on balance to take what we had been told at face value and enquire no further.

8 The Respondent was represented by Mr Piers Chadwick, a consultant.

9 At the start of the hearing, Mr Lennard informed us that the Claimant had chosen to withdraw all claims under the 2010 Act, with the result that the only matters for decision were the complaint of unfair dismissal and the unauthorised deductions claim.

[1] The resemblance is unfortunate: 'Mr Ogilvy' (not his real name) was sentenced to a term of imprisonment in 2017 for masquerading as a barrister to defraud clients.

10 Given its reduced scope, the hearing was completed on the afternoon of day three when, following private deliberations, we delivered an oral judgment dismissing both claims.

11 These reasons are given in written form pursuant to an oral request on behalf of the Claimant made at the hearing.

The Legal Framework

Unauthorised deductions from wages

8. Under the 1996 Act, Part II, workers are protected from unauthorised deductions from wages. 'Wages' includes any sum payable in connection with the employment (s27(1)). But that protection does not extend to claims for damages for wrongful dismissal (*Delaney v Staples (t/a De Montford Recruitment)* [1992] ICR 483 HL).

9. The Tribunal has a separate contractual jurisdiction under which claims for wrongful dismissal may be heard, pursuant to the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 but, as already noted, the Claimant at the case management hearing eschewed any such claim.

Unfair dismissal

10. The unfair dismissal claim is governed by the Employment Rights 1996 ('the 1996 Act'), s98. It is convenient to set out the following subsections:

> **(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal, and**
> **(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it – …**
>
> **(c) is that the employee was redundant …**
>
> **(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –**
>
> **(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
> **(b) shall be determined in accordance with equity and the substantial merits of the case.**

11. Although our central function is simply to apply the clear language of the legislation, we are mindful of the guidance provided by the leading authorities. From *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439 EAT and *Post Office v*

Foley; HSBC Bank v Madden [2000] IRLR 827 CA, we derive the cardinal principle that, when considering reasonableness under s98(4), the Tribunal's task is not to substitute its view for that of the employer but rather to determine whether the employer's decision to dismiss fell within a band of reasonable responses open to him in the circumstances. That rule applies as much to the procedural management of the case as to the substance of the decision to dismiss (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA). The 'band of reasonable responses' principle is applicable in the redundancy context no less than where the dismissal is based on conduct, capability or any other reason (*Williams v Compair Maxam Ltd* [1982] ICR 156 EAT, particularly at 161E).

Oral Evidence and Documents

12 We heard oral evidence from three witnesses on behalf of the Respondent: Ms Nicola Billingham, Security Account Manager, Mr Steven Browne, Site Security Lead, and Ms Solvita Mengelsone, now Site Security Lead but at all relevant times Reception Campus Manager. The Claimant also gave evidence.

13 In addition to the testimony of witnesses we read the documents to which we were referred in the bundle of some 600 pages.

14 We also had the benefit of the written closing submissions presented on both sides.

The Facts

15 The facts essential to our decision, either agreed or proved on a balance of probabilities, we find as follows.

Facts relevant to the unauthorised deductions from wages claim

16 As already noted, the Claimant was first employed by the Respondent in July 2013.

17 The Respondent has not been able to produce a document to substantiate its case that the Claimant's employment was terminated in or about May 2014 and that it employed him under a fresh contract with effect from July 2014.

18 The Respondent has, however, produced circumstantial evidence to support its case. This consists of the following: (a) the July 2014 statement of main terms of employment, which declares that the continuous employment began on 1 July 2014; (b) a CV prepared by the Claimant which states in terms that he was employed by the Respondent from July 2013 until May 2014 and again from July 2014 onwards; (c) the separate (and different) reference numbers ('ERNs') applicable to the two periods of the Claimant's employment; (d) the 'long service award' given by the Respondent to the Claimant in 2019 purporting to celebrate the completion of five years' continuous service; (e) the absence of any documentary evidence of any complaint or query being raised by the Claimant about his period of continuous service until his redundancy arose (it being

undisputed that he has a long history of raising documented complaints and grievances in the workplace).

19 On the Claimant's case, he was 'taken off' by the Respondent in or around May 2014. He did not give evidence saying or suggesting that the terms on which he was engaged in July 2014 involved or included any agreement to reinstate or re-engage him in such a way as to preserve his prior continuous employment. No document suggestive of any such agreement has been produced.

20 Asked about the CV, the Claimant told us that it was drafted in error which he attributed to stress. He also asserted that the reference to two separate periods of employment was a 'typo'.

Facts relevant to the unfair dismissal claim

21 At all relevant times the Respondent had an agreement with Meta to provide security services at several London sites.

22 In 2022 Meta closed one site resulting in the Respondent conducting a redundancy exercise. The Claimant, who worked at the site which was closed, was successful in the redundancy exercise but, of necessity, compelled to move to another location, namely the Rathbone site.

23 In late 2023 Meta took the decision to close the Rathbone site and a further redundancy exercise was initiated. Plans were announced in December 2023 for consultation on a reorganisation entailing an overall reduction in headcount of 54 employees across all Meta sites.

24 Consultation packs were sent to affected staff. These provided considerable detail on the redundancy scheme, individual consultation, intended timeframes, the selection criteria, guidance provided to scoring managers and sundry other matters.

25 The redundancy scheme provided for scoring of each affected individual by at least two managers with overview by more senior managers and HR, a right of appeal on scoring and a separate right of appeal against any ultimate decision to dismiss for redundancy.

26 Collective consultation meetings were held in early January 2024. Five selection criteria and scoring ranges were agreed. These were: attendance (0-10 points) ; job performance (0-10 points); conduct (0-5 points); core competencies (0-5 points); and additional skills (0-5 points).

27 All staff were offered the opportunity to engage in individual consultation. The Claimant, among others, took up the opportunity. He wrote correspondence and attended at least one meeting in order to develop his arguments. Essentially, he favoured a more elaborate selection process involving a greater number of individual criteria. The Respondent replied courteously to his correspondence but was not persuaded that any adjustment of the criteria was necessary or desirable.

28 On 6 February 2024 the Claimant received notification of the scores awarded to him by his line managers. These gave a total of 23/35, leaving him liable to be selected for redundancy. We were told, and accept, that a score of 25 would have taken him out of the 'danger zone'. (Mr Lennard made a great deal of the fact that a table shown to us appeared to demonstrate that individuals with scores as low as 21 had escaped dismissal. His point seemed to be based on a misunderstanding: anyone scoring below 25 was in danger of losing his or her job but the ultimate outcome would depend on whether suitable alternative employment was available and whether he or she applied for it and, if so, whether any such application succeeded.)

29 The Claimant exercised his right of appeal. Mr Browne, a witness before us, considered the appeal and, on 15 February 2024, gave his decision partially upholding the challenge and increasing the 'core competency' score from 2 to 3 and the overall total from 23 to 24. [2]

30 Since his total was still below the 'pass mark', the Claimant was, on 26 February 2024, issued with a notice of redundancy to take effect on 30 April 2024.

31 On the same date, the Claimant received a 'Redundancy Support Pack' containing advice on applying for jobs, drafting CVs and covering letters, handling interviews and other matters. It also contained information on wellbeing support resources and techniques.

32 The Claimant purported to raise challenges to the ultimate scoring outcome and the Respondent chose to treat them as raising an appeal against the redundancy notice. The appeal was assigned to Ms Mengelsone (a witness before us). She reviewed a great deal of documentation (witness statement, paras 13 to 20) and held a meeting on 4 March 2024 at which the Claimant was given a full opportunity to develop all his points and concerns. The nub of his case was that the scoring was unfair, but no specific ground was advanced. Asked about what appeared to be an allegation of procedural unfairness, the Claimant denied making such a case, pointing out that he had expressed himself hypothetically ('*if* they did not follow procedure …').

33 On the subject of seeking alternative employment, the Claimant was well aware of how to obtain access to information concerning vacancies within the Respondent's organisation. Despite that, the Respondent did circulate some information about particular vacancies. In addition, all potentially redundant staff were made aware that the Respondent's HR and Recruitment teams were available to provide any assistance that might be required.

34 Between about 4 and 7 March 2024, there were some emails between the Claimant and the Respondent concerning his stated difficulty in pursuing a vacancy through the company's website. The nature of the difficulty was never established and no fault or flaw in the system has been identified to us. Nonetheless, we accept that the Claimant felt in need of some assistance. The correspondence appears to end on 7 March 2024 with a message from the

[2] This corrected a message of the day before, appearing to uphold the original scores.

Claimant unanswered. He did not pursue the alleged difficulty in making online applications thereafter. Nor did he make any application for any internal vacancy. In so far as he suggested in evidence that the Respondent's silence left him helpless to pursue any opportunity within the organisation, we reject that notion. Nor do we accept that he genuinely regarded himself as so constrained. He had unrestricted access to information on all internal vacancies. If there was any opening he was anxious to pursue, he was in a position to apply for it, either through the system (if the supposed flaw or fault had been remedied or could be overcome) or by communicating directly with the Recruitment Team, HR, his line managers, Miss Billingham, or, no doubt, many others. Under questioning from the Tribunal, the Claimant sought to attribute his silence on the alleged technical problem after 7 March 2024 to his compromised mental health. He told us that he was unwell with anxiety and depression – variously for a week or six months. He pointed to no contemporary evidence (medical or otherwise) to substantiate this. Nor did he claim to have brought his poor health to the attention of the Respondent.

35 By a letter dated 28 March 2024, Ms Mengelsone rejected the Claimant's appeal against the decision to dismiss for redundancy. She found no substance in the detailed points debated at the meeting on 4 March 2024 and no basis for interfering with the outcome to which the scoring exercise had led.

Secondary Findings and Conclusions

Unauthorised deductions from wages

36 In the course of the hearing, we overlooked a fundamental legal difficulty which confronts the Claimant on this part of his case. Neither of the advocates touched upon it. The hearing proceeded on the footing that the claim was legitimately put as a complaint of unauthorised deductions from wages and turned only on the question of the proper calculation of the Claimant's period of continuous service. But it seems to us on closer examination that that analysis is mistaken. The claim can only stand as a claim for damages for wrongful dismissal, based on the proposition that the Claimant was entitled to notice calculated by reference to a period of continuous employment dating back to 2013 but received notice which took into account service from 2014 only. The Claimant does not say that the Respondent failed to pay him properly for the notice which he served. Rather, he contends that he was given short notice and is entitled to damages accordingly. As the authority of *Delaney v Staples* made clear, such a claim does not lie under the 1996 Act, Part II. The House of Lords passed remarks on the desirability of the Tribunal being given the power to entertain contractual claims and, as noted above, Parliament obliged by means of the 1994 Order. But this takes the Claimant's case nowhere given that he has set his face against pursuing a contractual claim (see the extract from EJ Elliott's document cited above, para 15). In these circumstances, the unauthorised deductions claim must be dismissed as legally misconceived.

37 As explained in our oral reasons, even if not legally untenable, the claim would have failed on the facts in any event. Acknowledging force in Mr Lennard's simple point that the Respondent should be able to produce documentary evidence

substantiating a break in continuity, we are satisfied that the countervailing circumstantial evidence is truly compelling. Here, the most striking item is the Claimant's own CV, which makes the Respondent's case for it. And his attempt to explain away his own document (putting it down to a 'typo' and/or 'stress') is hardly persuasive. Under questioning from the Tribunal, he sought to improve his position by claiming that, more than once, he had raised the need for responsible managers correctly to document the start date of his continuous employment and been shooed away with reassurances that there was 'nothing for him to worry about'. But his long (and undisputed) history of raising written grievances and pursuing workplace concerns and complaints at length speaks for itself. Why he would have let the continuous employment issue drop on an oral reassurance is not easy to see. Nor is his credibility improved by the fact that his oral evidence in answer to the Tribunal's questions is nowhere evidenced in any document and nowhere hinted at in his witness statement. On these matters, we regret to say that we are unable to accept his evidence as truthful. For all of these reasons, we find that the Respondent is right and the Claimant wrong on the issue as to his period of continuous employment.

38 We should add that we have considered whether we should invite the observations of the parties on the jurisdictional point, since it was not canvassed at the hearing. On balance, we have concluded that it would not be proportionate or in keeping with the overriding objective to do so, given our clear finding in the Respondent's favour on the substantive merits of the continuous employment issue. Our new ruling merely adds a second ground confirming the outcome already given.

Unfair dismissal

39 What was the true reason for dismissal? We are satisfied that it was the fact that the Claimant was redundant when his post was abolished and he was unsuccessful in applying for a position in the new structure. It is not in question that the reorganisation resulted in a diminution in the Respondent's requirement for employees to carry out work of the kind performed by the Claimant and that that changed state of affairs was the reason, or principal reason, for his dismissal. Accordingly, redundancy, a potentially fair reason for dismissal, is made out (see the 1996 Act, s139(1)(b)).

40 Did the Respondent act reasonably in treating the reason as a sufficient reason to dismiss? We remind ourselves that we must confront that question by asking whether its action fell within a permissible range of options. We are satisfied that it did.

41 The issue of reasonableness turned on four main considerations, which we will consider in turn. The first was consultation. The Respondent conducted consultation collectively and individually. In our judgment the collective consultation was properly conducted. The Respondents shared the rationale for the proposed redundancy and their plans for how to run the exercise, using clear and unambiguous language. They did so in good time. The parties to the collective consultation ultimately agreed on the rationale and the terms of the scheme as devised by the Respondent, including the selection criteria. As an individual level,

again, there was proper consultation. Affected employees were given the opportunity to raise questions and make suggestions and representations. The claimant availed himself of the opportunities. He was listened to and the Respondent, while not agreeing with his suggestions, responded courteously and in detail to his points.

42 Secondly, there is the question of the selection criteria. In our view, the criteria were properly conceived with a view to the Respondent retaining those most likely to deliver best service in the future. It was a skills- and performance-based exercise. It is inevitable that any criterion seeking to measure skills and performance will entail a degree of subjectivity, but the Respondent rightly took steps to ensure measurability so far as possible, for example in relation to attendance records. Moreover, the criteria were, in our view, appropriately balanced - or at least permissibly so. Lastly, we reject Mr Lennard's contention that the criteria were defective in omitting length of service. The higher courts have long recognised that selection criteria are a matter for the employer and that there can be no question of any presumption that length of service should count.

43 Thirdly, we have regard to the scheme in operation. We are satisfied that it was fairly applied. It was not argued that any score applied to the Claimant was inappropriate. There is nothing in the published outcomes (at least in the documents before us) pointing to unfair, biased or anomalous scores. No doubt for good reason, Mr Lennard did not go further than suggesting to the Respondent's witnesses was that they *could* have awarded a different, more generous score. No arguable basis for challenge to the scores awarded is made out. On review, Mr Browne marked the Claimant up one point and (as he told us without challenge) denied himself the opportunity to mark him down (on a different criterion). On any view, his decision *favoured* the Claimant. And Ms Mangelsone was, we think, entirely justified in rejecting the appeal against dismissal. Her proper response to Mr Lennard's point that she *might* have adjusted his score upwards was that there was no justification for any further interference.

44 Fourthly, we come to the question of alternative employment. As we have found, the Claimant was well aware of how to operate the Respondent's website in order to search for employment opportunities online. We reject Mr Lennard's apparent suggestion to the contrary, which did not seem to correspond with the Claimant's own evidence. He was a very experienced member of the Respondent's workforce, well used to defending his own interests in the workplace. Moreover, only a year before, he had gone through, and survived, a separate redundancy exercise. Given the weakness of the Claimant's case, it was not surprising that Mr Lennard should seek to make as much as possible of the correspondence between 4 and 7 March 2024, and he is not to be faulted for doing so. But that said, this very small part of the overall story advances the case very little. The Respondent signalled, as one would expect, a willingness to do what was necessary to resolve the surprising technical difficulty to which the Claimant had adverted. If the correspondence petered out as a consequence of someone overlooking his last message, he should have written again, picked up the telephone or otherwise taken any sensible practical step in order to obtain a resolution (if the problem was real and remained unresolved). The notion that, in the absence of an answer to his last message, the Claimant was left with no

recourse to alternative employment is absurd and we reject it. As we have noted, he gave unsatisfactory evidence in relation to this aspect in answer to questions from the Tribunal. If it is really true that he was indisposed by poor mental health, he did nothing to communicate that fact to the Respondent and the Respondent cannot sensibly be held liable to him in unfair dismissal for failing to take his indisposition into account by offering additional support.

45 Having stepped back to review the redundancy process in the round, we are satisfied that the Respondent's actions were reasonable overall and certainly fell within a range of permissible options open to it in the circumstances.

46 It follows that the dismissal was not unfair.

Outcome

47 For the reasons stated, the claims for unauthorised deductions from wages and unfair dismissal fail and, all other complaints having been withdrawn, the proceedings as a whole are dismissed.

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EMPLOYMENT JUDGE SNELSON

Date: 16 September 2025

Reasons entered in the Register and copies sent to the parties on 24 September 2025

..... for Office of the Tribunals