



EMPLOYMENT TRIBUNALS

Claimant: MR G WESSON

Respondent: ACTIVITY SUPERSTORE LIMITED

Heard at: Reading (by video) **On:** 26 March 2026

Before: Employment Judge Findlay

Representation

Claimant: In Person

Respondent: Mr C Bennison, Citation

JUDGMENT having been sent to the parties on 11 May 2026 after judgment and summary reasons were given orally on 26 March 2026, and summary reasons having been requested by the claimant in accordance with Rule 60(4B)(b) of the Employment Tribunals Rules of Procedure and provided on 10 June 2026, and the respondent then having requested full reasons in accordance with section 4C and (7) of those rules, the following full reasons are provided :

FULL REASONS

The Issues

1. This claim was made on the 10th of March 2025, after early conciliation took place between the 10th of February and the 10th of March 2025. The claimant was employed as Group Financial Controller for the respondent from the 14th of August 2023 until 23rd January 2025.
2. The claimant resigned from his employment giving three months' notice on the 24th of October 2024.
3. The claim is about whether the claimant is entitled to a payment in respect of what has variously been referred to as a "sick pay" or alternatively an "attendance" bonus in circumstances where he had given his notice to the respondent (but was still employed) at the point when such bonuses in respect of attendance during the previous calendar year (2024) fell due to be paid in January 2025. The claimant says that he discovered (on or about the 6th of January 2025) that he would not be paid this bonus, although he says that he was entitled to it as he had not taken any time off sick in the previous calendar year.

4. The claim is put as either a complaint of unauthorised deduction of wages under section 13 of the Employment Rights Act 1996 or alternatively as a breach of contract claim under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Given the dates of early conciliation, a claim about anything which occurred **from the 11th of November 2024** is likely to have been made in time, and therefore it appears that the claimant's claim in respect of the bonus is in time.
5. The respondent's case is that there were limits on entitlement to the bonus and that payment was discretionary overall. The respondent says that the bonus was not payable to someone who was still in their probationary period (and indeed this limitation is referred to expressly in the Employee Handbook), but also if there were outstanding disciplinary proceedings in respect of the employee in question when the payment fell due or if an employee was within the notice period when payment fell due (the following January in respect of each calendar year).
6. It is common ground that the claimant was indeed in his notice period when payment of the bonus became due in January 2025.
7. Mr Bennison on behalf of the respondent argued that there was either an express oral term of the contract of employment that payment of the bonus payment was subject to the employee not being within their notice period or having outstanding disciplinary proceedings against them at the time the payment fell due, or alternatively that there was an implied term to that effect, implied by custom and practice, so that there was no unauthorized deduction or breach of contract.

Findings of Fact

8. The claimant's contract of employment states, at page 30 of the bundle under "Bonus payments", that:
"There is a bonus scheme in operation in respect of your employment, details of which will be issued to you separately. The company reserves the right to review the scheme periodically and any changes that affect you will be notified to you in advance."
9. It is agreed that the "details" referred to in the contract were provided to the claimant in the Employee Handbook, the relevant version of which is in the bundle starting at page 38. This version says that it was updated on the 21st of July 2021, and it is said to be version 3.10. The respondent says that this was the version which was in force at the time of the claimant's employment and that was not disputed.
10. At page 46 of the bundle, the provisions regarding the "attendance" or "sick pay" bonus are set out. It refers to the respondent's contractual sick pay scheme. It says: "on successful completion of your probationary period the scheme provides for the payment of up to three days basic pay (pro rata) in any calendar year".
11. The Handbook continues: "At the end of the calendar year if you have not used any or all of the three company paid sick days you can

choose to either; receive pay for the unused days in January of the following year [this is what the claimant refers to as attendance/ sick pay bonus] OR choose to take the unused days as additional holiday during the year". It concludes by saying that "days taken as additional holiday are for that year only and are not a permanent change to your annual leave".

12. It is common ground that the claimant was employed from the 14th of August 2023 until the 23rd of January 2025 and that the bonus in question refers to the calendar year 2024. No one suggested that the claimant had used any of his three (pro rata) company paid sick days in the 2024 calendar year.
13. Apart from the need to complete the probation period before the bonus payment becomes payable, the limitations on payment referred to by the respondent, that is that it is not payable to employees who are in their notice period or subject to disciplinary proceedings, and is in any case discretionary, are not referred to in the written contract or in the Employee Handbook. Mr Powell, the respondent's Chief Executive, accepts in his witness statement this bonus scheme is a contractual scheme and that the terms are set out in the Employee Handbook.
14. There was no evidence given before me, and it was not put to the claimant, that at the time he entered his contract of employment he was told that the attendance/sick pay bonus would not be paid if he was within his notice period when that payment fell due, or indeed that he was told that it would not be paid if there were outstanding disciplinary proceedings against him at that point or that it was discretionary. That is, there was no evidence before me that there were express oral terms to that effect and I find that there were no such express oral terms.
15. Alternatively, Mr Bennison says that a term limiting the availability of sick pay/attendance bonus should be implied into the claimant's contract based on custom and practice.
16. There was no documentary evidence before me as to when this bonus scheme started. Mr Powell, who gave evidence for the respondent, said he thought that it was about 10 years ago.
17. The claimant says, and I accept, that he was not aware of any bonus scheme regarding to attendance/sick pay when he was previously employed by the respondent around 2013, nor later when he worked for the respondent as a contractor – and clearly, it would not affect him unless he was an employee. Of course, this does not mean that a term cannot be implied by custom and practice (even where the employee is unaware of it) but see below.
18. Mr Wesson says, and I accept, that he only became aware of the details of the sick pay/attendance bonus scheme around the 6th of January 2025 when he was told about it by Mr. Miller, the then Finance Director, and that Mr Miller said he (the claimant) would not be paid it as he was in his notice period. I accept the claimant's evidence about this, as the claimant only became involved in dealing with payroll in

October 2024, and issues of payment of sick pay/attendance bonus did not arise until January the following year.

19. Mr Powell said the claimant received a one-day pro-rata attendance bonus in January 2024. No evidence to that effect was produced. Even if Mr Powell is correct, however, that is not evidence that the claimant knew about any exceptions to entitlement to payment. Even if he read the Employee Handbook, the only limitation referred to there is the need for the employee to have passed their probationary period.
20. Mr Powell's statement simply asserts that there were restrictions/exceptions to payment of the bonus which were "known across the business". He gives no details of any other example of the application of these exceptions before January 2025, and there is no documentary or other evidence at all of any particular employee being refused payment of the bonus due to being in their notice period or having disciplinary proceedings against them when the payment fell due or for any other reason prior to the claimant entering his contract.
21. This is the relevant point in time for consideration of whether there was such an implied term -otherwise, there would need to be evidence about an agreement to vary the claimants contract to include the restrictions. There is no such evidence, and I do not accept on the balance of probabilities that the restrictions on payment to which Mr Powell refers to were known either by the claimant or "across the business".
22. At paragraph 12 of his statement, Mr Powell says that it was clear that the restrictions were included in the scheme as it had operated in this way since the beginning of the scheme "years ago". Despite this assertion, the alleged limitations about being in a notice period or being subject to disciplinary proceedings were not included in the Employee Handbook when it was revised in 2021. As noted above, there is no evidence of the payment not being made to those in their notice period when the payment fell due other than in January 2025, and therefore I do not accept Mr Powell's evidence about this.
23. Mr Powell refers to the fact that the names of individuals who had given their notice were highlighted in red by Mr. Miller, the Finance Director, in January 2025. There is an email (p87) from Mr Powell to Mr Miller, which was not copied to the claimant, dated 30 December 2024 when he asks for "The usual league table", and part of an email said to be from Mr Miller at 89- 91, when the claimant and two others (including Mr Miller himself) are highlighted in red as having "resigned". But this is not evidence that anyone in their notice period had been treated in this way previously, or even that those highlighted as having resigned were to forfeit the payment; I have seen no previous "league table" of this sort produced by Mr. Miller or anyone else. I do not accept that these emails establish a previous practice of not paying the bonus to those in their notice period when it fell due.
24. There is an email from Mr Powell to staff members on page 102 that is dated 6 January 2025. This does say "usual restrictions apply" but there is no indication of what the "usual restrictions" are or where, if

anywhere, they are to be found. I cannot conclude from this (or any of the above) that there were restrictions relating to those in their notice period which were “reasonable, notorious and certain”.

25. It is not in dispute that the claimant was not paid the sick pay/attendance bonus and it does not appear on his pay slip for January 2025 (page 100).

Relevant Law

26. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
27. “Relevant provision” according to section 13(2) means a provision of the contract comprised (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question or (b) in one or more terms of the contract whether express or implied and if express whether oral or in writing the existence and effect or combined effect of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
28. Subsection 3 of section 13 provides that where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion after deductions, the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker’s wages on that occasion.
29. Section 27 of the 1996 Act provides that “wages” in relation to a worker means any sums payable to the worker in connection with his employment including (specifically under paragraph 1(a) any fee or bonus or other emoluments referable to his employment whether payable under his contract or otherwise.
30. Section 23 provides that an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made. As indicated above, the respondent has not suggested that the claim was not made in time.
31. Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages or for a sum due in respect of personal injuries) if the claim is one to which the Employment Tribunals Act 1996 section 3(2) applies and the claim arises or is outstanding on the termination of the employee's employment and the claim is not one to which Article 5

applies. No one suggested that Article 5 applied here (or that section 3(2) did not).

32. In his statement at paragraph 5, Mr Powell accepted that the reference to the sick pay or attendance bonus payments is under a subsection titled "Contractual payments and Benefits" at page 30 of the bundle. He accepted at paragraph six that this means that there was a contractual bonus scheme in operation which was subject to its own terms as set out at page 46 in the Employee Handbook.
33. At paragraph 21 of the case of **Autoclenz v Belcher 2011 ICR 1157 SC** it is stated that I must consider what contractual terms did the parties actually agree, that is, what is the reality of the situation?
34. Regarding any implied term, of course I cannot imply a term just because it is said to be reasonable to do so. A term can only be implied if I can presume it would have been the intention of the parties to include it at the time the contract was made. If a term is to be implied, it can only be implied at the time the contract was formed and in the light of any relevant circumstances then prevailing - unless there is any evidence of variation of contract, which no-one suggested was the case here.
35. The respondent argues that a term restricting payment of the sick pay/attendance bonus so as to exclude individuals who are in their notice period when it falls due should be implied on the basis of custom and practice. To imply such a term on that basis, there would have to be evidence on which I could conclude that the custom was reasonable, notorious and certain – that is, fair and not arbitrary or capricious, and generally well established and well known. There must be evidence from which I could conclude that the parties must have accepted that there was such a practice which had crystallised into contractual rights - that is, that the term is being implied because there is a sense of legal obligation to do so – see **Solelectron Scotland Ltd v Roper and ors 2004 IRLR 4, EAT**.
36. In other words, I must be satisfied by evidence that by the time the contract was entered into by the claimant and respondent, the exclusion of payment of the sick pay/attendance bonus to employees who were in their notice period when payment fell due were sufficiently well-known and well established that the parties must be taken to have agreed to them.

Application of Law to Facts

37. Was the claimant paid less wages than were properly due to him? As set out in my findings of fact above, the claimant's contract read together with version 3.10 of the Employee Handbook indicates in writing that provided he had passed his probation period and had taken no time off sick in the previous calendar year, he would be entitled to the bonus when it fell to be paid the following January.
38. There was no evidence before me that there was an express oral term of the claimant's contract of employment that the sick

pay/attendance bonus referred to in his contract at page 30 and the Handbook at page 46 would not be paid if it fell due at a point when he had given notice to terminate his employment and/or that it was discretionary and I do not accept that there was any such express oral term. No-one suggested that there were outstanding disciplinary proceedings against the claimant at the time the bonus fell due, and there was no evidence before me that there had been an oral agreement about such a term when the claimant entered his contract of employment or subsequently.

39. I find that there were no such express oral terms.
40. There was no evidence before me that the claimant's contract of employment was subsequently varied expressly to include such a term, nor did anyone argue that was the case, and I find that it was not.
41. The respondent effectively concedes that there were contractual terms that the claimant would be paid a Sick pay/attendance bonus as set out at page 46 of the handbook and incorporated in his contract of employment provided he had successfully completed his probation period, which everyone accepts was the case in relation to the 2024 calendar year.
42. Implying a term that, as a matter of custom and practice, the claimant should not be paid the bonus payment if he was in his notice period when it fell due appears to contradict the express written terms of the contract, and a term should not be implied in such circumstances.
43. In any case, however, the evidence before me simply does not establish that there was an established practice of excluding those in their notice period, or indeed anyone except those in their probationary period, from payment of the sick pay/attendance bonus. The exclusion of those in their probationary period is spelt out in the Employee Handbook. That Handbook was updated in 2021 but there is nothing to suggest that those in their notice period were excluded from the payment of bonus or that it was otherwise discretionary. If there were well established exceptions as Mr Powell suggested, I would have expected to see them reflected in the Handbook and/or examples of the application of the term. There has been no such evidence.
44. I have found that the claimant was not aware of any such practice and that there is no evidence that that it had been applied to anyone else prior to January 2025.
45. There has been evidence provided by the respondent from which I could conclude that exclusion of those in their notice period was by the time the claimant entered his contract of employment in 2023 "reasonable, notorious and certain", well established and/or well-known either within this particular employment or in this type of employment.
46. I therefore find that there is no basis upon which I could imply a term that those who had given their notice were not entitled to the bonus when it fell due. Payment of such a bonus is equally consistent

with rewarding past good attendance as encouraging future compliance. Indeed, in the email from Mr Powell dated 6 January 2025 at page 102 it states that one of the purposes is to “reward people who managed to stay healthy during the year”.

47. It follows from this conclusion and the fact that the respondent accepts that the bonus scheme was contractual in nature that the sick pay/attendance bonus was indeed “properly payable” to the claimant on 31 January 2025 and it was not paid, hence it should be treated as a deduction from wages under section 13(3) Employment Rights Act 1996.
48. The deduction was not authorised to be made by a “relevant provision” of the claimant’s contract- indeed the respondent did not even argue that section 13(2)(b) had been complied with and there was no evidence that it had. I do not consider that Mr Powell’s comment in the email of 5 January 2005 that “usual restrictions apply” could reasonably be read as some kind of notification in writing that exclusions not mentioned in writing in the Handbook or anywhere else applied. For completeness, the claimant had not at any time signified in writing his consent to the deduction being made (section 13(1)(b)).
49. It follows that the failure to pay the sick pay/attendance bonus was an unauthorised deduction under section 13 of the 1996 Act.
50. So I find that Mr Wesson was entitled to be paid the sick pay/attendance bonus under his contract of employment. There has been no evidence that he took any time off sick in the calendar year 2024, he denies that he did, and the respondent did not suggest he did, so I find that he was entitled to a bonus of three days pro rata as per the Employee Handbook.
51. The respondent agrees that the appropriate gross sum is £911.54.
52. As I have decided that there was no express oral term limiting entitlement to payment of the sick pay/attendance bonus in the manner suggested by the respondent and that it would not be appropriate to imply such a term, consideration of section 38 of the Employment Act 2002, referred to by the claimant in correspondence, simply does not arise.
53. Although this claim could equally be seen as a claim for breach of contract under the Employment Tribunals (England and Wales) (Extension of Jurisdiction) Order 1994, as the terms of the contract (incorporating the Employee Handbook current at the time) entitled the claimant to the payment as he had completed his probationary period and had not taken any time off sick, I have found that this sum was properly payable under section 13 of the Employment Rights Act 1996 and I have made the award on that basis.
54. I should make it clear that in reaching my decisions I have considered the case law to which I was referred as well as the legislation. I would observe that the case of **Hellewell** is distinguishable in that there was a written bonus scheme in that case which stated that

if a member of staff left the company because of gross misconduct or poor performance they were not entitled to the bonus. The issue in that case was whether, if a claimant was not entitled to a payment under contract, there could still be an unlawful deduction of wages claim. That is not the situation here.

55. In the case of **Camden Primary Care Trust v Atchoe** again the circumstances were different in that it related not to any bonus but to whether the claimant was still entitled to an “out of hours” payment when he had been removed from an “on call” rota on health and safety grounds and therefore was not working “out of hours”. In that case, the Employment Appeal Tribunal held that as the respondent had acted within the terms of the contract, no payment was due. In paragraph 33 of that judgment, it was said that, of course, consideration of the terms of the contract includes consideration of any implied terms. It was established in that case that there were indeed implied terms which entitled the Primary Care Trust to remove the claimant from the rota and therefore no payment was due. In this case, of course, I have found that there was no express or implied term that would have permitted refusal of the payment.
56. I also took account of the case of **Autoclenz v Belcher** 2011 ICR 1157 SC and considered what the parties agreed or can be taken to have agreed based on all of the evidence before me.

Approved by:
Employment Judge Findlay

08/07/2026

JUDGMENT SENT TO THE PARTIES
ON

14 July 2026

FOR THE TRIBUNAL OFFICE

NOTE: Written summary reasons having been provided further to a request by the claimant under rule 60(4B) of the Employment Tribunal Rules 2024 as amended, written full reasons will not be provided unless requested by any party by a written request received by the tribunal within 14 days of the sending of the written summary reasons.