



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Shariba Said  
**Respondent:** Mr. Garry Allsopp  
**Heard at:** Leicester  
**On:** Thursday, 13<sup>th</sup> June 2019  
**Before:** Employment Judge Heap (sitting alone)

## Representatives

**Claimant:** In Person  
**Respondent:** Miss. L Halsall - Consultant

## RESERVED JUDGMENT

The Claimant's claim of unauthorised deductions from wages fails and is dismissed.

## REASONS

### BACKGROUND AND THE ISSUES

1. By way of a Claim Form presented on 20<sup>th</sup> June 2018, Miss. Shariba Said ("The Claimant") issued proceedings against her former employer, Mr. Garry Allsopp ("The Respondent"). At that stage, the claim was comprised of complaints of unfair dismissal; discrimination relying on the protected characteristics of race and religion or belief; complaints related to having made a protected disclosure and for unpaid wages and holiday pay. The claim was consolidated with proceedings also brought by the Claimant's sister against the same Respondent.
2. At a Preliminary hearing on 25<sup>th</sup> March 2019 the Claimant withdrew a number of those complaints which she had previously advanced in her Claim Form, leaving the sole complaint of one of unauthorised deductions from wages contrary to Section 13 Employment Rights Act 1996. The claim was accordingly separated from that brought by the Claimant's sister who still advanced the other complaints which had been withdrawn by this Claimant.
3. The basis of the claim is that the Claimant says that she was not paid the full amount of wages for shifts that she worked for the Respondent. The Respondent denies that that is the case and says that the Claimant has been paid all that she was entitled to be paid. The issues are as set out within

paragraph 3 of the note of the last Preliminary hearing but in short terms it was, at that stage at least, the Claimant's case that she had not been paid the sum of £2,180.00 for hours that she said she had worked and that she had also been underpaid for night shifts worked.

4. However, as I shall come to below, the scope of that particular claim has now expanded somewhat significantly. As I say, the Respondent denies any underpayment of wages as alleged or at all.

### **THE HEARING**

5. I heard evidence today from the Claimant on her own behalf. On behalf of the Respondent, I heard from the Respondent himself and also from his daughter, Miss Alexa Allsopp. Thereafter, I heard submissions from Miss. Halsall on behalf of the Respondent and from the Claimant on her own behalf. I also had before me a bundle of documents produced by the parties and running to 38 pages.
6. I have taken all of that witness and documentary evidence into account before making my decision on the claim.
7. I should observe that at the close of submissions the Claimant indicated that she was unable to remain at the hearing centre for much longer on the basis that she had an appointment elsewhere at 2.00 p.m. The hearing had, I should note, been rescheduled from a 10.00 a.m. start to a 12.00 p.m. start the previous day at the request of the Respondent. There was insufficient time to give Judgment orally and still enable the Claimant to make her appointment and so in those circumstances I reserved my decision so that she was able to leave.

### **THE LAW**

8. The law to be applied to claims of unauthorised deductions from wages are as set out in Section 13 Employment Rights Act 1996 which provides as follows:

*“Right not to suffer unauthorised deductions.*

*(1) An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) 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 the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

*(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

*(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*

*(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.*

9. Thus, if the amount of wages that are properly payable are less than the amount that is paid, then that will amount to a deduction. The burden is on the Claimant in such a case to establish that a sum which is properly payable as wages has not been paid.

10. If that burden is made out, it is for the Respondent to then satisfy the Tribunal as to the reason for the deduction and that it was either an authorised deduction under Section 13 Employment Rights Act 1996 or an excepted deduction within the meaning of Section 14 Employment Rights Act 1996.

## **FINDINGS OF FACT**

11. The Claimant worked for the Respondent providing care services. The Respondent's wife is disabled and requires the provision of 24 hour care. That has, as I understand it, been done by various agencies or arrangements at various times but I do not need to go into the specifics of that to deal with the claim which is presently before me. The Respondent himself is also disabled suffering from multiple sclerosis. I accept his evidence and that of his daughter that they both nevertheless provide care for Mrs. Allsopp in

addition to the professional caring staff who are engaged to assist.

12. It is the Claimant's case that between 8<sup>th</sup> February 2018 and 1<sup>st</sup> April 2018 she worked between 7:30 am to 9:30 pm and thereafter undertook what was referred to as a waking night when she would essentially be on call for the whole of that period until 7:30 am the following morning. That would result in the Claimant undertaking work for a 14 hour shift followed by a 10 hour on call session and thus working a 24 hour day overall.
13. The Claimant's evidence was that during that entire seven week period she had therefore provided 24 hour round the clock care for Mrs. Allsopp on her own. Her evidence was that there would sometimes be occasions when she would be able to grab a maximum of a couple of hours' sleep at the point when Mrs. Allsopp was initially settled into bed until the time when she then began to need care in the night but that on most of those occasions she would be woken during the night. She says that she has not been paid for all of the hours worked in this regard and that she is owed the sum of £10,015.00.
14. The Respondent's case is that that account is untrue and that the Claimant never provided 24 hour care of that nature during that period and she has already been paid everything that she was entitled to.
15. I have to therefore determine whether I accept that the Claimant did work those additional hours as claimed. Taking all matters into account, I do not accept her evidence on that point for a number of reasons.
16. Firstly, if the Claimant's account was correct then she would have been working continuously for 24 hours a day for over 7 weeks, having at best a maximum of a couple of hours sleep on a few nights per week and a period of only 3 days off on 17<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> March 2018 during that entire period (see the Claimant's Schedule of Loss at pages 34 to 37 of the hearing bundle).
17. It is inconceivable that the Claimant would have been able to function having so little sleep over such a prolonged period, let alone provide important medical care and run a business in addition. In respect of the latter point, the Claimant was and is a director of a care company and her evidence was that she would run that alongside the provision of 24 hour care during this period by answering emails during any breaks.
18. The Claimant's position quite simply does not add up as she would have clearly been overcome by exhaustion very quickly if she was genuinely working between 22 and 24 hours per day.
19. Secondly, without any reasonable or rational explanation, the Claimant's account in relation to the amounts owed has changed considerably during the course of these proceedings. At the point that the Claimant submitted her Claim Form she was claiming a very different sum to that which she has set out in her Schedule of Loss and which she gave the above evidence about today.

20. The Claimant's Claim Form in that regard said this:

*"I want to get paid for the hours I have worked. These are as follows of some hours paid and most not been paid:*

*320.5 hours worked*

*102.50 hours paid*

*218 hours (not being paid)*

*19 waking nights done (not being paid)*

*12 sleep nights (paid).*

*In total [sic] I am owed £2,180 for hours not being paid and £720 paid for sleep in nights when it should have been £1,900 for 19 waking nights and I have been paid less for 12 sleep in nights unfortunately not being paid for the full I have worked for."*

21. At the Preliminary hearing on 25<sup>th</sup> March 2019 I asked the Claimant about that and she confirmed, as recorded at paragraph 3 of the Orders sent to the parties thereafter, that her claim was for £2,180.00 for hours not worked and in addition for underpaid night shifts. That mirrored the information provided in her Claim Form.
22. However, by the time that the Claimant prepared her Schedule of Loss her claim in respect of the hours that she had worked in total had increased from 320.5 in her Claim Form to 686 and from 19 waking night shifts to 49 (or 490 hours). The sum claimed in respect of unpaid work done had therefore also shifted considerably from £2,180.00 in respect of unpaid hours to £5,835.00 and from £1,900.00 less payment already made in respect of night shifts to some £4,180.00.
23. Understandably, the Claimant was asked about that rather significant discrepancy in cross examination. Whilst the Claimant initially suggested that the Claim Form in question was her sister's, she accepted that it was in fact hers. That would make sense given that there is a reference to a separate claim by her sister in the Claim Form at section 3.1.
24. I found the Claimant's evidence as to how she came to give very different sums in the Claim Form initially both vague and evasive. She suggested that they were her sister's figures despite having accepted that it was her Claim Form. She also suggested that they were figures put in the Claim Form by her sister's solicitors who had acted in a rush to present the claim but that ultimately cannot be accurate as those solicitors never acted for the Claimant and the two Claim Forms are different. Indeed, the Claimant's Claim Form specifically refers to her sister's claim as being a similar but separate claim as I have already observed above.
25. Moreover, that explanation does not deal with the question of why the Claimant specifically told me at the earlier Preliminary hearing that the information in her Claim Form was correct and that her claim was that she had not been paid for £2,180.00 worth of hours worked and had been underpaid for night shift work.

26. Whilst I accept that the Claimant had not received notice of that Preliminary hearing until the previous day, I do not accept her evidence that it was that which caused her to provide incorrect information. The Claimant is a business woman and director of her own company. I consider it highly unlikely that if she was unsure whether the information in the Claim Form was correct when asked about it that she would not have made that position clear. Instead she has later, in accordance with directions made at that Preliminary hearing, provided a schedule of loss without any supporting documentation whatsoever setting out that she was working 24 hours a day for a seven week period and, as I have already observed, I find it inconceivable that she could have worked to those levels for such a period without extreme exhaustion, if not worse. It is in my view simply not credible.
27. As I have also observed, there is no supporting evidence in respect of those matters. The Claimant told me that she had compiled the schedule of loss from notes which she had kept on her phone. She has not disclosed a copy of those notes and I have no documentary or independent witness evidence to attest to the levels of hours that the Claimant says that she had been working.
28. In addition, the Claimant's evidence was inconsistent as to the date on which she had left employment with the Respondent. The Claimant was clear in cross examination that her employment with the Respondent had not continued past 6<sup>th</sup> March 2018 as that was the time that a new agency took over care for Mrs. Allsopp. The Claimant was clear that she had not wanted to work for the agency and therefore left to dedicate her time to the company that she was also running.
29. However, when it was pointed out to her by Miss. Halsall on behalf of the Respondent that her schedule of loss claimed that she had still been working 24 hours a day up to and including 1<sup>st</sup> April 2018 (i.e. some considerable period after she had said that she had left employment with the Respondent) her evidence changed that she must have ended her employment on 1<sup>st</sup> April. Her explanation for that when asked about the position by me was that she must have made a mistake with dates. I find it highly unlikely that that was the case and that in reality the Claimant did work as the Respondent claimed until 6<sup>th</sup> March 2018 but has simply changed her evidence on that position when Miss. Halsall pointed out the discrepancy between her original evidence and the hours of work that she was claiming in her schedule of loss.
30. The fact that the Claimant did not work past 6<sup>th</sup> March 2018 was also supported by the evidence of Miss. Allsopp who told me that she recalled that the agency were definitely in place (and the Claimant accepted that she had not worked for that agency) at the time of her mother's birthday at the end of March. I accept that evidence, which Miss. Allsopp was able to place in context, and therefore the Claimant cannot have worked until 1<sup>st</sup> April 2018 as claimed.
31. It follows from what I have said that I did not find the Claimant's account to be credible and I do not find that she has discharged the burden of establishing that there were sums which were properly payable to her as wages which were not paid to her by the Respondent. I find it more likely than not that the Claimant was paid in accordance with the time sheets which appear in the bundle at pages 29 and 30 which match her wage slips provided by the

Respondent. It is not sufficient for the Claimant to simply assert, without supporting evidence, that she was not paid for hours worked and, as I have indicated above, I find her account both inconsistent and lacking in credibility.

**CONCLUSIONS**

32. For the reasons set out above, I do not find that the Respondent paid to the Claimant on any occasion an amount which was less than that which she was entitled and it follows that there were no additional sums properly payable to her which could be deemed to be deductions from her wages.

33. For those reasons, the claim fails and is dismissed.

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Employment Judge Heap

Date: 5<sup>th</sup> July 2019  
RESERVED JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

**Note:**

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