



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Prekopuca  
**Respondent:** Cleshar Contract Services Limited

**Heard at:** by CVP  
**Before:** Employment Judge Lang (sitting alone)

**On:** 7 December 2020

## Appearances

For the claimant: In person  
For the respondent: Mr K Chaudhuri

## JUDGMENT

The complaint of unlawful deduction from wages is not well founded and is dismissed.

### REASONS

1. By a claim form issued on 1 June 2019 the claimant brings a complaint for unlawful deduction from wages in relation to the period 2 June 2017 to 1 June 2019 following ACAS early conciliation from 4 April 2019 to 4 May 2019. In essence he says that he was not paid the correct shift rate and is owed wages.

### The issues

2. Did the respondent make unauthorised deductions from the claimant's wages in accordance with the Employment Rights Act Section 13 and if so, how much was deducted? From 2015 onwards, he was paid £80 per shift while working as a Skilled Plate Layer (SPL) and £107 per shift while working as a Protecting Workers on Track Engineering Hours Operative (PWT). The claimant contended that, due to his competencies and experience, he should have been paid £100 per shift as an SPL and £125 per shift from 2014 onwards as a PWT.
3. The relevant questions are as follows – what were the contractual rates in force as at 2 June 2017? did they alter during the 2 year period to 1 June 2019? Was the claimant paid at the applicable rate throughout the period?

### The Hearing

4. The claim was conducted by CVP. I heard evidence from the claimant and also evidence from Chris Jackson (Head of WL/TFL Operations) and Bob Doyle (Director of Rail) for the respondent. I also had a bundle of documents of 291

pages.

### Findings of Fact

5. The claimant started working for the respondent in October 2004. He was initially engaged under a "Contract for Services on London Underground". This provided that he was providing services to the respondent in the capacity of a self-employed operative.
6. He signed a contract of employment and his employment with the company commenced on 9 March 2015. The contract included a provision about pay which stated "Your pay at all times will be no less than the national minimum wage per hour worked. Additional pay may be paid depending on the work you are required to perform. Where overtime rates are applicable you will be notified of this prior to the commencement of the work".
7. From 2015 onwards he was paid £80 per shift while working as a Skilled Plate Layer (SPL) and £107 per shift while working as a Protecting Workers on Track Engineering Hours Operative (PWT).
8. The claimant contended that, due to his competencies and experience, he should have been paid £100 per shift as an SPL and £125 per shift from 2014 onwards as a PWT. He was unable to produce any documents from the respondent that set out these shift rates and relied upon his knowledge of what other employees were paid. There is no evidence that the claimant complained about the £80/£107 pay rates which applied from March 2015 onwards until he was offered an increase in October 2015 (see below).
9. On 13 October 2015 the respondent wrote to the claimant regarding a proposed change to his contract of employment. This was to give him the option of an increase in pay in return for him accepting a new grading structure. The letter stated:

"Please note that it is entirely optional whether you accept the new grading structure and participate in this arrangement. However, once you have agreed to the new grading structure you will be eligible for consideration of the enhanced rates and you must comply with all the terms attached. This decision is permanent. You will not be able to opt out of the new grading structure once you have agreed to it".
10. The claimant was asked to complete a confirmation slip and he was told that the new pay scheme would become effective in the payroll period following the date on which the confirmation sheet was returned.
11. The claimant said that he did not receive this letter until December 2015. The letter provided for an SPL grade of SPL3 and an increase in his rate to £90. (Incidentally, the respondent's later position was that this letter was sent in error and that he should have at all material times been graded at SPL1 and entitled to only £80 per shift).
12. In any event the claimant did not sign the acceptance confirmation. The claimant complained to HR in February 2016 that he was still receiving the £80 shift rate.

It was pointed out to him that he needed to sign the contract and return it in order to receive the new rate of £90. He asked if there was back pay payable. He was asking for the shifts he had worked since October to be paid at the £90 rate. He was told that there was no allowance for backdating pay under the new pay grading system.

13. A further contract was sent to him following his query. This included the same rates of pay and again the claimant did not sign it.
14. He complained again in April 2016 about not receiving back pay and in November 2016 entered into correspondence with Chris Jackson about his pay rates. Chris Jackson said that his current pay rates were correct, that he was on £107 as a PWT1 and told him what he needed to do to move up from £80 to £85 per shift in relation to SPL duties.
15. A further contract was sent to the claimant on 13 March 2017, this provided for an increase in rates to £85 (SPL2) and £110 (PWT2). However, the claimant did not sign this and continued to be paid at his £80 and £107 rates respectively.
16. A further contract was sent out in October 2017 to him again including rates of £85 and £110 respectively but this was also not signed and returned.
17. The claimant was told again by e-mail from the HR department on 2 November 2017 that in order to get the pay increase he needed to return the contract but he did not do so.
18. An informal meeting to discuss his grade and pay took place with Mr Jackson on 5 December 2017 and a further informal meeting took place on 14 December 2017. The claimant's position was that he would accept a £90 rate for SPL work but wanted it back paid from February 2016 with interest.
19. The claimant eventually raised a grievance on 15 October 2018 by e-mail and a grievance meeting with Mr Jackson took place on 15 November 2018.
20. The outcome of the grievance hearing was communicated to him on 5 December 2018. He was told that he hadn't received any pay increases because he hadn't signed the contracts and that the Company would not authorise backdated pay. He was told he had a right of appeal.
21. A grievance appeal meeting took place on 7 January 2019 with Bob Doyle. Mr Doyle confirmed his findings by way of a letter dated 14 January 2019. Mr Doyle upheld Mr Jackson's decision and rejected the appeal.
22. The claimant received an increase in his shift rate for SPL work from April 2019 to £85 per shift but his PWT rate has remained at £107 per shift.

### **The Law**

23. Section 13 of the Employment Rights Act 1996 states as follows:

**“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.
- (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.”

24. Also of relevance in this case is the Deduction from Wages (Limitation) Regulations 2014 the relevant extracts of which are as follows:

2. In section 23 of the Employment Rights Act 1996(c) (protection of wages: complaints to employment tribunals) after subsection (4) insert— “(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. (4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).”

### **Conclusions**

25. Although the claim for deductions is limited to the period from June 2017 to June 2019, I must consider the position prior to that in order to establish whether or not there was an ongoing series of deductions. I have come to the conclusion that from the commencement of his employment on 9 March 2015 his contractual rates of pay were £80 and £107 per shift respectively and the claimant was paid at these amounts.
26. The respondent adopted a new grading structure and, as is common practice for many employers, offered a pay increase to employees who were adjudged to have reached a higher grade subject to the employees signing a new contract of employment. In other words, the pay increase was conditional upon a new contract of employment being signed.
27. The claimant did not sign a contract of employment when he received the October 2015 letter 2 months later in December 2015. If he had done so his SPL rate would have increased to £90 and he would have been paid accordingly.
28. The claimant had a further opportunity to sign the contract in February 2016 which he did not take and in March 2017 a further increase in rates was offered to him but, again, he did not sign the contract. Had he done so he would have been paid at the £85/£110 rates.
29. In October 2017 a further contract with those rates was not signed by him.
30. The claimant refused to sign any new contract because he was aggrieved that the October 2015 letter did not arrive until December 2015 and that the Company would not pay him back pay in relation to the period October to December 2015. This affected the claimant's relationship with the Company in relation to pay thereafter and the claimant refused to sign any subsequent contracts. There was no obligation on the Company to pay back pay in the circumstances. It seems to me that the claimant is the author of his own misfortune in this regard.
31. Dealing with my 3 questions in paragraph 3 above - What were the contractual

rates in force as at 2 June 2017? £80 and £107 per shift respectively. Did they alter during the 2 year period to 1 June 2019? Yes, there was an increase in his shift rate for SPL work from April 2019 to £85 per shift but his PWT rate remained at £107 per shift. Was the claimant paid at the applicable rates throughout the period? Yes.

32. I am satisfied that no deductions from the claimant's wages were made during the period June 2017 to June 2019. The claimant was paid at the correct shift rate throughout this period of £80 for SPL and £107 for PWT work and from April 2019 was paid £85 per shift for SPL work. Accordingly, no deduction from wages was made and the claim is not well founded and must be dismissed.

---

**Employment Judge Lang**

Date: 21 December 2020

Sent to the parties on:

20 May 2021

For the Tribunal:

.....