EMPLOYMENT TRIBUNALS

Claimant
Mr A Takacs

Respondent
Independiente Communications Limited

Heard at: Watford (CVP) **On:** 25 & 26 June 2026

Before: Employment Judge S Moore (sitting alone)

Appearances
For the Claimant: Ms S Phumaphi, counsel
For the Respondent: Ms J Kerr, counsel

JUDGMENT ON PRELIMINARY ISSUE

The claim is struck out because it does not fall within the territorial scope of the Employment Rights Act 1996 and the Tribunal has no jurisdiction to hear it.

REASONS

Introduction

1. The Claimant has brought complaints of unfair (constructive) dismissal and for unlawful deduction of wages against the Respondent, pursuant, respectively to ss. 94 and 13 of the Employment Rights Act 1996 (ERA).
2. This is a Public Preliminary Hearing to consider two issues:
   (1) The status of the Claimant's relationship with the Respondent; namely was he an employee within the meaning of s.230 ERA for the purpose of his unfair dismissal complaint and/or a worker within the meaning of s.230 ERA for the purpose of his unlawful deduction of wages complaint; and
   (2) Whether the Tribunal has territorial jurisdiction to hear the claim. In this latter respect, since it was not argued that the tribunal does not have international jurisdiction to entertain the dispute, the question is perhaps better framed as whether the dispute falls within the territorial scope of the ERA.

3. I heard evidence from the Claimant and from Alexander Alanson (AA), the Chief Operations Officer of the Respondent. I was also referred to a bundle of documents. On the basis of this evidence, I make the following findings of fact.

The Facts

4. The Claimant is a Hungarian national. Other than studying for a semester at Nottingham Trent University, pursuant to the Erasmus Scholarship scheme, in 2009-2010, he has never lived in the UK.
5. At the end of 2015/beginning of 2016 he was recruited in Budapest to work for the Respondent.
6. The Respondent is a company incorporated in Great Britain and its registered address is in Northampton. It is a specialist creator and developer of augmented reality solutions for the commercial sector. At the time of the Claimant's recruitment, it was a fast-growing start-up and had one or two offices in Hungary.
7. It does not, and has never had, an office in the UK.
8. On 18 January 2016 the Claimant entered into a contract of employment (the employment contract") with the Respondent in the role of "Head of Sales – Europe". His remuneration consisted of (i) a "basic salary" of 12,000 euros per annum and (ii) a sales commission of 15% of the Company's profit on each project he was responsible for concluding during his employment.
9. Clause 6 of the employment contract was headed "Place of Work" and provided:

   "You will be based from the Company's offices in Budapest or such other premises as the Company may from time to time occupy or acquire.

   The Company reserves the right to require you to travel both in the United Kingdom and abroad in the performance of your duties."
10. The last clause of the employment contract provided: "This Agreement is governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts."
11. The letter setting out the terms of the employment contract was addressed to the Claimant at an address in London (31 Chandos Way). This was a property which the Claimant rented during 2016 but in which he never lived, although he occasionally stayed there rent-free after 2016 because he knew the owner.
12. Although, when asked, AA's answer was vague, the position appears to have been that some Hungarian employees of the Respondent may have wished to be paid through a UK payroll because income tax levels in the UK were lower than in Hungary and also for the ancillary objective of acquiring EU residency rights in the UK. In any event, regardless of the reasons why the Claimant was paid through a UK payroll, in order to be so paid he required an NI number and needed, or considered it expedient to have, an address in the UK. Hence, he rented the property at 31 Chandos Way.
13. On 3 May 2016, the Respondent's account manager sent AA, and the Respondent's co-founder Alex Poulson (AP), the following email:

"Adam's commission (£5749.50 GBP) … is due to be paid.

Adam is a PAYE employee, which means if we pay him the commission through the UK system it will raise the PAYE payable significantly…Not to mention that it will also raise his personal income tax as well…

Can you please let us know if there has been any agreement about how we can pay Adam's commission? If there is no agreement then Adam please let us know what alternative options can you provide, for example invoicing?"

14. On either the 6 May or 5 June 2016 the Respondent entered into an agreement with Pannon Trade Kft (Pannon) a company incorporated in Hungary (the Contractor Agreement 2016). The company had been set up by the Claimant's family some years earlier and the Claimant had become the owner by the time the Contractor Agreement 2016 was signed.

15. The Contractor Agreement 2016 provided that Pannon would provide the Respondent services on a project-by-project basis "as negotiated in good faith and as mutually agreed between the parties". Further that Pannon would be paid according to the "agreed job specification and completed job sheet".

16. The Contractor Agreement 2016 also provided that: "This Agreement is governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts".

17. Although the Contractor Agreement 2016 did not specify numbers or percentages the understanding of the parties at the time was that Pannon's fees would be calculated on the basis of 15% commission; i.e. the same rate of commission set out in the employment contract.

18. The initial commission which had been earned by the Claimant, as referred to in the email of 3 May 2016, was paid to Pannon pursuant to the Contractor Agreement 2016, as were all subsequent commission payments. The payments were made against invoices raised by Pannon, usually in American dollars. Pannon was responsible for all the tax due on those commission payments, which was paid to the Hungarian authorities.

19. The only payments that were ever made to the Claimant personally were in respect of his basic salary, which continued to be paid to him up to his resignation. They were paid through a UK payroll, net of UK tax and National Insurance (NI), into a bank account in Hungary in Hungarian florins.

20. AA stated in his witness statement that the change in contractual arrangements reflected the fact that while the Claimant had initially been employed as Head of Sales Europe, most of the products he was selling were being sold predominantly outside of Europe, therefore it made sense for the Claimant to become a self-employed sales contractor via his own company, Pannon. However, he continued to be paid his basic salary because he had been asked to continue to manage other members of the Respondent's team.

21. I don't accept this explanation. I consider that the reason for the change in contractual arrangements can be seen in the email of 3 May 2016. The parties agreed to vary the Claimant's employment contract so that the commission that would otherwise have been payable under that contract became payable to Pannon instead, pursuant to the Contractor Agreement 2016. This was so the

Respondent would pay less tax in the UK. Indeed, when I put this to AA he effectively admitted as much. Further, although the Claimant denied the arrangement was to his benefit, I don't accept this either. The Claimant's father is a qualified actuary, who would have been able to advise the Claimant on the tax implications of the arrangement, Pannon had been in the family ownership for some time, and the Claimant continued to work for the Respondent pursuant to the arrangement for another 8 years without any complaint about it. I consider it more likely than not that the arrangement was beneficial, from a tax perspective, to both parties.

22. On 14 December 2017 the Claimant was informed that his basic salary was being increased to £1250 per month (£15,000 pa).

23. The bundle also contains two further purported contracts with Pannon, although both are unsigned:

    (i) The first is dated 21 March 2019 ("the Contractor Agreement 2019") and is between Pannon and the Respondent. It explicitly states the sales commission due under the agreement will be paid according to the Respondent's commission plan, which would be updated annually.

    (ii) The second is dated 1 January 2020 and is between Pannon and INDE LLC ("INDE") ("the Contractor Agreement 2020"), a company incorporated in California. It provides that Pannon would be a contractor of INDE and that it would be paid in accordance with INDE's Commission plan. It further provides that the contract would be "governed, interpreted and construed in accordance with the laws of the State of California".

24. As regards INDE, in 2018 the Respondent's co-founder AP had moved to America to incorporate a new company, namely INDE. This was because while sales opportunities in Europe were declining, they were increasing in North America.

25. On 1 January 2019 the Respondent and INDE entered into a Transfer Pricing Agreement which allowed the Respondent to internally charge INDE for any support it provided, this included allowing the Respondent to make payments on behalf of INDE and be reimbursed for them, including commission payments made by the Respondent to Pannon. The arrangement came about to avoid INDE incurring the banking costs of paying contractors directly from the USA.

26. The Claimant said that he had never seen either of these purported contracts before these proceedings. AA's position was that the Contractor Agreement 2019 was quickly superceded by the Contractor Agreement 2020, and even though the Contractor Agreement 2020 was not signed the Claimant would have been well aware that by 2020 that the location of the business opportunities and the focus of his work was North America, and that he had little if any relationship with the UK.

27. I accept this latter proposition.

28. First, there is an exchange of emails between the Claimant and AP dated in June 2020 in which the Claimant agreed that his rate of commission would be changed to 12.5%. The change is described under the heading "USA Sales" and the Claimant's printed title and address at the bottom of his email is given

as "Director – Business Development, INDE, 2395 Silver Lake Bld, Los Angeles 90039".

29. Secondly, the Claimant's Linked-In page sets out his history with INDE as follows:

"Jan 2016 – July 2016: 7 months, Head of Business Development, Europe, London Area UK

July 2016 – January 2021: 4 years 7 months, Director – Business Development, North America, Los Angeles Metropolitan Area

January 2021 – April 2024: 3 year 4 months, Chief Revenue Officer (CRO), Los Angeles, California, United States".

30. On 18 May 2022 the Claimant was informed by the Home Office that he had been granted indefinite leave to remain (or settled status) in the UK. The basis on which the Claimant acquired this right is wholly unclear, given that his evidence in these proceedings is that he has *never* been resident in the UK (apart from a brief period as an Erasmus student in 2009/2010).

31. The Claimant says from 2021 onwards he began to experience difficulties receiving commission payments, so that by 5 July 2023 the total unpaid commission amounted to $185,783. On 14 March 2024, following what he says was a humiliating and accusatory meeting with AA and AP he resigned. He claims that by that date he was owed $142,588 in outstanding commission.

32. I find that over the course of the Claimant's 8-year working relationship with the Respondent, his place of work was Hungary. That was specifically stated in the employment contract and also reflected the reality of the situation. For the first years the Claimant worked out of the Respondent's office in Budapest. In 2020 or 2021 that office closed (in the light of the Covid 19 Pandemic) and the Claimant worked remotely from his home in Hungary. The Claimant was also required to travel as part of his job, mainly to attend trade fairs. The country he travelled to more frequently than anywhere else was the USA, although he did, on occasions travel to Europe. AA said the Claimant had no reason to travel to the UK because the Respondent didn't have any offices there or hold any trade shows there and had very few UK customers. He says the only time he was aware of the Claimant travelling to the UK for work was for a three-day trip in October 2023 for a team building event. The Claimant's evidence was that in total over 8 years he had spent about 4-5 weeks in the UK on work related matters. Even taking the Claimant's case at its highest, he therefore worked in the UK for no more than 2-3 days per year throughout the 8-year period in question. There was some evidence that at the outset of the parties' working relationship it had been expected that the Claimant would work to some extent in the UK, which may explain the explicit reference to travelling in the UK in clause 6 of the employment contract, but in the event that did not happen.

Conclusions

(1) <u>Does the dispute fall within the territorial scope of the ERA?</u>

33. The test of territorial jurisdiction in respect of employment legislation is set out in **Lawson v Serco [2006] 1 ALL ER 823 (HL)** as subsequently interpreted in **Ravat v Halliburton Manufacturing Services Ltd [2012] IRLR 315 (UKSC)**.

34. The starting point is that a Claimant may bring a claim in the employment tribunal under the ERA if they enjoy employment in Great Britain. In **Lawson v Serco** it was stated at [36] that "circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation". Similarly in **Ravat** the Supreme Court stated at [27] that "the general rule is that the place of employment is decisive".

35. In **Ravisy v Simmons & Simmons LLP (UKEAT/0085/18)** Mr Justice Kerr stated at [22] that in cases in which a claimant works outside Great Britain:

    "the presumption is against jurisdiction unless there is something which puts the case in an exceptional category, such that the employment has much stronger connections both with Great Britain and British employment law than with any other system of law. That is a question of fact and degree."

36. Similarly in **British Council v David Jeffery and Jonathan Green v SIG Trading Ltd [2018] EWCA Civ 2253**, Underhill LJ, stated:

    "there will be exceptional cases where there are factors connecting the employment to Great Britain, and British employment law, which pull sufficiently strongly in the opposite direction to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation.

37. Accordingly, the question is notwithstanding the fact that the Claimant's place of work was Hungary, are there factors which put the case into the category of exceptional cases where the employment relationship has much stronger connections with Great Britain and British employment law than any other system of law.

38. Ms Phumaphi relied on the fact the Respondent is a company incorporated in Great Britain, that the Respondent was the supplier of the services the Claimant was selling on the Respondent's behalf, that his contract of employment was expressly governed by the law of England and Wales and subject to the exclusive jurisdiction of the English courts, that he was paid through a UK payroll, paid income tax and NI under PAYE and, from the point it became compulsory was enrolled in a UK pension, and that he holds UK settled status and indefinite leave to remain.

39. She also relied on **Ravat** where a commuting employee who worked in Libya was found to fall within the territorial scope of the ERA because he was employed by a British company on terms governed by and assured by the protection of British employment law, and she submitted the same reasoning should apply in the present case.

40. Taking **Ravat** first, as Ms Kerr pointed out, the first line of the judgment (of Lord Hope) states that "this case is about the employment status of individuals who are resident in Great Britain and are employed by a British company but who travel to and from home to work overseas".

41. The only similarity this case has with the facts of **Ravat** is that the Claimant was employed by a British company. At the time of his working relationship with the Respondent the Claimant was not resident in the UK, and indeed has never been resident in the UK (apart from a brief period as a student many years

before). He was not working abroad as a British citizen, as Mr Ravat had been doing, he is a Hungarian national who was recruited in Hungary and was working for the Respondent from Hungary, his home country.

42. Furthermore the evidence was that while the Claimant travelled in the course of his work, he hardly ever travelled to the UK for work related purposes, spending – even at its highest – less than a week a year in the UK in any year he worked for the Respondent. This was no doubt due to the unchallenged evidence that the Respondent had an extremely small number of UK based customers, did not have an office in the UK and did not attend trade shows in the UK. The location to which the Claimant most frequently travelled was the USA, which is reflected in his Linked-In profile which from mid 2016 in fact identifies his place of work as being Los Angeles.

43. It is true that the Claimant paid UK tax pursuant to PAYE on his basic salary paid under his employment contract. However this was a minimal amount. Moreover, since the claim for unlawful deduction of wages is in respect of unpaid commission, I consider that it is also appropriate to consider how those payments – which were by far the most lucrative element of the Claimant's overall remuneration – were made and taxed. In this respect, the commission payments were made in the currency of the country where the products had been sold, which was primarily dollars, and, notably, the amount of commission the Claimant says he is owed in his claim form is calculated in dollars. Further, since Pannon is a Hungarian company, and the commission was paid to Pannon, the tax due in respect of the commission payments has always been accounted for and paid in Hungary.

44. As regards the Claimant's settled status in the UK, I do not consider this strengthens in any material way the connection between his employment relationship and Great Britain or British employment law. It does not in fact reflect any period of residency in the UK, still less any period of residency in the UK during the period of that employment relationship.

45. I also do not consider the fact that the Respondent (a UK company) was frequently identified on client invoices as the supplier of the goods and services sold by the Claimant to be a material factor. From 2019 onwards this was a consequence of the Transfer Pricing Agreement but, in any event, that the Respondent should be identified as the supplier of goods and services on client invoices is simply a logical consequence of the fact that the Claimant's job was to sell the Respondent's (and INDE's) good and services.

46. I accept that the employment contract expressly stated that it was governed by the law of England and Wales and subject to the exclusive jurisdiction of the English courts, and I also accept there is no evidence the Claimant agreed to the Californian choice of law clause in the Contractor Agreement 2020. However, while in **Jeffries** Underhill LJ found at [50]-[67] that an express choice of law clause is a relevant factor to be taken into account, I am not satisfied, even taking the choice of law clause into account, that the employment relationship between the Claimant and the Respondent has much stronger connections with Great Britain and British employment law than any other system of law. In this case, for all the reasons set out above, it seems plain to

me that the relationship had a much stronger connection with Hungarian employment law and Hungary, where the Claimant lived and worked.

47. It follows from the above that I am not satisfied Parliament can reasonably be taken to have intended that an employee in the Claimant's position should have the right to take his claim to an employment tribunal and I am accordingly not satisfied the disputes falls within the territorial scope of the ERA.

48. It must therefore be struck out.

(2) Employment Status

49. Although the point does not now fall to be decided I would add that had I reached a different conclusion in respect of the question above, I would have found that the Claimant was an employee of the Respondent's throughout their working relationship.

50. The contract of employment remained in existence for the duration of that relationship and the Claimant continued to be paid his basic salary until his resignation. I do not accept the Contractor Agreement 2016 reflected a genuine change in the relationship between the parties, rather it was a device used for tax reasons. While it is true that the Claimant may have had a high degree of autonomy, this was because of the rapidly expanding nature of the Respondent and the rapid increase in his seniority. However he continued to work for and under the direction of AA and AP, who made the decisions in respect of the amount of his basic salary and the percentage of the commission payments. He also had a company laptop and a pre-paid company expense card. Notably the Respondent's ET3 was pleaded on the basis that the Claimant had at all times been an employee and they only changed their position prior to the previous Preliminary Hearing.

51. However, the question of whether the Claimant can claim the alleged unpaid commission payments as a matter of unpaid wages owed under his employment contract is a separate question from that of his employment status, and, given my conclusions above, not one for this Tribunal.

Approved By:

Employment Judge S Moore
Date:
26 June 2026

Sent to the parties on:

30 July 2026

For the Tribunal:

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