



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MARTIN

**BETWEEN:** Mr V Jackson Claimant  
and

Network Rail Respondent

**ON:** 5 June 2018

**APPEARANCES:**

**For the Claimant:** In person

**For the Respondent:** Ms Shepard - Counsel

**RESERVED JUDGMENT**

The unanimous decision of the Tribunal is that the Claimant's claim for unauthorised deductions from wages is not well founded and is dismissed.

**RESERVED REASONS**

1. By a claim presented to the Tribunal on 23 February 2018 the Claimant made a claim for unauthorised deductions from wages. Judgement was reserved as this case was a floating case in the list and the Judge only had the allocated one hour available to hear it. There was no time for deliberation and judgment.
2. The Claimant's case is that he should be paid a supplement of 4% for certain shifts which he says are flexible. The Respondent's case is that these

provisions do not apply to the Claimant and he is not entitled to a 4% enhancement for those shifts.

### The hearing

3. The Tribunal heard from the Claimant and for the Respondent from Mr Neil Verrinder Operations Manager.
4. The Tribunal had before it a small bundle of documents comprising 64 pages and some additional documents produced on the day.

### The Tribunal's findings

5. The Claimant is employed as a Shift Signalling Manager at Three Bridges Area Signalling Centre and works to a nine week shift pattern. In that period the Claimant is required to work eight days on General Purpose Relief turns. These are shifts on specific days, however the actual shift (ie early, late or night) is confirmed the previous Thursday as the purpose of this shift is to cover gaps as needed, for example if someone is sick or on holiday. The exact shift can be altered after the Thursday confirmation for operational reasons. The Claimant was only required to work at Three Bridges and not at any other site.
6. The Respondent has an agreement made with the unions that a flexibility premium is paid in certain circumstances. These circumstances are where a signaller works flexibly on all shifts and has no permanent place of work travelling to various sites as operational needs require. The flexibility premium is calculated according to how far they have to travel and the number of their pre-rostered turns.
7. There is provision in the agreement that where a relief supervisor have less than 20% of pre-rostered turns, they will continue to receive a premium of 4% of basic salary.
8. The Claimant wrote to Mr Verrinder on 15 February 2017 claiming he was entitled to the Flexibility Premium on the basis that *"GPR turns are not fixed and can be night, late or early shifts which are normally only confirmed the week before, when the roster is published on Thursday afternoon, which obviously curtails any plans we would like to make, as we are never certain what the GPR turn may be, in some circumstances a shift may need covering at very short notice, this adds to the flexibility which we have to accept, but, likewise, should be remunerated for as the Pay and Conditions document outlines"*. This letter came from the Claimant and seven others.
9. Mr Verrinder replied on 24 March 2017 rejecting the argument put by the Claimant and his colleagues and explaining *"that the Flexibility Premium (FP) was created as an element of the Signaller Restructuring Initiative (SRI 1994) to take over payments in lieu of travelling time. SRI says applies to staff required to work at one or more locations. The Flexibility Premium (FP) also compensates staff who do not have a fixed roster pattern. This is on the basis that the fewer turns rostered (ie the more unpredictable the working pattern), the higher the premium .....The 0-1 mile distance travelled for all signallers was bought out in the 2001 agreement and therefore now there are no payments made for 0 – 1 mile distance"*

*unless you are classed a relief flexible signaller with less than 20% of pre rostered turns. The SSMs at Three Bridges are not relief staff'.*

10. The Claimant did not accept the explanation given by Mr Verrinder and continued to pursue the matter via his union, the RMT first locally and then to the Area Council. The RMT Union Representative did not agree with the Claimant's view that he should receive the enhanced pay. The minutes of the meeting of the Area Council meeting which took place on 8 September 2017 show that the Area Council similarly could find no basis in the Claimant's claim for enhanced pay. The Claimant resigned from the union because they did not agree with him.
11. The Claimant accepted that he only worked at Three Bridges and did not work at any other location. He told the Tribunal that his pre-rostered turn amounted to 19.5% of time worked (this was a figure agreed by the Respondent). The Claimant said that the GPR shift could be changed at short notice and said it happened maybe on two or three shifts out of the eight GPR shifts in a nine-week period. He agreed with the processes as outlined in Mr Verrinder's witness statement but disagreed with the outcome.
12. It was put to the Claimant in cross examination that in a rolling nine-week roster that there are 41 days of work in the nine week period of which eight were GPR turns and the others pre-rostered. It was put to the Claimant that the GPR turns amounted to 19.5% of all turns in the period, which means that the percentage of pre-rostered terms was 80.5%. The Claimant accepted this was the case.
13. The Claimant reiterated the part of the agreement which provided that if you are a relief flexible signaller and less than 20% of turns were pre-rostered they would get the premium. The Respondent accepted this but pointed out that 80.5% were pre-rostered so the enhanced payment did not apply.
14. The Claimant said that the job title was signaller and being on a relief turn was a duty to support his argument that he was entitled to the enhanced payment.

### **Submissions**

15. The Respondent submitted the question was whether the Claimant was a relief flexible signaller with less than 20% of pre-rostered terms and that the Tribunal does not have to determine if it was a relief or flexible duty. The Respondent's position is that in a true sense it applies to someone with GPR shifts every working day or the vast majority of turns to cover gaps. Mr Jackson does not do this but for 8 shifts in a nine-week period an element of flexibility is inbuilt to allow for cover for colleagues who may be ill or on holiday.
16. The issue is whether he had less than 20% of pre-rostered turns. It was submitted that when the Respondent took the Claimant to the roster he accepted this shows GPR relief terms of 19.5% of duties and that it therefore follows 80.5% are pre-rostered terms.
17. The Claimant submitted that the document states there is less than 20% pre -

rostered terms, this was the duty for those days when allocated GPR turns. This was to allow for flexibility on short notice change, so this is a duty not a role. A role is signaller. On this basis should be paid 4% flexibility enhancement.

**My findings**

18. As agreed at the outset this case turns on the wording of the pay agreement and how the Claimant's work was done. I find that the Claimant was not entitled to a flexile working payment as he did not work at more than one location and the pre-rostered turns amounted to 80.5% of his working time. The agreement did not apply to the Claimant. The Respondent's submissions are accepted especially as the Claimant had agreed with the calculations in his evidence to the Tribunal.

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Employment Judge Anne Martin  
Date: 12 June 2018