



**IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)**

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**Judgment of the Employment Tribunal in Case No: 4100549/2024 Heard at  
Edinburgh on the 5<sup>th</sup> of August 2024**

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**Employment Judge J G d'Inverno**

**Mr R Doyle**

**Claimant  
In Person**

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**Touch-Less Hygiene Ltd**

**Respondent  
Represented by:  
Ms K Henson  
(per Aeris Employment  
Law Limited)**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that the claimant lacks Title to Present and the Tribunal lacks Jurisdiction to Consider his claims, which are dismissed for want of Jurisdiction.

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**Employment Judge: d'Inverno  
Date of Judgment: 26 August 2024  
Entered in register: 27 August 2024  
and copied to parties**

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**I confirm that this is my Judgment in the case of Doyle v Touch-Less Hygiene Ltd and that I have signed the Judgment by electronic signature.**

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## **REASONS**

### **The Claimant's Position**

10 1. In his initiating Application ET1 the claimant bears to give notice of claims for:-

15 (a) Arrears of pay (Unauthorised Deduction from Wages) contrary to the provisions of section 13 of the Employment Rights Act 1996, the ("ERA")

(b) A commission payment said to be due to him in contract

20 (c) Compensation for asserted accrued but, as at the Effective Date of Termination of his Employment, untaken proportionate paid annual leave entitlement

(d) A claim for Notice Pay.

### 25 **The Respondent's Position**

2. The respondent has entered appearance resisting the claims and:-

30 (a) Challenging the claimant's Title to Present and the Tribunal's Jurisdiction to Consider any of his claims by reason of asserted time bar

(b) Accepting that they made a deduction of 2 days pay from the claimant's final salary but asserting that the deduction was one which fell outwith the protection afforded by section 13 of the ERA, it being,

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(i) A deduction in respect of overpayment of holiday pay and thus a permitted deduction in terms of section 14 of the ERA; and, separately and in any event,

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(ii) A deduction which was authorised in terms of the claimant's written Contract of Employment

(c) Asserting that, as at the Effective Date of Termination of his Employment, 20<sup>th</sup> October 2023, the claimant had taken his whole proportionately accrued paid annual leave entitlement in the holiday year 1<sup>st</sup> January to 31<sup>st</sup> December 2023

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(d) That the claimant had no entitlement in contract to the commission payment which he sought, the agreement between the parties extending only to the business of new clients introduced by the claimant whereas the contract in respect of which the claimant sought commission was with pre-existing long established customers of the respondent.

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### **Sources of Oral and Documentary Evidence**

3. The claimant gave evidence on affirmation on his own behalf. For the respondent the Tribunal heard evidence from his Director Mr S Whyte. Each party lodged a bundle of documents including a copy of the claimant's written Contract of Employment.

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**Findings in Fact**

4. On the written and oral evidence presented, the Tribunal made the following essential Findings in Fact, restricted to those relevant and necessary to the determination of the issues before it.
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5. The respondent, Touch-Less Hygiene Limited, operates an emergency call out business providing decontamination services at clients' premises across all parts of Scotland and certain other parts of the United Kingdom.
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6. The claimant was employed by the respondent, in the role of Technician/Engineer, from 20<sup>th</sup> March 2023 until 20<sup>th</sup> October 2023 on which latter date he determined his Contract of Employment by resigning with immediate effect.
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7. The Effective Date of Termination of the claimant's Contract of Employment was 20<sup>th</sup> October 2023.
8. The claimant's employment was regulated by a written Contract of Employment entered into between the parties.
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9. In terms of his Contract of Employment the claimant's salary, as at the Effective Date of Termination, was £26,000 gross per annum.
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10. The respondent's holiday year ran from 1<sup>st</sup> January to 31<sup>st</sup> December.
11. The claimant had an entitlement to 28 days paid annual leave per 12 month holiday period.
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12. In addition, the claimant had entitlement to and was paid additional sums for additional shifts worked, at a rate of £125 for up to 4 extra hours regardless of whether the job took less than 4 hours.

13. The claimant had no entitlement to greater additional hours payments in respect of jobs which exceeded 4 hours.
14. The claimant had contractual entitlement to receive a commission payment in respect of the business secured from new customers introduced by him.
15. The claimant had no entitlement to receive commission in respect of business secured from pre-existing established customers of the respondent.
16. The University of Edinburgh, the customer in respect of whose business the claimant contends he is due commission payment, was a pre-existing long established customer of the respondent and had been so prior to the claimant commencing employment with the respondent.
17. As at the Effective Date of Termination of his Employment, 20<sup>th</sup> October 2023, the claimant had already taken 2 days paid annual leave in excess of his accrued entitlement proportionate to that part of the holiday year 1<sup>st</sup> January to 20<sup>th</sup> March 2023.
18. In terms of his Contract of Employment the claimant gave, to the respondent, prior written authorisation, for the purposes of section 13 of the ERA, to deduct from his final wages any overpayment of wages which had been made to him. The respondent made a deduction equivalent to 2 days net pay from the claimant's final wages.
19. The deduction was an authorised deduction for the purposes of section 13 of the ERA.
20. The deduction separately, was a permitted deduction in terms of section 14 of the ERA.
21. In terms of his final salary payment the claimant received from the respondent all outstanding wages due to him. As at the date of Hearing there

was no balance of wages due and resting owing by the respondent to the claimant.

22. As at the date of Hearing there was no balance of accrued but as yet untaken  
5 paid annual leave entitlement in respect of which the claimant was entitled to be compensated.

23. The claimant, having resigned, had no entitlement to notice pay.

10 **Jurisdiction (Time Bar)**

24. Following his resignation on 20<sup>th</sup> October 2023 (the Effective Date of Termination of his Employment) the claimant first contacted ACAS and engaged with early conciliation on the 4<sup>th</sup> of December 2023, which is date A  
15 for the purposes of the Early Conciliation Regulations.

25. The early conciliation period ended, and the claimant was issued with an Early Conciliation Certificate, on the 15<sup>th</sup> of January 2024, which is date B for the purposes of the Early Conciliation Regulations.

26. The 3 month minus one day primary statutory time limit period, measured from the Effective Date of Termination of his Employment (20<sup>th</sup> October 2023) and, within which the claimant had entitlement to present each of his complaints to the Employment Tribunal, was extended by the effect of the  
25 Early Conciliation Regulations until 1<sup>st</sup> of March 2024, on which date it expired.

27. The claimant first presented his complaints to the Employment Tribunal on 1<sup>st</sup> of May 2024, some 2 months later.

28. There was no evidence placed before the Tribunal which went to support a Finding in Fact that it was not reasonably practicable (reasonably feasible) for the claimant to timeously present his complaints within the extended time limits which expired on the 1<sup>st</sup> of March 2024.

29. There was nothing which prevented the claimant from presenting his complaints prior to the expiry of the extended time limit on 1<sup>st</sup> March 2024.

5 30. In the circumstances and on the evidence presented, the Tribunal, separately, did not regard the complaints which were not presented until 1<sup>st</sup> May 2024 as complaints presented within such further period as was reasonable.

## 10 **Findings in Fact and in Law**

31. The claimant lacks Title to Present and the Tribunal lacks Jurisdiction to Consider his complaints in terms of section 111(2)(a) and separately in terms of section 111(2)(b) of the Employment Rights Act 1996.

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## **The Applicable Law, Discussion and Decision**

32. The reserved challenge to the Tribunal's Jurisdiction to consider the claimant's complaints, by reason of asserted time bar, falls to be addressed and determined first.

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33. The Title of parties to present complaints of the type advanced by the claimant to the Employment Tribunal, and the Tribunal's Jurisdiction to Consider such complaints, are prescribed by the terms of section 111 of the Employment Rights Act 1996 which provides as follows:-

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### **“111 Complaints to employment tribunal**

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

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(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

- (a) before the end of the period of three months beginning with the effective date of termination, or
- 5 (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- 10 (2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).
- 15 (3) Where a dismissal is with notice, an employment tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.
- 20 (4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—
- (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such
- 25 circumstances that he will be unfairly dismissed when the notice expires,
- (b) references to reinstatement included references to the withdrawal of the notice by the employer,
- 30 (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and



(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

(5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),

(a) subsection (2)(b) does not apply, and

(b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.”

34. The primary time limit, which is set out in section 111(2)(a) of the 1996 Act, and within which parties may, of right, present their complaints to the Tribunal is a period of 3 months minus one day, measured from the Effective Date of Termination of Employment. In the instant case the Tribunal has found in fact that the Effective Date of Termination of the claimant's employment was 20<sup>th</sup> October 2023. Absent engagement with and extension under the Early Conciliation provisions, the primary statutory time limit would have expired on the 19<sup>th</sup> of January 2024.

35. In circumstances where a party engages with early conciliation prior to the expiry of the initial time limit, the days spent in early conciliation fall to be added to the statutory time period.

36. The claimant so engaged with early conciliation on the 4<sup>th</sup> December 2023 and the early conciliation period ended on the 15<sup>th</sup> of January 2024. The expiry of the primary statutory time limit was accordingly extended by operation of the Early Conciliation Regulations to midnight on the 1<sup>st</sup> of March 2024.

37. The claimant did not present his complaints within that period and the Tribunal accordingly lacked Jurisdiction to Consider his complaints in terms of section 111(2)(a) of the ERA.

38. In such circumstances the Tribunal may only consider a complaint where it is satisfied:-

5 (a) That it was not reasonably practicable (by which the Higher Courts have confirmed is meant not reasonably feasible) for the complaint to have been presented within the extended primary time limit; and in addition

10 (b) That taking account of the date in which the complaints were first presented (in the instant case not until the 1<sup>st</sup> of May 2024), the Tribunal further considers that the complaints were presented within such further period as was reasonable in the circumstances. (section 111(2)(b) of the ERA).

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39. The onus of so satisfying the Tribunal and so persuading the Tribunal that it may so consider the subsequent late presented complaints as having been presented within an additional reasonable period, sits with the claimant. It is for the claimant to establish these matters to the satisfaction of the Tribunal, on the balance of probabilities and on the preponderance of the evidence. There was no evidence placed before the Tribunal that went to support a Finding in Fact that it had not been reasonably practicable for the claimant to present his complaints timeously. All of the information which the claimant required to raise his complaints was within his possession throughout the extended statutory time period. Following his engagement with ACAS he was aware of the time limits and of how to progress his complaints before the Employment Tribunal. Or if not so aware ought reasonably to have been aware upon the taking of reasonable steps to inquire the means of doing which were available to him throughout the extended primary period. He did not do so and did not present his complaints until 1<sup>st</sup> of May 2024, some 2 months after the expiry of the time limit.

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40. The claimant has failed to discharge his burden of proof in respect of satisfying the Tribunal that it has Jurisdiction to Consider his complaints which, accordingly, fall to be dismissed for want of jurisdiction.

5 41. The Tribunal's Jurisdiction not having been established, it is not necessary to  
determine the merits of the complaints advanced in respect of which the onus  
of proof again sat with the claimant. The Tribunal records, however, that on  
the evidence presented and on the Findings in Fact which it has made it  
would have considered that the claimant had failed to discharge the burden of  
10 proof in respect of establishing entitlement to any of the sums sought by him.

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**Employment Judge: d'Inverno**  
**Date of Judgment: 26 August 2024**  
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**I confirm that this is my Judgment in the case of Doyle v Touch-Less  
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