



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Maddox

**Respondent:** Cathedral Pallet Trucks

**Heard at:** Newcastle Hearing Centre **On:** Wednesday 28<sup>th</sup> September 2020

**Before:** Employment Judge Martin

***Representation:***

**Claimant:** In Person

**Respondent:** Mr P Trott (Managing Director of Respondent Company)

## JUDGMENT

1. The claimant's complaint of unlawful deduction from wages is well-founded and the claimant is awarded the sum of £60.00.

## REASONS

1. The claimant gave evidence on his own behalf. Mr Trott, managing director of the respondent gave evidence on behalf of the respondent. The claimant produced a number of documents in support of his claim which were as follows:- his contract of employment; list of and details of the claimant's specific claims together with diary entries for each of the dates in question; timesheets for November – December 2011; e-mails between the claimant and the respondent 15<sup>th</sup> June – 4<sup>th</sup> September 2020. The respondent did not provide any documents.

The law

2. The law which the tribunal considered was Section 13 (3) of the Employment Rights Act 1996 which provides that "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, 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".

The issues

3. The issues which the tribunal had to determine was what, if any, sums were due and owing to the claimant for overtime for various dates between 28<sup>th</sup> January and 18 March 2020.

Findings of fact

4. The respondent is a small company based in County Durham which deals with the sales and maintenance in the materials handling industry. The claimant was employed by the respondent as an engineer from 2007 until his employment terminated in the summer of 2020. The claimant lived approximately 7 miles from the respondent's workshop. His normal travel to and from work would take approximately 20 -30 minutes.
5. The claimant's contract of employment states that his normal hours of work are between 8.00am and 5.00pm Monday to Thursday and 8.00am to 3.30pm on Friday. It also states that he will be required to work overtime when authorised and as necessitated by the needs of the business. It also states it may include the need to work away.
6. It is conceded that the respondent had paid the claimant overtime in the past.
7. It is also acknowledged that the claimant is not entitled to overtime for travelling to and from work.
8. Claims for overtime were reviewed by the respondent according to the worksheets produced for each job upon which the claimant had been working on a particular day. Mr Trott said that there would be a degree of give and take in relation to claims and payment of overtime. Sometimes employees would finish early and they would simply go home. The respondent would not require them to go back into the office premises. The respondent also said that it would pay overtime for jobs were not being done locally.
9. The respondent has not produced any documents for these proceedings although they are relying on the worksheets for the jobs in question.
10. The tribunal has considered each of the various specific claims made by the claimant as set out below.
11. On 28<sup>th</sup> January he is claiming 4.5 hours. He says he started work at 4.45am because he had to go in to the workshop; then had to come back and meet with Gerry another engineer, who met him at his home. The respondent said the claimant downloaded the job at his home at 5.30am so isn't entitled to the additional time in the morning. It was noted that he did not return from work until 6.30pm that evening. The claimant also said that the tablet which he would normally use was not working. He said it had not worked on various occasions for him. The respondent said that the claimant seemed to be the only one who had any real difficulties with the tablet.

12. The claimant said that he always used a handwritten diary to also record jobs and he has produced the extracts from that diary for each of the claims which he is making. The respondent said that it has not paid the monies for 28 January because the claimant cannot prove he undertook this work and there was not a signature on the worksheet. It also says that it was concerned that this claim was not made until some months afterwards. The claimant's evidence is consistent with his diary record for that day which shows him leaving at 4.45am and arriving home at 6.30pm and records his movements during that day. It also notes that he was working with Gerry and it sets out details of his mileage.
13. In relation to 3<sup>rd</sup> February the claimant is claiming half an hour because he said that he had to go into the workshop on that day to undertake some repairs. He is claiming the half an hour that he went in from 7.30 to 8.00am. The respondent suggests that the claimant's first job started at 8.55am from the records and is only thirty minutes away. They therefore say he could not have gone in and done any repairs at the workshop.
14. The claimant's diary records show his movements throughout that day.
15. On 13<sup>th</sup> February the claimant says that he started work fifteen minutes early at the workshop and then had to return back to the workshop and did not arrive back home until 5.30pm. He is claiming half an hour not forty-five minutes. The respondent again says that is not necessarily consistent with the worksheets. They say that the local job was only a short distance from his home and that this would be within his normal travelling time.
16. On 3<sup>rd</sup> March the claimant is claiming half an hour as he said that he had to go back into the workshop to drop off Liam, who was an apprentice working with him and that he did not arrive home until 5.30pm. The respondent says that this was a local job which finished an hour earlier at 4 o'clock. It is noted that it does appear that this was indeed a local job, as it is noted that it finished at 4 o'clock on the claimant's diary entry.
17. On 4<sup>th</sup> March the claimant was paid for most of the overtime on the job but half an hour was deducted. The claimant says that he had to go into the workshop first to pick up materials. The respondent says that the claimant did not go into the workshop and that the job was downloaded at his home at 5.30am. The claimant's diary entry is consistent with the claimant going into the workshop at 4.45am.
18. On 6<sup>th</sup> March the claimant is claiming half an hour. He indicates that he left home at 7.30am and then got dropped off another employee Jack and did not arrive home until 4.00pm. The respondent says that this job started at 8.48am; therefore after his start time and that it finished at just after 2.00pm. They said these were local jobs. The respondent says the claimant is not entitled to any overtime.
19. On 7<sup>th</sup> March the claimant is claiming half an hour. He says he left his home at 7.24 and arrived at his first job approximately twenty minutes before his start time of 8.00am. He said that he then had to drop off Jack, another employee, and

arrived back home at 17.22pm. The respondent says that the claimant's first job was again local and started at 7.45am and that the last job was local and finished at a 15.15pm. They say the claimant is not entitled to any overtime for that day.

20. On 12<sup>th</sup> March the claimant is claiming half an hour. He said he went in to the workshop twenty minutes early and was at the workshop at 5.30pm. The respondent says that this was a local job which finished at just after 2.00pm and therefore no overtime is due.
21. On 18<sup>th</sup> March the claimant is claiming half an hour's overtime. He says that he went into the workshop to drop off another engineer at 5.30pm. He does record that he finished the job at 16.50pm. The respondent says that the job was finished at 16.40pm. The respondent says that, in any event this is consistent with the normal time to travel back from the job to the claimant's home and although they dispute that he dropped any off at the workshop, they say that is irrelevant as he effectively home within his normal travelling time.

### Conclusions

22. The claimant is claiming £85.00 for overtime. The claims relate to various different dates from 28<sup>th</sup> January to 18<sup>th</sup> March 2020.
23. Dealing with those dates the tribunal consider that the claimant is entitled to his claim for overtime for the following dates: 28<sup>th</sup> January 4.5 hours overtime; 3<sup>rd</sup> February 0.5 hours overtime; 13<sup>th</sup> February 0.5 hours overtime and 4<sup>th</sup> March 0.5 hours overtime. The tribunal is satisfied with the claimant's oral evidence and the documentary evidence which support his oral evidence that he did work additional hours on those dates; in particular 28<sup>th</sup> January he worked an additional 4.5 hours and on 3<sup>rd</sup> February he worked an additional half an hour in the morning, because he had to undertake some repairs. He also appears to have gone in early on 13<sup>th</sup> February and worked and gone back to the workshop so arriving home after his normal hours of work on 13<sup>th</sup> February. The tribunal is satisfied that, on 4<sup>th</sup> March when he was working with Gerry, another engineer on the River Trust and went into the workshop at 4.45am. The respondent has paid him for the rest of his overtime on that day but deducted half an hour because it did not he accept he had gone into the workshop. The tribunal however accepts that he did so and therefore is entitled to overtime for that day as well.
24. However the tribunal does not consider that the claimant worked overtime for the other dates which he has claimed namely 3 March, 6<sup>th</sup> March, 11<sup>th</sup> March, 12<sup>th</sup> March and 18<sup>th</sup> March. In relation to the 3<sup>rd</sup> March the claimant appears to have arrived home at 5.30pm as noted on his own diary entry which would be consistent with his normal working hours taking account of travel. On 6<sup>th</sup> March he finished the job with sufficient time to have returned home within his normal travelling time. On 7<sup>th</sup> March he arrived home within his normal travelling time He appears to have left home on that day giving himself sufficient time to travel to his first customer. On 12<sup>th</sup> March his last job appears to have been completed with sufficient time for him to have returned home within his normal travelling time from work. That job finished at 2.00pm. On 18<sup>th</sup> March it appears irrelevant whether the claimant dropped someone else off at the workshop, because he

would still have arrived at home within the parameters of his normal working day taking account of travelling time. For those reasons the tribunal does not consider he is not entitled to overtime for those particular days.

---

**EMPLOYMENT JUDGE MARTIN**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 12 October 2020**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.