



THE EMPLOYMENT TRIBUNALS

Claimant: Mr W Hughes

Respondent: Hutchinson Transport Limited

REASONS OF THE EMPLOYMENT TRIBUNAL

Held at: Newcastle Hearing Centre

On: Tuesday 3rd November 2020

Before: Employment Judge Speker OBE DL

Appearances

For the Claimant: Mr Henry Percy-Raine of Counsel

For the Respondent: Mr Terry Lee Campbell, Transport Manager

REASONS

1. The claimant Walter Hughes brings a claim against his former employer Hutchinson Transport Limited for a declaration and a repayment based upon alleged unauthorised deduction of wages. This arises out of the payment by the respondent to the claimant of overtime at the rate of time and a quarter instead of time and a half which was the contractual rate. The respondent concedes that there was nothing in writing authorising the reduction but the respondent maintains that the reduction was pursuant to an oral variation of the contract of employment.
2. This hearing was conducted by CVP (Cloud Video Platform) with none of the parties or witnesses or representatives in attendance.
3. I found the following facts:
 - 3.1 The respondent is a transport company working from Hull, Runcorn and Middlesbrough (which is the head office). The claimant was one of

approximately twenty-six HGV drivers. He worked under a contract of five days per week Monday to Friday with regular overtime but in February 2019 he was reduced to a four-day working week. On 25th March 2020 he temporarily agreed to go back up to five days for a two-month period after which he would revert to four days.

- 3.2 Towards the end of March because of the national pandemic and business uncertainty, the respondent explored the possibility of costs saving and an objective to try to save the jobs of all of the employees. The managing director agreed to take a 50% reduction and other managers a 20% reduction. It was proposed to approach the drivers and ask if they would consent to a variation of their terms by having the rate of pay for overtime reduced from time and a half to time and a quarter. The company arranged that Terry Campbell speak to all of the drivers and ask if they would agree to this change.
- 3.3 The evidence given to the tribunal by Mr Campbell was that he did indeed speak to every driver apart from one who was not available on 30th March. His evidence was that in speaking to every driver including the claimant they all expressed their willingness to have this reduced overtime rate of pay. Following the conversation Mr Campbell sent an e-mail to each of the drivers thanking each for accepting the temporary pay reduction and saying "this will help HTL in the fight for survival in this very difficult period". A more detailed letter was sent to each of the drivers by Bruce Hutchinson the managing director which recorded the reductions of 50% for the directors, 20% for managers, 10% for staff and the hourly paid having reduction in the overtime rate. The managing director also expressed his thanks for the continued support during the difficult and uncertain times. Mr Campbell resent his e-mail the same day as there had been an error in the first. There was nothing to indicate that the e-mail had not arrived to all of the drivers including to the claimant.
- 3.4 The claimant in his evidence denied that he had agreed to the variation in the overtime rate although he accepted that he had indeed spoken to Mr Campbell on 30th March. He denied having received the first or second of the e-mails but that he did receive an e-mail later and at that stage he challenged the reduction and said that he had not agreed to it.
- 3.5 The claimant raised a grievance on 21st April with regard to the overtime reduction and a grievance meeting was scheduled for 1st May 2020 but did not take place because the claimant's union representative was not available. The claimant handed in his notice of termination of employment on 1st May 2020 and his employment ended on 8th May 2020.

Submissions

4. On behalf of the claimant Mr Percy-Raine set out the background and the legal framework under Section 13 of the Employment Rights Act 1996. He submitted that there was a deduction from the claimant's wages by virtue of payment of the reduced rate and that the claimant had not agreed to it but certainly there was

nothing in writing and the claimant denied having received e-mails at the time. It was submitted that the three methods of authorisation were authorisation or requirement by statute, authorisation or requirement by relevant provision of the contract or authority by written consent. It was submitted that none of these applied in the present case and that accordingly the claim should be granted and that there should be a declaration that there was an unauthorised deduction and payment to Mr Hughes of £1115.02, the agreed calculation of the underpayment of overtime.

5. On behalf of the respondent Mr Campbell argued that the payment of overtime at the lower rate was in accordance with an oral variation of the contract of employment and that Mr Hughes had specifically agreed to this. The company had taken advice from ACAS to the effect that oral variation was possible in relation to the contract. The respondent's case was that this was authorised by that variation albeit orally notwithstanding that there was nothing signed by the claimant at any time. Mr Campbell acknowledged that he had not made any written record of the oral conversation which he had had with the claimant on 30th March.

The law

6. Employment Rights Act 1996

Section 13 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.

Findings

7. This claim arises out of difficult and uncertain times posed by the national pandemic. The respondent company was urgently considering its position with regard to the uncertain future and wished to try to save the jobs of all employed within the company by making economies by cutting wages including salaries and hourly rates. I accept the evidence of Mr Campbell that he was deputed to speak to all of the drivers and that he did so in order to ask that they agreed to accept the reduction in the overtime arrangements. Although Mr Hughes denied that he had communicated agreement to the proposal, I find that he was vague in his recollection of the facts surrounding discussions and I note that there were other matters during this period including the claimant changing the hourly rates to extend it with a view to reducing it later. There had also been discussions as to possible redundancies.
8. It was necessary for me to determine the nature of the understanding reached between the respondent on one side and the claimant and the other drivers on the other and whether this provided authority for the respondent to make what would otherwise have been an unauthorised deduction from the wages of the claimant by paying him at a lower rate for each hour of overtime as was expressly set out in his terms and conditions of employment. The statement of terms and conditions of employment stated that the basic payment for each hour of work was £10.00 and for overtime would be £15.00 per hour (known as time and a half). The change proposed by the respondent was to pay £12.50 per hour which would be time and a quarter.
9. There are ways in which a deduction from wages can be authorised within Section 13 (1)
 - (a) the deduction is required or authorised to be paid by virtue of a statutory provision or relevant provision of the worker's contract;
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
10. Under Section 13 (1) (a) there are two possibilities. Certainly in this case there is no basis for suggesting that the deduction was required or authorised by virtue of a statutory provision. The other possibility is by virtue of a relevant provision of the worker's contract to which I will come back below.
11. Under Section 13(1)(b) deductions can be authorised if the worker has previously signified in writing his agreement or consent. This is an important protection for employees against having deductions made from their wages and places an onus upon an employer to ensure that the employee understands what is intended and has given his agreement in writing. This does not apply in the present case.
12. I revert to the question of whether the reduction/deduction was made pursuant to the contract of employment. The basis of this argument is that the conversation between Mr Campbell on behalf of the respondent and the claimant himself was effectively a conversation leading to a voluntary variation of the contract of

employment on a temporary basis under which the claimant was agreeing that his contractual entitlement would be £12.50 per hour for overtime rather than the contractual £15.00 per hour. I find on a consideration of all of the available oral and documentary evidence, that the conversation on 30th March did amount to an oral variation of the contract under which the claimant was agreeing to accept £12.50 per hour for overtime. This was consistent with the economic situation at the time and motivation behind the approach made to Mr Hughes. It may be that his claim was brought on the basis that any such change must be evidenced in writing. However for the reasons indicated, that is not the case where there is a change in the contractual terms which can be effected orally and does not require to be in writing.

13. For these reasons I find that the claim that Mr Hughes has suffered an unauthorised deduction from his wages has not been made out, that the lower overtime payments were pursuant to the contract as orally varied and that accordingly there has been no unauthorised deduction. In these circumstances the claim fails and is dismissed.

EMPLOYMENT JUDGE SPEKER OBE DL

**REASONS AUTHORISED BY EMPLOYMENT
JUDGE ON 9 December 2020**