EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002920/25

Final Hearing on 20 April 2026

Employment Judge Campbell

Mr V Giurgiu	**Claimant** **In Person**
Arnold Clark Automobiles Limited	**Respondent** **Represented by:** **Mr Meechan, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The respondent did not make unlawful deductions from the claimant's pay and the claim is dismissed.

WRITTEN REASONS

Introduction

1. This was a full hearing in person. Owing to pressure of time a judgment was not issued on the day. At the hearing the claimant gave evidence and on behalf of the respondent Ms Lisa Ramsay, Senior People Advisor gave evidence.

2. A joint hearing bundle had been prepared. Numbers in square brackets below correspond to pages within it.

3. The claimant remains employed by the respondent. There was one legal complaint, namely whether the respondent had made unlawful deductions from his pay by not awarding him an uplift to his hourly pay rate from 1 January 2025 onwards.

Relevant law

1. Under section 13 of the Employment Rights Act (the 'Act') a worker is entitled not to have unauthorised deductions made from their pay. Unless a deduction is required by law, it may only be made with the employee's specific and advance written consent.

2. For there to have been an unlawful deduction from wages, a worker has to have been paid less than the amount 'properly payable' to them, unless it is through an error.

Findings of fact

1. The claimant is employed by the respondent as a Technician, working at its Hillington premises. The respondent is a car dealership.

2. The claimant's initial contractual hours were Monday to Thursday, 8.00am to 5.30pm and Friday 8.00am to 4.30pm. He agreed informally with his manager, a Mr Devlin, that he would start at 8.30am each Monday and Thursday to help deal with childcare arrangements, and would make up the hour at a different time during the week. He tended to do this by coming in an hour early on Fridays. Mr Devlin's line manager was Mr Weir. He did not know about the arrangement.

3. The respondent operates an incentive scheme whereby Technicians can earn an additional 50p towards their hourly rate of pay if they are able to meet three criteria over a calendar year. It is referred to as the Technician Improvement Programme or 'TIP' for short. The requirements are published on the respondent's intranet [63-64]. The three criteria are (i) attendance and timekeeping, (ii) work quality and (iii) additional hours. Under the latter, employees had to work at least 52 hours of overtime in each half of the year. It is stated that 'Leave, including flexible leave, is deducted from extra hours and must be made up before counting towards the 52-hour requirement'.

4. Employees can consult an electronic dashboard to see whether they are meeting the requirements for the TIP uplift. To qualify, they must meet each of the three criteria in both halves of the calendar year, i.e. between January and June and then again between July and December. The pay uplift is then applied from the start of the following year.

5. The claimant’s information suggested that he had met all of the necessary criteria throughout 2024 and this was confirmed in meetings with his line managers in July 2024 and January 2025. He expected to receive the uplift in his February 2025 pay, backdated to 1 January but this did not occur. He pursued the matter with management who said they would look into it but his pay did not increase in March either.

6. In early April he raised a grievance about the matter and this was explored and responded to by a People Advisor named Ms Burt in writing on 22 May 2025 [99-101]. In summary, she found that the claimant had been working under an informal variation to his contractual hours. She gained that understanding by speaking to Mr Weir. By this point Mr Devlin had left the respondent’s service. Without addressing the question of the TIP uplift particularly directly, the implication was that because the variation to the claimant’s working pattern had not been established via a formal process, he had not met the timekeeping requirement of the scheme and therefore did not qualify for the increase.

7. The claimant appealed against this decision and Ms Ramsay took the matter up. She also investigated the claimant’s concerns and dealt more directly with the TIP uplift issue as well as the question of whether the variation to working hours had been validly agreed. She issued a decision by letter dated 27 June 2025 [115-117] which said that she had spoken to senior management who had confirmed that the claimant had met all of the TIP criteria whilst working under the variation to his working pattern, and that he would receive the uplift in his July 2025 pay. In reviewing the claimant’s working pattern itself she confirmed that he was entitled to continue with late starts on Mondays and Thursdays, but should not start at 7.00am on Fridays for health and safety reasons and because there was no business need. Instead, his number of weekly contractual hours would reduce by one from 44 to 43 and this would be formally agreed going forward.

8. Between 2 July and 16 September 2025 the claimant and Ms Ramsay exchanged emails, which were produced [119-127]. The claimant began by asking for clarification that the uplift would be backdated to January 2025 and she confirmed that it would. On 24 July he emailed her to say that he had received his payslip and the uplift did not feature. She agreed to look into the matter. On 31 July she emailed to say that it was ‘*currently being reviewed as there looks like there has been an anomaly in your TMS [time management system], as when you have been working back the 1 hour on a Friday it has been marked as overtime which has resulted in you receiving time and a half for this hour. This would also affect how much overtime you have worked for the TIP. It is currently being reviewed and I will be in touch when we have more information.*’

9. The claimant noted that the matter had not been rectified by the time of his August 2025 payslip and again emailed Ms Ramsay. Around this time Mr Weir

asked the claimant to come into his office and explained that on a review of working time records, he had not completed enough hours of overtime to qualify for the TIP uplift. The claimant emailed Ms Ramsay to say that she had decided he was due the uplift as part of her decision in his grievance appeal, and that by not paying it the respondent was making unlawful deductions from his pay.

10. Ms Ramsay proposed to arrange a meeting between the three of them. She said in an email on 2 September 2025 that '*On initial review of your TMS it looked like you had achieved your TIP, however when this has been reviewed again you have not met the criteria, which I believe Gregor [Weir] discussed with you.'* She repeated that it appeared that each hour he worked to make up for his later starts had been treated as overtime.

11. The claimant declined to meet. In his evidence he suggested that he was apprehensive about meeting Mr Weir in person. His email to Ms Ramsay at the time suggests that the reason was that he believed the matter had been concluded by the issuing of her decision, and that *'there is therefore nothing left to discuss so I respectfully decline your meeting invite'*.

12. Ms Ramsay was unable to meet with Mr Weir herself as he was on annual leave, but met with another manager Mr Dunsmore who had the claimant's time records and provided a summary of those to her. She incorporated the information in a letter to the claimant dated 23 September 2025 [128-129]. It showed, for each half of 2024:

    a. how many hours of overtime had been legitimately worked and paid,

    b. how many hours had been treated as overtime, but were in fact the claimant making up the time from his late morning starts,

    c. the hours for which he had been paid despite not working (in other words when he had been paid from 8.00am onwards despite starting at 8.30am),

    d. the dates when he had started late and not been paid for the half hour between 8.00am and 8.30am (i.e. the correct approach), and

    e. the number of hours of flexi time taken (which, under the rules of the scheme, had to be deducted from the overtime total).

    The net effect of the information was that the claimant had worked 36 hours of overtime in the first half of the year and 35.5 hours in the second. As the target for each half was 52 hours, he had not achieved that.

13. As the respondent's position did not change, the uplift was not paid to the claimant and he commenced ACAS early conciliation on 7 September 2025 with a view to presenting this claim, which he did on 1 December 2025.

Discussion and decision

14. The claimant's case was put forward on two grounds, namely (i) he had met all of the criteria to qualify for the TIP uplift in 2024, and so was entitled to it under the rules of the scheme, and (ii) that in any event Ms Ramsay had effectively bound the respondent to pay the uplift by virtue of her findings and conclusions in the grievance appeal. Each is considered below.

15. Regarding the claimant's primary argument, understandably it has to be said he believed that he was entitled to the TIP uplift at the beginning of 2025. Line managers had told him at the end of each six-month period that he had met all the criteria.

16. Further, when payment was not made and he raised a grievance, Ms Ramsay at the appeal stage effectively reversed the initial decision of Mr Burt and stated in clear terms that he had met all of the criteria and would be paid the uplift. In a subsequent email she clarified that this would be backdated.

17. It became clear however that Ms Ramsay was relying on information provided by the claimant's managers which was inaccurate. The true position was as explained by Mr Dunsmore to her around August or September 2025, which she conveyed to the claimant in her letter of 23 September 2025. The claimant was suspicious of why a different reason was now being given from the one initially relied on to refuse the uplift, but on the best evidence available it remained the case that he had not worked enough overtime hours. The fault was not with him in this being overlooked initially, but it remained a fact. Under the rules of the scheme, which he accepted were the correct criteria to be applied, he did not qualify.

18. The claimant's secondary argument was that the provisions of the respondent's grievance procedure [65-67] dictated that any decision taken at the appeal stage would be 'final and binding'. Whilst the procedure uses that language, in context it is a reference to an exercise of judgment or discretion by the appeal hearer and is binding in the sense that the employee raising the grievance must accept it. It cannot reasonably be read as an intention by the respondent to create in effect a new contractual right without something further being done, and it did not prevent the respondent from revisiting any conclusions once it became clear they were based on erroneous evidence. In particular, and in common with many employers' grievance policies, it is explicitly stated not to form part of any employee's contract of employment. Had it provisionally bound the respondent in the way the claimant wished, there would have been nothing legally to prevent the respondent departing from it.

Conclusions

19. In conclusion therefore, the claimant, on whom the onus of proof initially lies, was unable to establish that he was entitled to be paid any more than he received at any time, and therefore that unlawful deductions had been made from his wages.

20. The claimant deserves a degree of sympathy given that he was led to believe he had met the requirements for the pay uplift, only to be told some time after that the information was inaccurate. However, this perhaps should be balanced against the fact that it appears he was overpaid in respect of some of his shifts when starting later than normal or making up lost time.

21. The fact remains however that he has not proven his case on the evidence and the claim must therefore be dismissed.

Date sent to parties **27 April 2026**