



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100275/2025

Held in Glasgow on 28 July 2025

Employment Judge L Wiseman

Mr S O'Donnell

**Claimant
In Person**

The Caledonian Bar Ltd

**Respondent
Represented by:
Mr D Carroll -
Owner**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decided to dismiss the claim.

REASONS

1. The claimant brought a claim in respect of unfair dismissal and payment of holiday pay.
2. The respondent entered a response asserting the claimant had been self-employed since April 2023 and therefore not entitled to proceed with the claim.
3. I heard evidence from the claimant and I was referred to a small number of documents. It became apparent during the claimant's evidence that he had been paid cash-in-hand for the hours he worked. I advised both parties that I considered there may be an illegal contract and I gave them time to consider their position. The claimant subsequently confirmed he wished to proceed with the claim. I advised both parties this was not possible and I could only proceed to determine whether any contract in place was tainted by illegality.
4. Mr Carroll proceeded with cross examination of the claimant regarding the issue of the nature of the contract in place. I made the following material findings of fact.

Findings of fact

5. The claimant commenced employment with the respondent on May 2022. The claimant was employed as a Bar Manager.
6. The claimant was paid £12 per hour and his pay, subject to tax and national insurance, was paid direct into the Bank.
7. The claimant, in early 2023, had discussions with Mr Carroll, regarding a pay rise. It was agreed the hourly rate would rise to £15 and the claimant was given the option of staying on the books or coming off the books.
8. Mr Carroll sent the claimant a message on the 3 April 2023 (document R, B22) in which he stated: *"Do you have your hours? Also need to know if want paid in cash tax free or through the books going forward"* The claimant replied *"Off the books is fine"*.
9. The claimant received one payment at the rate of £15 per hour, to his bank account but thereafter he received payment every week in cash.
10. The claimant was paid cash for the hours he worked, with no deduction of tax or national insurance.
11. The claimant subsequently approached Mr Carroll about payment for holidays. The claimant was told by Mr Carroll that as he was *"off the books"* he did not get paid for holidays. The claimant and Mr Carroll exchanged messages regarding this and on the 20 May 2024 Mr Carroll messaged the claimant to say *"...I can pay you £15 through the books but you would lose out tax nat ins etc but then gain holidays etc.."* The claimant continued to be paid cash in hand.
12. The claimant's relationship with the respondent ended on the 20 September 2024. The document at R88 was a copy of the P45 issued by the respondent to the claimant, giving *"details of employee leaving work"*.

Respondent's submissions

13. Mr Carroll submitted the claimant had been paid in cash because he was self-employed and because he had opted to be paid in this way. The claimant could have remained on the books, but when given the option to be off the books, he had taken it.

Claimant's submissions

14. The claimant submitted that he had not ever been self-employed. He had been offered £15 per hour tax free by Mr Carroll, and had accepted this. The claimant believed that "tax free" meant that Mr Carroll would be responsible for paying the tax and national insurance.

Decision

15. I noted there was no dispute regarding the fact the claimant had started employment as an employee being paid wages net of tax and national insurance, with payment of wages going directly into his Bank account. There was no dispute regarding the fact this changed when the claimant's hourly rate increased to £15 per hour.
16. Mr Carroll argued the claimant was self-employed, but this was not an argument I could accept in circumstances where there was no evidence to support it. I noted that, with the exception of the payment of wages, nothing changed in the way in which the claimant worked when his rate of pay increased to £15 per hour. Further, the completion of the P45 supported the fact the claimant was an employee.
17. I concluded the claimant was employed as an employee and continued to be an employee throughout the period of his employment.
18. There was no dispute regarding the fact the parties had discussions regarding the claimant remaining on the books or being off the books. The messages produced by Mr Carroll supported the position that he gave the claimant the option of remaining on the books, or coming off the books, and the claimant opted to come off the books. This was further supported by the claimant's evidence that he agreed to be paid £15 per hour tax free.
19. The claimant argued that he thought "£15 per hour tax free" meant Mr Carroll would be responsible for paying the tax and national insurance. I could not accept this argument. The claimant has had significant experience of being an employee and he knew that wages were meant to be paid net of tax and national insurance.
20. I concluded that the parties entered into an arrangement for the claimant to be "off the books" and paid in cash for the hours he worked. I decided this was an illegal contract. I decided the claimant's claim could not proceed for this reason, and I decided to dismiss the claim.

Date sent to parties31 July 2025