



EMPLOYMENT TRIBUNALS

Claimant: Mr H De Mello

Respondent: Innovate Energy Solutions Limited

Heard at: Croydon (via CVP)

On: 22 May 2026

Before: Employment Judge Leith

Representation

Claimant: In person

Respondent: Mr H Tilmouth (Chief Executive Officer)

JUDGMENT with summary reasons was given at the hearing on 22 May 2026 and written summary reasons were requested at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. However, the Tribunal considers that it is appropriate to provide written full reasons, and the following written full reasons are therefore provided:

FULL REASONS

Claims and issues

1. The Claimant claims breach of contract and unauthorised deduction from wages.
2. The issues before the Tribunal had been discussed at a previous hearing before Employment Judge Fowell. The parties agreed at the start of the hearing that the factual issues between them were as set out in EJ Fowell's case management order, which were as follows:

The claims

11. Mr de Mello brings claims of:

- a) breach of contract and
- b) unlawful deduction from wages under section 13 Employment Rights Act.

12. There is little practical difference between these two types of claim. Each of the sums below are claimed on each basis in the alternative. The issues are as follows.

Half-year bonus

13. Mr de Mello says that he had a contractual entitlement to a half-yearly bonus of £7,500. This was last paid in April 2024. It was dependent on targets being achieved by the company as a whole rather than on an individual basis. He was therefore expecting one in November 2024 which was not paid, and again in April 2025.

14. The company's position is that the bonus was discretionary and that no targets were agreed (or met) for these periods. Further, he was dismissed from 1 April 2025.

15. Clause 18 of the contract of employment states:

"A bonus opportunity of £7.5k can be learnt (sic) each six months based on achieving specific targets. Start date to be agreed once exit from current employer is agreed."

16. Was this a discretionary bonus or a contractual entitlement?

17. If it was discretionary:

a) it does not come within the definition of wages at section 27 Employment Rights Act 1996 and so there was no unlawful deduction from wages;

b) it can only be claimed as a breach of contract if the entitlement was "reasonable, notorious and certain." (As decided in previous cases, such as *Devonald v Rosser and Sons* 1906 2 KB 728, CA, and *Sagar v H Ridehalgh and Son Ltd* 1931 1 Ch 310, CA).

18. If the bonus arrangement was sufficiently certain, when was it due to be paid?

19. In the case of any bonus in or around the end of November 2024, the claim is outside the normal three-month time-limit for bring a claim. Was it reasonably practicable for the claimant to have brought a claim within three months? If not, was it then brought within a further reasonable of time.

20. In the case of any bonus in or around the end of April 2025, did Mr de Mello lose his entitlement to it on being dismissed?

Share Options

21. The company has a share option scheme – the Enterprise Management Incentive (EMI) Share Options Scheme - under which employees may be entitled to purchase shares at a particular price at a certain period in time.

22. The company says that:

- a) This was never implemented.
- b) They did not get an HMRC valuation.
- c) No option agreement was ever signed.
- d) No vesting period was agreed.
- e) Any award of shares would have been at the discretion of the Board.
- f) Mr de Mello was not a Good Leaver as defined by the scheme.

23. Clause 18 of the contract of employment states:

"Tax efficient EMI options will be granted after a new valuation is approved by HMRC, the options will have a 12-month cliff and vest each 12 months over a three year period. More details will be issued shortly."

24. Mr de Mello maintains that his offer letter and contract of employment entitled him to share options. Further, it was for the company to ensure HMRC valuation and other steps to implement the scheme.

25. Was there a contractual entitlement?

26. If so, what was agreed in terms of the number of options, price of shares and vesting arrangements?

27. For the purposes of the claim of unlawful deduction from wages, does such entitlement come within the definition of wages?

28. Was Mr de Mello a Bad Leaver? This is a defined term in the EMI scheme. It provides:

"Bad Leaver" means an Option Holder who ceases to be employed by or hold office with the Company and all other Group Companies and who is not a Forced Leaver, a Good Leaver or a Voluntary Leaver;"

...

"Good Leaver" means an Option Holder who ceases to be employed by or hold office with the Company and all other Group Companies at any time by reason of:

- (a) death;
- (b) permanent incapacity;
- (c) redundancy;
- (d) dismissal by the Company or any Group Company otherwise than for Cause; or
- (e) the Board determining that the Option Holder is a Good Leaver.

29. The company's position is that Mr de Mello was guilty of some serious failings including the loss of 74 charging stations worth approximately £25,000. They also rely on the fact that he sent a field operative to Greene King pubs in breach of the company's protocol not to attempt to sell directly to sites in this way.

30. Mr de Mello disputes this. He points out that his final pay slip refers to redundancy and more generally that he was dismissed to avoid paying him sums owed.

Share Options outside the EMI scheme.

31. Mr de Mello says that he was entitled to additional shares, outside the EMI scheme. This was agreed on or about 29 November 2024 when he was promised a salary increase of 2.75 per cent to be paid in shares.

32. The respondents says that the only share scheme was the EMI scheme and there was no promise to award shares outside that scheme.

Holiday pay

33. It is agreed that an emergency situation arose over Christmas and New Year 2024/2025. Mr de Mello says that he was required at short notice to work over that period of about five days despite having booked holiday, and so is entitled to be compensated for that loss of holiday.

34. Those facts are largely undisputed save that Mr Tilmouth was also working over that period.

35. It also appears to be agreed that no subsequent discussions took place about restoring those lost holiday days and that this was only raised on termination.

36. The contract of employment entitled Mr de Mello to 33 days holiday per year, including public holidays. The holiday year began on 1 January.

37. Was there an agreement, express or implied, to carry over holiday from the 2024 holiday year to 2025?

38. If so, how much holiday had been accrued at the date when the employment ended?

39. How much holiday had been taken by that date?

40. What balance was owing on termination?

41. How much was paid on termination?

Notice Pay

42. The contract provides for two months' notice in writing.

43. Mr de Mello was told of his dismissal on 1 April 2025. This was confirmed in writing on 10 April 2025.

44. Should the notice period have run from 10 April 2025?

45. If so, Mr de Mello was entitled to an additional nine days pay and benefits.

Other points

46. In respect of these claims the Tribunal has no power to award interest, damages for injury to feelings or any uplift for breach of the ACAS Code of Practice."

Procedure, documents and evidence heard

3. I heard evidence from the Claimant and from Mr Hugo Tilmouth (who I refer to within the remainder of these reasons as "Mr Tilmouth"). Both gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined. Mr Tilmouth's witness statement was prepared after he had seen the Claimant's. The Claimant did not suggest in terms that I ought to disregard it on that basis.
4. The Respondent had also tendered a witness statement from Mr Graeme Tilmouth, the Respondent's Chief Financial Officer. Mr Graeme Tilmouth was in Portugal, and he had connected to the CVP hearing from there. Individuals in Portugal must seek permission on an individual basis from the Portuguese authorities to give evidence in UK Tribunals. The Respondent had not sought permission for Mr Graeme Tilmouth to give his evidence from Portugal. This appeared to be because there had been some confusion following the hearing before EJ Fowell about whether the Tribunal would apply for permission on the Respondent's behalf. The relevant Presidential Guidance makes it clear it is a matter for the party seeking to call a witness to ensure that any necessary permission is in place.
5. I asked the Respondent at the start of the hearing whether they were asking me to postpone the hearing so that either they could seek permission for Mr Graeme Tilmouth to give evidence from Portugal, or so that Mr Graeme Tilmouth could arrange to come to the UK to give his evidence at a relisted hearing. I explained that a Tribunal would only generally be able to give limited if any weight to the witness statement of a witness who had not attended the hearing to be cross-examined. The Respondent indicated that

they wanted to proceed with the hearing without Mr Graeme Tilmouth giving evidence.

6. I had before me two separate bundles – one of 229 pages prepared by the Claimant, and one of 230 pages prepared by the Respondent. There were a number of common documents between both bundles. I explained to the parties that I would not read all of the documents in the bundles, but only those to which I was specifically referred.
7. At the end of the evidence I heard submissions from both parties. I also had summary documents prepared by both parties summarising their respective positions on the issues in dispute.

Factual findings

8. I make all of the factual findings within this judgment on the balance of probabilities. I have not dealt with every area canvassed before me; rather, I have focused on those necessary to reach a conclusion on the issues in the claim.
9. The Respondent installs mobile telephone charging stations in pubs and clubs. The Claimant commenced employment with the Respondent on 1 November 2023 as Head of Operations.
10. On 13 October 2023, Mr Tilmouth emailed the Claimant regarding the terms on which he was being offered a role with the Respondent. He said this:

“Title: Head of Operations

Progressing to: COO in 1 year (based on targets)

Package: £100k = £75k cash + 25k options @ £5m val = 0.5% per year

We will also include a bonus based on mutually agreed targets for at the end of the first 6 months equal to £7.5k and the same at the end of the first 12 months.

We can discuss the exact details of this target but I would suggest its tied to revenue growth or EBITDA.

If you are happy with the above terms we can discuss the start date and notice period and draft the full contract for you.”

11. The Claimant’s contract of employment was dated 16 October 2023. Insofar as relevant, it provided as follows:
 - 11.1. The Claimant’s salary was £75,000 per annum, which accrued from day to day at 1/260th of annual salary.
 - 11.2. The Claimant was entitled to 33 days holiday per year, pro rata. The holiday year began on 1 January. Three days could be carried over into the following year, to be used within the first 3 months of that year.

11.3. The Claimant's notice period was two months (or statutory notice if greater). Clause 14.1 specified that notice must be given in writing.

11.4. The Respondent was entitled to pay in lieu of notice.

11.5. Clause 17 said this:

"17.1 This Agreement contains the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to your continued employment.

17.2 Each party acknowledges that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, undertaking or warranty (whether made innocently or negligently) whether written or oral, save as is expressly set out in this Agreement.

17.3 No party will have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

17.4 Nothing in this Agreement will limit or exclude liability for fraud."

11.6. Clause 18, headed "Additional items", said this:

"Tax efficient EMI options will be granted after a new valuation is approved by HMRC, the options will have a 12 month cliff and vest each 12 months over a three year period. More details will be issued shortly.

A bonus opportunity of £7.5k can be learnt [sic] each six months based on achieving specific targets.

Start date to be agreed once exit from current employer is agreed."

12. On 29 November 2024, the Claimant and Mr Tilmouth had a discussion about strategy. The Claimant followed that meeting up in writing. He noted that the 2025 and 2026 targets for the business were as follows:

12.1. £25M+ revenue;

12.2. £3M EBITDA; and

12.3. 5,000 locations.

13. Within the same email, the Claimant described the bonus going forward as being "1/3 based on the companies performance, and 2/3 based on revenue per station and online status, based on monthly targets to be established". He additionally noted that he would get a salary increase of 2.7%, converted into company shares.

14. On 20 December 2024, the Claimant emailed Mr Tilmouth asking if he agreed to the points set out in the 29 November 2024 email. Mr Tilmouth

responded on 23 December 2024. He explained that the salary increase was agreed. Regarding the bonus he said this:

“On the bonus I suggest going forward to place the bonus on hitting the revenue target each month. If we hit it gets paid if not it does not and it's a monthly bonus.

I am happy to look at increasing this bonus if we have a full quarter over target and same with end of year if we have a full year over target.

We can then do the first bonus tied to Nov being above target then go from there.”

15. On 20 January 2024, Mr Tilmouth emailed the Claimant. He indicate that there was no bonus for Q3 and Q4 of 2024, as the business did not hit its targets (he did not specify what the targets were or explain how he said they were not met). He proposed that the bonus scheme for Q1 and Q2 of 2025 be revised to allow the Claimant to achieve twice the previous monthly bonus If targets were hit. He proposed a monthly bonus of £2,500 based on purely operational targets (relating to the number of charging stations online).
16. On the same day, the Claimant emailed Mr Tilmouth setting out that the Respondent has “met or exceeded most targets” during the period. His email included a table which showed that revenue was ahead of projected revenue for each month from July to December save October and December, and that the overall revenue across the six months was above the projected revenue by £16,570.
17. Over the 2024 Christmas period, the Claimant was on pre-booked annual leave in Brazil. An issue arose with the Respondent’s operation during that period. Mr Tilmouth asked the Claimant’s availability. The Claimant explained that he would be available to do some work, and that he could work a full day if “extremely necessary”. It is common ground that the Claimant did do some work for the Respondent during that period. He did not, however, ask to either cancel or reschedule his annual leave or take time off in lieu.
18. On 1 April 2024, Mr Tilmouth told the Claimant orally that he was being dismissed. He followed that up with a message on 2 April 2024 with a message in which he proposed that the Claimant would continue to work until the end of April, then be paid in lieu for May. He concluded the message by saying this: “Please confirm if you’re happy with this, and I’ll arrange for the formal notice to be issued”. The Claimant replied the following day asking questions about his bonus and about his share options.
19. On 10 April 2024, the Claimant was emailed a dismissal letter. The dismissal letter itself was silent regarding the reason for the dismissal. The covering email referred to the reason as being “your misrepresentation of

the Greene King situation, which put one of our largest contracts at significant risk". The covering email additionally suggested that the Respondent considered that there were grounds to summarily dismiss the Claimant, but that they had decided not to do so. The email said this regarding bonuses and share options:

"Bonus Query – Email

As discussed previously, the Q3/Q4 bonus was discretionary and was not awarded due to the following factors:

Loss of 50–70 units during the period, valued at approximately £25,000–£35,000

Delayed reporting and reconciliation of these losses, well after any potential solution could have been actioned

Agreement to work remotely from Brazil was conditional on having stable operations in place—unfortunately, this was not implemented. When 50% of the network went offline, there was no contingency plan

Refusal to return to address the issue, resulting in me stepping into the operations role, hiring 35 field workers in January, and building the necessary processes from scratch

Given these circumstances, the bonus was not awarded.

[...]

Share Options

As you are leaving as a bad leaver, no share options will be granted or retained, in accordance with the share option agreement."

20. The reference to the Greene King situation was a reference to an issue with a large client of the Respondent. Greene King had asked the Respondent not to contact individual premises regarding fitting chargers as they preferred the matter to be dealt with centrally.
21. The Claimant's evidence was that what had happened was that an operative from the Respondent had been at a Greene King pub (at Greene King's request). While he was there, the manager was speaking to other managers in the region, and asked them if anyone else wanted a charger fitted, at which point a number said they did. The operative then asked the Claimant if he could fit charges in those places, and the Claimant told him that he could. Two days later, the client contact from Greene King contacted the Claimant to confirm installation in those locations.

22. Mr Tilmouth referred to WhatsApp messages which he said proved that the Claimant had misled him regarding the Greene King situation. They were not, however, in the evidence before the Tribunal. Nor was there any evidence before the Tribunal from Greene King regarding being concerned about what had occurred. Mr Tilmouths' evidence in his witness statement was extremely sparse (even though it was produced after he had received Claimant's statement).
23. Mr Tilmouths' witness statement referred to the incident as having come to light on 25 April 2025. In oral evidence h explained that that was an error, and that it must have come to light earlier. His evidence was that he could not recall the precise date but though it might have been a month earlier on 25 March 2025.
24. On 25 April 2024, Mr Tilmouth emailed the Respondent's investors with an update. In that email he described the reason for the Claimant's dismissal as being "the slow roll out (and putting agreement at risk – happy to discuss specific directly) and total lack of systems to run the operations (leading to lost stations)". He also referred to the Claimant being replaced by someone else who did a far better job for less than half the cost.
25. The Claimant's pay slip for May 2025 described his final payment as "tax free redundancy". It was paid without deductions for income tax and NI. Mr Tilmouth's evidence was that that was the Claimant's payment in lieu of notice, and that it was paid in that way to be tax efficient for the Claimant. I note that while this is not a tax Tribunal, the parties may wish to reflect on whether the Claimant has paid (and the Respondent has deducted) the correct income tax on that payment, and consider whether they need to report the payment to HMRC.
26. The evidence of Mr Tilmouth was that the Claimant was dismissed for a "serious breach of trust", namely the Greene King issue and the Claimant initially denying that he had instructed the field operative to contact a Greene King venue without authorization. Mr Tilmouths' statement also referred to operational failings, which were described as:
 - 26.1. Incorrect contractor bank details supplied on multiple occasions;
 - 26.2. Contractor payment delays and reversals;
 - 26.3. Errors in operational reports requiring senior correction;
 - 26.4. Poor communication with external partners;
 - 26.5. Delays in providing essential operational data; and
 - 26.6. "More seriously, 74 charging stations went missing during the Claimant's tenure, which he was responsible for tracking and recovering. The total value of these losses was approximately £25,900, representing a major operational failing for a small business."

27. I was not taken to any evidence underpinning those allegations, and there was of course no disciplinary process in which the allegations were put to the Claimant.
28. The claimant notified ACAS under the early conciliation process of a potential claim on 26 April 2025 and the ACAS Early Conciliation Certificate was issued on 7 June 2025. The claim was presented on 19 June 2025.

Law

Breach of contract

29. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that Employment Tribunals have jurisdiction to consider certain complaints of breach of contract. The Tribunal only has jurisdiction where the claim is brought by an employee, and where the claim arises or is outstanding on the termination of the employee's employment.
30. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.
31. A claim of breach of contract must be presented within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonable practicable to do so, in which case it must be submitted within what the Tribunal considers to be a reasonable period thereafter.
32. Bonuses may be contractual or discretionary. A contractual bonus is one which is incorporated into the employee's contract, and can be enforced. A discretionary one is one which is at the discretion of the employer.
33. Contractual terms regarding a bonus must be interpreted in line with the meaning they would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract (*Investors Compensation Scheme Ltd v West Bromwich Building Society (No.1)* [1998] 1 WLR 896).
34. If there is an express entitlement regarding entitlement to a bonus but no agreement on the amount or method of calculation, the entitlement is still enforceable (*Messtechnik v Hartley* [2012] EWHC 2013 (QB)).
35. Where a bonus is discretionary, the employer must nonetheless not exercise its discretion in an irrational or perverse manner. Failure to do so will mean that the employee is entitled to be compensated in respect of the failure (*Horkulak v Cantor Fitzgerald International* [2006] EWCA Civ 1287).

In that case, the relevant cause in Mr Horkulak's contract said that the employer "may in its discretion" pay a bonus.

Unauthorised deduction from wages

36. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. A deduction occurs where the total amount of wages paid on any occasion by an employer to worker is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions).
37. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.
38. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.
39. In order to determine what wages are "properly payable", the Tribunal may need to interpret the contract of employment (*Agarwal v Cardiff University and anor* [2019] ICR 433).

Conclusions

40. I start by making a finding about the Claimant's dismissal. The Respondent's pleaded case is that the Claimant was dismissed for misconduct, although the ET3 did not set out in terms the alleged misconduct relied upon.
41. As no disciplinary process took place, the allegations against the Claimant were never tested in that way. It is for the Respondent, who asserts that the Claimant was in repudiatory breach of his contract, to prove such a breach. Although it is trite to say so, I can only decide the case on the evidence before me.
42. I accept the Claimant's version of events regarding what transpired with the Greene King incident. It was consistent with the contemporaneous email before me from Greene King regarding installing chargers in the premises in question. Tellingly, there was no real evidence before me regarding the Claimant's alleged misleading of Mr Tilmouth. Mr Tilmouth referred in his

evidence to WhatsApp messages which were not in evidence before me. Nor was there any evidence before me to suggest that Greene King had had any issue with the way the Claimant acted. Indeed, they renewed their contract with the Respondent very shortly thereafter, which is not suggestive of it being as serious a matter as Mr Tilmouth sought to suggest.

43. On the evidence before me, I therefore can see nothing in the Greene King incident which constituted gross misconduct by the Claimant, or which would have justified summary termination.
44. The other matter referred to by Mr Tilmouth in his evidence were, in my judgment, properly characterised as performance issues. And it is significant that they were not referred to in the covering email to the dismissal letter (which only referenced the Greene King situation). There was nothing on the evidence before me to suggest that they constituted gross misconduct or gross negligence.

Half year bonus

45. The Claimant relies upon clause 18 of the employment contract. The Respondent's case was that the use of the word "opportunity" in clause 18 means that the bonus was a discretionary one.
46. I find that the bonus was not a wholly discretionary one. The opportunity to earn a bonus was an important component part of the Claimant's remuneration package. That is consistent also with the size of the bonus. And of course the size of the bonus was fixed within the contract. That is also inconsistent with the bonus being discretionary. It is also consistent with the way it was framed in the offer email. While the offer email did not form part of the contract, it is nonetheless in my view a helpful indication of what was in the parties' minds regarding the status of the bonus as a part of the Claimant's overall remuneration package.
47. The element of the bonus that was discretionary was the targets. While the offer letter referred to the targets being "mutually agreed", the contract referred to them as being "specified". I consider that the meaning of the wording in the contract was that the targets were to be set by the Respondent.
48. It was common ground that the Claimant was paid a bonus in respect of the first six months of his employment. There was nothing to suggest that the targets were changed; the target at that point was based on the Respondent's revenue.
49. Mr Tilmouth asked the Claimant in cross-examination to show evidence of the targets being set. But given that Respondent had the whip hand, I consider that it was for the Respondent to demonstrate that the targets were set. Insofar as the Respondent had a discretion regarding setting targets, that was a discretion which needed to be exercised in a way that was not

irrational or perverse. The Respondent's case was that since no target had been set, no bonus was payable. In my judgment, that was an entirely perverse approach to the bonus. It would also be perverse in my judgment to seek to change the targets or to import a new target retrospectively.

50. Doing the best I can with the evidence before me, I therefore conclude that the Claimant's bonus entitlement in the second half of 2023 was based on the Respondent meeting a revenue target. The contract was clear that the bonus was six-monthly (although Mr Tilmouth had referred to moving to a monthly target going forward).

51. Both Mr Tilmouth and the Claimant referred in the contemporaneous correspondence to performance being assessed across the third and fourth quarters of 2024 – that is, July to December 2024. It therefore appeared to be common ground that that was the period over which the bonus fell to be assessed. Importantly, I have seen nothing to suggest that the intention was that the target had to be met in each individual month. And that is something which I consider would have needed to have been spelled out expressly. The ordinary inference from a bonus being paid every six months is that it is intended to capture performance across the entirety of the six-month period. That is also consistent with the fact that Mr Tilmouth later sought, in the email of 23 December 2024, to change to a monthly bonus.

52. I conclude that the Respondent met its projected revenue target for that period. I reach that conclusion for the following reasons:

52.1. The Claimant's email of 20 January 2025 set out the Respondent's performance against target, which showed that the revenue target was exceeded across second half of 2024.

52.2. Importantly, Mr Tilmouth did not respond to take issue with either the target or actual revenue figures presented by the Claimant, or to suggest that they were inaccurate.

52.3. In the context of whether targets had been met, Mr Tilmouth's email of 20 January 2025 referred to there having been losses across the period. But that is a different point. I have found that the bonus was based on revenue rather than profit. Mr Tilmouth was clearly dissatisfied with the overall performance of the Respondent, and its apparent lack of profitability. I consider that his concern in that regard led to him looking for a way to avoid paying a bonus to the Claimant. That is also consistent with what he said in the email of 10 April – in that email he gave a number of reasons for withholding the bonus, none of which were related to revenue. Those may very well have been factors that led him to feel that the Claimant did not deserve a bonus; but they were not part of the targets in place as of the third and fourth quarters of 2024, and the Respondent was not entitled to withhold the bonus for any of those reasons.

53. It therefore follows that the Claimant was entitled to his bonus for the second half of 2024. By failing to pay it, the Respondent was in breach of contract. That breach remained outstanding at the termination of the Claimant's

employment, so he is entitled to pursue it as a breach of contract claim. The claim was brought in time with reference to the termination date, so there is no jurisdictional issue. I therefore award the value of the bonus, £7,500, as damages for the breach.

54. In light of that conclusion, I need to consider the claim as a complaint of unauthorised deduction from wages.

55. The Claimant's employment did not continue for a further six months. To the extent that the bonus was changed to a monthly one from January 2025 onwards, the target had been changed to be based on stations online. Mr Tilmouth was entitled to make that change. It was well within the ambit of the Respondent's discretion, and was certainly not irrational or perverse given that the Claimant's role had an operational focus. Mr Tilmouth's evidence, which was not disputed, was that the Claimant never met that target in any of the months from January to April 2025. So no bonus accrued from January 2025 onwards.

EMI share options

56. The Claimant's contract plainly entitled him to EMI share options. The wording was that the options "will be granted" – it was not caveated in any way, save that it would happen after a new valuation was approved by HMRC. The offer letter, while not a part of the contract, made it abundantly clear that the options were an important part of the Claimant's overall remuneration package.

57. It was put to the Claimant in cross-examination that:

- 57.1. He had never signed (and was never given to sign) and EMI options agreement;
- 57.2. He was never issued with a grant certificate; and
- 57.3. There was no Board resolution granting options.

58. The Claimant agreed with all of those propositions. His evidence was that those were all matters that were in the control of the Respondent, and that the Respondent failed to do them. The Respondent's case appeared to be based on the proposition that, as a matter of fact, the Claimant never received the EMI options. That is plainly accurate. But the reason he did not receive them was because the Respondent did not take the steps it was required to take in order to grant the options.

59. The contract entitled the Claimant to the options. He did not get them because of the Respondent's failures. It must in my judgment be implicit in the contract that the Respondent was required to take the steps necessary to grant the options to the Claimant. I consider that by failing to take the steps it was required to take in order to formally grant the EMI share options to the Claimant, the Respondent therefore breached the Claimant's contract of employment.

60. An EMI Options Agreement for another employee was in evidence before me. I do not consider that it assists me, however, because the Claimant never entered into an EMI Options Agreement. I cannot say whether the Claimant's agreement would have been in the same terms. The Respondent did not advance its case on that basis at the hearing before me.
61. For completeness, because it was noted by EJ Fowell as being an issue in dispute, I should say that had I considered that the EMI Options Agreement assisted me to understand the terms under which the Claimant's EMI options would have been granted, I would have concluded that Mr De Mello was not a "bad leaver" as defined in the EMI Options Agreement. This is because the definition of a bad leaver was an option holder who was dismissed by reason of dismissal other than for Cause. Cause was defined as "behaviour entitling the Company to summarily dismiss the Option Holder or terminate employment as a result of gross misconduct, gross negligence and/or dishonesty". It flows from my previous conclusion that the Claimant was not dismissed for cause within the meaning of the EMI Options Agreement, because the Claimant had not committed behaviour entitling the Respondent to summarily dismiss him or dismiss him for gross misconduct, gross negligence or dishonesty.
62. The Claimant is therefore entitled to damages for the breach. The breach of contract was outstanding at the termination of the Claimant's employment.
63. I consider that the best I can do value those options is to use the value that the offer letters puts on them. The offer letter provided that the options would be worth £25,000 (it provided that the Claimant's remuneration package was £100,000 per year, with £75,000 as cash and £25,000 as options). The contract provided that there would be a one year cliff and that the shares would then vest over three years. So the first tranche would have vested on 31 October 2023 (one year after the Claimant's employment commenced). That tranche would have been one third of £25,000 worth of share options – so £8,333.33. Therefore I award the sum of £8,333.33 as damages for breach of contract. As this has succeeded as a complaint of breach of contract, I do not need to consider it as a complaint of unauthorised deduction from wages.

Extra share options

64. It was agreed that the Claimant was entitled to a salary increase of 2.7%, paid in shares. That was discussed at the strategy meeting in November 2024, and set out in writing in the Claimant's follow-up email. Mr Tilmouth confirmed in writing that he agreed. It is common ground that the Claimant was never given those shares.
65. I find that the increase was intended to take effect from December 2024. That is, in essence, an agreed variation to the Claimant's contract. It would

be nonsensical to suggest that the Claimant could not enforce an agreed salary increase.

66. By failing to give the Claimant those shares, the Respondent breached his contract of employment. He is entitled to damages for that breach. The best I can do to put a value on that is the value of the shares the Claimant should have been given, which was set by reference to the value of the Claimant's salary. That entitled him to £2,025 worth of shares per annum (2.7% of his salary of £75,000). For the six months from December 2024 to the end of the Claimant's employment in May 2025 (including the PILON period he was paid), that gives a total of £1,012.50, which I award as damages for breach of contract. As this has succeeded as a complaint of breach of contract, I do not need to consider it as a complaint of unauthorised deduction from wages.

Holiday pay

67. The Claimant's case is that he worked some days that should have been annual leave over the Christmas period. There was clearly evidence that the Respondent asked him when he would be available during that period. But there was no evidence that the Claimant sought to cancel his pre-booked annual leave. Nor was there evidence before me that the Claimant ever requested time off in lieu, or to take back any annual leave. The Claimant was employed in a senior position. I consider that if he had intended to cancel his annual leave, he would have said so.
68. It follows therefore that the Claimant was correctly paid on termination for the annual leave he had accrued but not taken.

Notice

69. The Claimant was informed of his dismissal orally on 1 April 2025. But that was not put in writing until 10 April 2025.
70. The contract was clear that notice of dismissal had to be in writing. In the circumstances, the oral notification of dismissal on 1 April 2025 was not effective to start his notice period running. His notice period should have run from 10 April 2025 not 1 April 2025.
71. The latter part of the Claimant's notice was paid in lieu, taking him up to the end of May 2025.
72. The Claimant's contract provided that his pay accrued at the rate of 1/260th per working day. The Claimant's salary at that point was £72,025 (including the value of the pay increase which was to be given shares). His daily rate of pay was £296.25. There were 7 working days in June 2025 for which he was not paid. That gives a total of £2,073.75, which I award as damages for breach of contract.

73. The total damages I award for breach of contract are therefore £18,919.58. All of the calculations are based on gross sums (net figures were not available). There is therefore no grossing up to perform.

Approved by:
Employment Judge Leith
Date: 19 June 2026

Sent to the parties on:
Date: 25 June 2026