EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001050/2025

Held in Aberdeen on 9 September 2025

Employment Judge N M Hosie

Dr J Sim	**Claimant** **Represented by** **Mr C Harrington,** **Solicitor**
Highland Health Board	**Respondent** **Represented by** **Mr R Davies,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim is dismissed.

REASONS

Introduction

1. The claimant, Dr Juliet Sim, claimed that the respondent, Highland Health Board ("the Health Board"), had made an unlawful deduction from her wages in relation to her sick pay entitlement; she also sought the determination of her written employment particulars, in particular, in relation to the contractual entitlement to sick pay. Her claim was denied in its entirety by the Health Board.

The evidence

2. I first heard evidence from Dr Sim. I then heard evidence on behalf of the Health Board from Ms Gaye Boyd, Deputy Director of People.

3. A joint bundle of documentary productions was also submitted ("P").

The facts

4. Having heard the evidence and considered the documentary productions, I was also able to make the following findings in fact, relevant to the issues with which I was concerned. By and large, the material facts were either agreed or not disputed. Helpfully, a Statement of Agreed Facts was produced (P.44), which I have incorporated in my findings.

5. Dr Sim has worked for the NHS in Scotland since 1997. She worked as a locum G.P. on various dates between 2017 and 2024. She was self-employed for this work. It is this previous work which she relies on for calculating her contractual sick pay entitlement. The respondent disputes that she can do so as she was not an employee at that time.

Rural Emergency Practitioner role

6. On 24 September 2024, Dr Sim commenced employment with the respondent as a Rural Emergency Practitioner ("REP"). Her terms and conditions included the August 2007 Consultant Grade Terms And Conditions of Service ("T&Cs"). (P.59-78)

7. Dr Sim was on sick leave from her REP role from 20 November 2024 until 11 February 2025, returning to work on 12 February 2025.

8. She received one month of full sick pay. The last day of full sick pay was 20 December 2024 as the respondent did not include her service as a locum for the purposes of calculating her sick leave allowance. This was disputed by Dr Sim. She claimed she was entitled to sick leave for the entirety of her absence.

T&Cs

9. Paragraph 7.5 of her T&Cs deals with "Sick Leave" (P.70-75).

10. Paragraph 5.1.3 (P. 64) states that:-

"*5.1.3 All previous regular service in the consultant grade in the NHS, including any absence on authorised leave, will be counted in full in determining the starting salary, seniority point and seniority date.*"

11. Paragraph 5.1.5 states that:-

"*All locum service in a consultant post undertaken for 3 or more continuous months ('continuous' as defined in **paragraph 11.5.1**) prior to first*

appointment as a consultant in the NHS will count at the rate of one half in determining the starting salary, seniority point and seniority date."

12. Paragraph 11.7 (P. 77) refers to **"Continuous Locum Service"** and states that:-

"*For the purposes of **paragraphs 5.1.5**…… 'continuous locum service' will be taken to mean service as a locum in the employment of one or more employers uninterrupted by the tenure of the regular appointment or by more than 2 weeks during which the consultant was not employed in the NHS.*"

The 1980 Regulations

13. Dr Sim's solicitor also relied, in the alternative, on the National Health Service (Superannuation) (Scotland) Regulations 1980 ("the 1980 Regulations") (P.241-254). These Regulations are a vehicle to having service approved for sick leave purposes.

Grievance

14. On 1 December 2024, Dr Sim raised a grievance. She claimed that she should have received sick pay for the entirety of her absence until 12 February 2025 and not just for one month (P.148-150).

15. Following a "Stage 1 Grievance Hearing" on 6 March 2025, the respondent wrote to Dr Sim on 14 March 2025 to advise her that her grievance had not been upheld (P.206-207). In short, they did not consider that her previous locum work when self employed was reckonable service for the purpose of sick pay benefits.

16. A "Stage 2" Hearing followed. The respondent's position remained unchanged. Her grievance was not upheld (P.208-221).

Claimant's submissions

17. The claimant's solicitor made oral submissions. The following is a brief summary.

18. He confirmed that the claim was in respect of an unlawful deduction of wages, in terms of s.13 of the Employment Rights Act 1996 and that Dr Sim was seeking payment of sick pay from the period from 20 December 2024 to 12 February 2025.

19. He submitted that while there has to be a sum to which an employee has to be a sum which an employee has some legal but not necessarily contractual entitlement from which the deduction could be made (***Hellewel & Anr v. AXA Services Ltd & Anr*** UKEAT/0084/11/CEA).

20. He also submitted, with reference to ***Weatherilt v. Cathay Pacific Airways Ltd*** [2017] IRLR 609, that an Employment Tribunal has jurisdiction to interpret contracts to resolve such disputes.

21. He referred, in particular, to Paragraphs 5.1.3, 5.1.5 and 7.5 of Dr Sim's T&Cs (P.64 and 68).

22. The amount of sick pay due was dependant on length of service (P.70 at section 7.5.1).

23. However, he submitted, that so far as "Previous Qualifying Service", at Paragraph 7.5.3 (P.71), was concerned, that does not go so far as to say the person has to be an employee during the period of service.

24. Nor, he submitted, does the "Locum Tenens", Paragraph 7.5.17 (P.74), distinguish an employee. He submitted that there was a "typo" in that section as it should have referred to paragraph 11.7.1 and not 11.5.1 which, he submitted, was only relevant to consultants who had reached 65 years of age.

25. He submitted that he was not asking the Tribunal to determine that Dr Sim was an employee but rather that her "Locum Service" was "reckonable service" for the purposes of sick pay as her T&Cs did not differentiate between a contract of service and a contract for service.

26. He submitted that when Dr Sim worked for the respondent as a Locum G.P. this was "reckonable service" and should have been counted for the purposes of Paragraphs 5 and 7 of her T&Cs.

27. Until May 2023 Dr Sim was an employee for tax purposes and she made national insurance contributions.

28. Further, during the locum period she was authorised to pay into the NHS pension scheme and deductions were made from her pay for that purpose.

The 1980 Regulations

29. In the alternative, he submitted that Dr Sim was entitled to the sick pay she was claiming in terms of the National Health Service (Superannuation) Scotland Regulations 1980 ("the 1980 Regulations")(P.241-254).

30. In particular, he relied upon Regulation 82(P.252-254), which allows service to be approved for superannuation purposes.

31. He submitted that these Regulations were still relevant to Dr Sim's claim.

32. He submitted that Dr Sim satisfied the criteria set out at Regulation 82(2) and, in particular, 82(2)(d).

33. He submitted that the fact that Dr Sim paid into the NHS pension scheme meant that the Scottish Ministers had granted approval, in terms of the

1980 Regulations (P.256-262). He referred to the letter of 3 March 2025 which Dr Sim received from the SPPA which he submitted confirmed that the Scottish Ministers had approved her paying into the NHS pension scheme (P. 205).

34. In further support of his submissions, Dr Sim's solicitor referred to the circulars from the SPPA dated 3 March 2003 (P.45-47); and 24 June 2003 (P.48-51). He referred in particular to Appendix A and "new Regulations 8 and 10 (P.51) concerning the definition of a "Locum Practitioner" and giving rights under the Scheme. He also referred to Appendix B which added additional categories under the NHS Superannuation Scheme (Scotland) Regulations 1995 and included a section on "Pensioning locum work" (P.52).

35. Finally, he invited the Tribunal to make a determination of Dr Sim's written particulars in terms of s.1(4)(d) and s.12 of the 1996 Act to reflect her "7 years of reckonable locum service for sick pay purposes", per Paragraph 7.5.1 ((P.70).

Respondent's submissions

36. The respondent's solicitor made written submissions which are referred to for their terms. The following is a brief summary.

Prior Locum Service

37. He explained that Dr Sim relied upon prior periods of locum service as a G.P. in support of her claim (P.38-39). However, during those periods she was, "neither an employee, nor a medical consultant". She was self-employed.

38. The respondent's solicitor submitted that the claimant's T&Cs "**of service**" were used for employing a consultant, not for a self-employed locum (P.59-78).

39. She was paid, therefore, one month full sick pay, on the basis that her sick leave took place during her first year of service.

"*Paragraph 7.5.3 is about previous qualifying service* (*P.71). In sub paragraph ("a") it refers to "all periods of service…… under any employer…. will be aggregated.*

Paragraph 7.5.17 appears under the heading of "Locum tenens" and is the last paragraph within 7.5 (P.74). It says "for the purpose of sick leave allowances a consultant's service will be taken to include locum service". It also refers to "continuous locum service" in relation to consultants who reached 65."

40. He submitted that:

"*a) "service" only means employment itself or work which has been performed under a contract of employment; failing which*

b) "locum service" means engagement as a locum ***consultant****.*"

41. So far as a) was concerned, the respondent's solicitor submitted that:

"*A contract of service" is often used intentionally to refer to an employment contract. It can be distinguished from a "contract for services" which is not.*"

42. The respondent's solicitor submitted that the reference to "Service" in the T&Cs meant employment (P.59). Accordingly, with reference to paragraph 7.5.1 (P.70) the claimant was only entitled to one month's full pay in her "first year of service".

43. So far as "previous qualifying service" was concerned, there is reference to "*All periods of service…..under any employer*". This means employment.

44. The respondent's solicitor then addressed the submission by the claimant's solicitor that the 1980 Regulations provided an alternative route to having service approved for sick leave purposes.

45. Regulation 82 refers to "employment" and "service" (P.252) and it was submitted that where the contract refers to "service", approved under the 1980 Regulations, and elsewhere, this means employment.

46. So far as paragraph 11 of the contract was concerned, namely "Renumeration And Conditions Of Service Of Locum Tenens" (P.76-78), the respondent's solicitor referred to the evidence of Miss Boyd that these terms and conditions were only used for locums employed under a contract of employment with a Health Board. Once again, he submitted that "Service means employment".

47. He also referred, in this connection to paragraph 11.7.1 (P.77) which gives the definition of "Continuous Locum Service". He submitted that this meant "employment".

48. In the alternative, the respondent's solicitor submitted that if "service" did not mean employment, "locum service" meant working as a locum consultant. In particular, he submitted that the reference to "locum service" in paragraph 7.5.17 meant locum service as a consultant.

The 1980 Regulations

49. The respondent's solicitor submitted that if it was accepted that "service" in the contract meant employment then the claim relying on the 1980 Regulations fails, "*since it relies on the part of paragraph 7.5.3 of the*

contract which says 'Any service approved by Scottish Ministers…'" (P.71); and the relevant work relied on by the claimant was as a self-employed person.

50. In the alternative, the respondent's solicitor submitted that if "service" in the contract did not mean employment, then Paragraph 7.5.3(a), "*creates the potential for prior 'service' to be aggregated for ascertaining the appropriate allowance of paid sick leave where the service is 'approved by Scottish Ministers for the purpose of Regulation 82(1) of the NHS (Superannuation) (Scotland) Regulations 1980.'"* These were referred to at paragraph 17 of the Grounds of Claim (P.20); and also in the claimant's further and better particulars (P.40-43).

51. It was maintained on behalf of the claimant that: -

"As she has been able to pay into an NHS pension during all of her locum appointments, that this is in effect, the Scottish Ministers granting approval.

As such, when she took up an employed role in September 2024, Reg 82(2)(d) should have applied, so all service, including in the locum roles, should have been counted as reckonable service for benefits payable under the Regulations (and by way of 7.5.3, should be counted as service for the purposes of paid sick leave)."

52. The respondent's solicitor response was as follows:-

a) *This is a case about whether a contractual right exists or not. To determine this we need to look at what the contract says.*

b) *"approved by Scottish Ministers for the purposes of Regulation 82(1)" is clearly a reference to the approval process described in Regulation 82(1) (P.252). This is a very specific process which can operate in specific circumstances. Paragraph 7.5.3 does not mention events that have the same* ***effect*** *as an approval under the Regs. It refers instead to approval that has actually been given.*

In any event, Reg 82 (P.252-253) refers to "employment" and "service". At 82(2)(d) it appears to equate the two terms ("… after ceasing to hold the approved employment, be entitled to reckonable service, contributing service and non-contributing service respectively, all periods of employment ….")

I therefore submit that Reg 82 applies to employment, not self-employment. The relevant prior work relied on by the claimant was self-employment. I submit that approval cannot have been "in effect" granted for the purposes of Regulation 82, where the claimant's circumstances did not meet the basic requirements of the Regulations.

In any event, the 1980 Regs were revoked in March 1995. This removed the pathway under those Regs. It would therefore not have

been possible for Scottish Ministers to grant the relevant approval (whether actual or deemed or "in effect", approval) in relation to the locum GP work (P.38-39) between 2017 and 2024, relied on by the claimant for her claim. Nor could Regulation 82(2)(d) have applied to her (in fact or in effect) when she started work under the contract in September 2024.

53. The respondent's solicitor also addressed the issue of reliance on an "implied modification of clause 7.5.3". However, this was not advanced by the claimant's solicitor.

54. In conclusion, the respondent's solicitor said this:-

"My submission is that when interpreting paragraph 7.5.3 regarding relevant previous qualifying service, service means employment.

If it does not, then 'locum service' in 7.5.17 specifically means working as a locum consultant, which the claimant had not been prior to starting in the relevant role.

On the 1980 Regs, the contractual requirements were not met in relation to the claimant's prior work as a self-employed locum.

There has been no prior notice of an argument by the claimant that a term should be implied.

In any event, there is no objectively reliable basis for implying any term.

Accordingly, I invite the Tribunal to dismiss the claim."

Discussion and Decision

55. Having regard to ***Hellewell***, to which I was referred, I first had to consider whether there was a sum legally payable, in accordance with s. 13(3) of the Employment Rights Act 1996 ("the 1996 Act). Only if the answer was in the affirmative could the right not to suffer unauthorised deductions, in terms of sub-sections (1) and (2) of s.13 be invoked.

56. The issue for me, in short, was whether the claimant's self-employed locum GP work between April 2023 and October 2024 was reckonable service for the purposes of the Sick Leave provisions in paragraph 7.5 (P.70-75).

57. If not, this period of service would not be counted as reckonable and would be a break in service of more than 12 months which would mean Dr Sim was not entitled to the sick pay she claimed under paragraph 7.5.3.

58. I did not find this issue at all easy to determine. However, helpfully, I was presented with detailed, well-reasoned, well-researched submissions by both solicitors .

59. The general principles of interpretation are that a person seeking to interpret the contract must give the words their plain ordinary meanings which they normally bear in English; and the interpreter should consider the whole contract document and seek an interpretation which makes sense of and gives effect to the whole contract and each part of it.

60. While I was mindful that the T&Cs did not differentiate between a contract of service and a contract for services, as such, the contract is entitled "Terms and Conditions *of* Service".

61. I focused on the meaning of the word "service" and I came to the view that it meant employment, not self-employment..

62. Paragraph 7.5.3 which deals with previous qualifying service and refers to all periods of "service" means periods of employment under an employer, not the self-employed.

63. I was persuaded that the submissions by the respondent's solicitor in this regard were well-founded and were to be preferred.

64. For the sake of completeness, I also record my view that the period of time when Dr Sim worked as a self-employed locum would not be considered "Locum Tenens" for the purposes of paragraph 7.5.17 (P.74), as paragraph 11.7 also makes reference to "service" (P.77)

65. I was persuaded, therefore, that the submissions by the respondent's solicitor were well-founded and were to be preferred.

66. It follows, therefore, that I was also persuaded that the "service" referred to in the 1980 Regulations, which relies, to an extent, on paragraph 7.5.3 also means "employment".

67. The claimant's submissions in this regard therefore, were not well-founded.

68. Finally, for the sake of completeness, I also record that I found favour with the submissions by the respondent's solicitor that the approval of the Scottish Ministers, for the purposes of Regulation 82, was not "in effect" granted.

69. Accordingly, the claim is dismissed.

70. Finally, I wish to express my gratitude to the parties' solicitors for their assistance with this complex matter and for their careful oral and written submissions

Date sent to parties **9 October 2025**