



EMPLOYMENT TRIBUNALS

Claimant: Mrs Amy Rothwell

Respondents: Gray's Inn Medical Group Limited (1)
Dr Pezhman Nouraei Fard (2)

Heard at: London Central (by CVP)

On: 5, 6 August 2025

Before: Tribunal Judge Jack, acting as an Employment Judge

Representation

Claimant: Mrs **Simpson**, counsel

Respondents: Mr Ocloo, consultant (Peninsula)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The first respondent has made unlawful deductions from the claimant's wages and is ordered to pay to the claimant the gross sum of £9,146.64, in respect of the amounts unlawfully deducted.
2. The first respondent is ordered to pay to the claimant the sum of £800 in respect of financial loss attributable to the unlawful deductions from wages, pursuant to section 24(2) Employment Rights Act 1996.
3. The complaint of being subjected to a detriment, contrary to section 146(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992, is well founded and succeeds.
4. The respondents shall pay the claimant £4,000 compensation for injury to feelings.

REASONS

Background

1. This is a claim for unauthorised deduction from wages and trade union detriment.

2. There was a preliminary case management hearing on 17 December 2024. EJ Emery listed the final hearing before a panel, stating that the trade union detriment complaint may benefit from a full panel. However the parties were notified that due to judicial and panel availability the hearing would need to be before a judge sitting alone. The parties told me that they did not object. The Presidential Guidance on panel composition is clear that a material change in circumstances may require the decision on panel composition to be reviewed. It also states that examples of a material change that may favour panel composition to a judge sitting alone includes there being no panel member available and the delay involved in relisting the case would be contrary to the interests of justice. Had the parties sought an adjournment so that the final hearing could be before a full panel, I was told that the earlier listing would be in mid to late 2026. Having regard to the overriding objective and the need to avoid delay, my view was that the hearing should proceed before a single judge.
3. There was a bundle of 222 paginated pages. The respondent provided various additional documents which were paginated 223 to 239 (and a revised index to the bundle). The claimant provided another document i.e. a payslip for 30 April 2025.
4. The claimant, the second respondent and Ms L Dimosthenous provided witness statements and gave oral evidence.

The Issues

5. There is a list of issues in EJ Emery's record of a preliminary hearing dated 17 December 2024. I suggested that the list of issues under the heading remedy could be pruned in the light of the claimant's schedule of loss. The parties agreed.
6. The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, it appears that the complaints have been brought in time.

2. Trade Union membership claim

2.1 Was the claimant a member of a trade union?

2.2 Did the respondent subject her to a detriment by referring to her in a reference as "a unionist"?

2.3 If so, was it done for the sole or main purpose of penalising her for being a member of a trade union?

3. Remedy for trade union membership detriment

3.1 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

4. Unauthorised deductions

- 4.1 Were the wages paid to the claimant on 31 January 2024, 31 March 2024 and 31 April 2024 less than the wages they should have been paid?
- 4.2 Was any deduction required or authorised by a written term of the contract?
- 4.3 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 4.4 Did the claimant agree in writing to the deduction before it was made?
- 4.5 How much is the claimant owed?

Findings

- 5 The claimant was employed by the first respondent as Practice Nurse and Head of Nursing on 15 February 2021.
- 6 Her contract of employment provides that deductions can be made from her salary in six circumstances (clause 5.3).
- 7 The staff handbook of the first respondent says that the first respondent has a policy of encouraging employees to undertake training, and will assist with the costs of training. However in the event of termination of employment, for whatever reason, the first respondent will seek reimbursement of the costs in line with the Training Agreement.
- 8 There is a standard template Training Agreement on the first respondent's staff intranet. This is a 'blank' template into which details need to be inserted when it is used e.g. the name of the training provider and the anticipated cost of the training.
- 9 On 1 September 2022 the claimant signed a completed Training Agreement in respect of training provided by King's College London. The claimant agreed to remain employed by the first respondent for a minimum of two years. If she left her employment "once the training has been agreed and paid for by" the first respondent, she undertook to refund £9,152.00 to her employer.
- 10 £9,152.00 was the amount of the fees charged by King's College for the relevant training i.e. the Advanced Clinical Practitioner Course ('ACP').
- 11 The claimant attended the ACP.
- 12 The first respondent did *not* pay for the ACP course that the claimant attended. Higher Education England paid for the course directly, and the respondents did not pay anything towards the course.
- 13 The respondent received an invoice from Acquisition Aesthetics for £2,028.24 in respect of a Combined Course dated 25 August 2022. This was for a Foundation course and an Advanced course combined.

- 14 The claimant was not asked to sign a Training Agreement in respect of aesthetics training provided by Acquisition Aesthetics.
- 15 There were various WhatsApp messages from Pezh (i.e. the second respondent) to a number of members of staff, including the claimant. These messages were about the Foundation Course and the Advanced course and the second respondent said that if the members of staff who had agreed to go did not attend they would be liable for the fee “which is circa £2k each”. The second respondent also said that he would write formally, and would send a contract when it had been prepared by a solicitor and a loan agreement. However no contract or loan agreement was sent.
- 16 The most important WhatsApp message for the purposes of this claim was sent on 15 September 2022 to a number of members of staff, including the claimant. It said:

“Please be reminded that those of you who are attending the acquisition aesthetics course sponsored by GIMG ltd will be doing so on the basis of the cost being raised as debt to us (the creditor) with the prior understanding that if you leave us prior to having [p]aid this back in full it will be sought from your pay or a claim will be raised against you. Hopefully you will stay and work in our aesthetics clinic and repayment will be by way of each treatment you give (botox, fillers, prophil) at a rate of £70 per treatment. Please thumbs up and accept this. Contract is coming from the HR department”.
- 17 The claimant responded to this message with a thumbs up.
- 18 The claimant attended a Foundation Botox and fillers course on 17 September 2022.
- 19 The claimant attended an Advanced Course on 4 December 2022.
- 20 The respondent paid for her to attend each of these courses, paying a total of £2,028.24.
- 21 At some point the claimant also attended a third aesthetics course provided by Acquisition Aesthetics, the topic of which was Prophil. The respondent has not provided an invoice for this course and in the absence of documentation relating to this I am unable to make a finding as to the cost of this course.
- 22 The claimant handed in her notice on 17 January 2024.
- 23 The claimant’s payslip for 31 January 2024 shows a deduction of £2,627.24 in respect of private training. The respondent says that this was deducted to repay the three aesthetics courses that she attended. The result was that the claimant’s net pay for the month was £250.09.
- 24 The claimant is a member of the Royal College of Nursing (RCN), which is a trade union. The RCN letter wrote to the second respondent on 7 February 2024 regarding what was said to be an unlawful to deduction of the claimant’s wages. The RCN sought the immediate return of the full deduction.

- 25 The claimant raised a grievance on 7 February 2024 regarding the recent deduction from her wages. She referred to RCN guidelines regarding the underpayment of wages.
- 26 The claimant's payslip for 28 February 2024 shows net pay of £3,003.46. No deduction relevant to the issues in this case was made.
- 27 A grievance meeting held on 8 March 2024, which both the claimant and the second respondent attended. The claimant was represented by Will **Malcher**, her RCN representative, who contributed actively to the meeting and referred to the Employment Rights Act 1996.
- 28 The second respondent provided a reference for the claimant to the claimant's then prospective and now current employer. This was written on 12 March 2024. The opening paragraphs start thus:
- “We would not employ Amy because she does not fit in with our culture and model of working.
- This is not to say that she is not an excellent nurse. In our opinion, Amy is a unionist and is motivated by partnership and personal income ... “
- 29 The reference does close by saying again the claimant is an excellent nurse. However the reference is in the main negative.
- 30 The second respondent said in his evidence that every nurse and doctor is a member of their respective union and that he applauds it. The term “unionist” in the reference was a figure of speech to refer to an individual who gathers other individuals together to challenge the organisation. It has, he said, no reference to membership of a trade union. I consider this to be inherently implausible. One established meaning of the word “unionist” is member of a trade union: OED. There are other established meanings e.g. a supporter of the union of Northern Ireland with Great Britain, which are clearly not relevant here. Further, there is a mention of her “union representative” later in the same reference, which is plainly a reference to her trade union representative. For the reasons given, I consider that the second respondent's evidence is not credible on this point. The reference to “unionist” was a reference to her trade union membership and, read in context, was plainly negative.
- 31 The claimant took two days unpaid leave on 27 and 28 March 2024 to attend a funeral. The respondent has not provided any documentary evidence of her having taken any other unpaid leave in February or March 2024, and I find that this was the only unpaid leave that she took in this period.
- 32 The claimant's payslip for 31 March 2024 shows that she was paid £2,755.31 although, as the second respondent accepts, the claimant did not receive any money at all in March 2024. The respondent says that this deduction was in respect of repayment for the ACP course. The same payslip also shows a deduction for 25.5 hours of unpaid leave at the hourly rate of £29.00.
- 33 The claimant's employment terminated on 17 April 2024.
- 34 The claimant's payslip for 30 April 2024 shows a deduction of £1,942.91 in respect of what is said to be loans repayment. The respondent says that this

deduction was also in respect of repayment for the ACP course. The result was that the claimant's net pay was zero.

35 The first respondent sent the claimant a letter on 26 June 2024 seeking reimbursement of the ACP training course in the sum of £9,152.00.

The Law

36 Section 13(1) of the Employment Rights Act 1996 (ERA) 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 worker's contract, or

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

37 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.”

38 Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Where a tribunal finds a complaint under section 23 ERA well founded it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deductions made in contravention of section 13 ERA (s24(1)(a) ERA).

39 Section 5 of the Interpretation Act 1978 provides that in any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 are to be construed according to that Schedule. Schedule 1 of the Interpretation Act 1978 defines 'writing' as including “typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly”.

40 Section 146(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of —

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,

41 A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. An unjustified sense of grievance cannot amount to “detriment”: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11.

Analysis and Conclusion

Unauthorised deductions

42 Deductions were made from the claimant’s wages:

£2,627.24 on 31 January 2024;

£2,755.31 on 31 March 2024;

a further deduction in respect of 25.5 hours of unpaid leave at the hourly rate of £29.00 also made on 31 March 2024;

£1,942.91 on 30 April 2024.

43 The respondent does not say that the deductions were required or authorised by a statutory provision.

44 The claimant’s contract of employment provides that deductions can be made from her salary in six circumstances (clause 5.3). However those circumstances do not include the repayment of fees paid by the first respondent for the claimant’s training.

45 The staff handbook of the first respondent says that the first respondent has a *policy* of assisting with the costs of training. However in the event of termination of employment the first respondent will seek reimbursement of the costs in line with the Training Agreement. This is a statement of policy about helping employees and seeking reimbursement which does not have contractual status. The standard template Training Agreement on the first respondent’s staff intranet cannot record a contract or a written agreement to deductions until and unless it is filled in.

ACP – the Training Agreement

46 With respect to the deductions of £2,755.31 and £1,942.91 the respondent relies on the Training Agreement in respect of the ACP delivered by King’s College London, and says that it was a contract of the worker which authorised deductions within 13(1)(a) ERA.

47 The respondents argued that the Training Agreement was not restricted to the costs of the course delivered by King’s, but also covered the cost of the claimant being out of work when attending the course and the cost of the supervision and mentoring that was needed for her to complete this training.

48 The second respondent’s evidence was that there were two elements to the cost covered by this agreement (i) the course fees and (ii) the costs to the business of supporting and mentoring the claimant so that she would be able to complete the course requirements. His evidence was that he estimated

the cost of the clinical sessions that would be needed as over £10,000, and reduced this figure to a figure that he thought would be palatable and so “we matched the figure to the college costs”.

- 49 I do not accept this. First, it is inherently implausible that an agreement said to be about (i) course fees and (ii) the costs to the business of supporting and mentoring would be for the exact amount of those course fees. Second, this understanding is not reflected in the terms of the agreement itself which does not refer to any costs to the employer other than payment by the first respondent for the training i.e. for the training from King’s College. Third, the agreement envisages that the claimant will become liable for the full amount i.e. for £9,152.00 as soon as the training is paid for by her employer. That makes sense if her liability relates to the payment of course fees. It does not make sense if her liability relates to business costs which only be incurred gradually as she benefits from ongoing support and supervision.
- 50 I therefore reject the second respondent’s evidence on this point, which I consider to be retrospective justification for some of the deductions made.
- 51 Mr Ocloo submitted that if there was not an express term of the claimant’s contract which authorised deductions in relation to the costs incurred by the first respondent in respect of the support and mentoring needed for her to complete the ACP, then it was an implied term. I can see no basis on which to imply such a term. The respondents clearly consider that such a term would be reasonable or desirable, and but that is insufficient. I see no evidence that it would have been the intention of both parties to include the term in the agreement at the time that it was made. Further, there is no evidence, and it was not argued, that the first respondent had notified the claimant in writing of the existence and effect of such an implied term prior to making the deductions in question (as required by s. 13(2)(b) ERA).
- 52 The explicit terms of the Training Agreement are that the claimant would refund her employer if she left her employment “once the training has been agreed and paid for by my employer”. However the first respondent did *not* pay for this training. It was paid for directly by Health Education England. So this agreement does not authorise a deduction. Nor does it signify the claimant’s agreement in writing to a deduction in circumstances where the first respondent did not in fact pay for the training.
- 53 In conclusion, the deductions of £2,755.31 on 31 March 2024 and £1,942.91 on 30 April 2024 were not required or authorised by a written term of the worker’s contract. And the claimant did not agree in writing to the making of these deductions before they were made. These two deductions were therefore unauthorised.

Aesthetic courses – the WhatsApp exchange

- 54 I have quoted the relevant WhatsApp exchange of 15 September 2022. The respondents say that this was an agreement or consent to the making of the deduction of £2,627.24 on 31 January 2024.
- 55 The first point is that even if the WhatsApp exchange was an agreement to deductions, it did not authorise a deduction of £2,627.24. It is clear from the other relevant WhatsApp messages that what was being discussed was attendance at the Foundation course and the Advanced course, the fee for

which was said to be “which is circa £2k each”. Contrary to the evidence of the second respondent that this agreement covered all three aesthetics courses, including the Prophilos course, I consider that it is clear from the context that only the Foundation Course and the Advanced course were being discussed. The fee for those two courses was, as I found above, £2,028.24.

56 Mrs **Simpson** submitted that the claimant’s thumbs up was merely an acknowledgement of the message or, at most, acceptance of the idea that a contract would follow in the future. The last sentence of the message states that “Contract is coming from the HR department”, and other messages referred to sending a contract being sent when it had been prepared by a solicitor and a loan agreement. However the message to which the claimant was responding stated “Please thumbs up and accept this”. All five recipients of the message sent a thumbs up and, I find, by doing so in the context of the sentence just quoted, they accepted what was said in the message. What was said in the message was that “if you leave us prior to having [p]aid this back in full it will be sought from your pay or a claim will be raised against you”. The claimant accepted in her oral evidence that in the message to which she responded there was mention of deduction from her pay. I conclude that by responding to the WhatsApp message of 15 September 2022 with a thumbs up, the claimant was agreeing to the making of a deduction from her pay if she left the first respondent before paying the course fees of £2,028.24 back in full.

57 Mrs **Simpson** submits that even if the thumbs up emoji did signify acceptance, it was not in writing within the meaning of s. 13 ERA, since an emoji does not fall within the meaning of ‘writing’ as defined by the Interpretation Act 1978. I accept that. An emoji is visible. But it is not a way of representing a word or words in visible form, or a way of reproducing a word or words in visible form. It is not like a printed word or a photograph of a word, each of which represents or reproduces a word in a visible form. It follows that signifying agreement by way of an emoji is not signifying agreement in writing for the purposes of s. 13(1)(b).

58 In conclusion, the deduction of £2,627.24 on 31 January 2024 was not required or authorised by a written term of the worker’s contract. The claimant had only agreed to deductions in the amount of £2,028.24. Further, and more importantly, she did not agree *in writing* to the making of this deduction before it was made. This deduction was therefore unauthorised.

Unpaid leave

59 A deduction was made on 31 March 2024 for 25.5 hours of unpaid leave at the hourly rate of £29.00.

60 The claimant took two days unpaid leave on 27 and 28 March 2024 i.e. 16 hours. She did not take any other unpaid leave in the period February to March 2024.

61 I conclude that there was an unauthorised deduction of 9.5 hours at the hourly rate of £29.00.

How much is the claimant owed?

- 62 An unauthorised deduction of £2,627.24 gross was made on 31 January 2024.
- 63 An unauthorised deduction of £2,755.31 net on 31 March 2024, or £4300.99 gross.
- 64 An unauthorised deduction of 9.5 hours at an hourly rate of £29 an hour was made on 31 March 2024, or £275.50 gross.
- 65 An unauthorised deduction of £1,942.91 gross was deducted on 30 April 2024.
- 66 That is a total of £9,146.64 gross.
- 67 The claimant also sustained financial loss attributable to the deductions complained of. I find on the basis of the relevant documents in the bundle that she borrowed £4,000 as a result of the large deductions made from her wages, and has incurred interest in the sum of £800.

Trade Union detriment

- 68 The claimant was a member of a trade union, namely the RCN.
- 69 The RCN letter wrote to the second respondent on 7 February 2024 regarding an unlawful to deduction of the claimant's wages and seeking the immediate return of the full deduction.
- 70 The claimant raised a grievance on 7 February 2024 regarding the recent deduction from her wages, and she referred to RCN guidelines regarding the underpayment of wages.
- 71 At the grievance meeting held on 8 March 2024 the claimant was represented by her RCN representative, who contributed actively to the meeting and referred to the Employment Rights Act 1996.
- 72 The second respondent provided a reference for the claimant on 12 March 2024 which begins as follows:
- “We would not employ Amy because she does not fit in with our culture and model of working.
- This is not to say that she is not an excellent nurse. In our opinion, Amy is a unionist and is motivated by partnership and personal income ... “
- 73 I have found that this was a reference to her being a member of a trade union. The reference to her being a unionist is plainly negative.
- 74 The *Shamoon* test is met. A reasonable worker would or might take the view that being referred to as a unionist in a negative way in a reference to a prospective employer was, in all the circumstances, to her disadvantage. That is the case even if (as here) the reference did not prevent the prospective employer from taking them on. So the respondents subjected the claimant to a detriment by referring to her negatively in this reference as “a unionist”.

- 75 In the context of the events that I have just outlined, which occur within a short period of time, I am satisfied that the negative reference to the claimant as a “unionist” had the sole or main purpose of penalising her for being a member of a trade union.
- 76 The claimant’s oral evidence (which I accept) was that she found having a reference from her previous employer saying that they would not now employ her as she is a unionist hurtful, unnecessary and demeaning. Her witness statement said (and I again accept) that she was very offended to find her legitimate membership of a trade union being used against her in such a negative job reference.
- 77 Mrs **Simpson** accepted that this was a one-off incident and that the appropriate level was the lower Vento band. The claimant’s schedule of loss seeks an award of £5,000.
- 78 The claim was presented on 29 May 2024, so relevant lower Vento band is £1,200 to £11,700. Injury to feelings awards are compensatory and should be just to both parties. The focus is on the actual injury suffered by the claimant, not the gravity of the acts of the respondents. The award should compensate the claimant fully, without punishing the respondents. The reference was a one-off occurrence.
- 79 In all the circumstances, I consider the appropriate award to be £4,000.

Employment Judge Andrew Jack

Date 9 August 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
12 August 2025

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M PARRIS
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FOR EMPLOYMENT TRIBUNALS

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