



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000167/2025

Held in Glasgow on 16 May 2025

Employment Judge R King

Mr M Murray

**Claimant
In Person**

Waverley Medical Practice

**Respondent
Represented by:
Ms C Lauret -
Litigation
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim is dismissed.

REASONS

Respondent's designation

1. In the first place, the Tribunal allowed the respondent's unopposed application to amend its designation from 'Waverley Medical Practice' to 'Dr Simon Connolly, Dr Lynn Duff, Dr Claire McColgan, Dr Louisa Reed, Dr Shabana Irshad, Dr Jennifer Traynor and Dr Catrina McDowall trading as Waverley Medical Practice'.

Preliminary matter – respondent's application for strikeout

Respondent's submission on strike out

2. Ms Lauret confirmed that the respondent insisted on its application to strike out the claim on the ground that the Tribunal did not have jurisdiction to hear it.

3. In the first place, she submitted that the Tribunal did not have jurisdiction to deal with the claim as a breach of contract claim. As the claimant's contact of employment had terminated on 15 November 2024 and the disputed back payment of wages had not been awarded by the respondent to its existing employees until 2 December 2024, Ms Lauret submitted that the claimant's claim was not one that had arisen or was outstanding on the termination of the employee's employment.

4. The respondent's second argument was that the Tribunal did not have jurisdiction to hear the claim as a claim arising from an unauthorised deduction from wages for in terms of the Employment Rights Act 1996.

5. In Ms Lauret's submission, there was no contractual provision that could be relied upon by the claimant in either a contract or otherwise in any staff handbook. In those circumstances, she submitted there was no basis upon which a claim could be pursued in terms of the relevant provisions in the Employment Rights Act 1996.

Claimant's submission on strike out

6. In the claimant's submission there was no reason to disavow jurisdiction. In that regard he referred to the transcript he had provided of a Tribunal decision in the case of **Rumford and Rumford v York Council 1800202/2023**, a case at the Hull Employment Tribunal, which in his belief involved a similar complaint to his; namely the question as to whether a former employee was contractually entitled to payment of a back dated payment of wages even after they had left their former employment when the payment was made.

7. In the circumstances he saw no reason why the Tribunal should not have jurisdiction to hear his claim when an Employment Tribunal in Hull had dealt with a claim that had the same main characteristics as his own.

Decision on strike out*Breach of contract claim –*

8. The relevant provisions are contained in Article 3 (c) of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 which provides:

5 “3. *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—*

10 (a) *the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland 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.”*

15 9. It was not in dispute that the claimant’s claim for wages had not fallen due for payment as at the date of termination and was therefore only a prospective, and not an actual, right to payment. In the circumstances the claimant’s claim had not arisen, and was not outstanding, on the termination of his employment. As a result, the Tribunal did not have jurisdiction to hear the
20 claimant’s claim as a claim for breach of contract.

Unauthorised deduction from wages claim –

10. The relevant sections of the Employment Rights Act 1996 provide as follows:

 “3. ***Right not to suffer unauthorised deductions.***

25 (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."*

...

27. Meaning of "wages" etc.

(1) *In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—*

(a) *any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise"*

11. It was clear that the claimant's claim related to wages he believed he was contractually due as a backdated pay award even though his employment had terminated when the award was made. In that regard, he relied on an asserted verbal contract with the respondent that he would be paid that backdated pay award after his employment had terminated.

12. A payment properly payable for work done prior to the termination of a contract of employment is payable as wages under that contract regardless of when it becomes payable.

13. It was therefore clear that even though the sum sought by the claimant was not payable on termination of his employment, it could potentially have become payable when the backdated pay award was made. The issue for the Tribunal was to determine whether the claimant was contractually entitled to be paid the backdated pay award.

14. In those circumstances, it was clear that the Tribunal had jurisdiction to hear a claim for an unauthorised deduction from wages brought under section 13 of the Employment Rights Act 1996.

Findings in fact

15. The Tribunal heard evidence from the claimant and from Mr Thomas Nelson on behalf of the respondent. A joint bundle of documents was also provided and both parties made helpful submissions at the end.

5 16. Having heard evidence, the Tribunal makes the following findings in fact. If there was a disputed issue, the Tribunal reached a conclusion on the balance of probabilities. It is not the Tribunal's intention to make findings in relation to every piece of evidence that it heard, since that would include facts that were ultimately irrelevant to its conclusions on the disputed issues to be
10 determined.

17. The respondent is a medical practice with eight partners. The claimant worked for the respondent as a receptionist between 8 January 2024 and 15 November 2024. His hourly rate of pay was £11.92 per hour.

General medical practitioner's uplift

15 18. Each year, the Scottish Government reviews its funding for doctors' and dentists' remuneration and, generally around October, will provide medical practices with additional funding. While some of that additional funding is often passed on to employees as wage rises there is no legal obligation on any medical practice to do so.

20 19. Within the respondent's medical practice, its usual practice is that on receipt of an annual increase in funding from the Scottish Government it provides a backdated pay rise to 1 April to current employees. That is normally payable in the November or December pay, depending on when the partners meet to decide if and when a backdated pay rise will be made.

25 20. For 2024/2025, the Scottish Government circulated a letter dated 10 October 2024 to medical practices, including the respondent, that there would be a £50m increase in the global sum payable to doctors and dentists that was "*intended to provide a 5.5% increase for practice staff pay and a 6% increase for non-staff expenses, allowing for GP income net of expenses to increase*
30 *by 6%.*"

21. The circular also provided that -

“Scottish Government would advise all practices to apply this uplift to staff pay unless there are extenuating circumstances, for example staff have received higher pay uplifts since April 2024.”

5 *The claimant’s inquiries in advance of his leaving the respondent’s employment*

22. Although the claimant’s employment terminated on 15 November 2024, he had been aware since September 2024 that he would be leaving because he had by then found another job. However, he delayed in resigning while the PVG check relative to his new job was carried out.

10 23. The claimant was aware that the respondent had made backdated pay awards for the past several years, following the annual increase in Scottish Government funding. He was also well aware that he would be leaving his employment within the next few months and the timing of his departure might occur after any backdated pay award.

15 24. In advance of his leaving the respondent’s employment he was anxious to understand if he would be entitled to receive any such backdated pay award if he was no longer employed by the respondent when it was awarded.

20 25. At a staff meeting chaired by the respondent’s practice manager Thomas Nelson on 5 September 2024, the claimant asked Mr Nelson whether any backdated pay award made in October or November but backdated to 1 April would be payable to him if he was no longer employed by the practice when the award was made. In reply, Mr Nelson confirmed to the claimant that any backdated pay award would be paid only to existing employees who were employed at the date of the award.

25 26. Later on 5 September 2024, the claimant sent an e-mail to Mr Nelson in the following terms –

“I have concerns that I may not be fairly paid for my employment contributions from April up to my potential leaving date which is unconfirmed yet. I have performed the same duties as everyone else in the office and I feel regardless

of if I leave before it's confirmed, the pay rise is backdated over dates I was employed and fully performing the duties. I feel I am entitled to that salary increase till the last day I perform those duties."

27. On 5 September 2024, Mr Nelson replied as follows -

5 *"Hi Mark,*

10 *As discussed tonight, I had checked with HR just after the staff meeting to query this and they have confirmed that if you have left your position and are no longer an employee at the time the pay rise is awarded, then you wouldn't be entitled to the backdated pay. However if you are still working here as an employee at the time of the pay rise, then of course this would be paid to you."*

28. A few days later, on or around 7 or 8 September 2024, Mr Nelson spoke again to the claimant and reaffirmed that same position.

15 29. In October 2024 the claimant spoke to Nicola Clarke, the assistant practice manager who reports to Mr Nelson. By then he knew he would be leaving the respondent's employment on 15 November 2024. He asked Miss Clarke whether he would be paid any backdated pay award in his November salary, which would be his final salary with the practice.

20 30. In response Miss Clarke told the claimant that he would receive a backdated pay award in his November pay if the partners had already awarded a pay rise by the date of his departure, at a time when he was still an employee. That was entirely consistent with the position that had been explained to him on at least three occasions by Mr Nelson.

25 31. In the event the claimant left his employment on 15 November 2024, and the partners did not award a backdated pay rise until they met on 2 December 2024. Until then the making of the backdated pay award was in the balance because of the additional cost of employer national insurance contributions that had recently been introduced. That additional cost had been a concern to the respondent to the extent that it was considering treating it as 'extenuating circumstances' that would have prevented it making an award.

32. However, on 2 December 2024 the partners decided to award a backdated pay award, backdated to 1 April 2024, to employees who were still employed in the practice on the day of their decision. In the circumstances no award was made to the claimant.

5 **Submissions**

The claimant's submissions

33. The claimant had fully expected to be paid the backdated pay rise in November in his last pay packet. He had made decisions based on his understanding that he would receive it because of his discussion with Miss Clarke.

34. In his view, the Scottish Government circular was an "instruction" and the practice were obliged to pass on the additional money from the NHS as a pay rise to its staff. He believed that he was contractually entitled to it and that had been underlined by Miss Clarke telling him he would receive the pay award in November.

The respondent's submissions

35. In Ms Lauret's submission, the claimant had failed to provide any written evidence of any contractual agreement that he would receive a backdated pay award if it was made after the termination of his employment.
- 20 36. He had sought to rely on his version of a conversation he had with Nicole Clarke that he would be paid the backdated pay rise money in November even though that contradicted what he had been repeatedly told by the practice manager Mr Nelson - namely that he would not receive any backdated pay award if at the time of the pay award, he had already left the respondent's
- 25 employment.
37. However, Ms Lauret submitted that the claimant had admitted in cross examination that, at its highest, Miss Clarke had only told him that he would be paid the backdated pay award in November if he was still an employee at the time the award was made.

38. Ms Lauret accepted that a verbal agreement could be as binding as a written one but, in the circumstances, there was no verbal agreement at all.

39. Further, while it was accepted that the custom and practice of the respondent was that current employees would receive an award, there was no such custom and practice or any other contractual obligation upon the respondent to pay backdated pay award to “leavers”, who had already terminated their employment by the time a backdated pay award was made.

Discussion and decision

40. The Tribunal had little difficulty in concluding that in all the circumstances, the claimant had no contractual right to receive any backdated pay that was not awarded until after the termination of his employment.

41. It was clear from Mr Nelson’s evidence and from the documentary evidence from 5 September 2024 that the respondent’s consistent position was that former employees were not entitled to any backdated pay rises if they were not employed on the date when the award was made.

42. That position had been consistently explained to the claimant by Mr Nelson and by Nicola Clarke during her conversation with the claimant in the weeks leading to the termination of his employment. The Tribunal accepted the respondent’s submission that the claimant admitted in cross examination that at its highest Miss Clarke had told him he would receive a backdated pay award in his final pay in November only if he was still an employee at the time that the pay award was made.

43. As the backdated pay award was not awarded until 2 December 2024, there was no obligation on the respondent to make any backdated pay award to the claimant who left his employment on 15 November 2024. In all the circumstances, his claim must therefore fail and is dismissed.