EMPLOYMENT TRIBUNALS

Claimant: Mr D Burns

Respondents: MYCSP Ltd

HELD AT: Liverpool **ON:** 9 & 24 March 2017 (in chambers)

BEFORE: Employment Judge Shotter

REPRESENTATION:

Claimant: In person
Respondents: Mr J Robinson, solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The Tribunal does not have the jurisdiction to consider the breach of contract claim which is dismissed upon withdrawal by the claimant.

2. In respect to the claimant's application for a reference under Section 11 of the Employment Rights Act 1996 as amended the Tribunal is satisfied, on the balance of probabilities, the 29 October 2012 contract is the relevant contract and records all of the information required under Section 1.

3. The Tribunal does not have the jurisdiction to consider the claimant's complaint concerning flexible working under Section 13 of the Employment Rights Act 1996, and that complaint is dismissed.

4. The claimant suffered an unlawful deduction of wages in relation to sick pay properly payable under the contract; his claim brought under Section 13 of the Employment Rights Act 1996 is well-founded and adjourned to remedy. The parties will be advised of the date in due course.

REASONS

Preamble

1. By a claim form received 5 December 2016 (early conciliation certificate dated 17 November 2016) the claimant, whose employment is continuing, claimed unlawful deduction in pay and breach of contract in connection with the agreement that he could work flexibly. The claimant also sought damages of £25,000 for damage to his mental health and employment opportunities, a claim over which the Tribunal did not have jurisdiction.

2. In short, the claimant alleged the respondent had unilaterally amended the terms of his contract with the result that he was entitled to less sick pay, no longer able to use the flexible working scheme, had lost privilege days and was unable to carry over 5-days holiday.

3. The Tribunal does not have the jurisdiction to consider the breach of contract claim as the claimant remains in employment, instead the claimant seeks a declaration that his contract includes a flexible working arrangement.

4. The respondent disputed the claimant's claims maintaining the claimant enhanced sick pay was not "properly payable" under the relevant contract dated 26 May 2015 and did not amount to unlawful deductions.

Evidence

5. On behalf of the claimant the Tribunal heard evidence from the claimant and it considered his written statement, and on behalf of the respondent the Tribunal hear from Jennifer Ryan, head of Human Resources, and her written statement was also taken into account. The Tribunal preferred the claimant's evidence concerning the contractual position, which was supported by contemporaneous documentation when it came to conflicts in the evidence. However, it did not find his evidence was believable when it came to the contract attached to the 26 May 2015 letter; it was clear from the contemporaneous documentation the claimant had read more than the first page of the contract despite his assertions before this Tribunal that he was too unwell and upset to do so.

6. Jennifer Ryan was a believable witness who was unable to gainsay the claimant's statement that he had never been provide with a new contract between 29 October 2012 until 26 May 2015, as Jennifer Ryan had no direct knowledge drawing on HR records not guaranteed to reflect the reality of the contractual position as opposed to what HR hoped had happened throughout the claimant's employment without any direct evidence that it had.

Issues

7. The following issues were agreed between the parties:

6.1 What is the applicable contract/statement of terms and condition of employment?

6.2 Is the claimant enhanced sick pay as a matter of contract? If so, is enhanced sick pay properly payable under the contract? Has there been an unlawful deduction of

wages in accordance with Section 13 of the Employment Rights Act 1996 as amended ("the ERA")?

6.3 Is the claimant entitled to as a matter of contract to flexible working? Is there an express contractual term or in the alternative, an implied term of contract that the claimant can work flexibly?

6.4 Should the breach of contract claim be struck out because the employment is still continuing? It was conceded by the claimant that there was no breach of contract claim and that claim is dismissed.

8. The Tribunal was referred to an agreed bundle of documents, witness statements, oral submissions and a number of additional documents produced at the hearing. The Tribunal has considered the parties' submissions, which it does not intend to repeat in their totality, but has attempted to incorporate the points made by the parties within the body of this judgment with reasons, and has made the following findings of the relevant facts.

Facts

9. The respondent was created on 1 May 2012 out of the devolution of services of a number of government departments and it administers civil service pension schemes employing approximately 525 employees in 2 sites across England. At the time of its creation a number of employees from the Department for Work and Pensions ("DWP") transferred to the respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") retaining their contractual rights.

10. In 2012 the respondent issued terms and conditions of employment to new employees similar, but not identical to those that had transferred across from the DWP. The terms DWP terms included a provision for 6 month full sick pay followed by six months half sick pay, 2.5 privilege days and the facility to bank additional time work and take it as holiday known as flexi-time.

11. The claimant was initially employed as an administrative officer by the respondent, initially on a fixed term contract with a 6-months probation period commencing 29 October 2012 terminating on June 2014 without the need for notice. The contract reflected some of the DWP terms and conditions, albeit the claimant did not transfer under TUPE. The respondent was unable to locate a signed copy of the claimant's contract and it cannot say if the claimant ever signed it; the claimant was unsure. It is undisputed between the parties this was the initial contract relevant to the claimant's employment.

29 October 2012 fixed term contract

12. The relevant clauses are as follows:

11.1 Clause 1.2 provides other terms and conditions "certain of which are referred to in Part 2 of the Statement are et out in a variety of MyCSP Policies…Certain terms and conditions to your employment are affected by collective agreements made between MyCSP Ltd and the Trade Unions. The terms and conditions that govern

your appointment may be amended from time to time either as a result of collective bargaining or following consultation with the Trade Unions."

11.2 Clause 1.3 provides terms and conditions of appointment made through collective bargaining or consultation, will be notified to you by amendment to the appropriate manuals, or policy rules and guidance documents."

11.3 Clause 1.4 provides "In the event of a conflict between on the one hand your letter of appointment and this statement…and on the other and, the provisions of the Policy rules and Guidance and other documents of general application referred to above, the terms of your letter of appointment and this statement shall prevail."

11.4 Clause 6 provides under the heading "Hours of Work" that "your post does not include flexi-time as standard. Local schemes may be managed by your head of pension service centre in accordance with the operational needs of the business."

11.4 & 11.5 Clauses 9 & 10 provides for 22 days holiday per annum rising to 25 days pay after 1 year's service, and 8 public holidays and 2.5 days privilege holidays per leave year.

11.6 Clause 11.1 provides "You may received full pay less any Social Security National insurance Benefits such as incapacity benefit, for the first 6 months of absence and half pay for a further 6 months, subject to a maximum of 12 months paid sick leave in any four year period. Any statutory sick pay will be pad with sick pay up the maximum of full pay."

13. On the 22 March 2013 the claimant, following an interview, was offered a full-time position for a trial period of 6 months commencing 1 May 2013 as pension administrator. The letter confirmed "Upon satisfactory completion of the trial period you will be made permanent in the role…Your terms and conditions of employment, including your salary, will remain the same." The claimant signed the letter on 28 March 2013. There was no documentary evidence before the Tribunal that the claimant had been issued with new terms and conditions of employment and it concluded the terms and conditions remained as per the 29 October 2012 contract. The respondent was unsure whether a new contract had been issued in March or November 2013 as a search of its electronic system (where contracts were held) produced nothing. The Tribunal found it was insufficient for the respondent to rely on other contracts issued to other employees as evidence that the claimant, who disputes this was the case, agreed to a change in his original terms and conditions of employment that reduced sick pay benefit to a maximum of 12 weeks at full pay for employees with 2 years or more service and 6 weeks for staff with less than 2 years. The number of holidays remained the same taking into account privilege days. There was no reference to flexi-time.

14. The Tribunal concludes, on the balance of probabilities from the evidence before it, as the respondent cannot confirm the claimant was provided with a new contract in March or November 2013, and the claimant disputes this fact, the applicable contract was the 29 October 2012 contract. It is notable the offer letter dated 22 March 2013 makes no reference to the new contract being attached in direct contrast to the draft letter dated 29 October 2012 (that was not addressed to the claimant but there is no dispute by the parties that a similar letter was sent to

him) which specifically refers to 2 copies of the Terms and Conditions of Employment being attached, one for signature and return. One would have expected the 22 March 2013 letter to have been written in similar terms enclosing the contract. It was not, and the only requirement on the face of that letter was for the claimant to sign that at the bottom of the letter an endorsement that he had accepted the offer of employment of pension's administrator and was able to commence employment on 1 May 2013.

15. The claimant successfully passed his 6-month trial period and this was confirmed in a letter dated 5 November 2013 that set out the following; "As of 1 November 2013 your position has been confirmed as permanent…if you require any additional information…do not hesitate to contact me [Faith Owen business HR partner] or the HR team." The same observations that have been made in paragraph 13 above are applicable to this letter which does not attach to it any terms and conditions of employment and is silent on this issue with the result that the claimant, quite reasonably, assumed with the 22 March 2013 letter in mind, his terms and conditions of employment and salary would remain the same and so the Tribunal finds.

16. The respondent relies upon a payroll system record evidencing in its view that the claimant was on a fixed term contract between 29 October 2012 to 31 October 2013, and by 1 November 2013 he was on the new MyCSP terms as described at paragraph 12. The claimant's position is that he was not provided with a new contract until 26 May 2015 and throughout his employment leading to the events that brought this matter to a head, he worked flexibly banking time which he then used later. In short, nothing had changed.

17. The payroll system records are not clear in that between the contracts dated 29 October 2012 to 31 October 2013 there is a reference to "reserved rights DWP" which is incorrect as the claimant had not transferred across under TUPE and did not have any protected rights. The entry detailing the contractual position between 31 November 2013 and 30 April 2016 refers to reserved rights being MyCSP, the employment type CSP OSP Scheme 2 being the same for both records. The claimant denies he was on the MyCSP contract as alleged, asserting it was the DWP contract throughout.

18. The respondent maintains the practice to issue a new contract to employees on the successful completion of their probation period, and in support of these blank contracts from other employees were provided as evidence of the contract the respondent states the claimant received, which the claimant denies ever having received. In support of this contention the respondent prepared a schedule showing "some" of the claimant's colleagues who moved on to MyCSP terms as a result of securing permanent positions or changes in their role. This evidence was disputed by the claimant, and the respondent was unable to clarify whether it referred to all of the claimant's colleagues as the names had been blanked out and only 3 (including the claimant) of the 8 set out had moved onto MyCPS terms and conditions, the remaining employees retained on DWP terms with no clarification as to whether there had transferred across or had not been made permanent/accepted changes to their role. The Tribunal is of the view the respondent is in difficulties establishing the claimant had agreed to a different contract by reference to what should have happened as opposed to what they knew, with a degree of certainly, actually

happened. The claimant is adamant he did not receive a new contract and nor was he put on notice that his contractual terms had changed in line with any of his colleagues to the less beneficial MyCSP terms. Given the balance of power in the contractual relationship between employer and employee, and the need for certainly hence the requirement that a statement of terms and conditions of employment are produced in accordance with Section 1 of the ERA, it is encumberant on the respondent to ensure the contractual position is beyond doubt, and in this case the respondent has failed to do so given the contemporaneous correspondence points away from a new contract being issued and agreed, back to the 29 October 2012 contract.

19. At paragraph 21 of Jennifer Ryan's statement reference was made to the claimant in November 2013 not raising any objections to the MyCSP terms; the inference being he must have therefore have accepted them. The Tribunal did not agree. Given that a contract of employment is a legally binding agreement under which most changes take place with mutual consent as required under common law, it takes more than an employee failing to raise objections to a new contract which he appears not to have been sent, to establish that the changes were authorised by him by default.

20. In December 2013 the claimant secured a secondment commencing 6 January 2014 with an increase in salary. The position was confirmed in a letter dated 17 December 2013 which confirmed the claimant's statutory and contractual rights remained unchanged. The claimant was required to accept the offer by signing the letter. The letter was unsigned but it is undisputed the claimant was seconded in accordance with the offer. There was no reference to the contractual position being my MyCSP terms and conditions as opposed to DWP and the Tribunal finds, on balance, the claimant was entitled to assume the relevant terms and conditions were those set out in the 29 October 2012 contract.

21. In February 2014 following a successful interview, the claimant was offered the position of senior pension's administrator. The offer letter dated 18 February 2014 confirmed the increase in salary (previous offer letter had been silent on salary) and it was confirmed his statutory and contractual rights remained unchanged. At the bottom of the offer letter the claimant was to sign confirming acceptance. It was not accepted, instead the claimant took up the offer of a test analyst role confirmed in a letter dated 20 March 2014, and a secondment with an increase in salary from 1 August 2014 to 31 January 2015 with the possibility of an extension depending on business needs. It was confirmed his statutory and contractual rights remained unchanged. The claimant signed the letter on 31 March 2014. There was no other reference to his contract and whether it was one under the MyCSP or DWP terms.

22. The claimant's secondment ended on 26 May 2015, and he received a letter of this date in the following terms; "With effect from 26 May 2015 your role will **revert** [my emphasis] to pensions administrator…I will allow 3 months notice of this change to alary and you will therefore continue to receive your salary of £25,250 until 31 August 2015, after which it will reduce to £20,000. I enclose your contract of employment…" which the claimant was requested to read, sign and return. The claimant has sought to argue that by reference to the words "revert" he understood he was reverting back to the post of pension administrator and the terms set out within the only contract he had ever received before 26 May 2015, namely, the 29

October 2012 contract. The Tribunal is of the view that the fact a different contract, described as "your contract" was attached, should have put the claimant on notice that changes were being made. The claimant gave evidence he was too upset at the reduction of pay and not well enough to read the entire document. The contemporaneous documentation does not bear this out, and the Tribunal concluded on the balance of probabilities, the claimant had read the contract and made a decision not to sign and return it.

The 29 May 2015 contract

23. The contract reflected MyCSP terms and conditions as described above, namely, a reduction in the sickness benefit to 12 weeks at full pay has the claimant had been employed for more than 2 years. Holiday entitlement remained at 27.5 including privilege days . There was no reference to flexi-time.

24. The claimant queried his holiday entitlement and carry over, and in an email sent 20 July 2015 from the respondent HR he was informed "Your contract sent to you previously was for your new role in SCU effective from 26 May 2015. Prior to this you were on your old contract. According to your old contract your annual leave was as follows: 22 days for the first year of service, which increases to 25 days after one years' service (with an additional 2.5 days privilege leave each year)." It is notable that according to HR as at 20 July 2015 there was contract for the claimant's "new role" and an "old contract." The terms cited are identical to those in the 29 October 2012 contract incorporating the DWP terms and not the later draft contracts incorporating the MyCSP terms where holiday entitlement is described as a round figure of 27.5 and not 25 plus 2.5 days privilege. This email further supports the Tribunal's conclusion as at 25 May 2015 the relevant contract of employment was that of 29 October 2012.

25. The respondent's position is that as the claimant was changing his role a new contract was issued to him in accordance with a practice, a practice which the Tribunal found had not taken place previously in respect of the claimant at any stage, including the secondments. When the claimant's role had changed in the past the respondent confirmed as set out above, terms and conditions remained the same. There was no mention of any contractual changes, and had it not been for the attachment to the 29 May 2015 contract, the claimant was entitled to assume as his employment had reverted to that pre-secondment, his terms and conditions of employment remained unchanged. The Tribunal did not accept the claimant's evidence as credible that he expected the contract attached to the 26 May 2015 letter to have reflected the terms and conditions of his original 29 October 2012 contract. It is beyond doubt the claimant was aware his holiday entitlement had been described differently and there was an issue over carry over and he could not reasonably have assumed it was the same contract.

26. Jennifer Ryan gave evidence that prior to the 26 May 2015 letter being issued a meeting took place between the claimant and Cath Cooney to discuss the end of his secondment, the new contract was provided and discussed. There was no evidence before the Tribunal that Cath Cooney had raised with the claimant the changes made. However, the letter of 26 May 2015 directly refers to their "recent discussion" and some of the provisions within the contract, such as sickness benefit,

were highlighted in bold, thus the claimant was made aware of them, one way or another.

27. The May 2015 contract was not returned by the claimant who left it unsigned; he did not raise any further issues until much later and at no stage did he assert he was working under the 29 October 2012 contract and had not accepted the May 2015 contract. He continued to work and bank time under the flexible working provisions that had been agreed with his manager.

28. In an email dated 24 February 2016 the claimant and a number of his colleagues received clarification as to their flexible working arrangement which include "Over a 4 week period the maximum time that can be accrued is 22 hours 12 minutes (3 working days). This relates to the banking of hours within flexible working.

29. On 18 April 2016 the claimant made a request to use flexi-time credits which was denied on the basis that the claimant was not permitted to "bank" time. It was at this stage the claimant raised an issue concerning the May 2015 contract, querying his legal entitlement under MyCSP and DWP terms. The party-to-party became protracted, which the Tribunal does not intend to relate here as it does not assist it in deciding the issues. Grievances were raised, not upheld and appealed and the matter finally came before the Tribunal.

30. The claimant was absent on sick leave between 27 October 2016 to 2 February 2017 for which he has received sick pay entitlement under the MyCSP terms and not DWP.

Law

31. Employment Rights Act 1996 Section 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.

> (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."
>
> *Section 23. Complaints to employment tribunals:*
>
> "(1) a worker may present a complaint to an employment tribunal -
>
> > (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
> >
> > …"
>
> *Section 24. Determination of complaints:*
>
> "(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer -
>
> > (a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,
> >
> > …"
>
> *Section 25. Determinations: supplementary:*
>
> "(1) Where, in the case of any complaint under section 23(1)(a), a tribunal finds that, although neither of the conditions set out in section 13(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of section 24(a) be treated as reduced by the amount with respect to which that condition was satisfied."

32. Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994

> *Article 3. Extension of jurisdiction:*
>
> "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."

33. Employment Tribunals Act 1996

Section 3. Power to confer further jurisdiction on employment tribunals:

"(2) Subject to subsection (3), this section applies to -

(a) a claim for damages for breach of a contract of employment or other contract connected with employment,

(b) a claim for a sum due under such a contract, and

(c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract,

Conclusion – applying the law to the facts

34. With reference to the first issue, namely, what is the applicable contract/statement of terms and condition of employment, the Tribunal found, on the balance of probabilities, it was the 29 October 2012 contract and the Tribunal makes a declaration to this effect.

35. On behalf of the respondent it was submitted the claimant's evidence in respect of the May 2015 contract was disingenuous; the Tribunal agreed and as set above, did not find him to be a credible witness on this point. However, the fact the claimant did not sign the May 2015 contract does not mean it was agreed by default; something more was needed. The respondent did not have the contractual right to unilaterally change the claimant's terms and conditions of employment when his secondment came to an act after which he reverted to his original role; and further, if it that was the respondent's intention it should have done more than highlight a few paragraphs. It did not because the respondent incorrectly held the view the claimant's contract included MyCSP terms and not those held by the DWP pre-transfer as evidenced by the records held by HR, and thus no amendments were necessary.

36. In order for a contract to be varied in most cases it is well recognised in law mutual consent is necessary. The contract itself can provide for changes, but this argument is sensibly not being relied upon by the respondent. It is notable the 29 October 2012 contract can be changed with union consent. The sick pay provisions relating to employees may be one of those matters agreed following input from the union, if not collective bargaining. It is not a benefit in kind the respondent can unilaterally make detrimental changes to on the basis that an employee's secondment has come to an end and they are reverting to their original post. The sickness benefit included within the 29 October 2012 contract is a contractual benefit that cannot be withdrawn at any time unilaterally as it has been in this case.

37. Given the change was purportedly unilateral, the Tribunal went on to consider whether an agreement be implied from the claimant's conduct after he received the May 2015 contract i.e. after he questioned the holiday clause and continued in employment and by these actions agreed to the changes made to the 2012 terms and conditions.

38. The Tribunal is reluctant to conclude, given the balance of power between the claimant and respondent, that in the absence of an express agreement the claimant consented to the contractual changes. It is notable the real effect of the variation came to pass when the claimant was off sick and after he had attempted to use banked hours to work flexibly. His salary had already been reduced by agreement as a result of the reversion back to his original position, and thus there was no unilateral variation of this. The Tribunal is mindful of the fact that the claimant not only sustained a substantial reduction in salary, but for no good reason other than the respondent sought to place him on the less beneficial MySCP terms other employees were on, his benefits were also substantially reduced specifically with reference to sick pay; the issue before this Tribunal. The Tribunal concludes the fact the claimant continued to work after the production of the May 2015 contract did not necessarily mean he had agreed to the new terms, specifically the reduced sick pay entitlement which had no immediate practical affect on his employment. The fact the claimant had been asked to sign and return the contract, and failed to do so (which was not chased up by the respondent) reinforces the Tribunal's inference that he had not accepted a new term that made him much worse off had he been unfortunate enough to be absent from work on the grounds of ill-health work for a period of 12 months or less. The fact the claimant said nothing, and chose only to raise the issue of holiday pay, does not necessarily amount his consent, more is required either by word or deed and on the balance of probabilities the Tribunal finds that what transpired within the particular facts in the claimant's case was insufficient to establish implied consent. The fact he continued to perform his original role under the impression that the 2012 contract applied does not necessarily mean the new terms were accepted.

39. In conclusion, in respect to the claimant's application for a reference under Section 11 of the ERA the Tribunal is satisfied, on the balance of probabilities, the 29 October 2012 contract provides all of the information required by Section 1 of the ERA, and these are the particulars relevant to the claimant's employment including the provision for 6 months full sick pay and 6 months half sick pay as set out in clause 11.1.

40. With reference to the second issue, namely, is the claimant entitled to enhanced sick pay as a matter of contract the Tribunal found that he was, and the enhanced sick pay was properly payable under the 29 October 2012 contract. Accordingly, there has been an unlawful deduction of wages in accordance with Section 13 of ERA. The parties will be advised of a 2-hour remedy hearing in due course.

Flexible working

41. With reference to whether the claimant entitled to as a matter of contract flexible working, the Tribunal concludes it does not have the jurisdiction consider this complaint which raises issues of contractual construction the claimant having

indicated implied terms existed in his contract that enabled him to bank time and work flexibly. A Tribunal has limited jurisdiction to consider the construction of the contract and whether it entails implied terms under Section 13 of the ERA, the claimant remains in employment, and this claim cannot be determined without engaging in a contractual construction as to whether there was an express term that the claimant could not work flexibly (with banked hours) or an implied term that he could. As the claimant cannot bring a claim for breach of contract in respect of flexible working and the Tribunal does not have the jurisdiction to consider the complaint, the claim is dismissed.

42. Without coming to a decision in respect of flexible working, it is notable the 29 October 2012 contract expressly provides there is no flexible working. The claimant may wish to think upon how he can rely upon one contractual term in the 29 October 2012 contract to establish unlawful deductions of wages claim and ignore a term that is not in his favour.

43. In conclusion, the Tribunal does not have the jurisdiction to consider the breach of contract claim which is dismissed upon withdrawal by the claimant. The Tribunal does not have the jurisdiction to consider the claimant's complaint concerning flexible working under Section 13 of the Employment Rights Act 1996, and that complaint is dismissed. In respect to the claimant's application for a reference under Section 11 of the Employment Rights Act 1996 as amended the Tribunal is satisfied, on the balance of probabilities, the 29 October 2012 contract records all of the information required under Section 1. The claimant suffered an unlawful deduction of wages in relation to sick pay properly payable under the contract; his claim brought under Section 13 of the Employment Rights Act 1996 is well-founded and adjourned to remedy. The parties will be advised of the date in due course.

CASE MANAGEMENT ORDERS

44. The following case management orders are made to assist the parties prepare for a remedy hearing, as the compensation claimed by the claimant is not sufficiently set out. In the remedy document and amendment to it, the claimant makes a number of claims that are irrecoverable; the £30,000 damages claimed under Vento is a case in point as this is not a discrimination complaint but one brought under Section 13 of the ERA.

44.1 The claimant will clearly set out his net losses directly relating to the unlawful deduction of wages incurred as a result of the under-payment of sick pay with reference to specific dates, individual amounts and wage slips, which he will attach to the Schedule.

44.2 The respondent will prepare a counter-schedule of loss setting out clearly what sums are agreed and disagreed with, as the case may be, providing cogent reasons for the disagreement together with copes of the relevant wage slips.

44.3 The remedy hearing will be set down for 2-hours. If the parties are of the view more or less time will be needed, they will consult, see if agreement is reached and then contact the Tribunal immediately. It is the Tribunal's view that if the

above case management orders are complied with, remedy could take place in 2-hours.

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.

Employment Judge Shotter

27 March 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 March 2017

FOR THE TRIBUNAL OFFICE