



EMPLOYMENT TRIBUNALS

Claimant: Mr Mariusz Cichon

Respondent: Wincanton Holdings Limited

Heard at: London South (by video) **On:** 1 October 2026

Before: Employment Judge Sellwood

Representation:

Claimant	In Person
Respondent	Ms Kaye of counsel

JUDGMENT

1. The claim for unlawful deduction from wages is not well founded and is dismissed.

REASONS

Introduction

2. These written reasons are provided after a 2 hour final merits hearing. Despite the admirable cooperation of the parties with the timetable set out at the outset of the hearing, it was necessary to reserve my decision.
3. I was in receipt of a bundle totalling 170 pages, along with a witness statement from the Claimant, and five of his colleagues. These five statements largely consisted of brief testimony from those who had either received Company Sick Pay ("CSP") from the Respondent or been denied it, along with their beliefs as to the criteria which had been applied to them.
4. The Respondent adduced witness statements from Daren Winter, who made the decision not to award CSP, and Paul McCulloch, the HR Advisor who supported him in making that decision.
5. Given the time limit faced by the Tribunal and the amount of evidence adduced, I explored the issues with the parties at the outset of the hearing and informed them that I would only be assisted by cross-examination which went to the issues actually in dispute between the parties. I explained that, pursuant to Rules 41 and 45, I would control the time spent by the parties on cross-examination and submissions such that it was possible to complete the hearing in the listed timeframe.

6. The Claimant helpfully clarified that he was not disputing the discretionary nature of the clause governing the award of CSP. Rather, he was only challenging whether the contractual discretion had been exercised in an arbitrary, capricious or irrational manner. His written submissions underline that point, stating at paragraph 1 that *"I accept the express discretion. My case is that this discretion had to be exercised genuinely, rationally and consistently with the contractual scheme, taking proper account of the policy and the relevant facts"*.
7. Both Mr Winter and Mr McCulloch were cross-examined, as was the Claimant. The Claimant's other witnesses did not attend and, accordingly, I have granted very limited weight to their statements. Ms Kaye made oral submissions at the end of the hearing and the Claimant made oral submissions as well as sending me written submissions totalling 34 paragraphs. I have taken all of this into account when making my decision.
8. The Claimant seeks £5,249.24 in compensation, along with a 25% uplift for alleged failure to follow the ACAS Code.

Factual Background

9. The Claimant has been employed by the Respondent as a Warehouse Operative at its Thameside site since April 2015 and remains employed. Prior to the events giving rise to this claim, he had over ten years' continuous service.
10. On 13 December 2025 the Claimant commenced a period of sickness absence due to lower back pain. The Claimant's first payslip issued during the absence, dated 9 January 2026, showed that he had received Statutory Sick Pay ("SSP") rather than CSP. The Claimant states that he had no sickness absence during the preceding twelve months and believed that he satisfied the criteria identified within the policy for consideration of CSP. Between January and February 2026 he made a number of enquiries of management and HR seeking an explanation for the decision to pay SSP only.
11. The relevant policy documents in respect of CSP were the Thameside Absence Management Policy (February 2021) and its Supplementary Terms for Warehouse Employees (1 October 2025). Insofar as is relevant, the material terms contained within the Absence Management Policy read as follows:

"COMPANY SICK PAY – DISCRETIONARY PAYMENT

The Scheme will operate on a 'rolling year' principle, is a completely discretionary payment, and will be determined by the last 12 months' record of each team member.

Discretionary payments may be processed as follows:

Up to 1 year: SSP only

After 1-3 year's service: 4 working weeks at 100% and 4 working weeks at 50%

After 3-5 years' service: 8 working weeks at 100% and 8 working weeks at 50%

After + 5 years' service: 12 working weeks at 100% and 12 working weeks at 50%

Company sick pay is not paid for the first 3 qualifying days in any period"

12. The Supplementary Terms document was not materially different in its contents, save that the provision for those with over 5 years of service was set out as 13 working weeks at 100% and 12 working weeks at 50%.
13. The Claimant requested a review of the decision and a meeting was arranged for 13 March 2026. The meeting was attended by the Claimant, his USDAW representative, Mr Winter and an HR adviser. During the meeting, Mr Winter stated that CSP was a discretionary payment and that there was no contractual right to receive it. He informed the Claimant that, generally, most sickness absences at the site were paid SSP only. Mr Winter referred to factors including the Claimant's ongoing absence and the absence of a confirmed return-to-work date. The Claimant maintained that the policy required consideration of his previous twelve-month record and challenged the basis upon which the discretion had been exercised.
14. By letter dated 16 March 2026, the Respondent confirmed that the outcome of the review was unchanged. It maintained that CSP was discretionary and that no contractual entitlement existed. It further stated that "the decision to pay is based on a number of different factors and taking in consideration elements such as previous support, length of absence, previous record etc". The Claimant continued to receive SSP throughout his sickness absence.
15. The Claimant returned to work following a welfare and return-to-work meeting on 24 April 2026 and resumed work on 25 April 2026 under a phased return arrangement.

Witness Evidence

Daren Winter

16. When cross-examined by the Claimant, Mr Winter told the Tribunal that the main factors in his mind when making the decision not to award CSP were that the Claimant was allegedly on a warning for lateness, with two discussions having occurred with him about that topic, as well as the fact that he was not able to say when he might return to work (described in Mr Winter's witness statement as "*a key factor*" in his decision).
17. Mr Winter accepted that there were no documents in the bundle about this alleged lateness warning, and that he had not mentioned it in his witness statement. He also accepted that there were no contemporaneous notes of the reasons for his decision not to award CSP.
18. When asked by the Tribunal, Mr Winter said that he had not taken the length of illness into account, and that his decision was more about the 'behaviours' exhibited by the Claimant. This contrasted somewhat with his witness statement, which explicitly stated that "*the length of the sickness absence is also a factor that I consider when deciding whether to award CSP*".
19. Mr Winter's witness statement also explained that there is only a small pot of money available for the payment of all absences (SSP and CSP) at the Respondent, amounting to about £3,500 to £4,000 per week. He described that amount as typically "*consumed very quickly by the payment of SSP*".

Paul McCulloch

20. Mr McCulloch's evidence was that when assisting Mr Winter he did look into the Claimant's sickness absence and any warnings that might have been on his file, but that he could not now remember whether any such warnings existed. He also introduced a brief supplementary document which had been added to the end of the existing bundle, and which set out a table of those warehouse employees who had and had not been granted CSP in the 2024/2025 financial year.
21. That table demonstrated that a total of £15,953.74 had been paid out in CSP for that financial year, compared to £58,101.78 in SSP. The highest amount of CSP paid out for one employee during that time period was £1,543.39.
22. In response to judicial questioning, Mr McCulloch explained that the Respondent operates on the basis that everything that occurs on site is paid for by its customer (in this case, Sainsbury's). That includes any CSP paid out to employees, and so the cost to the customer of a CSP payment is a factor which is taken into account by the Respondent.
23. Mr McCulloch's evidence was that the Claimant was not awarded CSP because he had been off work for approximately three months at the point of decision and there was no indication about when he would be likely to return. As set out within Mr McCulloch's witness statement *"it would not have been possible for Wincanton to pay him CSP for an indefinite length of time"*.

The Claimant

24. Under cross-examination, the Claimant accepted that the mention of '12 month's record' within the material terms did not refer solely to an employee's sickness absence record, but rather their 'record' over the past year taken in the round. He accepted that this could include matters such as conduct, depending on the situation.
25. He also accepted that he had been spoken to on one occasion about lateness within approximately the last twelve months, but that his understanding was that this conversation resulted in no further action.
26. When asked about the various notes of his meetings with management during his sickness absence, he accepted that he was not in a position in January or February 2026 to tell the Respondent when he would be returning to work, as it was dependent on the efficacy of his physiotherapy treatment, along with an Occupational Health referral.

Relevant Law

27. The claim is brought as a complaint of unlawful deduction from wages under Part II of the Employment Rights Act 1996. To succeed, the Claimant must establish that the sums claimed were "wages" properly payable to him and that the Respondent failed to pay them. The burden rests on the Claimant to identify the contractual, statutory, or other legal basis on which the sums became payable.

28. A well-established distinction exists between contractual entitlements and discretionary benefits. Where an employer retains a discretion, the Tribunal does not substitute its own decision for that of the employer. However, contractual discretions are not unfettered. A discretion conferred by contract must ordinarily be exercised honestly, in good faith, consistently with the contractual purpose, and not irrationally, capriciously or arbitrarily. The leading case of Braganza v BP Shipping Ltd [2015] UKSC 17 is relevant to the scope of contractual discretion (albeit in a different context than sick pay) and I have taken it into account.

Findings of Fact

29. The crucial finding of fact in this case relates to which factors, if any, were taken into consideration by Mr Winter when making the decision not to award CSP to the Claimant.
30. The task of reaching such a finding would have been very significantly easier had any contemporaneous notes been made by Mr Winter or Mr McCulloch, or had they explained the exercise of their discretion to the Claimant during the several meetings that were conducted with him about his absence. Instead, the focus until this hearing appears to have been on whether the entitlement to CSP was discretionary – something which, as it transpired, the parties did not actually disagree about.
31. That said, the evidence of Mr Winter and Mr McCulloch (and to some extent, the letter of 16 March), make it clear that one of the factors taken into account was the lack of a firm return date from the Claimant. The Claimant did not disagree when cross-examined that he could not give such a firm return date when the decision regarding CSP was made, even though he did want to return to work when he could.
32. I also find that the financial resourcing of CSP was a factor taken into account by Mr Winter. The evidence shows that there was a limited budget for sickness absence, that it was paid for by the client and not by the Respondent, and that the Claimant's overall CSP allowance as sought in these proceedings would have made him a very significant outlier in comparison to his colleagues.
33. However, I do not find that Mr Winter factored the conversation had with the Claimant about his alleged lateness at work into the decision on CSP. This was a matter which was raised for the first time during his cross-examination. It is not mentioned in any contemporaneous document or in his witness statement. Whilst the Claimant accepted that such a conversation occurred, that is not the same as it being taken into account at the material time by Mr Winter. On the balance of probabilities, that did not occur.

Analysis and Conclusions

34. Given the above findings, I do not conclude that the Respondent exercised its discretion in an arbitrary, capricious or irrational way.

35. Both financial resourcing and likely date of return to work are reasonable factors to take into account when exercising a discretion to pay enhanced sickness benefit. The Claimant's sickness absence, if treated as attracting an award of CSP, would have eclipsed that of colleagues and taken up a significant percentage of the available budget for sickness absence payments.
36. Whilst it is regrettable that the Respondent did not more effectively keep notes of its thinking or explain that thinking to the Claimant, that is not evidence of any factor being taken into account that was improper. Nor has the Claimant suggested any factor that should have been taken into account that was not, save for his assertion that his length of service and clean twelve month record should have attracted CSP as of right.
37. I do not accept this. Whilst it is true that the Absence Management Policy sets out brackets of payments for employees at each level of continuous service, those brackets are explicitly described as examples of how "*discretionary payments may be processed*". They are not an entitlement and do not oust the general discretion possessed by the employer not to pay them in that way.
38. The Claimant raised a number of issues in his witness statement and closing submissions regarding the procedural aspects of his sickness absence management and pay review complaints. These matters related to his claim for an ACAS uplift to any award. Since his unlawful deduction complaint has failed, those matters fall away and do not require determination.

Approved by:
Employment Judge Sellwood
Date: 1 October 2026

Sent to the parties on:
Date: 8 October 2026

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