



EMPLOYMENT TRIBUNALS

Claimant: Mr Rajesh Kapoor

Respondent: Kuwait Airways Company

WRITTEN REASONS

Request for Written reasons

1. I gave oral reasons for my decision at a 1-day hearing on 26 February 2026. These written reasons are given following a request made by the claimant's solicitors. It was not their first request. They initially asked for written reasons before the notification of judgment had been sent to them. They were told their application was premature, and asked to reconsider the need for it, given that the claimant had won the claim. They nevertheless renewed their application in due course, as they are entitled to do under the present rules.

The claim

2. This was a claim for unlawful deduction of wages, presented to the tribunal on 27 June 2025. At the hearing, I had access to a bundle comprising 206 pages (though I was only taken a limited number of pages from it). I heard evidence from the claimant, who produced a five page witness statement. No evidence was forthcoming from the respondent. I was given a skeleton argument running to 13 pages by Ms Thomas, the claimant's barrister. I heard oral submissions from both representatives.
3. The claim concerned non-payment of increments to the claimant's salary from the start of 2025. No dispute arose as to how much would have been payable (£2,676.30 gross), if the claimant was entitled to it.

4. Rather, the respondent's pleaded case was that the claimant was not contractually entitled to the increment. Instead, the respondent asserted that the claimant's only contractual entitlement was to a review, under the relevant terms of his contract. (The respondent produced no evidence to suggest that, upon any such review, the claimant's performance was found or would have been found to be wanting.)
5. That much is spelt out within the grounds of resistance. However, the respondent went a little further at the hearing. It was said that because the only contractual entitlement was to a performance review, if the claimant had a claim it was for breach of contract (failure to review) rather than for unlawful deduction of wages. Thus, as the claimant remained employed by the respondent, it was said that the tribunal did not have jurisdiction to hear the matter. The matter would thus need to go to the civil court.
6. Mr Healey, solicitor for the respondent, accepted this was not a point taken in the pleadings even though time issues -another jurisdictional point- had been taken. (He confirmed that it was no longer contended that the claim was out of time.) Nevertheless, I accepted that, as it was a matter going to jurisdiction, the point could properly be raised by him.

The facts

7. The claimant was employed by the respondent on the 1 December 2001 as an operations officer. He remains in their employment, and now holds a managerial position. His contract was subject to a clause which provided for annual incremental awards, up to a certain level. These increments in effect increased his salary. The amount was predetermined by a table drawn up by the respondent.
8. The clause at issue ("the increment clause") provided that the claimant's salary and eligibility for incremental awards "will be reviewed annually". It also provided that "increments are awarded for efficiency and are subject to satisfactory service and conduct".

9. Every year from 2001, the claimant was paid an increment which increased his salary as he moved inexorably up the pay steps.
10. I heard no evidence to suggest that any other employees were refused their increments at any time.
11. What appears to have taken place is that an email would have been sent by HR to the relevant manager requesting confirmation that an incremental rise should be approved. (More often than not, the author of the email would ask if there were any objections to the increment being given.) Once confirmation had been received, the increment was implemented and paid, typically from January each year. Employees were not copied into such correspondence. There is no evidence that any sort of formal review meeting or discussion with the employee took place with management to decide whether or not performance had been satisfactory and thus worthy of a salary increase. I accept the claimant's evidence that such meetings/discussions did not take place.
12. By January 2025, the claimant was on grade 8 salary, and on step 18 of the 25 incremental steps within that grade. In January 2025, he was due to progress to grade 19, which meant he would be paid an additional £2,109 p.a. by way of salary thereafter. He told me, and I accept, that there were no performance or other issues in the preceding year regarding his service or conduct.
13. Each of his colleagues received their incremental awards for 2025. However, for reasons which were not explained to him, he did not receive the award. The claimant sent various emails to HR and his line manager asking for clarification as to what had happened. He did not receive it. HR itself wrote to the claimant's senior manager trying to obtain clarification. Amongst other things, the manager was asked if he had any objection "to award the claimant his annual increment taking into account his efficiency, standard service and conduct". No response was forthcoming.

14. The claimant then raised a grievance on 27 May 2025 regarding the non-payment. Unfortunately, the grievance was (as he put in his evidence.) ignored by management, and the matter remained (and remains) unresolved.
15. The day after the claimant submitted his grievance, on 28.5.25 HR wrote to the senior manager at issue explaining “as per staff contract, annual increment[s] are not automatic... They are awarded for efficiency and are subject to satisfactory service and conduct... If the staff efficiency and satisfactory service and conduct are not what is expected then a line manager can refuse to award the annual increment. In this case, the staff should be aware of what improvements are required when advised that the annual increment will not be awarded. [The claimant] has received no information as the reason why the annual increment was not award[ed] in January 2025 and therefore has decided to send in a grievance.” No response was received.

The law

16. Unlawful deduction claims are governed by section 13 of the Employment Rights Act 1996. That section prohibits making deduction from wages of an employee unless for certain prescribed reasons. The amount which is properly payable must be capable of being ascertained. Some legal, though not necessarily contractual, entitlement the payment in question must be established. Reasonable expectation is not enough. See **New Century Cleaning Company Limited v. Church**.
17. ‘Wages’ includes salary, bonuses (discretionary or otherwise), and increments to salaries.
18. The construction of the contract falls to be decided by how the words would be understood by a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation they were in *at the time* of the contract. The background includes anything which would have affected the way in which the language of the document would have been understood by the reasonable person, see **ICS v West Bromwich** [1998] 1 WLR 896 at 912-3 *per* Lord Hoffmann.

19. When considering whether or not a bonus is discretionary rather than an entitlement, the language of the employment contract needs to be considered. If the contract contains the language of entitlement, it is very unlikely to be merely discretionary. And even where a bonus scheme is discretionary, that discretion cannot be exercised in an irrational or perverse way. See **Clarke and Nomura International plc**.
20. If a payment scheme is linked to productivity or ability, vague targets and terms of art are likely to be construed in favour of the employee. See e.g. **Murphy v. Enterprise Liverpool**, as described in **Geoffrey Gershon Williams v. Apsire Comms**.

Application to facts

21. In my judgment, the claimant was contractually entitled to the incremental award unless -which had not happened in his case- his performance in the previous year had been adjudged to be unsatisfactory. Thus, the claim was properly brought as an unlawful deductions claim.
22. In making this finding, I do not rely on the fact that the claimant had a reasonable expectation of payment (though I accept he had that reasonable expectation). Rather, I focus on the background facts and the increment clause, as I must, and on whether he had a legal right to payment under that clause on those facts.
23. The increment clause says that the claimant's salary would be reviewed annually. But it does not say that claimant would not be paid his salary unless and until a review had taken place. Similarly, I think that on a proper reading of the term applying the above principles, and with a view to the background facts, there was no requirement for a review to have taken place before the claimant became eligible for his incremental increase to that salary. Rather, the contract permits the respondent to withhold some or all of the incremental award if -but only if- issues relating to "service or conduct" had arisen in the previous year. Otherwise, the claimant was entitled to the increment, as well as his salary.

24. In other words, rather than a review which confirmed satisfactory service and conduct being a prerequisite to an incremental award, the award had to be made unless, upon review, issues had risen with performance. That appears to have been how things worked (even though, as a matter of good practise, HR may have checked with management before actioning the incremental awards).
25. There is also the more fundamental question of what a 'review' constitutes. The contractual term in question states that the salary and eligibility for incremental awards will be reviewed annually. It does not in fact say that unless and until a performance review had taken place, the employee would not be paid their increment. It could have said so.
26. I appreciate that HR on several occasions tried to establish from the senior manager whether or not he had any issues with paying the increment (having taken this course in previous years). But I do not think this somehow means the only relevant contractual responsibility the respondent had was to conduct a review, and that unless until that review took place, the claimant was not entitled to his increment.
27. More importantly, I do not think a reasonable person appraised of all the facts at the time of the contract would think otherwise.
28. I thus do not need to go to authorities concerning the irrational exercise of discretion. But if I did, I suspect that it would be strongly arguable that to ignore or fail to act on the claimant's and HR's requests for a review (or confirmation payment could be made), coupled with the absence of any issues with the claimant's performance and the fact that the sum at issue was known to all, might well mean an unlawful deduction claims could still be made out, founded on those matters.
29. If I am wrong, and the claimant could only bring a 'pure' breach of contract claim (which would not be open to him in the tribunal at this stage, given his continued employment), I make the following points:

- a. Mr Healey conceded that any such claim would not be subject to *res judicata* in the civil court simply because the claimant had brought his unlawful deductions claim in this forum. He is right to do make that concession.
- b. In the absence of any suggestion that the claimant had in any way rendered less than satisfactory service, I cannot see how the respondent could resist a contract claim for what would have been the inevitable result of a review (assuming the review had to precede liability to pay). Indeed, to resist such a claim might well have given rise to costs issues in the civil court -even in a 'small claims' context.

30. However, those points are academic for the reasons I have given.

31. The amount £2,676.30 (gross) in unauthorised deductions was agreed as a figure. I agreed with the submission that in the circumstances a 25% uplift for unreasonable non-compliance with the ACAS procedures was appropriate. The Claimant's grievance was simply ignored. The Respondent did not contend otherwise. The parties agreed that, including that uplift, the appropriate judgment sum was £3,345.38 (gross).

APPROVED BY
Employment Judge Michell
Date: 25 March 2026

Sent to the parties on:
18 May 2026
For the Tribunal: