EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 8002719/2025

Open Preliminary Hearing Held in Aberdeen by CVP on 28 August 2026

Employment Judge J Hendry

Dr D Yeats	**Claimant** **In Person**
Grampian Health Board	**Respondent** **Represented by:** **Ms A Stobbart,** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:

(One) The claim for unfair dismissal having been withdrawn is dismissed.

(Two) The claim for unlawful deduction from wages relating to the 13 December 2024 is out of time and shall be dismissed.

(Three) The following claims relating to the period 2 July 2024 – 31 July 2025 shall be struck out as having no reasonable prospects of success

a. **Retrospective access to the NHS Pension Scheme;**
b. **Occupational sick pay in respect of one day's absence on 13 December 2024;**
d. **That the claimant should have been paid as a Locum Consultant;**
e. **Payment for Supporting Professional Activities;**
f. **Payment in lieu of study leave.**

(Four) The strike out application in relation to claims for deducted breaks shall be reserved meantime.

REASONS

1. The claimant in his ET1 makes various claims arising from a period where he was working for the respondent as a senior physician. His position was that the circumstances suggested that he was in fact an employee and entitled him to be treated as such in relation to his contractual terms.

2. A Preliminary Hearing was arranged to take place by CVP on 28 August 2026 to consider the issues of time bar, strike out and deposit order.

3. A Joint Bundle of Documents had been prepared and a draft List of Issues agreed. The Tribunal had asked for the respondent's Skeleton Submission to be submitted beforehand to allow the claimant who is a party litigant an opportunity of considering it. The claimant lodged his own Skeleton arguments and submissions.

4. It was agreed that the Tribunal would determine the following:

    1. *Is the claim of unlawful deduction from wages in relation to the alleged non-payment of occupational sick pay following one day's absence on 13 December 2024 time-barred?*
    2. *Should the claim of automatic unfair dismissal by reason of seeking to assert his statutory rights be struck out/a deposit order issued on the basis of no/little reasonable prospects of success?*
    3. *Should the undernoted claims of unlawful deduction from wages/breach of contract which relate to the period 2 July 2024 – 31 July 2025 be struck out/a deposit order issued on the basis of no/little reasonable prospects of success?*
        a. *Retrospective access to the NHS Pension Scheme;*
        b. *Occupational sick pay in respect of one day's absence on 13 December 2024;*
        c. *Break deductions in respect of period;*
        d. *Should have been paid as a Locum Consultant;*
        e. *Payment for Supporting Professional Activities;*
        f. *Payment in lieu of study leave.*

5. I explained at the outset what would happen during the hearing and the Rules that apply to strike out and deposit and the relevant tests for granting such orders. I referenced the issue of time bar and the law in relation to unlawful deductions contained in the Employment Rights Act 1996.

6. I then invited Dr Yeats to give evidence about the lodging of the claims and specifically about the circumstances around lodging the claim for unlawful deductions from his wages. This claim revolved around a claim for salary for a day's sick leave. Ms Stobbart indicated that she wanted to call a Dr Alder who had been in charge of the claimant's department as a witness in relation to a discrete matter namely why the claimant's assignment/contract to work at the hospital was not extended. This related to the claimant's assertion that his contract had not been renewed or extended because of his assertion of his statutory rights, namely for payment, of what he regarded as underpayments of salary.

Findings

7. Grampian Health Board, officially known as NHS Grampian, is the regional National Health Service (NHS) organisation responsible for providing healthcare services across the north east of Scotland.

8. Dr Yeats qualified in medicine in 2000. He worked at various locations although his family home was at least latterly in Edinburgh. He worked as a locum for around 20 years. He specialised in geriatric medicine. He had worked previously for the respondent as an acting Locum Consultant in 2020/2021. The respondents later changed the rules on who could be regarded as being suitably qualified for the role and this excluded the claimant who did not have the necessary qualification.

9. The claimant had reached a high level of skill and experience and was categorised as a Specialist Doctor. Different Health Boards have slightly different classifications of physicians depending on their role, experience and qualifications. Being regarded as a Specialist Doctor allowed him considerable autonomy in the care of his patients. The next career progression would be to Consultant.

10. The claimant was well liked and respected by his colleagues.

11. The hospitals in Aberdeen find it difficult to attract staff. They often rely on word of mouth or personal contacts to fill temporary gaps in their rotas. The respondents needed cover. The department was short staffed. A Consultant was on maternity leave and this was the principal reason for the claimant being employed.

12. During the period in question the claimant had negotiations with Doctor Sarah Alder the Clinical Lead in the department of Medicine for the Elderly about working back in Aberdeen. Because of a change in the Health Board's rules she could not offer him a post with the status of Consultant as before but it was agreed that he would work for them as a Specialist Doctor. She explained to him that she could only offer him a three month assignment but that would be likely to be 'rolled over'. He agreed to work three days per week.

13. The respondents have a system whereby locum staff apply through a designated organisation to work with them called Locum Management System. They refer to such staff as being directly engaged.

14. The claimant applied and received standard contract terms headed ''Worker Direct Engagement Contract'' (JBp69-83) (which was not ultimately completed) and a booking confirmation form (JBp93-94). The documents make clear that the contract is with a worker/locum. It was on this basis that the claimant agreed to work for the respondent. Further booking forms were sent to him at the expiry of the initial assignment period.

15. The first booking form covered the period 1 July 2024 until the 1 October 2024. It gave the claimant's details as ''Specialist Registrar Care of the Elderly'' and later under the heading Notes as ''Grade changed to Specialist from Consultant''. It set out the shifts to be worked on the rota. The booking form also details the rates of pay and breaks policy. The policy is that a 30 minute break is automatically deducted after 6 hours. **The claimant started work on the 1 July 2024. The claimant's assignment ended on the 31 July 2025 (JB p108)**.

16. In terms of these conditions the claimant received an enhanced rate of pay to take account of him having fewer benefits than a full time member of staff would have such as sick pay. Contributions would be made to a 'NEST' pension scheme for him but he was not enrolled in the NHS scheme for permanent staff.

17. The claimant was disappointed that there were errors in the booking form. He was given an identity card when he started which gave his title as ''Locum Consultant''. He did not object or query this.

Payroll Issues

18. When the claimant had worked with the respondents in 2020/2021 he had experienced difficulties with their payroll. He believed he had been underpaid

for some shifts. This had resulted in him eventually raising court proceedings for payment in the Sheriff Court.

19. On the 7 September 2024 the claimant emailed Gillian McDonald, Deputy Service Manager about disputed time sheets that had been submitted by him but not paid in full. He queried why breaks were deducted when he worked 5.5 hours in the evening. He also alleged that he had such deductions automatically made when on call. He received a response on the 18 October (JBp13/114). It confirmed that she had been in discussion with Julie Warrender. Many of the queried shift payments were approved.

Sickness Absence

20. The claimant emailed on the 13 December 2024 that he could not attend work as he had a heavy cold/flu. The claimant applied for payment. He was not paid for the rota'd shift. The claimant protested that he should be paid.

21. The fact that the claimant had not been paid for the 13 December was noted digitally (JBp119) as having been disputed by Lorraine Grant on 3 January. The claimant wrote to Gillian MacDonald in May (JBp187) asking for payment. He wrote: ''*I believe that technically I am an employee of NHS Grampian and I have rights associated with this including sick pay*''.

22. The claimant wrote again on the 27 June 2025 about the issue (JBp171). He wrote: "*..I believe I meet the functional criteria of an NHS worker or employee, even if not formally classified as such..*''

End of Assignment

23. The claimant believed that the work he was asked to do was virtually the same as the work he had done before as a Locum Consultant and that of the Consultant he was filling in for. He did not have to carry out some of the additional administrative duties that would have fallen to him if he had been a permanent staff member.

24. In July 2024 the department was faced with a difficulty covering the rota safely in August. This was partly because of an increase in work as they were having to cover patients previously covered by A&E.

End of Assignment

25. The respondents needed cover in August and September 2025 (JBp156). In April the claimant was asked if he could work in August. On the 12 June Dr Alder asked if he had responded as she was concerned that the

department would be understaffed. She noted that he had not replied. The claimant had decided that he wanted to accompany his son who was starting primary school for the first time. He was asked to reconsider by Dr Alder on a number of occasions. As a back-up she was in contact with a colleague Dr 'Ozo' (Ndukwu) who had worked at the hospital before (JBp1570). She asked him about his plans for August. They agreed to keep in touch. She noted in correspondence that the current locum (the claimant) was taking August off (JBp164).

26. The claimant's assignment came to an end. He was not offered a further extension by Dr Alder because he was unavailable to work during this period. The decision was made by her. She had authority to engage a locum such as the claimant and decided not to because of his unavailability. She did not take this decision because of pressure from others or because the claimant had raised issues over payment with payroll.

27. The claimant believes that he became a 'thorn in the flesh' of the respondents and that is why he was not given another contract.

Witnesses

28. Dr Yeats is an articulate and confident witness who was clearly frustrated by the workings of the payroll system and he had a genuine sense of grievance. He was a reliable witness as a historian and generally credible when giving evidence. There was little actual dispute as to the facts of what happened, more there was a dispute as to whether he was an employee and about the application of policies.

29. Dr Alder was a clear and professional witness. It was apparent she had no antipathy whatsoever towards the claimant. The evidence from both witnesses suggested a good friendly working relationship. I had no difficulty accepting her evidence that the reasons for the claimant not receiving a further assignment was due to problems covering the August/September period and not because of his ongoing difficulties with payroll. This was her decision. I noted that these matters were within her authority as head of the department although any longer period beyond three months engagement or the engagement of a full-time postholder required budgetary sanction.

Submissions

30. Ms Stobart lodged prepared submissions which she spoke to. The sick pay claim was clearly out of time. By 3 January he was aware it had been declined. The primary time limit expired on 2 April. There was a further delay before proceedings were raised and no obvious reason given to justify a late

claim. The bar was a high one to show that it was not reasonably practicable for him to lodge it in time.

31. She could not understand the claimant's position. Even if he was an employee he had contracted to work on agreed rates of pay and conditions. He had agreed to work as a Specialist Doctor. He was not entitled to the other benefits claimed. He could point to any contractual right to the benefits claimed to either justify claims for unlawful deductions or breach of contract.

32. The claimant insisted that he had employment status. He was integrated in to the hospital hierarchy and his principal duties were indistinguishable from those of a Consultant. He should be entitled to the benefits accorded to Consultants.

33. The sick pay claim for the 13 December should proceed as it should have been paid. In addition, he could not be sure that it had not been paid at the time and this was important for time bar purposes. There was a moral case for it to be paid. He had made it clear that the respondent's own policy could not justify the deduction of the breaks. This matter had continued for months with no resolution. He referred to the exchanges at pages 112 and 113. The last on call deduction would have been sometime in June or July.

34. He accepted Dr Alder's evidence that the failure to provide him with a further assignment was unrelated to his difficulties with the respondent's payroll and sought to withdraw the claim for unfair dismissal.

Discussion and Decision

Strike Out /Deposit

35. A Tribunal is required when addressing such applications as the present case to have regard to the overriding objective, which is found in the Employment Tribunal Rules which states as follows:

> "**3. Overriding objective**
>
> 3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing,
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

4. The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal."

36. The EAT has held that the striking out process requires a two-stage test in **HM Prison Service v Dolby** [2003] IRLR 694, and in **Hassan v Tesco Stores Ltd** UKEAT/0098/16. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim.

37. It has been observed that the power of strike out is a draconian one and could only be exercised in rare circumstances. The effect of a successful strike out application would be to prevent a party proceeding to a hearing and leading evidence in relation to the merits of their claim. (**Balls v Downham Market High School & College** [2011] IRLR 217 EAT).

Application for Deposit Order

38. In the alternative, Ms Stobart submitted that the claim has little reasonable prospect of success and that a Deposit Order should be made if the case is not struck out. The test is not as rigorous as "no reasonable prospect of success". The Tribunal's power to order a Deposit Order of up to £1000 for each specific allegation or argument. (**Doran v Department of Work and Pensions** UKEAT ES/0017/14, **Van Rensburg v The Royal Borough of Kingston Upon Thames and others** UKEAT/0096/07 and UKEAT/0095/07, **Wright v Nipponkoa Insurance (Europe) Ltd** UKEAT/0133/14).

Unlawful Deduction/Sick Pay

39. The first issue relates to the alleged unlawful deduction that occurred on the 13 December 2024. The ET1 was received on the 7 November 2025. The

claim should have been raised by the 12 March 2025. Dr Yeats said that the payroll was shambolic and he struggled to get responses to queries. That may be the case. However, he was aware that the respondent had no contractual requirement to pay him if he could not work a shift (Clauses 10 onwards at JBp76). He knew he was making a claim that was likely to be disputed and when he made the claim in December he says it should be paid ''*as per employment law*''. He could see that the claim 'bounced' on the 3 January. He must have been aware that the payment would not be in his next pay run which I understood to be done weekly (JBp75 clause 7.10). He should have taken proceedings within three months of this date if he regarded it as an unlawful deduction (Section 23(2) of the Employment Rights Act 1996).

40. However, the requirement for any such successful claim is that the money must be due as wages. In short there must be some obligation to pay. Similarly for breach of contract there must be demonstrated a provision that was then breached. The claimant has worked as a locum for many years. He was aware that he was not due his salary unless he worked. The standard contract terms and the booking form cannot be disregarded. They were used by parties to record a number of important matters such as sick pay entitlement and confirm he might be due SSP (Clause 10.6). Apart from the general assertion he was actually an employee and entitled to the particular contractual benefits of other employees the claimant has no basis. Even if it had such a basis it was reasonably practicable for the claimant to raise such proceedings in time or within three months of the respondents putting the matter beyond doubt in May. **This claim has no reasonable prospects of success and is struck out**.

41. The claimant also claims that the policy in respect of breaks and deductions of breaks was misapplied or misinterpreted. It certainly appears off that deductions would be made unless 6 hours' work was carried out. I struggle to see any basis for such a deduction if the claimant was on call. He would be free to spend that time as he saw fit. If he was actually called out to work then if his hours passed the six hour threshold a break would be triggered. However, any such claim might be out of time. The claimant was unable to say when the last such deduction was made**. In these circumstances I will reserve the issue of time bar and strike out/deposit meantime to allow the claimant to identify when the last of such deductions was made. The respondents should provide the appropriate records if the claimant does not have access to them**.

Status

42. The starting points here are the written terms reflecting the agreement that was reached between the claimant and the respondent and the way in which they acted towards each other being a guide to the true relationship. They appeared to act in conformity with the material provisions which had been set out in writing namely duration of the agreement namely sick pay and pay. None of these purport to give employment rights.

43. As noted above the claimant knew he was applying for locum work under an agency type arrangement that he had used before. He had to provide personal service. He was acting as a Specialist Doctor rather than as a Consultant as he had agreed with Dr Alder. The title on the name badge is of no real persuasive significance here. It is likely to have been an error that probably occurred because he was acting in the place of a Consultant who was absent and as he said fulfilling much of that role.

44. It is noteworthy that the documentation we have is aligned with worker status. The claimant was paid a higher hourly rate than he would have been if he was in a substantive post. He did not have some of the administrative responsibilities that a Consultant holding a substantive post would have had. These included taking roles in the hospital management, being educational supervisor of junior medical staff, undertaking clinics in the community, undertaking research and development, teaching or undertaking audits.

45. In addition, he could choose to work or not and this is amply demonstrated by him not working in August. That matter is crucial here. There was no mutuality of obligations once the assignment was over. By that I mean that outside the terms of the assignment there was no continuing obligation to provide and crucially to accept work.

46. The claimant places weight on the fact that he is integrated into the organisation. This is a factor that must be considered. However, this test for employment status has to be treated carefully. Logically someone providing cover for an employee must step into their shoes and thus become integrated in a sense in the structure of an organisation. That does not mean that everyone doing this must become an employee.

47. One of the perennial difficulties for both lawyers and laypeople is how to distinguish who is an employee and who is properly regarded as a worker. The law is complex and has been the subject of both Judicial and Parliamentary interventions. I have some sympathy with Dr Yeats when he says that he was doing the job of a Consultant and should have been treated as such in relation to his terms and conditions. He goes further to say that he should have been treated as an employee because the reality was that he

was actually an employee. There may have been little apart from a name badge to differentiate the day to day work he carried out with that of a substantive postholder Consultant but some important differences remain which are important.

48. There is no basis to conclude that the claimant was entitled to be paid as a Consultant even if he were to be classed as an employee. The rate of pay was agreed between him and the respondent. He was not in terms of the respondent's rules entitled to become a Consultant.

49. The consequence of this is that he was not paid for or entitled to study leave. In any event he did not apply for study leave. He was not entitled to join the NHS pension scheme.

Strike Out

50. The claims relating to access to the NHS Pension Scheme, Benefits and payment as an NHS Consultant (Payment for Supporting Professional Activities and in lieu of study leave) shall be struck out as having no reasonable prospects of success. The claim for automatic unfair dismissal turns on the claimant not being given a new assignment. The claimant withdrew this claim. Frankly he had little option standing the evidence of Dr Alder which he accepted. This claim has in any event no reasonable prospects of success. These difficulties cannot be remedied. They are unsupported by the Tribunal's findings. There is no basis for not striking them out in these circumstances.

51. Following the hearing Dr Yeats wrote to the Tribunal seeking to withdraw his concession that the claim for unfair dismissal should be withdrawn. He said that he "*I was representing myself at the hearing. I had had no sleep the night before and, by the point at which the withdrawal occurred, I was extremely exhausted and was not thinking clearly".*

52. The withdrawal of the concession was opposed. The respondents indicated that they believed that the withdrawal was clear and unambiguous. I regret that I agree with them. After hearing Dr Alder's evidence he said that he accepted it. He came to the same conclusion anyone would have who had heard Dr Alder's clear evidence on the matter. His demeanour and actions gave no indication that he was not thinking straight. Indeed the requested withdrawal discloses that he is not thinking matters through. Even if he withdrew the concession he would be left with unambiguous evidence which he did not challenge and which he said he accepted. Even if the concession was withdrawn the claim would have been struck out for the reasons above.

53. On a wider point it is not for the Tribunal to tell the Board how to manage its staff but in a situation where it is difficult to get staff to work in Grampian how staff are treated is important. The contractual documentation should be clear. Issues around getting responses from payroll caused Dr Yeats considerable frustration. The letter from Ms MacDonald indicated that a number of his challenges to calculations had been successful. That seems to suggest that there might be problem perhaps with the recording of the shift details or in the challenge process (I understand that Dr Yeats would input his claim electronically) but wherever the difficulty lies I would hope that such situations could be avoided or minimised in the future.

Date sent to Parties **17 September 2026**