Case Number: 3201257/2017

RM

EMPLOYMENT TRIBUNALS

Claimant:	**Mr J Economou**
Respondent:	**Atlas Courier Express (UK) Limited**
Heard at:	**East London Hearing Centre**
On:	**24 January 2018**
Before:	**Employment Judge S Moor**
Members:	**Mr S Dugmore** **Mrs BK Saund**
Representation:	
Claimant:	In person
Respondent:	Ms Frances Lawson (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. **The unfair dismissal claim is not well-founded and does not succeed.**

2. **The complaints that the Respondent made unlawful deductions to the Claimant's wages are not well-founded and do not succeed.**

3. **The Claimant withdrew his complaints that he was not paid holiday pay outstanding at the termination of his employment and that he was not paid notice pay and these claims are dismissed upon withdrawal.**

REASONS

1 These claims arise out of the Claimant's employment as a truck driver with the Respondent between 7 February 2017 and 6 June 2017.

The Issues

2 At the outset of the hearing we identified the issues with the agreement of the parties.

Deductions of Wages

3 Were there deductions to the Claimant's wages, contrary to section 13 of the Employment Rights Act 1996 ('ERA')? i.e. did the Respondent pay less to the Claimant than the amounts due on any occasion?

3.1 The Claimant contended he had not been paid and was entitled to: bonus payments; and overtime for hours worked over 48 hours each week.

3.2 The Respondent argued that the proper contractual position was that

3.2.1 bonus was discretionary and based on performance and the Claimant's performance each week did not warrant a bonus save for two weeks; and

3.2.2 the Claimant was paid a salary rather than hourly and was not due any overtime except in respect of 'Day Hire' work and that had been paid to him.

3.3 The Claimant claimed that the deductions from his wages of two parking fines incurred by him on duty amounting in total to £100 were unlawful.

3.4 The Respondent's case was that the deductions of parking fines were not unlawful because they were authorised by the written contract.

4 The Claimant initially contended that he was owed holiday pay and notice pay but by the end of his evidence and in his closing statement he withdrew these complaints.

Unfair Dismissal

5 We explored the law on working time with the parties. This was a case where the Claimant was effectively arguing that because he had refused to work more than 48 hours in any week, he was dismissed. He could not bring his case under s101A of the ERA because truck drivers are excluded from the Working Time Regulations 1998. The Road Transport (Working Time) Regulations 1999 apply to them. These Regulations do not give an individual an equivalent right to claim unfair dismissal for such a refusal, and cannot be read purposively to include one, see R (on the application of the United Road Transport Union) v Secretary of State for Transport [2013] IRLR 890 CA. That case suggested the Claimant's course was to raise a public interest disclosure claim.

6 It was therefore agreed by the parties that the ET1 form arguably raised a claim of automatic unfair dismissal either:

6.1 contrary to section 103A ERA, that the reason or principal reason for his dismissal was that the Claimant had made a public interest disclosure relating to his hours of work; or

6.2 contrary to section 100 ERA, that the reason of principal reason for his dismissal was that he had brought to his employer's attention his working hours which he reasonably believed were harmful or potentially harmfully to health or safety. (It was in respect of this latter claim that a full tribunal had been required to hear the case.)

7 The Claimant initially wished to withdraw his unfair dismissal claim on the basis he did not have two years qualifying service but having heard that there was the possibility of making an automatic unfair dismissal claim on either of these grounds he stated his wish to continue such claims. The Respondent agreed that they should be heard.

Findings of Fact

8 Having heard and read the evidence of the Claimant and that of Mr Sam Hills, Transport Manager, and having read the documents referred to us in the evidence we make the following findings of fact.

9 The Claimant started working as a truck driver for the Respondent on 7 February 2017. He received the appropriate training for that role including on the use of a tachograph, the electronic machine that recorded time and breaks driving.

10 Tachograph use is monitored by the Respondent and VOSA in order to ensure that heavy goods vehicle drivers keep to the driving limits and breaks required by law in order to ensure the health and safety of road users.

11 The Claimant was interviewed by Ms Rosher of the Respondent. We find it likely that the Claimant was informed at this interview that his salary would be £21,996 per annum which included all hours worked except in relation to when he worked on a Day Hire basis in which case he was awarded an additional £9.00 for each full hour worked beyond the contracted 10 hours during which time he was working for the customer. We make this finding because this was the Respondent's practice and this is how the terms of the contract were set out in writing. The Claimant recalled that Ms Rosher had told him that he was entitled to 9 hours overtime beyond 48 hours a week. We find that he is likely to have misunderstood what Ms Rosher told him about overtime payments. It is unlikely that she told him what he recalled, given that the written contract between the Respondent and its truck drivers did not record such payment arrangements and they were not its practice.

12 On a Day Hire, the customer was responsible for the driver's workload. The Respondent contracted to work for the customer for up to 10 hours. Therefore anything beyond that was paid extra by the customer and part of this was passed onto the driver in the form of overtime.

13 A few weeks after beginning work for the Respondent the Claimant was provided with a draft statement of his terms and conditions of employment, which he signed on 10

March 2017 above the words:

> *"I confirm my agreement that the above terms and conditions and the attached schedule constitute my contract of employment."*

14 Although the Claimant had the opportunity to do so, he did not read the contract before he signed it. The Claimant understood by signing the contract that he was agreeing to its contents.

15 In relation to '*Hours of Work'* Clause 7 of the contract stated:

> "*7.1 Due to the nature of your role there are no set or standard daily or weekly hours of work for you. You will be required to work for a … maximum of 60 hours each week subject to the requirements of the Company. You will not work more than 48 hours on average, when taken across a period of 26 weeks as per the Regulations. You will be required to work these hours flexibly at times determined by the needs of the Company's customers."*

16 These hour limits were in accordance with the Road Transport (Working Times) Regulations 1996. Had the Claimant read the contract he would have understood that his hours were not limited to 48 per week but 48 over a 26 week period, with a maximum of 60 in any one week during that period.

17 In relation to '*Remuneration*', Clause 8 of the contract states as follows:

> *"8.1 Your salary is £21,996 per annum to be paid in weekly instalments …*
>
> *8.2 Your salary has been calculated at such at a rate so as to take into account any additional hours worked and you are therefore not entitled to be paid for overtime … the only exception to this is that when working on a Day Hire as outlined in Clause 5.4 you are entitled to overtime payments should the client's work take longer than the designated 10 hours. This includes, but is not limited to, traffic delays and unloading delays. You are entitled to an additional £9 for each full hour worked beyond the contracted 10 hours."*

18 Had the Claimant read the contract before signing it, he would have understood from Clause 8.2 that his salary covered all working hours save for those in respect of Day Hire.

19 In relation to bonus payments, Clause 8.4 of the contract states as follows:

> *"The company may from time to time pay you a bonus payment for good performance. Good performance includes, but is not limited to, polite and courteous behaviour when on work for the company, good timekeeping, keeping your vehicle clean and tidy and not damaging your vehicle. The Claimant reserves the right to pay this bonus entirely at its discretion and can choose not to pay it without prior notice or reason. It does not constitute part of your standard salary."*

20 So far as deductions are concerned the contract states at Clause 16.7:

> *"In accordance with the Clause on debts and overpayments above you are responsible for your vehicle related fines, penalties and associated administrative costs."*

The Clause on debts and overpayments states:

> *"If, either during or on the termination of your employment, you owe the Company money as a result of any… default on your part or any other reason whatsoever, the Company shall be entitled to deduct the amount of your indebtedness to it from any payment or final payment of wages which it may be due to make to you. Such deductions may include but are not limited to: … Any fines, charges or penalties … for example … parking tickets …"*

21 It is agreed between the parties that the Claimant was entitled to one week's notice of termination of his contract in the first year of his employment.

22 During the course of his work with the Respondent, the Claimant was twice paid a performance bonus of £33.84. Mr Hills was the Transport Manager with overall responsibility for the drivers and their organisation. Mr Hills and his colleague assessed each week whether a driver's performance was sufficient to entitle him to the performance bonus. We find Mr Hills addressed his mind each week to the performance of the Claimant and did so without malice. In his oral evidence he has given us examples of times when the Claimant was not awarded a bonus because he had made tachograph errors and a further occasion when he was not awarded bonus because of a customer complaint. The Claimant recalls that the Respondent regularly told him he was not taking sufficient breaks according his tachograph and we accept Mr Hill's evidence that this would have been the kind of performance issue that would have prevented a performance bonus from being payable in any week.

23 Looking at the evidence overall, and given that the Claimant was paid two weekly bonuses, we are satisfied on the evidence that Mr Hills applied his discretion on the bonus according to the Claimant's performance rather than any improper factor.

24 During his work for the Respondent, the Claimant was paid £108 overtime in respect of Day Hire work, i.e. amounting to 12 hours. We accept the Respondent's evidence that this was the amount of overtime the Claimant actually worked in respect of Day Hire. The Claimant was not paid overtime otherwise, in accordance with the contractual position that his salary covered all hours that he worked.

25 The Claimant complained to his line manager about his hours, which he thought were too long. Therefore, in about mid-May 2017, Mr Hills met with the Claimant to discuss the number of hours he was working. They looked at the computer, which showed the Claimant's tachograph data. Mr Hills' evidence is, and we accept, that the tachograph data showed that the Claimant had not worked over the working time limit set in the contract (and by the Regulations). We find that by mid-May the weekly average over the time that he had worked for the Respondent was less than 48 hours and, in any event, the 26 week reference period had not yet expired.

26 We find that during this discussion Mr Hills explained to the Claimant that the limit of 48 hours working per week was averaged over a period of 26 weeks. We find that it is likely that Mr Hills did so because the Claimant's complaint was that his hours were too long and Mr Hills sought to explain why that was not the case. We also find that this is likely because the Claimant made a handwritten amendment to his own notes to this effect (page 89).

27 We find that it is likely, contrary to his evidence today, that the Claimant accepted Mr Hills' explanation and the date, given that he continued to work and made the amendment to his handwritten note as we have described. The Claimant today complains that Mr Hills only looked at the tachograph records and argued before us that his working time included duties that took time at the beginning and end of the day not recorded on the tachograph. We accept this but only to a very limited extent. We find that the Claimant's working time included no more than 5 – 10 minutes of the day, the time that the Claimant required to open up the gates of his vehicle in the morning and to attend the office in the evening to deliver his paperwork. We find therefore, given this very small amount of extra time, it was reasonable for Mr Hills to use the tachograph records to look at the overall average of working time, especially as the Claimant was less than half way through the reference period of 26 weeks. We find that, by the end of the meeting, the Claimant had accepted he was not over the 48 hours a week average and returned to work.

28 Also, during this discussion, Mr Hills and the Claimant discussed the parking fines that had been deducted from his wages. Mr Hills explained to the Claimant that the contract allowed them to be deducted from his pay.

29 Also, during this discussion, Mr Hills and the Claimant discussed the initial hour that the Claimant manually added to his tachograph records in respect of 21 hours working time at the beginning of some working days. Mr Hills pointed out to the Claimant that this was incorrect, but put the error down to the Claimant's misunderstanding of the tachograph process. We do not accept the Claimant's evidence about why he added an initial hour to some of his tachograph records mainly because he had been inconsistent as to why he did so. First of all he indicated that this was in respect of particular hours when he was working with a colleague in another vehicle. We find this would not have required a manual addition to his own sheet, as he should have used the second slot in the electronic tachograph machine of his colleague's vehicle. Second, he then sought to explain it was to do with the change between GMT and British Summer Time. But we find there are records outside BST on which the Claimant added the additional hour and we do not accept that this explanation for the addition. Mr Hills gave the Claimant the benefit of the doubt about these additional hours at the meeting.

30 We find that had Mr Hills been the kind of manager unhappy about an employee raising a complaint about working hours he is unlikely to have sat down with the Claimant, as he did, to find out the nature of his complaint, understand it, look at the data and resolve it with the Claimant. The evidence and the findings we have made about this initial meeting undermines the Claimant's allegation that he was dismissed simply for raising a complaint about his working hours, to the contrary Mr Hills dealt with those complaints reasonably and properly.

31 It then came to Mr Hills' attention that the Claimant may not have recorded his hours properly on 17 May 2017 when a customer complained about that day. The Respondent looked at the vehicle cab CCTV. It showed that the Claimant had taken a break at 10.06am for 54 minutes but allowed the tachograph to record those 54 minutes as 'work' (page 50). The Respondent regarded this as a serious matter because of the importance of accurate tachograph recording. VOSA regulate road transport and employers are faced with potential criminal prosecutions if drivers do not record their work accurately via a tachograph. The Claimant accepts that he should have pressed the button on the machine to record that a 'break' was taking place. Otherwise the machine recorded those 54 minutes as working time.

32 Then on Thursday 25 May 2017 the Claimant refused to do the work he was instructed to do the following day. We accept Mr Hills' evidence that the Claimant was rude in refusing and hung-up in telephone calls with two managers when they sought to discuss the matter with him.

33 As a result of these two matters the Claimant was invited to a disciplinary meeting by a letter, which warned him that the Respondent was proposing to dismiss (page 45). In this letter he was informed of the two disciplinary allegations: that he had wrongly recorded 54 minutes' break time as working time on his tachograph; and he had refused to carry out work as requested by his manager.

34 The disciplinary meeting took place on 30 May 2017 attended by the Claimant, Mr Hills and Mr Brace, a Director of the Respondent.

35 In respect of the first allegation it was suggested that by not recording the 54 minutes as a break the Claimant had inflated his working time. The Claimant said he had no reason for not putting the tachograph on to break other than it did not occur to him. When asked why he did not correct the tachograph manually in a print-out later, he said he did not know that was a requirement. Mr Hills pointed out that it was part of his training as a lorry driver.

36 In respect of the second allegation, the Claimant was asked why he had refused to do the work required of him on 26 May. His reason was that he did not want to go over his 48 hour working week. Mr Hills recalled the earlier discussion in which he had explained that the 48 hours was an average as per the working time regulations. The Respondent referred to the Claimant's handwritten record as evidence of his understanding of this (page 89).

37 The Respondent stated that the tachograph showed he was not averaging more than 48 hours work per week. The Claimant relied on is handwritten records, which the Respondent decided did not account for breaks in his working time and accounted for the wrong start and end of his shift times. Reference was made back to the manual entries he had made at the beginning of some days, which inflated his working time further.

38 Mr Hills and Mr Brace made the decision to dismiss the Claimant. We accept Mr Hills' evidence of the reason: first, and most importantly, that the Claimant had dishonestly recorded an additional 54 minutes work time on 17 May when he was on a break; second, that he had refused to do work the following day even though his average working hours were not over the limit. Third, that he was rude in that refusal. Mr Hills told us that he had

reflected on the additional hours the Claimant added to some of his tachograph manually and, albeit that he had given the Claimant the benefit of the doubt about those matters earlier on, by the end of the disciplinary hearing he had reached the conclusion that those additional hours, too, were an attempt dishonestly by the Claimant to inflate his hours. He relied on the Claimant's handwritten note as evidence that the Claimant well knew how his working hours were to be calculated. He and his colleague did not accept the Claimant's explanation that he had forgotten to turn the tachograph to break because this was part of a lorry driver's basic training and was consistent with other attempts to inflate hours.

39 We do not have to find whether or not the Claimant was dishonest, but we accept that Mr Hills reached that conclusion before he dismissed and that this was a conclusion he could reach on the evidence before him.

40 As to the Claimant's rudeness we find that Mr Hills did regard the Claimant to have been rude to his managers in his refusal to work. Indeed the Claimant acknowledged to us in his closing statement that he had a problem with his attitude from time to time. We find that, while he answered the phone to managers who sought to discuss his refusal to work with them, he then hung on them and was not prepared to listen to them or discuss the matter.

41 We find that the tachograph error was a serious matter for the Respondents because of their responsibilities to ensure that their drivers complied with the tachograph requirements and the risk of criminal prosecution if they did not do so.

42 In his evidence to us the Claimant did not state that at the informal meeting or at the disciplinary meeting he raised a health and safety concern about his working hours. Indeed in his written evidence was *"eventually I refused to take another assignment for the following day as it was another ten hour day hire which would have meant at least another 12 hours would have been added to my working week. I had already worked close to my contracted 48 hours and* ***as at that time I was not being paid overtime and there was still payments outstanding I did not see why I should work and not get paid*** *for all the hours I work."* (our emphasis). Based on this evidence, we find that the Claimant's concern was about payment not about health and safety. The Claimant knew, from his earlier discussion with Mr Hills, that the 48 hours was averaged out over a reference period (26 weeks in this case) and had he acted reasonably and read his contract he would have seen that this accorded with the EU rules.

43 We accept Mr Hills evidence that when a driver was risking being over the 48 hour a week average, he allowed him off. Recently Mr Hills had given a driver, who had informed him he was nearing his limit, some time off in order to reduce his average. This is important evidence again showing that Mr Hills was a manager who listens to drivers who had concerns about working time.

44 The Claimant was dismissed with effect from 6 June.

Law

Deductions

45 Section 23 ERA allows a worker to present a complaint to the Tribunal *"that his employer has made a deduction from his wages in contravention of Section 13*".

46 Section 13(1)(a) provides an employer shall not make a deduction of wages of a worker employed by him unless the deduction "*is required or authorised to be made by … a relevant provision of the worker's contract*". A deduction simply means that the worker is paid less than the amount properly payable to him.

47 Where the parties have both signed a written statement of terms and conditions of employment as amounting to the agreement between them, it is that agreement that sets out the terms of the contract. Save in exceptional cases, none of which apply here, a party cannot refer to prior discussions between them as inconsistent with the contract he has subsequently signed. It is for each party to ensure that they understand the written document before signing it.

Automatic Unfair Dismissal

48 Section 100(1)(c) ERA provides that, where there is no safety committee or health and safety representative, then:

> *"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that … he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety."*

49 Section 103A of the Employment Rights Act provides that:

> *"An employee who is dismissed shall be regarded as unfairly dismissed if the reason or if more than one the principal reason for the dismissal is that the employee made a protected disclosure."*

50 The meaning of a protected disclosure is set out in the ERA. Where the disclosure is made to the employer it must be a '*qualifying disclosure*' which is defined under 43B ERA, that is (so far as is relevant):

> *"Any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following …*
>
> *(b) that a person has failed … to comply with any legal obligation to which he is subject …*
>
> *(d) that the health or safety of any individual has been is being or is likely to be endangered."*

Submissions

51 The parties made helpful submissions to us. The Claimant argued he was entitled to bonus payments and overtime. He referred us to his calculation of his working hours on page 92 – 93 and calculated that he had not been paid 46 hours of overtime according to those calculations. He argued that he had been automatically unfairly dismissed because he had the courage to stand up and assert his statutory rights.

52 The Respondent argued that:

52.1 the discretionary bonus had been decided reasonably by Mr Hills;

52.2 the contract allowed for the deduction of parking fines; and

52.3 the real reason for dismissal was not that the Claimant had asserted statutory rights or made any disclosure or raised a health and safety matter, but that he has dishonestly provided an incorrect tachograph reading and unreasonably refused to work.

52.4 The Respondent argued that the Claimant had initially unreasonably misunderstood his contractual and statutory rights by failing to read his contract and by the end of his employment and his refusal to work he knew (or reasonably ought to have known) that his rights to work a maximum of 48 hours were averaged over a reference period of 26 weeks and that it was reasonable for Mr Hills to rely on the tachograph data showing he was within this maximum entitlement.

Application of Facts and Law to Issues

Deductions of Parking Fines

53 In our judgment, the claim that there was an unlawful deduction of wages in respect of the parking fines of £100 is not well-founded. This is because the deduction of parking fines was authorised to be made by clause 16.7 and 21.1 of the contract of employment and was therefore lawful under section 13(1)(a) ERA.

54 It is not for the Tribunal to decide whether it was fair for that deduction to be made. We can understand the arguments on both sides. The fact of the matter is that the contract agreed to by the Claimant when he signed it, authorised those deductions. This means that they were not unlawful deductions.

Alleged Deductions of Bonus

55 The contractual right to bonus was that it was discretionary and given for good performance. We have found that Mr Hills addressed his mind to the Claimant's performance in respect of each week of bonus and are satisfied on the evidence that he applied his discretion according to performance rather than any improper factor. Therefore, in our judgment, there was no bonus contractually due to the Claimant. If there was no bonus contractually due, there was no unlawful deduction.

Alleged Deductions of Overtime

56 We have found that the Claimant misunderstood the contractual position as described to him by Ms Rosher. It was clearly set out in the written contract that the Claimant agreed by his signature.

57 The contractual position was that he was not entitled to overtime in the ordinary course of his work but only entitled to overtime in respect of hours beyond 10 for the customer on a Day Hire.

58 The claim before us was in respect of overtime for hours worked beyond 48 in a week. This claim fails because the contract the Claimant signed did not award him any overtime for these hours, clause 7.1 makes that very clear. We therefore find that the claim for overtime fails because it was not a payment contractually due to him.

59 Towards the end of the hearing the Claimant sought to raise a claim in respect of Day Hire but that is not a matter that was particularised in his claim form nor set out with any particularity in his statement. In any event we have accepted Mr Hills' evidence that that all overtime for Day Hire was paid.

Alleged Automatic Unfair Dismissal

60 We have found as a fact that the reason for the Claimant's dismissal was that he dishonestly recorded a break as working time via his tachograph and that he refused to do work which was within his maximum working hours of 48 averaged over his period of work with the Respondent.

61 In our judgment this factual reason for dismissal is not a reason within s100 (health and safety) or section 103A (protected disclosure) ERA. We set out our reasoning below.

Section 100 (Health and Safety)

62 We have not heard any evidence that there was or was not a health and safety representative or safety committee at the Respondent. For these purposes we assume there was not. Thus was the reason or principle reason for the dismissal that the Claimant brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful to health and safety?

63 First, the dishonest recording of 54 minutes break, which was a major part of the reason for dismissal, could not be characterised as the Claimant bringing circumstances relating to health and safety reasonably to his employer's attention. We find therefore that an important reason for dismissal did not come within section 100 at all.

64 This is also true of the third part of the reason for dismissal, namely, the Claimant's rudeness. We do not consider that being rude to managers could in any way

be said to come within a reasonable means of conveying a health and safety concern.

65 We therefore find that the principal reason for dismissal does not fall within section 100.

66 Nevertheless, we have gone on to consider whether it could be said that the refusal to work the Day Hire the next day was the Claimant bringing to his employer's attention, by reasonable means, circumstances connected to his work which he reasonably believed were harmful to health and safety.

67 First, we have found that, from the earlier discussions, the Claimant knew his hours were within the contract. And had he acted reasonably and read the contract he would have known that those limits were set by law. In the light of this, it would be difficult to find that the Claimant reasonably regarded his working hours to be harmful to health and safety. Nevertheless, if he had done so, in our view, his refusal to work was not a reasonable means of drawing such circumstances to his employer's attention. It is the essence of the agreement between an employee and an employer that the employee will do work as instructed and there were lesser ways in which the Claimant could pursue his complaint about hours other than refusing rudely to do the work, for example by raising a written grievance. In reaching this conclusion, we take into account Section 100(1)(d) which shows that where an employee refuses to return to his place of work he is only brought within the section if he does so in the circumstances of danger which he reasonably believed to be serious and imminent. Taking the evidence in this case at its highest, that was not the Claimant's reasonable understanding: his evidence is that he refused to work because he was not being paid overtime. He has not stated to us that his concern was that driving the next day would put him or any other person in a position of danger.

68 We therefore find that the Claimant was not dismissed contrary to section 100 ERA and his claim in this respect is not well-founded and does not succeed.

Section 103A alleged protected disclosure dismissal

69 We have found that an important part of the reason for dismissal was that the employer believed the Claimant had dishonestly allowed his tachograph to record rest time as work time. We have found that Mr Hills had reasonable grounds upon which to decide that the Claimant was dishonest in his tachograph recordings. This was not to do with any disclosure.

70 The dismissal was also because of the Claimant's refusal to work. Can the Claimant argue that, in refusing, he was making a qualifying disclosure? We have decided he cannot.

70.1 In our view, at the time he refused to do the work, the Claimant could not have had a reasonable belief that his employer was failing to comply with the legal obligation to which he was subject because, by then, he understood that the 48 hour per week maximum was averaged over 26 weeks. The 26 week reference period had not yet elapsed and it was not therefore possible reasonably to believe that it had already been broken.

Nor, given that there were many weeks to go, was it reasonable to believe it was likely to be broken.

70.2 In any event, nor do we consider, on the findings we have made, that the Claimant had a reasonable belief that his refusal to work was made in the public interest. His evidence to us was that his concern was that he was not being paid overtime. This is an entirely personal concern and not one that could be reasonably thought to be in the public interest. For that reason, alone, his s103A claim fails.

70.3 Finally, had the Claimant read his contract, which he had an opportunity to do, he would have seen that his maximum working hours were averaged over 26 weeks according to European Regulations. Those regulations are imposed for health and safety reasons and it would not therefore have amounted to a reasonable belief that a health and safety matter was being infringed given that the 26 weeks had not yet expired.

71 We therefore decide that the Claimant's unfair dismissal claim under s103A is not well-founded and does not succeed.

Expenses claim

72 Finally, the Claimant wished to claim expenses for coming to the Tribunal today. We explained to him that we have no jurisdiction to award such expenses.

Employment Judge Moor

30 January 2018