



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000781/2024

Hearing at Edinburgh via Cloud Video Platform (CVP) on 5 September 2024

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Employment Judge: M A Macleod

**Mr B Palrasu**

**Claimant  
In Person**

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**Metix Limited**

**Respondent  
Represented by  
Mr G Delaney -  
Director**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that the claimant's claim fails and is dismissed.

### REASONS

1. The claimant presented a claim to the Employment Tribunal on 4 June 2024 in which he complained that he had been unlawfully deprived of pay by the respondent.  
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2. The respondent submitted an ET3 resisting the claimant's claim.

3. A Hearing was listed to take place on 5 September 2024 by Cloud Video Platform. The claimant appeared on his own behalf, and Mr Delaney, a director of the respondent, appeared for the respondent.

30 4. The respondent produced documents to be relied upon at the Hearing.

5. The claimant emailed the Tribunal shortly before the Hearing to propose that he would produce documents on the morning of the Hearing. When the

Tribunal advised him that he required to produce documents in advance of the Hearing in fairness to the respondent, he appeared to be uncertain as to how to respond. In the event, he did not seek, at the outset of the Hearing, to produce any documents. However, he produced an email exchange with his ET1, to which reference was permitted.

6. The claimant confirmed that his address was different to that given on the ET1, and accordingly the instance is amended to take account of his current address.
7. The claimant and Mr Delaney both gave evidence.
- 10 8. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

### **Findings in Fact**

9. The claimant, whose date of birth is 20 May 1996, commenced employment with the respondent as a Product Engineer, based in Glasgow, on 11 April 2022. His salary was £24,000 per year. He was, during the course of his employment, resident in the United Kingdom on a student visa.
10. By the end of December 2023, the claimant required a sponsorship in respect of his right to remain in the UK in accordance with the UKVI requirements.
- 20 11. At that time, the organisation employed very few people. The claimant was a product engineer; and Elson Mourao was Chief Technical Officer. The Chief Operating Officer was Richard Smith, the claimant's line manager. Gavin Delaney, who represented the respondent before this Tribunal, was a director from October 2023. The other directors were James Thurlow, the Chair; Sabbas Neophyto, Chief Investment Officer at Deepbridge Capital and Andrew Round, also of Deepbridge Capital.
- 30 12. The respondent is what Mr Delaney described as a pre-revenue venture-backed business, which has no income, but exists on share capital. Prior to Mr Delaney's involvement there had been a significant falling out between the Chief Executive and Chief Financial Officer on one hand, and the

investors on the other, resulting in the dismissal of the Chief Executive and Chief Financial Officer.

13. Mr Delaney's role is to look after distressed business for the fund which backs the respondent. When he became involved, it was necessary to identify someone to run the business locally in Glasgow, and the Chair trusted Mr Mourao to take that role.
14. On 1 November 2023, Mr Delaney travelled to Glasgow to make staff redundant in order to reduce the cashflow of the business. Mr Smith and Mr Mourao had prepared a number of letters to the staff in the business to advise them that they would be made redundant, including the claimant. A meeting took place between Mr Smith, Mr Mourao and Mr Delaney, at which it was decided that the claimant should not be made redundant at that point, partly in order to ensure that his visa status was not affected adversely.
15. In December 2023, the claimant required to start the process of applying to renew his visa. In order to secure his ongoing right to remain, the claimant required to be successful in that process. Mr Mourao, with whom he discussed this matter, advised him that the respondent was prepared to sponsor him, and assured him that his salary would be increased to £27,280 per annum from £24,000 per annum, in order to meet the UK Border Agency minimum salary for the position he occupied. Mr Mourao advised the claimant that the Board of Directors was happy to sponsor his application, and that they would be in a position to pay him this increased salary from January 2024. The claimant believed that if he were not paid that salary, he would have to leave the United Kingdom.
16. Mr Mourao intended to, and did, leave the employment of the respondent on 4 February 2024. The claimant was anxious to ensure that he had evidence from the respondent that his salary was being increased. As he put it before this Tribunal, the claimant understood that this was not a pay rise for him, but to state a legal reason for the deferment of his pay rise.
17. The claimant said he was not aware of the financial status of the company, but he was, or must have been, aware that the company was intending to

make redundancies, and also that he had not received the purported pay rise to which he now refers. He maintained that he was in agreement with the respondent that the pay rise would be deferred given that the respondent was unable to pay him that amount given the financial status of the company.

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18. Mr Mourao advised the claimant that he wanted to ensure that he had written confirmation of the pay rise so that he could claim it back in future. Accordingly, he wrote an email dated 4 February 2024 at 1557, addressed to Mr Thurlow, Mr Smith, Mr Round and Mr Delaney, as well as a Mr Ian Mawhinney, in the following terms:

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*“Hi,*

*As you may know we started the process of sponsoring Bhuvan at the start of December '23. His previous VISA expired in January but UKVI was flexible towards his stay as the process was already ongoing and the main reason for the delay was that we tried to get the application based on 70% of the required salary for his Skilled Worker VISA which would have meant no change to his current salary. However UKVI insisted we needed to meet the 80% as the job code is in the job shortage list. This means an increase from £24,000 to £27,280.*

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*The VISA has just been granted and as per the certificate of sponsorship the Work Start date is 06 January 2024. Due to our current situation Bhuvan has agreed that we can defer the salary adjustment but in order to avoid any issues in the future we need to provide some rationale to this and ensure that if UKVI questions this we have evidence to show we are aiming to meet our obligations.*

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*See the attached letter that I prepared with this in mind. If you agree please provide a signed copy to Bhuvan and add it to Bhuvan's documents in BreatheHR for record keeping.*

*Regards,*

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*Elson”*

19. No such letter was ever provided to the claimant; and no document was produced to this Tribunal to confirm that such a letter had in fact been prepared and signed by the Board of the respondent.
20. Mr Delaney's evidence was that he had very little knowledge of any conversations between the claimant and Mr Mourao.
21. The claimant also produced a letter from the UK Border Agency dated 30 January 2024 confirming that the claimant's application under the Skilled Worker route of the immigration Rules had been successful, and that he had been granted permission to stay in the UK as a Skilled Worker until 20 January 2025.
22. The letter went on to confirm that he was allowed to work for his sponsor in the job described, and set out the main details of the job. It confirmed that the sponsor was the respondent, that his job title was Product Engineer and that his salary was £27,280.
23. Mr Delaney's evidence was that he had no knowledge of this letter nor that Mr Mourao had told the UK Border Agency that the claimant's salary was £27,280 rather than £24,000.
24. The respondent was in severe financial trouble at the start of 2024. No payments were being made without the specific authority of Mr Thurlow or Mr Delaney, and they would not have agreed to the pay rise proposed for the claimant.
25. Mr Delaney's view was that Mr Mourao was seeking to be helpful to the claimant, but that the respondent could not sanction paying an employee a certain salary and telling the UK Border Agency that they were being paid a higher salary. He also said that Mr Mourao did not have the authority to bind the respondent in this way.
26. The respondent produced to the Tribunal a copy of the claimant's P60 for the year ending 5 April 2024, which records that the claimant's salary was £24,000 per annum.

27. The claimant was paid £24,000 per annum until 2 May 2024, when his employment ended.

### Submissions

28. Both the claimant and Mr Delaney made short submissions.

### 5 Discussion and Decision

29. The issue before me in this Hearing is whether or not the claimant was unlawfully deprived of pay in the period between January and 2 May 2024, when his employment ended, representing the difference between £27,280 and £24,000.

10 30. Under section 13(3) of the Employment Rights Act 1996, to which I was not referred but which is plainly the relevant statutory provision in these circumstances, it is provided that *“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for*  
15 *the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”*

31. The question before me is whether there was an effective amendment to the contract to the effect that the claimant’s salary would rise to £27,280 per  
20 per annum from the start of January 2024 in order to ensure that he would be able to obtain his Skilled Worker’s Visa.

32. There are a number of questions which arise here:

1. Did Mr Mourao agree with the claimant that he would receive such a pay rise?
- 25 2. If so, did he have the express authority of the respondent to bind them to such an agreement?
3. If he did not have the express authority of the respondent to bind them to such an agreement, did he have ostensible authority to do so?

4. What effect did the claimant's apparent agreement to defer the payments have on this matter?

33. Before addressing these issues, it is appropriate to comment upon the evidence in this Hearing. The claimant and Mr Delaney both gave their evidence in straightforward terms, seeking to assist the Tribunal. it is clear to me that neither were being directly dishonest in what they said. However, the evidence before me was relatively limited. I did not hear evidence from Mr Mourao, nor Mr Smith or any of the directors other than Mr Delaney, and accordingly it is difficult to be entirely sure about every aspect of this case.

34. However, I consider that there is sufficient material before me upon which I may reach a decision.

**1. Did Mr Mourao agree with the claimant that he would receive such a pay rise?**

35. In my judgment, Mr Mourao did agree with the claimant that he would be paid an additional sum in order to assist him with securing his Skilled Worker's Visa. The claimant gave evidence about this and in my view he was credible on this point. His evidence is supported by the letter from the UK Border Agency which specifically identifies his salary as £27,280. There is no basis upon which I can find that the information about his salary came from elsewhere than his employer. Further, Mr Mourao wrote to the respondent on 4 February 2024 to confirm the terms of his agreement, and to seek authority to proceed with it. That email was forwarded to the claimant on the same day. These are contemporaneous messages which set down what Mr Mourao was saying at the time to the respondent and to the claimant.

36. In addition, Mr Delaney simply said that he was unaware of any conversations which Mr Mourao had with the claimant.

**2. If so, did he have the express authority of the respondent to bind them to such an agreement?**

37. On this point, the claimant is unable to assist the Tribunal. He was not aware of the conversations between the respondent and Mr Mourao, though he did see the email of 4 February 2024 on the same date.

5 38. Mr Delaney gave evidence to the effect that there was no explicit authority given by the Board of the respondent, and in particular by himself or Mr Smith. He also confirmed that they would not have authorised such an increase in expenditure at such a time of financial constraint.

10 39. It is a curious aspect of this case that the claimant not only did not receive the sums he claims he was due, but also assented to the deferment of such payments. Mr Delaney said that he was unaware of such an agreement having been reached, but also that the respondent would never have agreed to it, particularly for the purposes of a Skilled Worker's Visa application.

15 40. Further, when Mr Mourao wrote his email of 4 February 2024, it is plain from its terms that he was seeking written authority to proceed, despite the fact that he had already secured the claimant's Skilled Worker's Visa by advising the UK Border Agency that his salary was at the higher level (which was confirmed on 30 January 2024).

20 41. In my judgment, Mr Mourao did not have the express authority of the respondent to reach an agreement with the claimant to the effect that he would receive a pay rise. While it is unclear what the lines of authority within the respondent's business were, particularly in the absence of a Chief Executive and Chief Financial Officer, there is no evidence that Mr Mourao had any authority to make such a decision, and by contrast Mr Delaney made clear that he did not, and that any such decision would have been made by himself and Mr Smith. Finally, the letter of authority which Mr Mourao sent to the respondent was left unsigned, and there is no evidence that it was ever signed by the respondent. No copy of the letter was presented to the Tribunal, in any event, and so no findings can be made about this matter by the Tribunal.

30 **3. *If he did not have the express authority of the respondent to bind them to such an agreement, did he have ostensible authority to do so?***



42. It is clear that Mr Mourao did not have the authority of the respondent to bind them to his agreement with the claimant that a pay rise should be awarded. However, the respondent may still be held liable in the event that it can be demonstrated that Mr Mourao may have had ostensible or apparent authority to bind them.
43. Mr Mourao did agree with the claimant that he would be paid £27,280 per annum from January 2024, instead of £24,000 as before. He acted upon that agreement in two ways: firstly, by informing the UK Border Agency that this was the claimant's salary in persuading them to award him his Skilled Worker's Visa; and secondly, by sending the email of 4 February 2024 to the respondent's directors with a letter of authority to sign.
44. As to the claimant's understanding of the situation, he was aware that Mr Mourao was not a director of the company. He also stated in evidence before me that Mr Mourao did not have the authorisation to approve the increase in salary without the authority of the Board of Directors.
45. The directors did not at any stage confer upon Mr Mourao the authority to reach a binding agreement with the claimant to the effect that his salary would increase as proposed, nor indeed to tell the UK Border Agency that this was the case; nor did the directors at any stage advise the claimant that Mr Mourao had that authority. That much is plain not only from Mr Delaney's evidence but from the claimant's acceptance that Mr Mourao did not have that authority.
46. Accordingly, in my judgment, it cannot be found that Mr Mourao had ostensible or apparent authority to reach a binding agreement with the claimant in relation to his pay rise.
47. I had reference to the Employment Appeal Judgment in **Puntis v Isambard Brunel Junior School [1996] UKEAT/1001/95/0810**, which considered a similar set of facts in which a deputy head made certain undertakings to a teacher, for which he had no authority. The EAT found that there was no evidence in that case that the deputy head had any authority to make such undertakings, and that he had no apparent authority granted to him by the

school governors to do that. Similarly, here, there is simply no evidence that Mr Mourao had the authority to make an agreement as to pay with the claimant, and further, there is clear evidence that the claimant understood that.

5 **4. *What effect did the claimant's apparent agreement to defer the payments have on this matter?***

48. This question only arises in the event that it was found that there was a binding agreement upon the parties that the claimant was entitled to a pay rise in the first place. As I have said, it is a curious fact in this case that the claimant did suggest he was willing to defer his payments, but given my  
10 earlier findings it has no bearing upon the issues for determination.

49. Accordingly, it is my conclusion that the claimant's claim that he was unlawfully deprived of the sum he claimed he was due, being the difference between £24,000 and £27,280 per annum for the period between January  
15 and 2 May 2024, must fail and be dismissed.

50. It is impossible not to be sympathetic to the claimant in this situation. He clearly understood that he was being awarded a pay rise, though perhaps conditional upon the agreement of the Board, which was never forthcoming. Mr Mourao appears to have acted precipitately by telling the claimant that he  
20 would be given a pay rise, and possibly worse by informing a government department that the claimant was earning a particular salary as a way of obtaining a Skilled Worker's Visa. I did not hear from Mr Mourao in evidence and accordingly I can make no findings about his conduct, but there is a troubling element to this case in that the information provided to the UK  
25 Border Agency was simply wrong, and that may have had an impact on their subsequent decision.

51. However, I am not persuaded that he has suffered an unlawful deduction from his wages and accordingly I must dismiss his claim.

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M A Macleod

**Employment Judge**

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20 September 2024

**Date**

**Date sent to parties**

20 September 2024

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*I confirm that this is my Judgment in the case of Palrasu v Metix Limited and that I have signed the Judgment by electronic means.*