EMPLOYMENT TRIBUNALS

Claimant: Mr M Nakhuda

Respondent: London Ambulance Service NHS Trust

Heard at: London South (remotely by CVP) **On:** 11 September 2026

Before: Employment Judge Heath

Representation
Claimant: In person
Respondent: B Jones (Counsel)

JUDGMENT was sent to the parties on 15 September 2026 and full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

Introduction

1. This matter was initially listed as a final hearing for two hours on 11 September 2026. It was converted to a public preliminary hearing to consider the respondent's application to strike out the claimant's claims as having no reasonable prospects of success, or in the alternative for a deposit order.

2. In the claim form the claimant indicated that he was claiming a redundancy payment and for breach of contract as well as deductions from wages. However, he also indicated that he was still in employment with the respondent. At the outset of the hearing the claimant confirmed he was still in employment, and understood that he was unable to claim for redundancy payment or for breach of contract. The hearing therefore focused on the application to strike out or for a deposit in respect of his wages claims.

Procedure

3. I was provided with more than one bundle, but the respondent made clear that there was an updated 114 page bundle, which was used for the hearing. The claimant also produced an application to amend and a skeleton argument.

4. The claimant made an opening statement at the start of the hearing. I heard respondent's submissions in support of their application, and heard the claimant's response to that application. I gave oral summary reasons in which I struck out his claims for unlawful deductions from wages. The claimant wrote after the hearing requesting full reasons.

The application and the claimant's response

5. The claimant presented his claim with attached particulars of claim on 3 February 2026. In his ET1 he indicated claims for redundancy payment, arrears of pay, other payments said to be "failure to provided contractual on-call/wrong team, lease car denial, banding, restructure related." In his particulars of claim he set out his claims under 7 headings:

    5.1. Breach of contract – failure to provide contractual on-call element

    5.2. Incorrect rota allocation – Placed on DBA rota instead of systems

    5.3. Lease car detriment – denial of access to operational benefit

    5.4. Banding disparity – equal value/pay parity element

    5.5. Timeline of attempts to resolve

    5.6. Impact on me and my role

    5.7. Consultation restructure (January 2026) - relevant background. He set out further sub-headings here relating to an ongoing restructure which he said disestablished his role, created other roles and requirements, made changes to his detriment.

6. The respondent made its application to strike out/for a deposit in a letter dated 19 March 2026, in which it also applied to convert the final hearing into an open preliminary hearing. It was also submitted that 2 days would be required if a final hearing went ahead.

7. On 10 September 2026 (the day before the hearing) the claimant made an application to amend. It is not entirely clear, but he sought to add claims under headings of:

    7.1. Payroll interference

    7.2. Interview record handling

    7.3. Monetary particulars (in which he clarified that all claims were under section 13 Employment Rights Act 1996 ("ERA")

    7.4. Minor drafting updates.

8. He also set out his ground for the application.

9. Also on 10 September 2026 the claimant produced a skeleton argument. In it he said he was responding to the application to strike out/for a deposit. He set out a brief chronology, set out the legal framework (in which, again, he said that the alleged breaches of contract underpinned his claims under section 13 ERA and were not standalone contract claims). He set out his response to the application to strike out, stating that his particulars were clears and his claims were not bound to fail and that a deposit order would be disproportionate.

10. In his oral submissions in support of the application Mr Jones:

10.1. Set out that the bundle was updated late in response to the claimant's documents sent the day before. (The claimant confirmed he had received the updated bundle.)

10.2. The claims related to 3 areas:

10.2.1. On call work

10.2.2. Not being given access to a lease car and instead having to pay for a car hire loan under a previous arrangement

10.2.3. Banding issues.

10.3. Page 60 of the bundle was the claimant's contract, which set out clearly at page 61 that he was Band 7 and at page 62 that he was not entitled to an on-call percentage. Page 66-7 indicated that the respondent was entitled to deduct from pay various sums, including loans. Page 59 was the confirmation of employment letter which made clear that the terms and conditions of service were in accordance with the NHS Staff Council Handbook "Agenda for Change terms and conditions of service".

10.4. Pages 77-79 was a letter dated 26 February 2024, signed electronically by the claimant, confirming a variation to the claimant's contract, transferring his lease vehicle and setting out a salary sacrifice in respect of this of £663.72. That salary sacrifice sum was set out clearly in his payslips (eg page 87).

10.5. At page 84 was an email dated 4 July 2025 from Ms Temple, an HR manager, to the claimant setting out that the claimant had mentioned he did not want to order a new salary sacrifice car if there was a possibility of his being entitled to a lease car. It was explained that entitlement to a lease car was based on a requirement to driving on blue lights for their role, which did not apply to the claimant. He was given information about how to apply for a new salary sacrifice car with the respondent's provider.

10.6. The respondent says that the claimant started on call work in April 2025, and was paid for this, as can be seen from his payslips (eg page 98). Entitlement to payments for on-call work is set out in the NHS Terms and Considition Service handbook (page 56).

10.7. Mr Jones said, in brief,

10.7.1. In terms of on-call, until April 2025 the claimant was not on the on-call rota and was not entitled to payments. This was not a deduction

10.7.2. On the car point, he was not entitled to a lease car, he had salary sacrifice deductions made in accordance with terms he agreed to. There was no unlawful deduction.

10.7.3. In terms of banding, he was paid at the appropriate band set out in his contract.

10.8. Mr Jones said that these submissions were made taking the claimant's claim at its highest and that he was not seeking to conduct a

mini-trial. The documents incontrovertibly show that there is no entitlement to the sums the claimant claims. The claimant may have complaints about how his expectations differed from the contractual reality, but these do not found a wages claim.

11. In his submissions the claimant raise, in brief:

11.1. In his opening statement that the case concerned multiple breaches of contract which he had attempted to resolve in many ways over time, but that the respondent failed to engage with him. He said that these failures caused him ongoing financial loss, and that there was a current restructure which disadvantaged him.

11.2. In his submissions said that disclosure of rota records and banding records would support his case.

11.3. He said his job description referred to out of hours support and the job was advertised on that basis. He said he raised this issue before starting and had further discussions with the operations manager. Despite this he was not put on the on call rota for a year.

11.4. When the claimant was placed on the on call rota he was placed with the data team, which did not align with his role and duties.

11.5. He was denied access to a lease car, contrary to the position with other colleagues who got cars. He said that a tender document did not refer to a requirement to drive blue light. This caused a financial detriment to his salary.

11.6. He said the respondent failed properly to evaluate his role, in respect of banding.

11.7. He summarized his claims by saying that they were about:

11.7.1. Whether the respondent breached his contact by failing to provide an on call element and allowance, and whether this failure constitutes wages;

11.7.2. Whether placing him on the DBA rota was a breach of contract;

11.7.3. Whether denying him access to the lease car scheme was a breach of contract;

11.7.4. Whether the respondent failed to evaluate his role;

11.7.5. Whether there were failures and procedural unfairness in the the recruitment process;

11.7.6. Whether payroll acted beyond their authority regarding salary sacrifice, causing loss.

The law

<u>Unauthorised deductions from wages</u>

12. Section 13(1) Employment Rights Act 1996 ("ERA") provides that an employer shall not make unlawful deductions from the wages of a worker unless the deduction is required or authorised by statute or the worker's contract, or the worker has given written consent to the making of the deduction.

13. Section 13(3) ERA provides: -

> *"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"*.

14. Section 27(1) ERA sets out the meaning of "wages" as:-

> "*any sums payable to the worker in connection with his employment, including –*
>
> > *(a) any fee, bonus, commission, holiday pay or other emolument preferable to his employment, whether payable under his contract or otherwise…"*.

15. Section 23(1) ERA provides that: -

> *"(1) A worker may present a complaint to an employment tribunal—*
>
> > *(a) that his employer has made a deduction from his wages in contravention of section 13…*"

16. It is not necessary for there to be a strict contractual entitlement to a payment for sums to be considered "wages properly payable" by the employer. It is enough that the employer is rendered liable to pay "either under the contract of employment or in some other way" (***Farrell Matthews & Weir v Hansen*** **[2005] ICR 509** citing ***New Century Cleaning Co Ltd v Church*** **[2000] IRLR 27**).

17. The tribunal has jurisdiction to resolve any issue necessary to determine whether a sum claimed under Part II ERA is properly payable, including issues as to the meaning of the contract relied on (***Agarwal v Cardiff University*** **[2018] ICR 433**).

18. In order for the tribunal to have jurisdiction to hear a claim for unlawful deductions the claimant must be for an identifiable sum (***Coors Brewers Ltd v Adcock*** **[2007] IRLR 440**). In ***Coors*** Wall LJ observed that Part II ERA "*is essentially designed for straightforward claims where the employee can point to a quantified loss. It was designed to be swift and summary procedure".* A claim does not fall out of the jurisdiction of the tribunal under Part II ERA merely because quantification of the claim might be difficult, indeed "very difficult", to resolve (***Lucy v British Airways*** **UKEAT/0033/LA**).

<u>Strike out and deposit</u>

19. Rule 38 of the Employment Tribunals Rules of Procedure 2024 ("ET Rules") provides:

> *(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—*
>
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success;*
>
> …

20. The tribunal is to consider on a careful consideration of the available material, whether it can properly conclude that the claim has no reasonable prospect of success (*Balls v Downham Market High School and College* [2011] IRLR 217, EAT).

21. It is highly unlikely that strike out is appropriate when there are factual disputes. The claim should be taken at its highest. Reasonable care should be taken to read the pleadings and any other relevant documents. Consideration should be given to an amendment if the claim would have reasonable prospects of success if properly pleaded (*Cox v Adecco* [2021] ICR 1307.

22. Rule 40 Employment Tribunals Rules of Procedure 2024 ("ET Rules") provides:

> *(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").*

23. The test for ordering a deposit is different to that for striking out under Rule 38(1)(a).

24. The purpose of the order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and creating a risk of cost. It is not to make access to justice difficult or to effect a strike out through the back door. Just because a tribunal concludes that an allegation has little prospects of success does not mean that it must make a deposit order. A discretion is retained which is to be exercised in accordance with the overriding objective (*Hemdan v Ishmail* [2017] ICR 486).

25. When determining whether to make a deposit order a tribunal is given a broad discretion, is not restricted to considering purely legal questions, and is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and reach a provisional view as to the credibility of the assertions being put forward. But it must still have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response (*Van Rensburg v Royal Borough of Kingston-upon-Thames* UKEAT/0095/07).

Conclusions

26. Mr Jones was clear that he was not raising any factual disputes, and was taking the claimant's case at its highest. He took me briefly to certain key documents and I agree with him that he was not inviting me to conduct a mini-trial.

27. I consider that the summary at the end of the claimant's submissions was illuminating. He was clear in his submissions that he considered that the issues were:

    27.1. Whether it was a breach of contract by failing to put him on the on-call rota and paying the allowances;

    27.2. Whether failing to put him on the DBA rota was a breach of contract;

    27.3. Whether denying him access to the lease car scheme was a breach of contract;

    27.4. Whether there was a failure to evaluate his banding.

    27.5. Whether payroll acted beyond their authority in relation to salary sacrifice.

    27.6. He made further allegations about a current restructure and not being provided documents.

28. A claim lies under Part II of the ERA when the total amount of wages paid on a particular occasion is less than what is properly payable. The claim must be for an identifiable sum.

29. I do not consider that the claimant is claiming for an identifiable sum.

30. He is saying that he should have been given on-call work, and perhaps was missold this at interview. He is not saying that he had done on-call work and that there was a shortfall in what he should properly have been paid. His contract is clear that on-call was not part of his contract. The claimant is frank in saying that it was a breach of contract that it was not.

31. I agree with Mr Jones that the claimant is attempting to recast a breach of contract claim (which he cannot make as he is still employed).There is no conceivable claim for an identifiable sum.

32. Similarly he claims that he should have been put on a different rota when he was put on the on call rota. Once again, this appears to be, at best, a breach of contract claim. There is no identifiable sum claimed. The claimant simply seems to be saying that it is unfair that this was done, and that it had financial consequences. It is not the function of the tribunal in a wages claim to investigate the fairness of putting the claimant on a particular rota.

33. He is further saying that he should have been allowed to access the lease car scheme and feels this was unfair in comparison with colleagues. Again there is no claim for an identifiable sum. It is not the function of the tribunal in a wages claim, once again, to investigate the fairness of the decision not to allow him access to the scheme. The claimant had salary sacrifice sums deducted from his wages as he has specifically consented to.

34. The claimant says that he was on the wrong band and that his role should have been evaluated differently. Again, there is no possible claim here for an identifiable sum. The claimant would effectively be asking the tribunal to undertake an exercise to establish what would have been the appropriate

banding. This is not how Part II ERA claims operate. His contract was clear what his banding was, and he was paid according to that.

35. I have considered whether the proposed amendment by the claimant would have made any difference. I conclude that it would not. He is not saying anything here that makes it clear that he is claiming identifiable sums. The amendment applications take things no further.

36. There is no reasonable prospect of the claimant succeeding in any claims he is putting forward. None of them is for identifiable sums. All claims are struck out.

Approved by:
Employment Judge **Heath**
Date: 2 October 2026

Sent to the parties on:
Date: 15 October 2026

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here: www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/