EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106680/2024

Held in Edinburgh on 1 August 2025

Employment Judge B Beyzade

Mr D J Buchan	**Claimant** **In Person**
SW Enviro Ltd	**Respondent** **Represented by:** **Mr T Merck - Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The judgment of the Tribunal is that:

   1.1 The complaint of unauthorised deductions from wages in respect of arrears of pay from March 2023 (failing to pay the claimant a salary of £25,920.00 from March 2023) does not succeed and is dismissed.

   1.2 The complaint of unauthorised deductions from wages (arrears of pay) in respect of 12 November 2024 – 27 November 2024 does not succeed and is dismissed.

   1.3 The complaint of unauthorised deductions from wages (holiday pay) in respect of November 2024 does not succeed and is dismissed.

REASONS

Introduction

1. The claimant presented complaints of unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 ("ERA 1996"), averring that the respondent failed to pay him a salary of £25,920.00 from March 2023, failed to pay his full salary entitlement in his final wage paid in November 2024, and failed to pay his full accrued but untaken holiday

entitlement on termination of his employment in November 2024. The respondent resisted these complaints.

2. Employment Judge Sangster had at a Preliminary Hearing on 06 January 2025 set out the complaints and issues before the Tribunal and issued directions relating to preparation for the Final Hearing (issued to parties on 07 January 2025). At a further Preliminary Hearing that took place on 08 May 2025, Employment Judge A Jones directed that the claimant's claim be listed for a 1-day final hearing before an Employment Judge at the Edinburgh Employment Tribunal.

3. The final hearing in this case took place on 01 August 2025 at the Edinburgh Employment Tribunal. This was a hearing conducted in person. The Tribunal carried out its deliberations in private following the conclusion of the evidence and submissions and reserved its judgment, which was subsequently issued in writing. Further to correspondences sent to parties explaining the delay, the Employment Judge apologises for the delay issuing the Judgment and any inconvenience caused.

4. The parties prepared and filed a Joint Inventory and Bundle of Productions in advance of the hearing consisting of 102 pages ("the Productions").

5. It was agreed that the issues relating to liability and remedy, if arising, would be investigated and determined by the Tribunal at this hearing.

6. The List of Issues was discussed in detail and agreed with the claimant and the respondent's representative at the start of the hearing. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, both the claimant and the respondent's representative being in agreement with these:

"6. Did the respondent make unauthorised deductions from the claimant's wages by:

(a) Failing to pay the claimant a salary of £25,920.00 from March 2023, when he met the requirements for competency level 1;

(b) Failing to pay the claimant his full salary entitlement in his final wage, paid in November 2024; and/or

(c) Failing to pay the claimant's full accrued but untaken holiday entitlement on the termination of his employment in November 2024.

7. If so, how much was deducted?"

7. The claimant gave oral evidence on his own behalf. He also sought witness orders for certain individuals, which were granted by an Employment Judge prior to the hearing in respect of Mr John Gonnella (Finance Director), Mr Scott Watson (Managing Director), Mr Bryan Williams (Operations Manager), and Mrs Debbie Kennedy (Business Support Manager). The claimant was reminded that he would need to ask open questions in examination in chief, after which the respondent's representative would be permitted to cross examine. These witnesses gave oral evidence on behalf of the claimant.

8. The respondent's representative did not call any witnesses on the respondent's behalf in the circumstances.

9. The claimant represented himself during the hearing and Mr Terence Merck, Counsel, represented the respondent.

10. Both the respondent's representative and the claimant made representations by way of oral submissions following the conclusion of the evidence.

11. At the outset of the hearing, the respondent's representative and the claimant agreed to work to a timetable to ensure that the hearing was completed in the time allocated.

12. The Tribunal made enquiries whether there were any reasonable adjustments to assist the claimant or the respondent to be able to participate in the hearing effectively. None were requested.

13. The Tribunal reminded the claimant and the respondent's representative of the need to co-operate and to assist the Tribunal to further the overriding objective. The respondent's representative and the claimant assisted the Tribunal to meet its overriding objective, and the hearing was completed in terms the evidence and submissions within the allocated time.

Findings of fact

14. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -

15. The claimant was employed by the respondent from 16 January 2023 until 31 October 2020. The claimant was employed by the respondent as a Ventilation Engineer.

16. The claimant's salary was £24,000 gross per annum. The claimant's salary was due to be paid monthly on the 27th day of each month by BACS transfer into the claimant's nominated bank account. The claimant's normal hours of work were 37.5 hours per week (half an hour lunch break to be deducted) and the claimant's start time was 8.30am and finish time was 4.00pm.

17. The claimant was provided with a contract of employment dated 24 October 2023, a copy of which appears at pages 65 to 70 of the Productions.

18. The claimant was entitled to 28 days holiday (including all statutory holiday entitlements) within any calendar year, and the respondent's holiday year was from 01 January until 31 December in each calendar year. The claimant's contract of employment stated *"On termination of employment holidays will be calculated in proportion to the full entitlement. If you have taken less than this entitlement the surplus holiday will be added to your final pay."*

19. The respondent's policy on holiday entitlement and carry-over was set out in the contract and not varied.

20. The claimant's first three months of employment was considered to be a probationary period, pursuant to the claimant's contract of employment. The claimant's contract of employment stated, *"If the company is satisfied that you have reached the required standards your permanent status will be confirmed."* The claimant's employment continued after the three months probationary period and the claimant had not been advised that he had not reached the required standards.

21. The claimant's contract of employment also required that the notice period to be given by the respondent to the claimant in order to terminate the claimant's employment was one months' notice to be provided in writing.

22. There was no agreement, written or oral, to increase the claimant's salary automatically after probation or March 2023.

23. By letter dated 19 March 2024 the claimant was advised that due to a shutdown period as a result of the contract the claimant was working on having access issues, the claimant would be required to take annual leave for 3 days from Tuesday 26 to Thursday 28 March 2024. The claimant was advised:

    "The total number of shutdown days is 3. This represents the number of days you are required to use from your annual leave entitlement. It is your responsibility to ensure you do not book or take annual leave in excess of the remaining amount of annual leave once the shutdown days have been subtracted from your entitlement."

24. In around April 2024 the claimant had queried with Mr Scott Watson, Managing Director the routes to progression and whether he could progress to the next level.

25. The claimant was sent a letter dated 19 April 2024 from Mr Watson regarding the respondent's annual review relating to staffing procedures which enclosed a copy of a document titled "Routes to Progression." The letter further stated:

"In order for any employee to progress to the subsequent level of competency within our organisation, we require written evidence and continuous examples of each aspect of the daily duties highlighted (with bullet points) within the enclosed document.

Upon receipt of written examples, the management will then take time to consider this written evidence in detail before delivering a response in writing. During this process, the management will take into consideration the views of SW Enviro support staff, customers and fellow colleagues to collate an accurate case history of your continued performance to date.

If you have any questions or concerns regarding the above, please contact me as your earliest convenience."

26. The Routes to Progression document indicated that the starting salary for the claimant's role was £24,000, the competency level 1 salary was £25,920.00 and the competency level 2 salary was £27,765.00. The management level salary thereafter was marked as "t.b.c.". The document listed the competencies that the claimant had to demonstrate in order to progress to level 1 competency.

27. The claimant believed he met the criteria for competency level 1 by March 2023, as stated in his letter dated 20 April 2024 (pages 73–76 of the Productions), but Mr Watson's letter dated 07 June 2024 (page 77) confirmed that he had not met the required competencies.

28. The claimant sent a detailed letter in reply to that letter to Mr Watson dated 20 April 2024 referring to a letter handed to him on 19 April 2024 following the claimant's reminder to him of a discussion to be had regarding moving to level 2 on the respondent's Routes to Progression scale. He stated, *"Whilst I see in your letter you detail the requirements of an operative to move to level 1 competency and think we should be looking at least at the requirements for achieving level 2 competency whatever they be, as indicated in our previous discussion in January."*

29. The claimant advised:

"My justification for this is, having started in January 2023 and having served the full three month probationary period with no indication that I had fallen short of the standard required at that time (end of March) my salary should have increased from the starting salary of £24,000 to the competency level 1 salary of £25,920 then, not only, as a pay increase can be added in any month's wage with the payroll being administered each month but also would fall at the start of the new financial year which would take care of any argument that pay rise discussions had to be discussed at the start of the new financial year as indicated by yourself in our previous discussion regarding

this in January 2024. It is more than arguable the standard of competency required for level 1 I have been carrying out to the best of my ability that the company allows from March 2023 hence signing a contract with the company on the 24th October 2023 albeit it should have happened at the latest Monday 3rd April 2023."

30. Having said that the claimant then said that in order to put his attainment of this competency level beyond doubt and justify it at the same time he would go through each bullet point within competency level 1 as requested in Mr Watson's correspondence. The claimant proceeded to seek to address the competency level 1 criteria under separate bold headings (see pages 73 to 76 of the Productions).

31. The claimant stated that he hoped he had demonstrated that he had more than met the competencies of level one and that he was happy to discuss anything that Mr Watson was unsure about. He also requested the competency level information relating to competency level 2 on the Routes to Progression document.

32. The claimant was advised by letter dated 23 April 2024 that due to a shutdown period as a result of the contract the claimant was working on having access issues, the claimant would be required to take annual leave for 1 day on Friday 26 April 2024.

33. By letter dated 07 June 2024 Mr Watson replied to the claimant's letter indicating that in order for an employee to progress to the next level of competency within the respondent's organisation they require written evidence and examples of their development. He stated:

"Having written to you on 19th April 2024 to illustrate exactly what the company expects from you to progress, we have now received and reviewed your response of 20th April 2024 and hereby confirm that you have not met the required criteria to advance to level 1.

If you have any questions or concerns regarding the above, please contact me as your earliest convenience."

34. At the relevant time, Mr Watson had genuine and substantial concerns that the claimant had failed to provide the required evidence and any sufficient examples showing that he had met the criteria detailed in the letter dated 19 April 2024. These concerns were based on Mr Watson's review of the claimant's written submission dated 20 April 2024 and his consultation with the Operations Manager prior to issuing the letter dated 07 June 2024 confirming that the claimant had not met the required competencies.

35. By letter dated 10 July 2024 the claimant stated that having taken the time to reflect on Mr Watson's letter dated 07 June 2024 he would be grateful if Mr Watson could detail in writing how he deemed that the claimant had not met the criteria to advance to Level 1.

36. The claimant was advised by letter dated 19 July 2024 that due to a shutdown period as a result of the contract the claimant was working on having access issues, the claimant would be required to take annual leave for 2 days from Thursday 25 to Friday 26 July 2024.

37. Thereafter, the claimant was advised by letter dated 07 August 2024 that due to a shutdown period as a result of the contract the claimant was working on ending (and there being no continuation works or projects to follow), the claimant would be required to take annual leave for 3 days from Wednesday 14 August to Friday 16 August 2024.

38. The respondent required the claimant to take annual leave on specified dates during shutdown periods and gave written notice in accordance with Regulation 15(2) of the Working Time Regulations 1998 by letters dated 19 March, 23 April, 19 July, and 07 August 2024 (pages 83–86 of the productions).

39. The claimant had met with Mr Watson on 25 September 2024 in order to discuss potential redundancy.

40. The claimant was sent a letter dated 30 September 2024 relating to potential redundancy and what would happen next.

41. By letter dated 03 October 2024 the claimant was invited to attend a consultation meeting on 11 October 2024.

42. The claimant met with Mr Watson on 10 and 11 October 2024 in order to discuss potential redundancy (the record of the meetings are at pages 90 and 91 of the Productions).

43. From the meeting notes dated 10 and 11 October 2024 it can be seen that the claimant put forward examples where work had been carried out by the claimant and his colleague (who were the only 2 staff qualified to do the work). The work included fire damp or testing and remedial works at all campuses at Edinburgh College. The claimant indicated that he had been conducting that work for the best part of the year, that the damp course required to be tested annually, and it would be necessary to start retesting again across all campuses. Mr Watson had said Edinburgh College carried out one fire dampener service per year and they were highly unlikely to increase frequency more than that.

44. The claimant was given notice that he would be dismissed by reason of redundancy by letter dated 21 October 2024. He was advised that the decision had been reached further to the meetings on 10 and 11 October 2024 and after applying the respondent's redundancy selection criteria. He was also advised that they had not been able to identify any suitable alternative work for the claimant or ways to avoid the redundancy situation. The claimant was advised that he would be required to work during his notice period of one month and that his late date of employment would be 27 November 2024.

45. In addition the claimant was advised:

"We will require you to work your notice. During your notice period, you are entitled to take a reasonable amount of paid time off work to look for alternative employment and attend job interviews. Before taking any such time off, you should get your manager's agreement. Your last day of employment will be 27th November 2024."

46. The claimant was advised that he would not receive a statutory redundancy payment due to his length of service, he would receive his accrued and untaken annual leave within his final pay, and that he had a right of appeal to Mr John J Gonnella within seven days of receipt of the letter.

47. The claimant sent a letter of appeal by way of an email dated 23 October 2024.

48. The claimant attended an interview for a new role with a different employer on or around 01 November 2024. The claimant received his normal pay from the respondent in respect of that day, to facilitate his attendance at the interview.

49. A number of messages were exchanged between the claimant and the respondent within November 2024 in which the claimant was advised whether or not he would be required to attend work (including that he would not be required to attend work on 07 and 08 November 2024, albeit that he would be required to attend work on 11 November 2024).

50. Although the claimant sought approval from Bryan Williams, Operations Manager, he had been advised that he needed to seek approval from Mr Watson. The claimant informed Mr Watson that he would be attending a work trial with a prospective employer from 12 November 2024 but did not specify how long the work trial would last. Mr Williams confirmed to the claimant that he was not needed to carry out work on 12 November 2024. The claimant did not provide any further updates to Mr Watson or Mr Williams during that week regarding the progress or duration of the work trial, or whether he was available to attend work. The claimant assumed he would be paid during the work trial based on his interpretation of the redundancy letter dated 21

October 2024 (page 79 of the Productions), but there was no express or implied agreement to pay him for this period.

51. From 12 November 2024, until the termination of his employment, the claimant did not attend or carry out any work for the respondent. There was no express or implied agreement that the claimant would be paid for this period, during which he was engaged in a work trial with a prospective new employer.

52. The claimant continued to attend his work trial with his potential new employer from that date.

53. The claimant discovered on Friday 15 November 2024 that his work trial would be extended to the following week. The respondent's office staff had finished work early that date at 1.00pm.

54. On Monday 18 November 2024 at 08.29am the claimant had spoken to Debbie Kennedy, the respondent's Business Support Manager. Neither Bryan Williams nor Mr Watson were available at the time. He indicated that the work trial period was continuing and it seemed to be going pretty well. He had advised that the company he had been carrying out the work trial with had asked to extend the work trial by one week, and that he would not be coming into work that week. Mr Watson had responsibility in terms of making any decisions in relation to time off and Debbie Kennedy did not have authority to approve the same. The claimant asked her to inform Bryan Williams and Mr Watson about this. Debbie Kennedy confirmed that she would pass on the message to them.

55. A message was passed onto Mr Watson from Debbie Kennedy about the claimant's work trial being extended and that the claimant would not be coming into work that week.

56. There was no correspondence between the claimant and Mr Watson or the claimant or Mr Williams during that week.

57. Between 01 January 2024 and 27 November 2024, the claimant accrued 25.5 days holiday entitlement. The claimant had taken 24 days' holiday entitlement, including 5 days when the business was closed in January 2024 and 2 days for Good Friday and Easter Monday, and was therefore entitled to a further 1.5 days accrued holiday entitlement at the date of termination of his employment (see holiday entitlement record at page 82 of the Productions).

58. The claimant was paid his normal contractual wages up to and including 11 November 2024. His final payslip dated 27 November 2024 (page 81 of the Productions) shows a gross salary entitlement of £2,000.00, from which £920.55 was deducted for absence. The payslip also shows payment of

£138.00 for accrued but untaken holiday entitlement. After these adjustments, the claimant's gross pay was £1,288.35, and his net pay after tax, National Insurance, and pension deductions was £849.65.

59. On or around 28 November 2024 the claimant was advised by Mr Gonnella that he had returned the claimant's call and left him a voicemail, and he had spoken with Mr Watson who was adamant that the claimant had been paid what he was due and he was not willing to discuss it further. He suggested that the claimant took legal action or called ACAS for advice. On 30 November 2024 he sent the claimant a further message advising *"David if you are due the cash no worries I was advised to deduct days from you by Debbie/Scott I am unsure why but will find out and advise however you should speak…"* (the remainder of that message was not made available).

60. The claimant started ACAS Early Conciliation on 17 July 2024. The ACAS Early Conciliation Certificate was issued to the claimant on 13 August 2024.

61. The claimant presented his claim to the Employment Tribunal on 16 September 2024.

Observations

62. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

63. In relation to the claimant claim that he should have been paid at the rate applicable at competency level 1, the claimant did not provide any details or specification about any discussions that took place prior to April 2024. There was no reference to any agreement or basis upon which the claimant salary would be increased to the salary applicable at competency level 1 (see contract at pages 65–70 of the Productions).

64. It was suggested that the letter to the claimant dated 07 June 2024 indicated that the claimant had not provided the required information or examples to evidence having met the requirements of competency level 1. The claimant was not provided with detailed information or feedback relating to his shortcomings in this regard. However Mr Watson's evidence was clear and convincing in terms that the claimant had not provided adequate examples in terms of how the claimant had met the criteria for competency level 1. He had formed a genuine and reasonable belief in this regard, based on his review of the claimant's letter dated 20 April 2024 and consultation with the Operations Manager (pages 73–77 of the Productions).

65. The claimant was adamant in his evidence that he had asked the Operations Manager and the Managing Director to approve his absence during the work

trial period, and that they had both approved the same. Mr Williams advised he had informed the claimant that he needed to obtain Mr Watson's approval (I accepted his evidence in this regard). The claimant's account was not consistent as he had initially stated that he had obtained verbal approval from Mr Williams. He later stated that Mr Watson had advised him to check with Mr Williams as to whether the claimant was required to attend work. It is difficult to decipher why the claimant would have needed to check this matter with Mr Williams, if Mr Williams had allegedly agreed to the claimant's request previously.

66. The claimant indicated during his evidence that during his conversations on 11 November 2024 neither Mr Williams nor Mr Watson had advised the claimant or agreed that he would be paid by the respondent during the work trial with his potential new employer. The claimant assumed he would be paid based on the content of the redundancy letter dated 21 October 2024 (page 79 of the Productions) and previous correspondence relating to his final pay arrangements. He also stated that having confirmed he was not needed to carry out work for the respondent, he thought that was reasonable.

67. The claimant had not informed Mr Williams or Mr Watson about how long the work trial was scheduled to last or the progress of the work trial during that week.

68. The claimant had spoken to Debbie Kennedy on the morning of 18 November 2024, following which a message was passed onto Mr Watson about the claimant's work trial being extended and that the claimant would not be coming into work. The claimant accepted that Debbie Kennedy did not have authority to agree that the claimant could be released to continue his work trial or that the claimant could be paid (or could continue to be paid) by the respondent during his work trial. Debbie Kennedy's account of her call with the claimant on 18 November 2024 was credible and consistent.

69. The claimant did not maintain regular contact with the respondent during the work trial, other than notifying on 18 November 2024 that he would not attend work that week, which limited the respondent's ability to recall him if work became available.

70. The Tribunal notes that the respondent relied on Regulation 15(2) of the Working Time Regulations 1998 to justify requiring leave on specified dates. The Tribunal accepts that the respondent complied with Regulation 15(2) WTR 1998 when requiring leave on specified dates.

Relevant law

71. To those facts, the Tribunal applied the law –

72. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract, provided in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA 1996.

73. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to personally perform any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230(3) of the ERA 1996).

74. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less that the total amount of the wages properly payable by him to the worker on that occasion.

75. Under Section 27(1) of the ERA 1996 "wages" means any sums payable to the worker in connection with their employment.

76. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.

77. The words 'properly payable' refer to a legal entitlement on the part of the employee to the payment (*New Century Cleaning Co Ltd v Church [2000] IRLR 27*). This authority confirms that the Tribunal must identify whether the wages claimed were legally due under the contract, and the claimant's case is that his entitlement to the payments claimed arose under his contract of employment and related correspondence, including the redundancy letter.

78. It does not automatically follow that an employee is not entitled to be paid if they do not work. There are, however, some cases in which the express or implied terms of the contract, properly construed, do not give rise to any obligation to pay when work has not actually been performed, even if the employee is ready, willing, and able to work.

79. In determining whether an employee is entitled to be paid for a period during which they have not worked, the terms of the contract are the starting point. As Lord Justice Coulson said in the case of *North West Anglia NHS Foundation Trust v Gregg [2019] EWCA Civ 387, [2019] IRLR 570*: "the starting point for any analysis of [whether the employer is entitled to withhold pay] must be the contract itself… Was a decision to deduct pay for the period [in question] in accordance with the express or implied terms of the contract?"

80. In the case of Gregg, Coulson LJ went on to say this: *"If the contract did not permit deduction then… the related question is whether the decision to deduct pay for the period… was in accordance with custom and practice. If the answer to both these questions is in the negative, then the common law principle – the "ready, willing and able" analysis… falls to be considered."*

81. The Working Time Regulations 1998 ("WTR 1998") provide as follows:

"5.—

(1) A worker may take leave to which he is entitled under [regulations 13, 13A and 15B] on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).

(2) A worker's employer may require the worker—

(a) to take leave to which the worker is entitled under [regulation 13] [13A or 15B]; or

(b) not to take such leave ...,

on particular days, by giving notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2)—

(a) may relate to all or part of the leave to which a worker is entitled in a leave year;

(b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and

(c) shall be given to the employer or, as the case may be, the worker before the relevant date.

(4) The relevant date, for the purposes of paragraph (3), is the date—

(a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and

(b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates."

82. In short, employers may require workers to take leave on specified dates by giving notice at least twice the length of the leave.

Submissions

83. The claimant and the respondent's representative made oral submissions, which the Tribunal found informative. I will deal with any essential points when setting out my own reasoning.

Discussion and decision

84. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

Did the respondent make unauthorised deductions from the claimant's wages by:

6.1 Failing to pay the claimant a salary of £25,920.00 from March 2023, when he met the requirements for competency level 1;

Wages arrears - increased salary £25,920.00 from March 2023

85. The claimant submitted that he was told before employment that his salary would increase once he achieved competency level 1 and that he met those requirements by March 2023. He argued that the respondent failed to honour this and that the increase should have been automatic after probation. The respondent's representative submitted that any discussion before the claimant's employment commenced was preliminary and did not create any binding obligation, that the written contract specified that the claimant's salary was £24,000 per annum, and that progression to competency level 1 was discretionary and subject to fulfilling conditions set out in the competency framework, which the claimant had not met.

86. The claimant's salary was £24,000 gross per annum. This was confirmed in the claimant's statement of terms of employment dated 24 October 2023.

87. The claimant asserted that there had been a discussion before employment about salary increasing with qualifications, but he did not provide any sufficient details or any supporting evidence of an agreement to pay him a higher salary from March 2023. This was not reflected in his written contract dated 24 October 2023 or any other written communications (at or around that time or thereafter) and is inconsistent with the respondent's later correspondence setting out the process for achieving competency level 1.

88. There was no agreement to provide the claimant with an automatic pay increase from March 2023, which would have been only two months after the start of the claimant's employment. The discussion before commencement of the claimant's employment (as referred to in paragraph 2 of the claimant's

letter dated 20 April 2024) was preliminary and did not create any binding obligation. Any pay increase was discretionary upon fulfilling the relevant conditions, which the claimant could have requested in due course and which were later provided to him in April 2024. The claimant had not met the criteria required to progress to competency level 1.

89. There was no contractual or implied term entitling the claimant to an automatic salary increase after probation, nor any indication that such an increase would be backdated to March 2023.

90. Accordingly, there was no agreement to pay the claimant £25,920.00 from March 2023 as averred by the claimant. The claimant's salary was confirmed in the terms of employment dated 24 October 2023.

91. The claimant asserted that he met the requirements for competency level 1 by the end of his probationary period in March 2023. However, the evidence shows that progression to competency level 1 required written evidence and examples of performance, which the claimant did not provide to the respondent's satisfaction.

92. On the evidence before the Tribunal, progression required written evidence and examples of an employee's development, as set out in Mr Watson's letter of 19 April 2024 and the "Routes to Progression" document provided with the same. The claimant did not receive this document until 19 April 2024 and his letter of 20 April 2024 was the first attempt to demonstrate competency.

93. Had the claimant successfully progressed to competency level 1, he would have received an increased salary of £25,920.00 per annum. However, there was no indication in the documents or evidence before me that that salary would have been backdated to March 2023 even if the claimant had reached competency level 1.

94. Mr Watson reviewed the claimant's submission and, by letter dated 07 June 2024, confirmed that the claimant had not met the required competencies to reach competency level 1. Mr Watson's evidence that the claimant failed to provide specific examples was credible and supported by his review of the claimant's submission and consultation with the Operations Manager before issuing the letter dated 07 June 2024. The Tribunal accepts that this decision was based on a genuine and reasonable belief supported by the evidence.

95. The claimant relied on his additional qualifications and contribution to profitability, but as the respondent's representative submitted, the value of work or perceived value of work does not automatically entitle an employee to a higher salary absent express or implied agreement relating to the terms of a salary increase or absent meeting any conditions relating to the same.

96. 96. Accordingly, the Tribunal finds that the claimant was not entitled to a salary of £25,920.00 from March 2023 (the claimant claimed the difference in salary between £24,000 and £25,920.00 i.e., £1,920.00). Under s 13 of the ERA 1996, the respondent did not make any unauthorised deduction in this regard. This complaint fails and is dismissed.

Unlawful Deduction of Wages

Did the respondent make unauthorised deductions from the claimant's wages by:

6.2 Failing to pay the claimant his full salary entitlement in his final wage, paid in November 2024

Wage arrears 12 November 2024 to 27 November 2024

97. The claimant submitted that the respondent approved his work trial with a prospective employer and did not state that he would be unpaid, so he believed he was entitled to wages for the remainder of his notice period. The respondent's representative submitted that approval was limited to time off, not pay, and was conditional on recall if work became available. The respondent further argued that the claimant was not ready, willing, and able to work after 11 November 2024 and did not comply with the contractual requirement to report absence daily.

98. The claimant's redundancy letter confirmed his employment would end on 27 November 2024 and stated he could take a reasonable amount of paid time off to attend interviews with his manager's agreement. He was paid for one day in this respect on 01 November 2024 to attend an interview, which was a reasonable amount of paid time off in the circumstances.

99. The claimant argued that the respondent's approval of his work trial implied he would be paid by the respondent. The Tribunal does not accept this. Approval was limited to time off and conditional on recall if work became available. There was no express or implied agreement to pay the claimant's wages during the work trial for the claimant's prospective new employer. There was no evidence of any custom or practice that wages would be paid during such a period. On the evidence before the Tribunal, the claimant was not ready, willing and able to work for the respondent during the work trial. He was engaged in work, albeit under a work trial for his prospective new employer, at the relevant time.

100. The claimant also referred to other provisions of the ERA 1996, including sections 141 (offer of alternative employment), 52 (time off for training), 34 (guarantee payments), 67 (suspension from work), 188 (insolvency), and 38 (failure to provide particulars). However, none of these provisions apply to the

circumstances of this claim, and the Tribunal does not find that they provide any basis for entitlement to pay during the work trial period.

101. The respondent's representative submitted that the claimant did not comply with the contractual requirement to report absence daily. The Tribunal notes that the contract specifies a requirement to report sickness absence daily, and the claimant was not absent due to sickness. While the claimant did not maintain regular contact with the respondent during the work trial, there was no clear contractual obligation to report non-sickness absence daily. This point therefore carries limited weight in the Tribunal's assessment.

102. Even if the claimant believed he was entitled to pay for the first week of his work trial, his unilateral notification on 18 November 2024 that he would not attend work that week, without agreement, and his failure to attend work thereafter meant he was not entitled to wages for that period. Therefore, in any event, from 18 November 2024, the claimant was not ready, willing and able to work for the respondent. He continued to be engaged in work, albeit under a work trial for his prospective new employer.

103. Under Section 13 ERA 1996, wages must be "properly payable." In these circumstances, and on the evidence before the Tribunal they were not "properly payable" to the claimant.

104. Although the contract of employment does not contain a general clause authorising deductions for overpayments, the Tribunal finds that the claimant was not entitled to be paid wages for the period of absence between 12 November 2024 and 27 November 2024. The respondent deducted £920.55 from the claimant's gross salary of £2,000.00, leaving £1,288.35 gross, which included £138.00 for accrued holiday. As the wages for the period of absence were not properly payable within the meaning of s.13 ERA 1996, the deduction was lawful.

105. Accordingly, the Tribunal finds that the respondent did not make an unauthorised deduction from the claimant's wages in respect of his final pay. This complaint fails and is dismissed.

Did the respondent make unauthorised deductions from the claimant's wages by:

6.3 Failing to pay the claimant's full accrued but untaken holiday entitlement on the termination of his employment in November 2024.

Outstanding annual leave on termination

106. The claimant submitted that he was not paid for his full holiday entitlement and that enforced holidays reduced his ability to plan leave and were unreasonable. He argued that holiday arrangements could have been managed better and that information was given verbally without formal

documentation. The respondent's representative submitted that the claimant was paid for 1.5 days accrued holiday (£138.00) in his November 2024 payslip, offset against deductions for absence, that there was no contractual entitlement to additional holiday pay, and that requiring leave on specified dates was lawful under Regulation 15(2) of the WTR 1998.

107. The claimant accrued 25.5 days' holiday entitlement in 2024 and had taken 24 days, leaving 1.5 days outstanding. He was paid £138.00 gross for this within his November 2024 payslip, which was offset against deductions for absence (see payslip at page 81 and holiday entitlement record at page 82 of the Productions). The Tribunal finds that this offset was lawful under the contract and does not alter the fact that the respondent paid the claimant for his accrued holiday entitlement.

108. Under Regulation 15(2) of the WTR 1998, an employer may require a worker to take leave on specified dates by giving notice at least twice the length of the leave. The respondent complied with this requirement by giving written notice for shutdown periods on 19 March, 23 April, 19 July, and 07 August 2024 (supported by letters at pages 83–86 of the Productions).

109. The claimant accepted that he did not seek permission to carry over holiday and that the respondent's policy did not permit carry-over. This is not only supported by the claimant's oral evidence but also the holiday entitlement records at page 82 of the Productions, which show no carry-over had been recorded, and by the contract terms at pages 65–70 of the Productions confirming that the respondent's policy did not permit carry-over.

110. Accordingly, the Tribunal finds that the respondent paid the claimant his full accrued holiday entitlement on termination. This complaint fails and is dismissed.

Conclusion

111. Accordingly, the claimant's complaints of unauthorised deductions from wages are dismissed in their entirety.

Date sent to parties **3 December 2025**

I confirm that this is my judgment in the case of 4106680/2024 Mr David John Buchan v SW Enviro Ltd and that I have signed the order by electronic signature.