



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102927/2023**

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**Held via Cloud Video Platform (CVP) in Glasgow on 29 September 2023**

**Employment Judge I McFatrige**

10 **Mr C McEwan**

**Claimant  
In Person**

15 **Consilium Contracting Services Limited**

**Respondent  
Represented by:  
Ms L Wilson -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Judgment of the Tribunal is that the respondent did not unlawfully withhold wages from the claimant. The claim is dismissed.

### **REASONS**

1. The claimant submitted a claim to the Tribunal in which he claimed that he was owed arrears of pay and other payments. He stated that he had not been  
25 paid the appropriate rate for the job. He stated that overtime and on call payments had not been received. He indicated that he believed he was due a sum of around £7,000 by the respondent following the termination of his employment. The respondents submitted a response in which they denied the claims. It was their position that the claimant had been paid all sums due  
30 in terms of his contract of employment.

2. The claim was originally set down for a final hearing to take place on 24 July 2023. Prior to this, the respondents asked for details to be provided by the claimant to the amount said by him to have not been paid. At the hearing, the claimant had only provided this information in respect of one of the months  
35 referred to. As a result, the final hearing did not proceed and the employment

judge converted the hearing into a case management preliminary hearing. During the course of that hearing, the claimant confirmed that he argued that he was employed as an approved electrician and was entitled to a higher rate of pay than he had been paid by the respondent as an electrician. It was  
5 noted that the issue of whether or not the claimant was entitled to be paid as an approved electrician was something which would require to be dealt with at the final hearing. In paragraph 5 of the note issued by the employment judge after the hearing, it is recorded that the claimant was told that it was not enough to make general assertions but that he required to provide full  
10 information so as to allow the respondents to check its records and explain why it does not agree with him. The claimant was then ordered to provide a complete breakdown of the sums he says were not paid by 1 August 2023. He eventually provided further particulars on 21 August.

3. At the hearing, the claimant gave evidence on his own behalf. Evidence was  
15 led on behalf of the respondent from George Reid, a director of the respondent. A bundle of productions was lodged by the respondent which was stated to be a joint bundle. It incorporated documents which had been provided by the claimant at various stages during the tribunal process and including emails and attachments sent by the claimant to the respondent and  
20 to the Tribunal at various times. It also included the further particulars of claim by the claimant dated 21 August 2023 and the respondent's response dated 27 September 2023. It has to be recorded that whilst the claimant had sent a number of Whatsapp messages to the respondent during the course of the dispute, some of which had found their way into the final bundle, the claimant  
25 sought to refer during the course of the hearing to various documents which he had not lodged. It should also be recorded that despite the clear terms of the order made by Employment Judge Wiseman at the preliminary hearing, the claimant's further particulars dated 21 August lodged at page 53 fell very far short of providing the detailed calculation of the sum due which had been  
30 asked for. On the basis of the evidence and the productions, I found the following essential facts relevant to the claim to be proved or agreed.

**Findings in fact**

4. The respondents are an organisation which provides maintenance and repair services mainly to social landlords. The claimant was employed by them as an electrician between 5 September 2022 and 1 February 2023.
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5. The respondents employ a number of tradesmen. With regard to electricians, they employ some as electricians and some as approved electricians. An approved electrician is an electrician who has demonstrated that he is able to carry out certain tasks over and above those of an ordinary electrician. He will be issued a grade card by the ECS which proves this. This card requires to be kept up to date.
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6. The respondents decide whether to appoint someone as an electrician or as an approved electrician depending on what their grade card shows. They will only appoint someone as an approved electrician if they can demonstrate that they have an approved electrician grade card.
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7. At the time the claimant was recruited, the claimant had previously been qualified to act as an approved electrician but he no longer held a valid grade card. Accordingly, the claimant was employed as an electrician and not as an approved electrician.
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8. The claimant was provided with a contract of employment which was lodged (page 66). This gave his title as 'electrician'. The claimant was employed on a basic salary of £33,113.60 per annum. This was the rate offered by the respondent to electricians. The respondents offered a higher rate of pay to approved electricians who could demonstrate they were approved electricians by producing a valid ECS grade card confirming this.
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9. On various occasions during the course of his employment, the claimant indicated to the respondent that he considered he ought to be employed as an approved electrician because he had previously held such a card. The respondent's position at all times was that they would only pay him on the basis of his grade card and that this showed that he was an electrician. At no
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time did the respondent ever agree to pay the claimant as an approved electrician.

10. The pay of certain electricians and other tradesmen is subject to a national collective agreement between certain trade unions and certain employers organisations. A copy of this agreement (the SJIB Agreement) was lodged (page 81 – 111). The respondents are not a member of the SJIB. The claimant's terms and conditions were not in any way governed by this collective agreement and the payscales and other conditions in this collective agreement were not imported into the claimant's contract of employment. Section 18 of the claimant's contract of employment specifically stated that no collective agreement applied to his employment.
11. It was part of the claimant's terms and conditions of his employment agreed with the respondent that if he were called out on an out of hours basis then certain payments would be paid. The claimant was entitled to be paid £120 per week for each week he was on a call and liable to be called out. The respondents had a call out rota which showed all the tradesmen who were on call. These were the tradesmen who would receive the out of hours calls. In addition to this, the respondents pay overtime at time and a half of the tradesmen's hourly rate for time spent on an actual callout outwith the normal working day.
12. The respondent's out of hours rotas for the period covered by the claimant's employment were lodged (pages 112 – 116). This rota shows all of the days on which the claimant was on out of hours callout rota. The claimant received the sum of £120 per week pro rata for each of the days that he was on call. The claimant's payslips for September, October, November, December, January and February were lodged. There were two payslips in October. These accurately show the payments that were made to the claimant.
13. The respondent's managers would produce the on call rota each month. Over and above that, an on call time sheet would be produced to each tradesman. This would require to be checked by the manager and then submitted to payroll. It required to be lodged by the eighteenth of the month in order to

ensure payment for the end of the month. The respondents required the oncall timesheet to be produced by each tradesmen on one of their forms. Initially, this was done by hand but from around October/November, the tradesmen was expected to directly input their overtime into a computerised record system known as Simpro. Simpro was primarily a management tool which the respondents used to monitor amongst other things the out of hours and on call work which has been done by their tradesmen. The respondent's Simpro records for September, October, November and December were lodged (pages 154 – 158). These accurately show the callouts including the address and the work which was required. The claimant was paid for all of the call outs on this list attributed to him.

14. The claimant was spoken to by the respondent's management in respect of his record keeping. He sought to rely on various handwritten notes without details as evidencing that he had been called out. When the respondent sought to marry these up with their records they found them not to be accurate. On occasions their records showed the work having been done by some-one else. The claimant was asked for comment on this but failed to provide an explanation.

15. In addition, the claimant sought callout fees for an incident when he was on holiday on or around 17 September 2022 when he was contacted by another tradesmen over Whatsapp and asked for advice which he provide via Whatsapp. The claimant was not entitled to be paid for this as he was not on the call out rota and would have been free to ignore the whatsapp messages.

16. On or about 21 December 2022, the claimant was called to a meeting with his then manager in relation to various issues. The claimant was issued with a verbal warning, the terms of this were recorded in a letter dated 21 December 2022 which was lodged (page 185). As well as lateness, the warning refers to callout details requiring to be submitted on company callout recording sheets and it is noted that list of jobs with times from his notebook would not be accepted. It was noted that approved overtime must be submitted no later than the eighteenth of the month. It was also noted that approved overtime must be submitted on the company callout recording sheets.

17. Following the termination of his employment, as part of the preparation for these proceedings, the claimant produced a document listing a number of jobs which he stated he had not been paid for (page 53). This was sent to the respondents on or about 12 September 2023. The claimant also at the same time produced a number of screenshots from his telephone, some of which were lodged as part of these proceedings. On 13 September 2023, the respondent's representatives wrote to the claimant seeking screenshots in respect of various alleged callouts which the respondents stated they had no record of (page 56). It was subsequently noted that they had some difficulty and that whilst the claimant had provided job numbers in some cases, these did not link up to job numbers on Simpro.
18. On 27 September 2023, the respondents submitted a response in which they went through the various dates and times of jobs which the claimant had claimed and provided their response. They noted which claims had in fact been paid and provided details of this which linked up with the respondent's payslips. In certain instances, they indicated their records showed that a different employee attended the callout or that there was simply no record of the claimant attending. Within this letter, the respondent also provided a breakdown of the claimant's pay which noted he had been paid the equivalent of 40.5 hours for callouts in October 2022, £644.76 for callouts in November 2022 and £292.53 for callouts in December 2022. On the basis of the evidence before me, I accepted that the respondent's contentions regarding pay were correct and that the claimant had been fully paid for all callouts which he had attended.
19. The claimant's position was that in addition to payment at the rate of time and a half, he was entitled in terms of the SJIB rules to additional payments of £20 for the first callout and £10 for subsequent callouts each day. As noted above, the SJIB rules did not apply to the claimant's employment and he was not entitled to these payments.

### 30 Discussion and decision

20. In this case, the claimant was claiming arrears of wages. It has to be said that his claim was not well particularised and when the case initially called for a final hearing, the employment judge decided to convert this into a case management hearing so that the claimant would have a further opportunity to clarify and fully specify his claims. Despite being given this opportunity, the claimant failed to set out what he was claiming in any degree of precision.
21. During the course of the hearing, I found his evidence to be confusing and at times contradictory. At the outset, I tried to get him to go through the voluminous screenshots and documents which he had provided and identify for me the precise details of his claim. He was not prepared to do this and stated that his main claim was that he ought to have been paid at the rate of an approved electrician and that this was some £2 an hour higher than the rate at which he had been paid.
22. With some reluctance, I drew from him the other aspects of his claim which appeared to relate to payments he was due in respect of out of hours work. It appeared that again, there were two aspects to his claim. The first was that the claimant believed that he ought to be paid extra fixed sums in accordance with the SJIB rulebook rather than receive the payments which were due in terms of his contract. This would involve a payment of £20 for the first callout and £10 for subsequent callouts. It would also involve him being paid double-time for weekend work instead of time and a half.
23. I tried to go through the document at page 53 with the claimant and for the claimant to marry this up with the various screenshots involved but ultimately the claimant was not in any position to link up his claims to any other documentary evidence. The claimant was cross examined about the respondent's systems and essentially his position seemed to be that he could only produce the handwritten notes from his notebook. It was his position that he had been told this was okay which seemed to be at direct odds with the terms of the verbal warning which he accepted he had been given on 21 December 2023.

24. I felt that the claimant's evidence was not reliable. It is clear that he feels a genuine sense of grievance in that he feels that he was underpaid by the respondent and that he ought to have been entitled to be paid at the rate of an approved electrician. He also appears to have a general sense of grievance that he was not being paid in full for call outs. Despite being invited to do so both by the respondent and by the judge at the first hearing he failed to set out his claim in sufficient detail. He also failed to provide any kind of accurate arithmetical calculation as to what he would be due and simply relied on him being owed at least £7,000. During the hearing he did not dispute that the terms of his contract of employment with the respondent were that he was paid at an electrician rate and not at the approved electrician rate. His position was that as some-one who had once been an approved electrician he had an absolute right to be paid at the higher rate.
25. I found the evidence of the respondent's single witness to be both credible and reliable. He set out the respondent's policy in the matter. It appeared to me that he had genuinely sought to engage with the claimant and ascertain whether or not the claimant was in fact due any additional overtime payments for callouts over and above what he had been paid. It appeared to me that he was hampered in this by the poor quality of the claimant's record keeping and the fact that the claimant did not appear to have cooperated with the respondent's own record collection processes.
26. At the end of the day, I had absolutely no doubt in my mind that the contractual position was as contended for by the respondent. The burden of proof was on the claimant to show that he had worked overtime hours for which he had not been paid and in my view, the claimant entirely failed to meet that burden.

### Issues

27. I agreed with the respondent's representative that on the basis of what the claimant had said both in his pleadings and during the hearing, there were three aspects to his claim. The first aspect related to his rate of pay and his contention that he should have been paid at the higher rate of pay which the respondents normally pay to an approved electrician. The second issue was



that the claimant contested that he had not been paid overtime for all of the overtime works whilst doing out of hours calls. The third issue was in relation to the additional payments for out of hours calls which the claimant contended he was due to be paid in terms of the SJIB Rules.

5 **Discussion**

28. I found the first and third of the issues raised by the claimant to be easy to deal with. It was absolutely clear to me that the claimant's contract of employment did not provide for him to be paid at the rate of an approved electrician. The amount of his salary is clearly stated in his contract. This was the salary which was agreed and the claimant agreed to work for this sum. I did agree with the claimant to the extent that if the claimant had been able to demonstrate that he was an approved electrician by showing an approved electrician grade card then the respondent would have agreed to pay him a higher rate of pay. The fact of the matter however is that the claimant did not have an approved electrician grade card and the respondent's decision was that in those circumstances, he would only be paid as an electrician.

29. Many employees consider that they are not paid what their work is worth. There is no right to go to a tribunal seeking fair pay. The only right which one does have is to complain if the employer fails to pay the rate of pay which has been agreed in the contract of employment or where a rate of pay is fixed by statute or other operation of law.. In this case, the respondents quite clearly paid what was in the contract. His claim in respect of his suggestion that he was entitled to be paid at a higher rate of pay is dismissed.

30. Similarly with regard to the various on call and out of hours payments said to be due under the SJIB rules, I was entirely satisfied on the basis of the evidence that these rules had absolutely no application to the claimant's contract. The claimant was only entitled to be paid for out of hours work as per the respondent's own payscales which provided for a weekly on call payment of £120 when he was on the on call rota and overtime at time and a half for time worked outwith working hours.

31. The issue of whether or not the claimant had been paid in full for the additional overtime hours he had worked was one which caused me much more concern. As noted above, I tried to go through things with the claimant and obtain a clear exposition of precisely what callouts he was claiming to have made for which he had not been paid. This essentially echoed the exercise which the respondent's solicitor had tried to carry out previously. On each occasion whilst the claimant was able to point to certain inconsistencies, it was not at all clear to me that this meant the claimant had been underpaid. Given that the onus of proof was on the claimant, I considered that on the balance of probabilities the claimant had been fully paid for the out of hours work which he had carried out. With regard to the suggestion he was entitled to be paid for responding to whatsapp messages from a colleague seeking advice I found that in terms of his contract he was not entitled to such a payment. He was not on the on call rota. He did not attend a callout.
32. I should say that during the course of the hearing, the claimant made reference to a sum of £25 which he was due in respect of an occasion when he had required to fill up the company vehicle with fuel. He was not cross examined about this but the respondent's position set out in their submission was that this claim was not part of the claimant's original ET1 and was not a matter before the Tribunal. It was not a matter which the respondent's agent had been able to take any instructions upon. In these circumstances, I considered that it would not be appropriate for me to make any ruling in respect of this since I agreed with the respondent's representative that such a claim was not actually before the Tribunal.
33. The claim is dismissed.

**Employment Judge: I McFatridge**  
**Date of Judgment: 12 October 2023**  
**Entered in register: 13 October 2023**  
**and copied to parties**