



# EMPLOYMENT TRIBUNALS

**Claimant:** A  
**Respondent:** B

## AT A HEARING

**Heard at:** Leeds                      **On:** 11<sup>th</sup> February 2018  
**Before:** Employment Judge Lancaster

### Representation

**Claimant:** In person  
**Respondent:** Mr S Flynn, counsel

## JUDGMENT

1. The remaining claims of unauthorised deductions from wages and /or breach of contract are dismissed.
2. The claim for a continuing loss of earnings following termination of employment, notwithstanding the dismissal of the discrimination claims, had no reasonable prospect of success.
3. The complaint in respect of an alleged failure to pay the National Minimum Wage rate for “sleepover” shifts had, subject only to a possible application for a stay pending any decision of the Supreme Court in the case of Mencap – Tomlinson-Blake, had no reasonable prospect of success.
4. In any event it was unreasonable for the Claimant to have continued to conduct that claim and also the complaint in respect of an alleged underpayment of the hourly rate applicable after the end of the probationary period, for the following reasons:
  - 4.1 The Claimant was paid on or about 17<sup>th</sup> May 2018, without admission of legal liability, for a further 96 hours “sleepover” at the applicable minimum wage and for 387 hours worked after the completion of 6 months employment at an enhanced rate of £7.50 per hour.
  - 4.2 The basis of these calculations had been explained at the original hearing on 8<sup>th</sup> May 2018 when these claims were stayed and was fully set out in the Respondent’s letter of 17<sup>th</sup> May.
  - 4.3 This basis of calculation was entirely consistent with the documentary evidence as to what the maximum sums payable were, even if the Claimant could have established a legal entitlement to those additional monies. That is that the Claimant’s own time sheets supported a potential claim only for a further 96 hours “sleepover” and the job description in the “recruitment pack” supported an

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- increase only to £7.50 per hour after successful completion of the probation period.
- 4.4 The Claimant persisted in his claims for 120 hours “sleepover” and for an increase to £7.70 per hour in the face of the clear documentary evidence to the contrary.
  - 4.5 On 6<sup>th</sup> February 2019 the Respondent offered to pay, again without admission of liability, the entirety of the additional claims with a warning as to costs should the Claimant refuse that offer.
5. In the circumstances the preconditions for the making of a costs order under rule 76 of the Employment Tribunals Rules of Procedure 2013 are satisfied.
  6. I exercise my discretion to order the Claimant to pay costs.
  7. The appropriate sum to award in respect of this hearing is £850.00
  8. Under rule 65 of the Employment Tribunals Rules of Procedure 2013 I specify that the Claimant shall therefore pay the Respondents costs in the sum of £850.00 on or before 23<sup>rd</sup> April 2019.

EMPLOYMENT JU DGE LANCASTER

DATE 14<sup>th</sup> February 2019

**Note**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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