



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Butler  
**Respondent:** Monmouthshire Timber Supplies Ltd  
**Heard at:** Cardiff **On:** 7 November 2018  
**Before:** Employment Judge S Davies (sitting alone)

**Representation:**  
**Claimant:** Mr J Morgan, counsel  
**Respondent:** Mr C Worthy, Managing Director

**JUDGMENT** having been sent to the parties on 17 November 2018 and written reasons having been requested by the claimant on 12 November 2018 in accordance with Rule 62(3) of the Rules of Procedure 2013:

## WRITTEN REASONS

1. I granted an unopposed application to amend by the Claimant, with regard to a recent pay rise confirmed by letter of 1 November 2018. I allowed two adjournments; for the Claimant to set out the amendment in writing and for the Respondent to respond in writing.
2. I heard evidence from the Claimant and on behalf of the Respondent from Mr Dave Tovey, Yard Manager, Mr Bob Smith, Sales Director, Mrs Christine Bingham, Office Manager & HR and Mr Chris Worthy, Managing Director.
3. I was provided with a bundle of documents. During the afternoon further documents were submitted in evidence on behalf of the Respondent, marked R1; these consisted of Facebook messenger conversations between the Claimant and Mr Tovey. I was shown an electronic version of

- the Facebook messenger conversation whilst cross examination proceeded.
4. The Claimant is still employed by the Respondent, which business he has worked for since 2014. The Claimant was unhappy in his original role and was interested when he was told by his colleague, Mr Tovey, about a new role in 2017. Mr Tovey and the Claimant were previously on friendly terms, sometimes they would share lifts to work and they had extensive contact with each other on Facebook.
  5. There was some discussion today about whether the Claimant's role change was a transfer or new role, but I do not need to make a decision about that as it does not materially affect my decision. There is no dispute that the Claimant moved from working in one part of the business and, after an interview and handover period, started work in a different part of the business under Mr Tovey as Yard Manager.
  6. The key issue I must deal with is; what was the hourly rate offered to and accepted by the Claimant on 5 May 2017 in respect of the new role?
  7. During the morning of 5 May 2017, Mr Tovey sent an email to the Claimant setting out details of the new role at the hourly rate of £8.50 (page 42a). This job had also been advertised in the local Job Centre paying a rate between £8.00 and £8.50 per hour. Mr Tovey says he subsequently had a conversation with Mrs Bingham with regard to arranging interviews; Mrs Bingham told him of the range of rates and indicated he had made an error in saying that the rate applicable to the Claimant would be £8.50. Mr Tovey says that he then called the Claimant to tell him of the correct rate. The Claimant accepts there was a telephone conversation but denies that he was told the rate was £8, instead he says that Mr Tovey called to give him the time of the interview.
  8. Mr Smith says that he told the Claimant during the course of the interview on 5 May 2017 that the rate would be £8.00 per hour. The Claimant denies this. Mr Tovey was asked how the Claimant responded to this information during the interview; Mr Tovey asserts the Claimant said nothing. Mr Tovey suggested this was because he had already told him the correct rate on the telephone.
  9. The Claimant completed a handover period in his old job and started the new role on 3 June 2017. Having worked during June and July and believing that he had not been paid correctly, the Claimant brought the issue up with Mr Tovey. This culminated in an email headed "breach of contract" sent to Mr Tovey on 29 August 2017 (page 42b) in which he expressed his frustration in strongly worded terms. There is an issue as to whether Mr Tovey received the email (he asserts that he did not). The Claimant also

asked Mr Tovey for Mr Worthy's email to write to him. The email sent by the Claimant to Mr Tovey was sent to the wrong email address.

10. Subsequently the Claimant submitted a grievance to Mr Tovey about the issue of his pay (following the correct process for raising grievances as per his contract of employment). The grievance was emailed to Mr Tovey's email address; Mr Tovey accepts that it was sent to the correct email address but says that he did not receive it. The grievance letter was addressed to Mr Tovey and also to Mr Worthy. Mr Worthy says he was not aware of the grievance or the issue with the Claimant's pay until the following January after the Christmas holidays.
11. A recurring theme from Mr Tovey's evidence was that he denied receipt of correspondence; although he did accept that emails were sent by the Claimant to his correct email address.
12. As well as communications by email, the Claimant engaged in informal communications via Facebook messenger with Mr Tovey. The Facebook messages were a highly contentious issue during the hearing, with serious allegations being made by three of the Respondent's witnesses (all save Mr Worthy) that the Claimant had fabricated/edited Facebook messenger messages.
13. Around the start of 2018, both the Claimant and Mr Tovey separately provided a paper print out of Facebook messenger messages between them to Mr Worthy. These versions had some common passages but differed in some parts with sections missing. Until today, when I suggested it, neither party had arranged to view an electronic version of the messages. The electronic version was shown to me via the Claimant's Facebook account on a phone and a laptop after the lunchtime break, during which break Mr Morgan viewed the electronic version with Mr Worthy.
14. I indicated twice during proceedings that I would have to make a finding as to whose version of events I preferred in circumstances where serious allegations were being made that the Claimant had fabricated evidence. The issue is one of credibility. I find that the Claimant's version of events has been consistent throughout, taking into account his correspondence within the bundle. I accept his account as being accurate. The letters and emails that he wrote, even if they were not received by Mr Tovey, demonstrate that the Claimant was shocked not to have been paid at the rate of £8.50 an hour (e.g. page 42b). These contemporaneous documents demonstrate the Claimant's state of mind at the time. I accept that he believed that he had accepted a job that paid £8.50 an hour. I do not accept that he was told the rate was in fact £8 per hour on 5 May 2017.

15. I do not accept Mr Tovey's account. Having seen the Facebook messenger messages electronically, I find that the version presented on behalf of the Claimant is accurate. I find the version that Mr Tovey provided (R1) has been edited, probably before it was handed to Mr Worthy. There may be a number of explanations as to why Mr Tovey would do this. He may have found himself 'between a rock and a hard place' between his friend and colleague on one side and management on the other. Perhaps he knew he had made an error, perhaps he did not pass on the grievance to Mr Worthy. That the Claimant's emails were not received by Mr Tovey seems highly unlikely in view of the Facebook messages which refer to emails. I am satisfied that Mr Tovey knew there was an issue about the Claimant's pay, this is clear from the Facebook messages. They provide ample evidence of a discussion that was ongoing over several weeks between the Claimant and Mr Tovey. I reject Mr Tovey's explanation that messages relate to a football bet; I see the consistency between what the Claimant says in those Facebook messenger messages and external documents he sent at the time (the grievance and emails about the pay issue).
16. As for Mr Smith, he was asked to recall events of around 7 months previously when describing the interview, in his email of February 2018, which stood as his witness statement. I find that he was mistaken in that he believed he had told the Claimant that the pay was £8.00. I accept the Claimant's version of events which was consistent with his shock at not receiving what he viewed as the correct pay. That persuades me that he was not told the rate was £8 at interview on 5 May 2017. I also note that £8.50 was within the range in the advertisement for the job.
17. I find an offer was made of the hourly rate of £8.50 in writing by Mr Tovey to the Claimant. The Claimant was not told of an error and he accepted the job offer on the basis of £8.50 per hour. Mr Tovey was in a position of seniority over the Claimant, the Claimant is entitled to view him as being in a position of ostensible authority to act on behalf of the Respondent. If there was a mistake as the Respondent says, that was never rectified in writing and no separate written offer of the new job was drawn up by the Respondent.
18. I now turn to Mr Worthy's letter of 1 November 2018 and the increase of 3% to the Claimant's pay. I appreciate what Mr Worthy says that my decision, if it goes in the Claimant's favour, may give rise to inconsistencies between the pay of the Claimant and other employees, who may have more responsibility than him. I recognise the unfortunate consequence for the Respondent but it is not a relevant consideration for the purposes of my judgment.
19. The letter of 1 November 2018 from Mr Worthy to the Claimant refers to an increase 'in line with inflation' of 3%. Since the letter is expressed in that

way, I find that it is appropriate to make the declaration that the Claimant's pay increases in line with inflation from the base rate of £8.50 to the sum of £8.75.

20. In summary I made a declaration:

- a) under section 11 of the Employment Rights Act 1996 that the Claimant's hourly rate of pay for the period 3 June 2017 to 31 October 2018 is £8.50 and that his overtime rate should be increased accordingly (calculated at time and a half).
- b) under section 11 of the Employment Rights Act 1996 that the Claimant's hourly rate from the period of 1 November 2018 onwards is £8.75.
- c) that the Respondent made an unauthorised deduction from the Claimant's wages with the sum in question to be quantified at a Remedy Hearing.

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Employment Judge S Davies  
Dated: 21 November 2018

REASONS SENT TO THE PARTIES ON  
.....24 November 2018.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS