



## EMPLOYMENT TRIBUNALS

**Claimant** Mr I Quartermain  
**Represented by** In person  
**Respondent** London United Busways Ltd  
**Represented by** Mr E Nuttman, Solicitor  
**Employment Judge** Ms A Stewart (sitting alone)

**Held at:** London South (Ashford) by CVP      **on:** 19 April 2023

## JUDGEMENT

The Claimant's claim for arrears of pay in the gross sum of £1,901.99 pence, being a 9% back dated pay increase from 4 December 2021 up to 29 July 2022, the date of termination of his employment, is not well-founded and fails.

Signed: Employment Judge A Stewart

**Employment Judge**

Date 3 May 2023



## EMPLOYMENT TRIBUNALS

**Claimant** Mr I Quartermain

**Respondent**

London United Busways Ltd

## **REASONS**

1 The Claimant worked as a bus driver for the Respondent and its predecessor for over 35 years until he resigned, leaving on 29 July 2022, in order to care for his wife who needed 24 hour care. A driver pay increase was finally agreed in collective bargaining between the Respondent and the recognised trade union with an implementation date of 16 September 2022, including 9% backdated to 4 December 2021. The Claimant contends that it is only fair and just that he receive the 9% pay increase from 4 December 2021 until his leaving date of 29 July 2022, as he worked those hours.

2 The Respondent argues that the Claimant has no contractual right to such an increase, that he was paid all that he was entitled to during his last months of working for the Respondent and that the backdated increase only applies to those who were still in the Respondent's employ on the implementation date of 16 September 2022 and not to anyone who had already left.

3 The Tribunal heard evidence from the Claimant and from Mr Andrew Evans, head of Operations – West, for the Respondent.

### **Facts:**

4 The Claimant asked for his back pay in October 2022. His traffic manager, Dave Mitchell, said that he would forward the request to payroll and later told the Claimant that he had heard back from payroll that a directive had been passed last year that leavers would not get back pay and that the Claimant was not entitled to anything as he had left before the implementation date. This was news to both the Claimant and to Mr Mitchell. The Claimant raised a grievance on 26 October 2022 but it was not upheld and he was never showed a copy of the 'directive', despite repeated requests. He states that he had never been informed of this directive and therefore assumed that he was entitled to back pay.

6 Mr Evans stated that the word 'directive' was not the right word. He said that the negotiations between the union and the top management of the Respondent were, by their very nature, secret but that it had been expressly agreed that the increase would only apply to current employees; that the Respondent was radically in financial deficit; and that the whole point of the terms of the increase was to incentivise recruitment and retention of drivers, a considerable problem in the industry, although it had been agreed with the union that even those working their notice would be entitled to the increase, as long as they were still employed on the implementation date and therefore still in a contractual relationship with the Respondent. The memorandum of

agreement notification letter does not mention the status of those no longer employed.

7 The Claimant told the Tribunal that he was unaware of any previous leavers who had been paid any back dated pay increases after they had left, over the years, as one lost touch with those who had left. He had assumed that they would be entitled, but had no actual knowledge of anyone having been paid back pay. Mr Evans said that he had never had a case of a previous employee claiming back pay after they had left and that he would have been so aware in his role, because any spending outside the ordinary would have to be approved by him since he was responsible for budgets and profit and loss across 4 garages and some 1,000 employees.

8 The Claimant's original written contract of employment makes no reference to any entitlement to pay increases during or after employment. In 1996, it became mandatory to include reference to collective agreements in employee contracts. A specimen contract post dating this specifically says 'there are no collective agreements included in the contract' (clause 14).

9 The Claimant has in fact received some pay increase per annum of his employment, although the 'anniversary date' of calculating any increase has changed over the years and the increases relating to the years 2019 and 2020 were not agreed in collective bargaining until April 2021. Strike threats and industrial action are the normal bargaining tool used by employees and unions at such times. They do not sue for a payrise.

**The Law:**

10 As to the law, the Tribunal directed itself as follows:

(i) It is for a Claimant who claims that wages or other money is owing to him from his employer, to satisfy the Tribunal, on a balance of probabilities, that they are legally entitled to the money claimed. It does not fall to the Respondent to disprove it.

(ii) This will usually be done by a Claimant showing evidence of a contractual right to the money, either expressly written or incorporated into the contract of employment, or by evidence of a subsequent express oral or written agreement between the employer and himself.

(iii) A term can be implied into a written contract, on the basis of clear evidence, for example by showing established custom and practice over a period of time, or by showing that it is necessary to give business efficacy to the contract. Otherwise, the written contract governs the situation.

(iv) There is no general implied term at common law that there will always be an annual pay rise (**Murco Petroleum Ltd v Forge [1987] IRLR 50**). The

Employment Appeal Tribunal said, in this case, that to imply such a term into employees' contracts would be to undermine effective collective bargaining.

**Conclusions:**

11 The Tribunal accepted that the Claimant's moral sense of what is fair and just has been offended by the Respondent's refusal to pay him the back pay for hours which he had actually worked up to the date of leaving in order to care for his wife. He feels that he is entitled to the increase because he had actually worked those hours.

12 However, he cannot show a written contract term giving him the right to pay increases after termination of his employment, and, in law, there are no implied terms giving him such a right. He could not point to any previous leaver who had been paid back pay after leaving his employment, so there is no evidence of custom and practice.

13 After leaving his employment, there was no ongoing contractual relationship between himself and the Respondent on which he can sue and no terms of his previous contract gives him the right to anything after he has left. During his employment he was paid the rate of wages which were current at the time and which remained current until changed, for existing employees, on 16 September 2022. He and his colleagues could not have sued for a wage increase in 2019 or 2020, even on their existing ongoing employment contracts, until after the collective agreement for increases was reached on 26 April 2022. By the time the latest increase agreement was reached, on 16 September 2022, it was too late for the Claimant, who had already left, and all leavers were excluded.

14 The Claimant cannot rely on his assumption that he has a right to back pay unless the Respondent has explicitly told him that he isn't. It is for him to show that he is legally entitled to the money which he claims. He has failed to satisfy this burden and so his claim accordingly must fail.

Signed: Employment Judge A Stewart  
**Employment Judge**

Date 3 May 2023