



EMPLOYMENT TRIBUNALS

Claimants: Ms E Harris and 8 others
Respondents: (1) Kaamil Education Ltd
 (2) Diligent Care Services Ltd

London Central
Before: Employment Judge Goodman

On: 3 September 2020

Representation

Claimants: Mr S. Brittenden, counsel
Respondents: Mr. W. Lane, Peninsula Business Services Ltd.

JUDGMENT

By consent

- Judgment for each Claimant named in the schedule below in the sum stated in respect of their claims against the Respondent named in the schedule for unlawful deductions from wages in respect of non-payment of the National Minimum Wage under Part II Employment Rights Act 1996 and claims in relation to paid annual leave under regulations 16 and 30 of the Working Time Regulations 1998 and/or Part II Employment Rights Act 1996.

Claimant	Respondent	Amount	Case Number
EULALEE HARRIS	Kaamil Education Ltd.	£15,335.14	1302187/2016
HELEN OGUNSANYA	Kaamil Education Ltd.	£7,485.06	1302192/2016
ALTHEA PALMER	Kaamil Education Ltd.	£1,664.16	1302193/2016
RASHID WAMALA	Kaamil Education Ltd.	£3,810.50	1302197/2016
CHERRY-LYN WILLIAMS LEE CHIN	Kaamil Education Ltd.	£7,695.98	1302199/2016
GWENDOLYN SMITH	Diligent Care Services Ltd.	£1,409.54	1302195/2016
MANOON JAHALY	Kaamil Education Ltd.	£850.25	1302183/2016 3304468/2018
FELICIA KWAME OSEI	Premier Care Waiting	£10,000.00	1302189/2016
GLORIA NOEL	Kaamil Education Ltd.	£17,800.74	1302191/2016 3328589/2017

Case No: 1302183/2016 and others

2.The named Respondents agree to pay such amounts to the Claimants with 21 days hereof.

3.No application for costs.

Employment Judge - Goodman

Date 03/09/2020

JUDGMENT SENT TO THE PARTIES ON

07/09/2020.....

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FOR THE TRIBUNAL OFFICE

NOTE

1. The judgment is on terms to which the parties consented. The claimants asked for their methodology for calculating the various claims to be appended as a useful guide to similar claims arising in the care sector. The respondents did not oppose the method of calculation and did not put forward an alternative method. What follows is an edited extract from the claimant's submissions as to the method of calculation.
2. Calculating NMW compliance where the Claimants make multiple care visits each day is a labour intensive and costly exercise. The Employment Tribunal ordered the Claimants to provide Schedules of Loss by reference to a single pay reference period as a proportionate way to approach compensation, with the underlying premise that the reference period is likely to be reasonably illustrative of the loss, used to calculate the multiplicand.
3. The Claimants gave evidence as to how they travelled to appointments, and the rotas provided to each Claimant set out the name, address, and postcode of each service user, as well as the time and duration of the appointment. Accordingly it is possible to calculate approximately how long it would take them to travel between appointments by reference to Google Maps or other software.
4. Where there are gaps between appointments, the central question is how much waiting time should be allowed. In so far as the Claimants were aware, the only guidance touching upon this issue was set out by Langstaff (P) in **Whittlestone v BJP Support Ltd [2014] IRLR 176** - but he was considering reg 15(2) NMWR 1999 which has since been considerably amended by reg

Case No: 1302183/2016 and others

34 NMWR 2015. The judgment provides some yardstick as to what gaps between appointments should count for NMW purposes. Two matters are of particular relevance:

(1) The fact that the rostered appointments are devised and completely under the control of the employer – it is therefore in the employer's best interests to ensure that carers are rostered efficiently. Carers should not be penalised if the employer adopts a lackadaisical approach to rostering.

(2) It might be helpful to analyse whether or not a gap is sufficiently lengthy to enable a carer to return home at the end of one assignment before travelling to the next appointment. (A point not expressly articulated in Whittlestone - but implicit, is that the carer must have a meaningful opportunity to rest or relax once they arrive back at home. It would be pointless if as soon as they put their key in their front door, they would have to turn around and travel to the next appointment).

5. The reference to *all working time* in the schedules of loss includes hours worked, travel time and waiting time. However, the Claimants have approached the calculation of their losses in a conservative way. The approach adopted by the Claimants favours the Respondents.

5.1 Sample Pay Reference Period: Although the Claimants have used a sample pay reference period in 2016 to calculate the value of each claim (in temporal proximity to the transfer), this probably underestimates the value of their claims. After the CQC raised concerns about Sevacare, the local authority (LB Haringey) placed an embargo preventing Sevacare taking on any new clients or referrals. As a result, Sevacare experienced a significant downturn in work. This ultimately led to it ceasing to operate in Haringey July 2016. Therefore, this would have impacted upon the number of appointments allocated to each Claimant.

5.2 Gaps of 60 minutes or less: For the purposes of these proceedings, the Claimants have disregarded gaps between appointments exceeding 60 minutes.

6. The claims are calculated by adding together:

(1) Travelling time between appointments during the day for gaps of 60 minutes or less

(2) Waiting time between appointments where travel has been undertaken and there is an additional gap after travelling time and before the next appointment, but where the overall gap between calls is 60 minutes or less

(3) Call time as shown in the Sevacare data – the total period of any care appointment.

7. Travelling Time has been calculated using City Mapper and Google Maps using the postcodes for each service user set out in the rotas, and taking into account each Claimant's method of transport. Searches have been conducted at off-peak, non-rush hour times, namely 11am on a Monday. This approach again operates in the Respondents' favour as some of the travel between appointments took place at morning or evening rush hour periods.

7.1 For Claimants whose method of travel is walking and/or taking the bus, walking time has been utilised in circumstances where the total walking time is less than 20 minutes and is not more than 4 minutes longer than travel time by bus. City Mapper has been utilised to calculate travel on foot and by bus.

7.2 For Claimants whose method of travel is by car, Travelling Time has been calculated on the following basis:

- (i) Google Maps has been used to calculate travel time as CityMapper does not offer this functionality;
- (ii) All searches have been conducted at an off-peak time. For consistency, each search has been conducted at 11am on a Monday;
- (iii) Where the search result contains a minimum and maximum travel time, the median travel time has been calculated and rounded up to the nearest minute; and
- (iv) One minute has been added to the beginning and end of each journey to take into account parking time and travel to and from the vehicle.

7.3 . The Claimants contend that the calculated arrears are reasonable, and necessarily conservative, by reason of the following:

- (i) The median travel time (not the maximum) as provided by Google Maps has been used in the calculations.
- (ii) The times have been calculated outside rush hour times, those being 7am – 9am and 3pm – 6pm in order to avoid any suggestion of artificial inflation of the average arrears.
- (iii) The pay period used to create the average under-represents the amount of travelling time actually undertaken throughout the claim period.
- (iv) One minute to account for parking time and travel to and from the vehicle is conservative when taking into account the local geography of the Borough and access issues.
- (v) The nature of the claimants' work means that they frequently travel at rush hour, when travel time can increase significantly. In reality travelling time would often exceed the time provided by Google Maps/City Mapper.