EMPLOYMENT TRIBUNALS

Claimant: Mr S Poddar
Respondent: Ai4Process Limited

Heard at: Watford (in public by CVP)
On: 15 October 2025
Before: Employment Judge Harrison

Representation
Claimant: In person
Respondent: Mr C Ocloo, Litigation consultant

JUDGMENT having been sent to the parties on 29 October 2025, written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure on 2 November 2025, and that request having been sent to me on 7 November 2025, the following reasons are provided:

REASONS

Preliminary issues

1. At the start of today's hearing, I checked whether the respondent wished to pursue its strike out application sent to the Tribunal last night. Mr Ocloo confirmed it did not.

2. At the end of his submissions, Mr Ocloo made a request to amend the respondent's claim to include a respondent's counter claim to the claimant's breach of contract claim. That application is refused. Before making my decision on this application I considered it by reference to: the time limits for submitting such claims which is six weeks from the ET1 being served; the fact that the respondent was represented throughout, and the claim was sufficiently evident on the face of the ET1; the relative hardship to the parties that would be suffered should I allow the amendment; and the fact that an adjournment would be necessary to hear the views of an unrepresented claimant. I also take into account that this claim could be heard in a different forum.

Evidence, procedure and issues

3. There was a bundle of documents running to 117 pages from the respondent and a short bundle of exhibits running to 15 pages from the claimant. Where page numbers are included here they are to numbers in the bundle or, if they are preceded by a letter C, to pages in the claimant's exhibits.

4. Before starting to hear the evidence, I discussed the case with the parties, clarifying the issues, and for the claimant, who was not represented, the process to be followed.

5. The claimant confirmed that his claims related to (i) an allegation of unlawful deductions taken by the respondent from the claimant's last wages and (ii) a breach of contract by the respondent in failing to reimburse the claimant's visa costs.

6. I adjourned to read the statements. Having done that I had a further, short discussion with the parties and as the claimant was not represented, I noted that part of the claim identified on the ET1 was for expenses which could not fall to be considered as a claim under section 13 Employment Rights Act but could be a breach of contract claim.

7. Evidence was given by the claimant on his own behalf, and from Joanna Davis, Human Resources and Operations Specialist, with the respondent, and Nick Hill, the respondent's Head of Consulting. All witnesses affirmed to tell the truth. After completion of the evidence both parties made submissions.

8. In the light of the concession recorded at paragraph 25, and in paragraph 1 of my Judgment, prior to giving my oral Judgment I checked with the parties the claimant's daily rate which they agreed was £269.23.

The facts

9. I find the following facts

Deductions

10. Upon his dismissal, the respondent deducted the sum of £2,692.31 from the claimant's final wages (p112), being equivalent to 10 days' pay. This related to five days of unauthorised absence (from 25 to 29 March 2024) and five days of holiday, taken but not accrued at his date of dismissal. The fact that the claimant had only accrued five days of holiday in the current leave year but had taken 10 days of holiday was not in dispute.

11. The claimant signed a contract with the respondent (p38). Leave is explained at paragraph 9 of the contract (p40). The leave year is the calendar year. Other arrangements relating to leave are set out in the respondent's handbook (p60), these include a statement that:

> "It is our policy to encourage you to take all your holiday entitlement in the current holiday year. We do not permit holidays to be carried forward and no payment in lieu will be made in respect of untaken holidays."

12. The claimant accepted the effect of the holiday provisions in the contract and handbook. However, he said that in 2022 he had applied to take advantage of a leave buy-back scheme (called **Leave Encashment**). He said in summary, that he still had the benefit of nine days holiday from 2022 either as pay or to be taken and these should have been used to cover the two sets of five days that were deducted.

13. The Leave Encashment scheme opened in October 2022 (C4). The claimant asked to sell back nine days under the scheme on 20 December 2022 (C9). The claimant's request was received, and he was told that approval would be sought (C7). There is no evidence that approval was given and both of the respondent's witnesses stated that it was not. Mr Hill explained that the claimant had been working on internal rather than client projects for most of 2022 and the scheme was to help those who had been unable to take leave as they were on client assignments. Although I acknowledge that the claimant did not receive a further reply about this until January 2024, I accept Mr Hill's evidence that the claimant's Leave Encashment application for 2022 was not approved as there is no contemporaneous evidence of the approval of his request and no payment was ever made.

14. The claimant was definitively told he had no Leave Encashment rights from 2022 at a meeting on 11 January 2024 which he attended with Ms Davis and Mr Hill and for which a contemporaneous record appears the bundle (p94).

15. Clause 5.3 of the claimant's contract reserves to the respondent the right to make deductions from salary for any sums owed to the employer including without limitation in respect of overpayments, loans or advances. Clause 5.4 of the claimant's contract states that no salary will be paid for unauthorised absence (p39).

16. The handbook states that employes may not work outside their home country unless exceptional circumstances apply and approval has been given in advance by Operations (p57).

17. The claimant had been permitted to work overseas under this exception in 2023 after he had an accident whilst on a period of leave.

18. The respondent described the way that booking holidays worked. The 3-stage process is set out in the Handbook (p60) and is as follows:

> "For UK based employees the process to request Holiday Leave:
>
> 1. Gain approval from your project manager/lead on your client project that your planned leave does not pose any issues to the project plans (sometimes dates may need to be negotiated to avoid important project dates like Go Lives)
>
> 2. Book the Holiday Leave in BrightHR, we operate an online system for booking holidays via BrightHR.
>
> 3. You will receive an e-mail authorising or declining your request. If you feel that your request has been unreasonably refused for any reason you should refer the matter to your manager. They will endeavour to ensure that you have every opportunity to take your holidays at the time you request them, but they will need to balance your requests with the business needs. "

19. The claimant gave evidence that his project manager gave him approval to take leave in March 2024, and to go to India for the whole month.

20. Requesting leave from his project manager was only the first step in the 3-stage process to request holiday described above. The second step was to submit a formal leave request, which would be followed up with an email either authorising or declining the leave request.

21. Miss Davis says that she spoke to the claimant's project manager who, Miss Davis says, had not authorised the claimant to go to India for a month. Based on the evidence I have seen about the meeting with the claimant (p94), and the evidence of company processes, I find it more likely than not that approval was not given to the claimant by his project manager. By dealing with the first step in the leave process (speaking to his project manager) the claimant did not undertake all the steps necessary to obtain authority to take leave. To obtain such approval he had to go through the 3 steps described above. I prefer the evidence of the respondent's witnesses in this regard as it is supported by the contemporaneous evidence and the leave authorisation process.

22. Before his leave was approved for March 2024 the claimant was told in terms in a telephone meeting with Mr Hill and Ms Davis, a record of which appears in an HR call record, that (i) he could not work whilst abroad and (ii) he could not take more than 10 days holiday (p94).

23. The claimant travelled to India for the whole of March 2024. He called in sick on 1 March, took holiday for two weeks from 4 to 15 March and provided evidence from a physiotherapist that he had fallen and injured himself during this period (p102) following which he was off sick for a week from 18-22 March.

24. After the period of sick leave the claimant asked to work remotely from India from 25-29 March 2024. He was not authorised to do so. In any case the claimant accepted both in his appeal against dismissal (p107) and in evidence that he had bought his ticket to travel to India for the whole of March 2024 before his meeting with Mr Hill and Ms Davis on 11 January 2024, and that he did not change this as it was too expensive to do so. After the meeting on 11 January the claimant knew that he would be in India for a period when he was not authorised to work from overseas, and his willingness to work whilst overseas did not change this.

25. During the course of the hearing the respondent accepted that one of the days of unauthorised leave taken by the claimant in fact fell on a bank holiday (29 March 2024) and that the claimant was, therefore, entitled to be paid for that day, and this is dealt with in paragraph 1 of the Judgment.

<u>Expenses</u>

26. Turning to facts in relation to expenses.

27. The claimant entered into a visa sponsorship agreement with the respondent on 10 June 2022 (p47). This stated that:

> "If the employee remains in the employment of the Company for a period of three years after 11th June 2022, the Company will reimburse the costs for [the] "Immigration Health Surcharge (IHS)" to the Employee."

28. The visa sponsorship agreement does not say that the reimbursement arrangements vary depending on the reason why the employee leaves

employment.

29. The claimant paid 194,686.44 Indian rupees for this charge (C15).

30. The claimant also asked for expenses of around £2,000 relating to family visa costs. The claimant accepted in evidence that this is not dealt with in the visa sponsorship agreement or otherwise and that there is no contractual right to this sum.

Conclusions and the law

31. This unlawful deduction from wages claim was brought under section 13 of the Employment Rights Act 1996 (**ERA**). The relevant part of section 13 reads:

> **s. 13 Right not to suffer unauthorised deductions.**
>
> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> (a) 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
>
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
>
> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
>
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

32. The question whether there is a statutory exception to section 13 is set out at section 14 the relevant part of which reads:

> **s14 Excepted deductions**
>
> (1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—
>
> (a) an overpayment of wages, or
>
> (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,
>
> made (for any reason) by the employer to the worker.

33. The breach of contract claim was brought under section 3 of the Employment

Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the **Order**). The relevant part reads

Extension of jurisdiction

3. Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee's employment.

34. The claimant took five days of unaccrued holiday in March 2024. The respondent was entitled to deduct this sum from the claimant's final salary under s13(1)(a) ERA as he had agreed to this in advance as a term of his contract. If this is wrong the respondent could effect this deduction lawfully as an excepted deduction being an overpayment under s14(1)(a) ERA. For the reasons I have explained above, the claimant had no right to set this off against the Leave Encashment scheme as he had not been approved for the Leave Encashment scheme in 2022.

35. The claimant was absent overseas for a period without authority. He had been told in advance in terms that he could not stay in India to work after his holidays. The fact that he wanted to work did not change this. He knew before leaving for India that this would not be permitted and in accordance with his terms of employment, unauthorised absence is not paid and this absence was not authorised. The respondent deducted pay for 5 days of unauthorised absence but conceded that one of these 5 days was a bank holiday and holiday pay was therefore due for 1 day. The employer was entitled to deduct 4 days' pay.

36. So far as the reimbursement of expenses is concerned, this cannot be heard under ERA by virtue of section 14 (1)(b). It can be heard as a breach of contract claim under the Order as the amount in dispute was claimed to be outstanding on the termination of the claimant's employment. The claimant signed an agreement with the respondent which covered his visa expenses. There is no entitlement under this agreement to family costs and the contract terms clearly state the immigration health charge will only be repaid if the employee remains in employment after three years which, in this case, did not happen.

Approved by:

Employment Judge Harrison
24 November 2025

REASONS SENT TO THE PARTIES ON – 25/11/2025

FOR THE TRIBUNAL OFFICE