



EMPLOYMENT TRIBUNALS

Claimant: Ms Jacqueline Broughton

Respondent: Vesta Road Surgery

Heard at: London South Employment Tribunal

On: 17 –18 June 2026

Before: Employment Judge K Wright

Representation:

Claimant: In person (representing herself)

Respondent: Miss Ahmad (Litigation Consultant)

Witness for Claimant: Ms Broughton

Witnesses for Respondent: Ms Uma Jesuthasan, Dr Elizabeth Pase and Ms Elaine Rowlands

JUDGMENT AND WRITTEN REASONS

Introduction

1. The Claimant brings complaints of:

1.1. Unfair dismissal

1.2. Unlawful deduction from wages, primarily on the basis that she contends she was promoted from Practice Nurse to Nurse Practitioner and should have received increased remuneration from 2015 onwards.

2. The Respondent resists both complaints.

3. The Tribunal heard evidence from the Claimant and from Ms Uma Jesuthasan, Dr Elizabeth Pase and Ms Elaine Rowlands on behalf of the Respondent. The Tribunal also considered the ET1, ET3, witness statements, the documents that the parties referred the Tribunal to within the documentary bundle(s) and the oral evidence given at the hearing.

Preliminary Matters

4. At the commencement of the hearing the Tribunal was required to address significant case management issues arising from a bundle of approximately 376 pages brought by the Claimant. The Respondent's representative explained that the Respondent had only received this material two days before the hearing when it was sent by post from the Claimant's former solicitors. The Claimant maintained that she had attempted to disclose the material from January onwards and was understandably upset that the documents had not previously been available.
5. The Tribunal spent considerable time at the start of the hearing identifying which documents within that bundle the Claimant wished to rely upon and determining their relevance to the pleaded claims. Many of the documents either duplicated material already contained within the agreed bundle or related to matters beyond the issues before the Tribunal. The Tribunal considered each category of document individually and ruled upon admissibility as the hearing progressed. All documents that were considered relevant or agreed to be relevant were admitted into evidence.
6. In order to ensure fairness to both parties, and recognising the disadvantage to the Respondent of being presented with a substantial additional bundle immediately before the hearing, it was agreed that the Respondent's representative would take the Claimant through the newly admitted documents one by one. The representative first asked open questions to the Claimant to establish the purpose and relevance of the material and then cross-examined the Claimant upon it. Thereafter, supplementary questions were permitted to the Respondent's witnesses concerning those documents where necessary.
7. The Claimant was permitted to refer freely to her own bundle during the hearing. Copies of relevant documents were made available to witnesses when required. The Tribunal is satisfied that these arrangements enabled the hearing to proceed fairly notwithstanding the late production of the documents. The Claimant was also

provided with the Respondent's hearing bundle and witness statement bundle and was able to participate fully in the proceedings.

8. The Claimant also provided a document described as a "tribunal document" which she initially characterised as further witness evidence. It became apparent during the hearing that the document was in substance written submissions rather than additional factual evidence. The Tribunal therefore treated the document as submissions and took it into account at the close of the evidence. The Claimant was also afforded the opportunity to make oral submissions, which she did.
9. During the hearing the Claimant indicated that she wished to pursue a complaint of whistleblowing detriment including dismissal. To the extent that this constituted an application to amend her claim, that application was refused. Oral reasons were given at the hearing. In summary, the proceedings had been ongoing for a substantial period, the claim having been issued 2 years before the final hearing. The whistleblowing allegations had not been pleaded. The Claimant had been legally represented at various stages of the proceedings included at case management and had had ample opportunity to seek amendment at an earlier stage. Permitting the amendment on the morning of the final hearing would have caused significant prejudice to the Respondent, which had prepared its case on the basis of the pleaded claims, and a fair hearing of such allegations would not have been possible without substantial further case management and likely adjournment. In all the circumstances, the interests of justice favoured refusal of the amendment.
10. Accordingly, the Tribunal confirmed that the claims proceeding to determination were confined to:
 - 10.1. Unfair dismissal.
 - 10.2. Unlawful deduction from wages

The Law:

Unlawful Deduction from Wages

11. Section 13 Employment Rights Act 1996 provides that:

- (1) An employer shall not make a deduction from wages of a worker employed by it unless -

(a) the deduction is required or authorised to be made by virtue of statutory provision or a relevant provision of the worker's contract; or

(b) the worker has previously signified in writing his agreement or consent to the deduction.

12. "Wages" includes any sums payable to a worker in connection with their employment, including salary.

13. The burden rests upon the Claimant to establish that wages were properly due and payable and that there has been a deduction from those wages.

14. In the present case the central issue is whether the Claimant was contractually entitled to be paid at a higher rate than that which she received, whether by reason of an alleged promotion to Nurse Practitioner or otherwise.

15. It is not sufficient for the Claimant to show that she believed she should have received a higher salary, that comparable employees elsewhere may have received a higher salary, or that market information suggests a higher rate of pay. The Tribunal must determine the contractual entitlement between the parties.

16. Accordingly, if the Tribunal concludes either that no promotion occurred or that no contractual entitlement to increased remuneration arose from any promotion, the claim for unlawful deduction from wages cannot succeed.

Unfair Dismissal

17. The Claimant had the qualifying period of service required to bring a complaint of unfair dismissal.

18. Section 98(1) and (2) Employment Rights Act 1996 provide that the employer must show the reason for dismissal and that it is a potentially fair reason.

19. Conduct is a potentially fair reason for dismissal.

20. Where the reason relied upon is misconduct, the Tribunal applies the principles established in *British Home Stores Ltd v Burchell* [1978] IRLR 379.

21. The Tribunal must consider whether:

- 21.1. The employer genuinely believed the employee to be guilty of misconduct;
- 21.2. The employer had reasonable grounds for that belief; and
- 21.3. At the stage at which that belief was formed, the employer had carried out as much investigation into the matter as was reasonable in the circumstances.
22. The Tribunal does not determine whether the employee was in fact guilty of the alleged misconduct.
23. The Tribunal must not substitute its own view for that of the employer.
24. Pursuant to section 98(4) Employment Rights Act 1996, the question is whether, in all the circumstances, the employer acted reasonably or unreasonably in treating the reason relied upon as a sufficient reason for dismissal.
25. In answering that question the Tribunal must consider whether the employer's decision fell within the range or band of reasonable responses open to a reasonable employer in those circumstances.
26. Different reasonable employers may react differently to the same facts. The fact that the Tribunal may have reached a different conclusion does not render a dismissal unfair if the employer's decision fell within the band of reasonable responses.
27. In considering fairness, the Tribunal must also consider the overall procedure adopted by the employer, including the investigation, disciplinary hearing and appeal process.
28. Procedural deficiencies do not automatically render a dismissal unfair. The Tribunal must assess the fairness of the process as a whole, including whether any deficiencies were subsequently remedied and whether the employee ultimately knew and had a fair opportunity to respond to the allegations relied upon.
29. Against that legal framework, the Tribunal makes the following findings of fact and conclusions.

Issues

30. The issues for determination were:

- a. Whether the Claimant was promoted from Practice Nurse to Nurse Practitioner and, if so, whether that promotion carried any contractual entitlement to increased pay.
- b. Whether the Respondent made unlawful deductions from the Claimant's wages.
- c. Whether the Claimant was unfairly dismissed contrary to section 98 Employment Rights Act 1996.

Findings of Fact

- 31. The Claimant commenced employment with the Respondent in January 2013 as a Practice Nurse. That was her contractual role.
- 32. In 2015 the Claimant completed further professional qualifications. She genuinely believed that she thereafter became a Nurse Practitioner and undertook duties of greater responsibility and that a promotion and change in job title had occurred.
- 33. The Tribunal accepts that references to the Claimant as a Nurse Practitioner appeared on some documentation and website entries at various times. My findings of fact on this point are that the evidence does not establish that a formal promotion occurred.
- 34. The Claimant was unable to produce any contemporaneous document confirming a promotion, variation to contract, revised job description, agreement of the partners, or confirmation of an increase in pay arising from such a promotion.
- 35. The Tribunal accepts the evidence of Ms Jesuthasan and Dr Pase that:
 - a. No promotion was approved.
 - b. No new contract was issued.
 - c. No revised duties were agreed.
 - d. No pay review linked to the qualification took place.
 - e. The Respondent regarded the terms "Practice Nurse" and "Nurse Practitioner" as being used interchangeably in some administrative records.
- 36. I therefore find that the Claimant has not proved, on the balance of probabilities, that she was promoted by the Respondent.

37. Even if I am wrong about that finding, I find that the Claimant has not established that any promotion carried with it a contractual entitlement to increased remuneration.
38. There is no evidence identifying a salary increase, agreed rate of pay, contractual variation, or remuneration structure attached to any purported promotion.
39. The Claimant relied heavily on market rates and salary comparison material. However, evidence that another employer might pay a Nurse Practitioner more does not establish that this Respondent agreed to do so.
40. She also relied on information from the NHS regarding recommendations of percentage increases or one-off payments that should be made.
41. However, as identified above, she was not employed by the NHS but by a private GP surgery.
42. Accordingly, even if a promotion had occurred, I would not find that the Claimant proved any entitlement to additional wages arising from it.
43. There was one acknowledged payroll error relating to an historic underpayment. The Respondent accepted that error and ultimately paid the outstanding sum and the Claimant agreed that she had received that. The Tribunal is satisfied that correction was made and that no further unlawful deductions have been established.
44. Turning to the dismissal, in August 2023 Ms Rowlands discovered expired items, including vaccines and other nursing supplies, in the nursing room used primarily by the Claimant. She reported the matter to management before disposing of the medication.
45. Dr Pase subsequently became concerned following the discovery of a further expired item from the emergency medical cupboard and instructed Ms Jesuthasan to undertake further checks. Those checks identified additional expired medication in the emergency drugs cupboard.
46. The Claimant's position throughout was not that the items had inadvertently been missed during checking. Her principal case was that the medication had been planted, specifically by Ms Jesuthasan, because the Claimant had raised concerns regarding pay and other workplace matters.

47. The Claimant also suggested that some items could not have originated from the emergency cupboard because of pharmacy ordering records and differences in photographic backgrounds.
48. During the hearing, the Claimant additionally stated that, on the day she was suspended, she agreed that she had discovered expired medication in the emergency drugs cupboard and had thrown this away, she had asked administrative staff whether they had been tidying and placing medication into the cupboard as she could not understand how it had got there. They didn't seem to know anything about this. She said she disposed of some items before understanding the allegations against her and would otherwise have photographed them as evidence.
49. The Claimant accepted that she disposed of expired medication from the emergency drugs cupboard before she understood the full nature of the allegations later to be made against her. Her evidence was that she was undertaking what she regarded as a routine disposal of expired stock and did not appreciate that the items might later become relevant evidence. I accept that this was her explanation. I do not find that her disposal of the medication was itself evidence of deliberate wrongdoing.
50. Although during the hearing the Claimant relied upon the letter at pages 269-273 of her additional bundle, there was no evidence before the Tribunal that the document was considered by either the disciplinary decision-maker or the appeal manager. Having reviewed the document, however, I do not consider that its omission rendered the dismissal unfair. The substance of the Claimant's position was known to the Respondent, namely that she disputed responsibility for the expired medication and challenged how some of the items came to be present in the cupboard. I do not consider that consideration of the letter would have been likely to alter the outcome of the disciplinary process.
51. Whilst the Claimant raised concerns during the internal process regarding the origin of the medication found in the emergency drugs cupboard, I find that the explanation advanced at the hearing was materially more detailed than that presented to the Respondent at the time. In particular, the Claimant's account that she had asked administrative staff whether they had been tidying and placing medication into the cupboard did not form a significant part of her representations during the disciplinary process. The principal challenge advanced to the Respondent was instead that Ms Jesuthasan had deliberately planted expired

medication because of disputes concerning pay and other workplace issues. Accordingly, it was that issue upon which the Respondent principally focused during its investigation.

52. The Respondent's witnesses, during their evidence at this hearing, whilst maintaining the leftover expired flu vaccinations should not have been kept in the fridge, did concede that this was not their primary concern as the window for flu vaccinations was over so no one would have been given these. It was the flu vaccinations, the expired medication and dressings and the expired medication in the emergency cupboard together that had led to the decision to dismiss.

53. I accept the Respondent's evidence regarding the chronology.

54. Expired items were first identified by Ms Rowlands in the nursing room.

55. Thereafter, following concerns raised by Dr Pase, a further check of the emergency drug cupboard was undertaken which identified additional expired medication.

56. I am not making a finding that the Claimant deliberately stored expired medication or was necessarily responsible for every item found.

57. I accept that other individuals had access to the nursing room and cupboard.

58. I cannot exclude the possibility that some items may have been placed in the cupboard by others at some stage.

59. However, that is not the Tribunal's task.

60. The question is whether the Respondent genuinely believed the Claimant guilty of misconduct, whether it had reasonable grounds for that belief, and whether it carried out as much investigation as was reasonable in the circumstances.

Unfair Dismissal

61. The reason for dismissal was conduct and was therefore a potentially fair reason pursuant to section 98(2) Employment Rights Act 1996.

62. The conduct relied upon by the Respondent was the Claimant's failure properly to manage and monitor medication and clinical stock for which she was responsible,

including the presence of expired medication and dressings in the nursing room and expired medication within the emergency drugs cupboard. The Respondent further concluded that the Claimant had signed stock-check documentation indicating that the emergency drugs cupboard had been checked when expired medication remained present. It was on that basis that the Respondent concluded that trust and confidence in the Claimant's ability to perform her role safely had been undermined.

63. It is clear that the Respondent treated matters very seriously from the outset.
64. In fact, it treated the allegations immediately as potentially amounting to gross misconduct and therefore proceeded directly into an investigation, disciplinary and appeal process.
65. Another employer might have approached matters differently. Given the Claimant's more than ten years' service and previously unblemished disciplinary record, another reasonable employer might have discussed the matter informally with her before initiating a formal disciplinary process, particularly where she had been carrying out the role for many years without previous concerns being identified. Such an approach may have produced an earlier explanation regarding the stock checking process, the handling of surplus flu vaccines and the Claimant's account of how medication may have come to be present within the cupboard.
66. However, this hearing is not a re-hearing of the allegations, and the Tribunal must not substitute its own view for that of the employer. The question is whether the Respondent's response fell within the range of reasonable responses and not whether it was the only reasonable response.
67. There were procedural shortcomings.
68. Information was passed to Peninsula before the Claimant was spoken to in detail and she was therefore on the back foot at the grievance investigation meeting.
69. There was uncertainty regarding precisely what discussions took place with the Claimant before matters were referred externally, although the Respondent concluded that properly none were, as they considered the matter serious and had immediately got Peninsula involved who provided their HR function.
70. The Claimant criticised the Respondent for failing to follow its own disciplinary procedure. I do not accept that criticism. The real substance of the Claimant's

complaint was that the matters identified should not have been treated as potential misconduct at all and should instead have been addressed through discussion, supervision, further training or warnings. However, the Respondent was entitled to regard the discovery of expired medication and dressings, followed by the discovery of expired medication within the emergency drugs cupboard, as potentially amounting to misconduct. Having reached that view, it was entitled to commence a formal investigation and disciplinary process. The Tribunal's task is not to determine whether a different approach could have been taken, but whether the approach adopted fell within the range of reasonable responses. I find that it did.

71. The Claimant was plainly shocked by the Respondent's decision to proceed immediately to a disciplinary route.

72. I accept her evidence on that point.

73. Having worked for the Respondent for over a decade without previous disciplinary action, she reasonably expected a different response.

74. As such she responded to the initial investigation that it was an internal issue to be discussed internally, objected to the fact she was required to discuss it with the external investigator and stated that she had no comment to make in respect of some of the allegations put to her as these issues should have been raised at a clinical level so they could be discussed and addressed.

75. Nevertheless, I find that any procedural deficiencies were cured during the subsequent process.

76. By the disciplinary stage and certainly by the appeal stage, the Claimant had received the substance of the evidence relied upon by the Respondent.

77. She knew the allegations.

78. She knew the Respondent's case.

79. She had an opportunity to challenge the evidence and to present her account.

80. She also exercised a right of appeal.

81. I further find that the Claimant's ability to engage at the earliest stage was affected by her shock and disbelief at the allegations being raised.

82. That does not, however, render the procedure unfair overall.

83. The Respondent had before it:

- a. Evidence of expired items found in the nursing room.
- b. Evidence of expired medication found in the emergency cupboard.
- c. Records showing the Claimant had responsibility for checking relevant stock.
- d. The Claimant's limited engagement with the allegations during parts of the investigation.
- e. Her repeated assertion that items had effectively been planted, namely by Ms Uma Jesuthasan as a malicious act.

84. On that material, the Respondent formed a genuine belief in misconduct.

85. That belief may have been mistaken. As I indicated during the hearing, I found the Claimant to give her evidence in a straightforward manner and to genuinely believe the correctness of her account. However, the issue for the Tribunal is not whether the Claimant was in fact guilty of misconduct.

86. I am satisfied, however, that the Respondent had reasonable grounds for the belief that it formed.

87. I am also satisfied that the Respondent's decision to commission and rely upon external HR consultants fell within the range of reasonable responses for a small GP practice faced with allegations of this nature.

88. Ultimately, although the Respondent dealt with the matter at the highest level and another reasonable employer may have acted more leniently, or may have made further enquiries regarding the fact that other individuals had access to the cupboard and the possible origin of some of the expired medication, the investigation undertaken was nevertheless reasonable in the circumstances. Given that I find that the Claimant had responsibility for completing and signing the emergency drugs checklist and for identifying and reporting medication approaching expiry, the Respondent's conclusion and decision to dismiss did not fall outside the band of reasonable responses open to a reasonable employer.

89. The dismissal was therefore fair.

Unlawful Deductions from Wages

90. The Claimant's principal unlawful deductions claim depended upon establishing that she was promoted and should have been paid at a higher rate.

91. For the reasons already given, I find:

- a. The Claimant has not proved that she was promoted.
- b. Even if she had been promoted, she has not proved any contractual entitlement to increased pay.
- c. The Respondent corrected the identified payroll error and paid the outstanding sum.

92. Accordingly, the unlawful deductions claim fails.

Conclusion

93. The complaint of unfair dismissal is dismissed.

94. The complaint of unlawful deduction from wages is dismissed.

95. All claims before the Tribunal therefore fail and are dismissed.

Employment Judge Wright

Dated 5 July 2026

JUDGMENT AND WRITTEN REASONS
SENT TO THE PARTIES ON
16 July 2026

FOR EMPLOYMENT TRIBUNALS

P Wing