EMPLOYMENT TRIBUNALS

Claimants: Mr J Orior
Mr A Peters

Respondent: Providence Linc United Services (PLUS)

Heard at: Croydon (remote public hearing via CVP)

On: 25 and 26 March 2021

Before: Judge Brian Doyle

Representation
Claimants: Mr J Orior on behalf of both claimants
Respondent: Ms S Pennington, Chief Executive Officer

JUDGMENT

1. The claimants' complaints under Parts 1 and 2 of the Employment Rights Act 1996 and under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 are not well-founded and are dismissed.

2. The claimants' statutory particulars of employment regarding their hours of work are set out in clause 8 of the written statement of terms and conditions of employment dated October 2009 (Mr Orior) and in clause 7 of the written statement of terms and conditions of employment dated May 2017 (Mr Peters), and they have not been varied or replaced or revoked by custom and practice, by any implied term or otherwise.

REASONS

Introduction

1. At the end of a two days' final hearing on 25 and 26 March 2021 the Tribunal gave its decision with oral reasons in outline. As is usual, the judge prepared a written judgment without written reasons and signed it on 26 March 2021, providing it to the tribunal administration on that same day. For reasons of which the judge is unaware, the tribunal administration did not promulgate that

judgment until 3 June 2021. On that same date Mr Orior requested written reasons by email. That is a request that complies with rule 62(3) of the Employment Tribunals Rules of Procedure 2013. The judge now provides those written reasons.

Claims and issues

2. The claims contain complaints by which the claimants seek to establish: (1) what their statutory statements of employment particulars should record for the purposes of section 1 of the Employment rights Act 1996 in respect of their hours of work; (2) whether the respondent is in breach of those particulars in respect of their hours of work; and (3) whether they have a claim for unauthorised deductions from pay (in respect of the amounts of pay properly payable by reference to those hours of work) under section 13 of the Act.

3. The claims were subject to case management by Employment Judge Hyde on 22 May 2020. Judge Hyde's case management hearing was concerned with a number of other claimants and a number of other complaints brought by the two claimants – with which this Tribunal is not concerned. The present hearing concerns only Mr Orior and Mr Peters, and only the complaints identified in the paragraphs immediately above and immediately below.

4. Judge Hyde identified the complaints as being essentially whether the claimants were employed under zero-hours contracts, as the respondent contended, or whether they were employed under contracts that specified a minimum number of hours of work, for which the claimants contended. If their contracts were effectively a guarantee of a minimum number of hours then there was also a claim for unpaid wages, although Judge Hyde questioned the basis upon which such a claim might be mounted (it being the respondent's position that it has paid the claimants for hours actually worked). The claims also contained complaints in respect of written statements of employment particulars, to which the respondent replies that statutory statements have been provided (although clearly the claimants do not accept that these correctly record their contractual working hours).

5. The claimants' case appears to be based upon an alleged variation of their employment contracts as a result of custom and practice and/or giving rise to implied terms supporting their position.

The evidence

6. At the commencement of the hearing the Tribunal dealt with a question arising as to whether documents relied upon by the claimants had been included in the hearing bundle. That was dealt with to the apparent satisfaction of both parties.

7. The Tribunal had before it a core bundle of documents comprising 718 pages, together with the additional documents requested to be added by the claimants on the first morning of the hearing. References to the documentary evidence appear in square brackets below. The key documents in the core bundle appear to be [91, 107-110, 143-144, 147-150, 155-162, 165-168, 173, 175, 181, 557 and 591-595].

8. The Tribunal heard witness evidence from both claimants and from Ms Sally Pennington, the respondent's Chief Executive Officer. Their evidence was supported by written witness statements and tested by cross-examination and tribunal questions in the usual way.

9. The claimants' evidence (and submissions) lacked focus and was characterised more by an understandable enthusiasm for their case and less by attention to the documentary evidence. In contrast, the evidence of Ms Pennington was credible and consistent, and was corroborated by the documentary evidence. While the Tribunal was satisfied that the claimants were honest witnesses, who gave their evidence in good faith, Ms Pennington was the more credible and impressive witness. Her evidence was compelling and persuasive. The Tribunal was confident in making findings of fact that were based largely upon her account.

Findings of fact

10. The respondent is a private company limited by guarantee and without a share capital. It is exempt from the requirement to use the word "Limited" in its title.

11. It is a charity and provider of social care supporting vulnerable people with wide-ranging learning disabilities. The company employs approximately 170 people in the UK. It provides a variety of services including respite, outreach and residential services. Residential services are provided in small, dispersed houses each accommodating between 2 to 6 service users. Each service is provided by a staff team consisting of salaried support staff on set hours contracts supported by bank staff on zero-hours contracts. The staff team receives management support from a Service Manager supported, where appropriate, by an Assistant Manager.

12. The individuals who the company supports in residential services all have high support needs and are assessed by the placing local authority as needing support and personal care 24 hours a day, 7 days a week. To meet specific communication and other needs support must be provided by consistent, familiar staff. This is funded through individual contracts with the local authority. In most services there is a core of salaried staff and a smaller number of bank staff.

13. To provide the high levels of consistent support needed the respondent company needs to be able to deploy its workforce across the full range of days and hours. In order to do this, while at the same time recognising the work/life balance needs of its staff, the company offers two types of contracts. Salaried support worker contracts are generally for 38 hours per week and require post-holders to work a shift system according to the rota set by their manager. The company is aware of the difficulties this can cause for staff and it tries to be as flexible as possible around this. Zero-hours (or bank) contracts are offered where these suit staff better and can be accommodated within particular staff teams. The bank staff provide cover to the team – for example for sickness absence or if the needs of service users change suddenly and more support is required. They are required to meet the same standards as salaried staff and

receive support and training from the company to achieve this. Bank contracts are fully flexible and enable staff to dictate their availability and to refuse shifts which are offered.

14. Mr Orior's contract issued in 2009 [143-144] states that "there will be no guarantee of any hours being assigned" and "you will not be under any obligation to accept them". Once a shift is accepted the employee is expected to work those hours.

15. Mr Peters's contract issued in 2017 [107-110] similarly states that "[the respondent] is under no obligation to offer you any (or a reasonable number) of assignments. You also have the right to refuse any offer of an assignment". These contractual requirements have not changed in this respect over time.

16. Similarly, the Bank Procedure issued to Mr Orior in 2009 [165-168] and the current one updated in 2017 [591- 595] both reflect the zero hours nature of the contracts.

17. The respondent's contracts for salaried and bank staff include a mobility clause whereby staff can be required to work at any service [91, 147, 557]. All services are in South East London within a confined geographical area.

18. Support Workers can apply to move from one type of contract to the other. Such requests are common. It is usual for salaried staff requesting to move to bank contracts as their home situation changes. The move is not automatic. They are required to attend an informal interview with HR and a manager to determine that they can meet the requirements of the new post and that this is the best option for them.

19. Turning to the claimants themselves, Mr Orior was employed as a Bank Support Worker from 5 October 2009. When he was offered the position, he was sent a letter laying out the terms and conditions. He accepted the post. He signed this letter on 18 August 2009. He confirmed that he understood and accepted the terms of employment [143-144]. It is the respondent's belief (and the Tribunal makes no finding as to that) that the information contained in this letter, along with the written statement of terms and conditions [147-150] signed by Mr Orior on 7 October 2009 [150] and the Job Description [155-162] and subsequent Bank Staff Working arrangements [173] which were issued to him comply with the Employment Rights Act 1996.

20. Mr Orior continued on this contract until 4 November 2019, when his contract was terminated [263].

21. Throughout his employment he worked varying numbers and patterns of hours. His position in these proceedings is that [51, 53, 55] his contract was in fact a minimum hours contract of 25 hours, then 32.62 hours, and finally 20 hours per week from 2009 to February 2012 and 30.57 hours thereafter. However, from 2009 to 2012 Mr Orior was on a Student Visa which restricted his hours to a maximum of 20 hours per week in term time. In emails sent to his manager in 2011 he advised he was only available at weekends and confirmed his understanding that he could be offered no shifts at all [175]. He also declined

hours offered to him which were within the 20 hours [181]. It is the respondent's position that at this time Mr Orior, his manager and the respondent understood him to be on a zero-hours contract, under which he chose to restrict his availability and decline shifts. The Tribunal agrees with that interpretation.

22. Mr Orior's position is that from February 2012 he was on a minimum hours contract of 30.57 hours per week [55]. This is a very precise figure of 30 hours, 34 minutes and 12 seconds. The respondent points out, and the Tribunal agrees, that this would not fit with a shift pattern where shifts usually last for 7 or 8 hours, and are always based on whole hours. Rotas and payslips disclosed exhibit a random number and pattern of hours worked by Mr Orior during this period.

23. In June 2017 Mr Orior took up full-time employment with another company (Outward Housing), working there until January 2018 [251]. As a bank worker on a zero-hours contract he was permitted to accept work elsewhere, but was required to inform the respondent of this and the hours he worked [593], which he did not do. As the respondent asserts, assuming his full-time employment to be at least 35 hours per week, if his case is to be accepted, he considers that at this time he was contracted to work a minimum of 65.57 hours per week between the two employers. The Tribunal does not consider that that is probable in the circumstances of the evidence it has heard.

24. The respondent's bank policy and Mr Orior's terms and conditions state that staff may not consistently work more than 48 hours per week in total, or 165 hours per month, for health and safety reasons, including with other employers [148, 592-593]. Rotas available during that period from October to December 2017 show that his availability was only 1 or 2 shifts per week [429-443]. Shifts are generally for 8 hours, so this enabled Mr Orior to keep within an average of 48 hours per week. It is apparent that he understood the nature of his zero-hours contract at this time and he did not make himself available for the 30.57 hours he claims to be his minimum hours.

25. After the termination of Mr Orior's contract with Outward Housing in January 2018 the hours worked by him increased for a while. This was due to an increase in his availability rather than to any change in the procedures or understanding of the respondent. There is no consistent pattern of working or hours which suggests that his contract had changed. In the weeks commencing 10 and 17 December 2018 he worked 15 and 23 hours respectively [466, 468]. In the week commencing 12 November 2018 he worked 43 hours [465]. 2019 follows a similar pattern, although with generally lower hours as he restricted his availability to mainly weekends.

26. Turning to Mr Peters, he was employed as a salaried Support Worker from 16 January 2017 to 31 May 2017. When he was offered the position he was sent a letter containing the terms and conditions [89-94]. He accepted the post, signing to confirm receipt and acceptance [90, 94 and 95]. Again, the respondent believes that the terms of the Employment Rights Act 1996 were complied with. The Tribunal makes no finding as to that.

27. However, it became apparent that Mr Peters was unable to comply with the requirements of the position, with persistent unauthorised absences, and he was set to fail his probation. Following a meeting with his managers he requested a move to a bank contract so that he could work more flexibly. As other aspects of his work were satisfactory, this was agreed [97-99]. He resigned from his salaried post and accepted a bank post [103 and 105]. He was sent a letter re-stating his terms and conditions [105-110], in apparent compliance with the Employment Rights Act 1996.

28. Mr Peters continued on this contract until 13 February 2020, when his contract was terminated [121]. Throughout his employment he had worked varying numbers and patterns of hours until May 2019 when he proceeded on sick leave until August 2019. He then stopped submitting availability for shifts and he made no contact with his manager or the respondent. In accordance with the terms of the bank procedure [592] in January 2020 he was asked to contact HR to confirm if he wished to continue in his employment. As he did not respond to the two separate letters sent to him he was considered to have resigned [117-121]. Had there been an understanding between the parties that Mr Peters was on a minimum hours contract and required to work 25 hours per week the respondent would have considered him to be on unauthorised absence throughout this period and dealt with the situation through its disciplinary procedure.

29. Mr Peters did not at any time indicate that he considered the terms and conditions of his contract to have changed. His case is that he does not consider that he was a bank worker on a zero-hours contract, but rather on a minimum hours contract of 25 hours per week [51]. It is not clear on what basis Mr Peters asserts this or on what date he considers that his contract changed. His working hours and pattern of working have varied during his employment. For example, in July 2018 he worked 30-38 hours per week [451-453], but at other times significantly lower hours – for example, 6 hours in week commencing 24 December 2018 and falling to zero hours in weeks commencing 3 September [460], 12th November [465] and again in December 2018/January 2019 [472-474]. He stopped working in May 2019 due to ill health, and he did not return despite being fit to do so from July 2019 [123 - 128].

30. Both Mr Orior and Mr Peters after short periods in other services were allocated to work at the respondent's service at Holmbury Dene. Until April 2018 this service differed from other residential services provided by the respondent in that it provided respite, rather than permanent accommodation, for up to 10 service users at a time. On some days there might be 10 service users resident and on others none. The funding contract was also different to other services. It was a "cost and volume" contract funding a small core service with additional funding for higher occupancy levels. In order to provide this service the staff team was structured differently to other services, with a very small core of salaried staff and a larger group of bank staff, to enable the high level of flexibility required.

31. In 2017 it became clear that for financial reasons local authorities were no longer making residential respite a priority. The number of bookings dropped

drastically. It was apparent that the respondent's contract to provide respite services would not be renewed. Following negotiations on the future use of the building, in 2018 the local authority offered the respondent a different type of contract for services at Holmbury Dene. This was to provide permanent residential care to 6 people who have learning disabilities and complex behavioural needs. It is a block contract, funding 1:1 support for each of the 6 residents at all times during the day, with two waking staff at night. In addition two beds were retained for respite use.

32. This new contract started in April 2018 and required a staffing structure similar to other services provided by the respondent, with a large core of salaried staff and a smaller number of bank staff. The specific needs of the service users required high levels of support and consistency, and in order to fulfil this the respondent began recruiting to fill 20 full-time salaried posts. It was envisaged that when these were filled there would be a need for fewer bank workers and some would need to move to other services where there were vacancies and a need for support to service users. At this time there were three service users who had been receiving interim respite who stayed as permanent residents and they were quickly joined by a fourth service user.

33. The staff team were kept informed of these changes throughout. The respondent's Head of Service attended staff meetings and sent written updates. In January 2019 he informed bank staff that with successful recruitment the number of salaried staff would soon be at establishment level and hence the number of hours available to bank staff would reduce, so some would be moved to other services.

34. This resulted in a grievance from Mr Orior, with several other staff named as party to the grievance, including Mr Peters. Ms Pennington heard this grievance. It was clear that staff were worried about the changes and particularly that there would not be a demand for their work in other services. Ms Pennington did not uphold the extensive and numerous claims made in the grievance (including discrimination), but she sought to reassure the grievers that there was an ongoing need for their services [515].

35. At about this time, the respondent accepted referrals to the remaining two residential places at Holmbury Dene. These two individuals had even higher needs than the four current residents. Support needs for one was assessed at 2:1 at all times, including an additional two dedicated staff waking at night. The other was assessed as needing 2:1 support for significant periods during the day. This substantially increased the staffing establishment required for the service. Therefore, the respondent started recruiting again and it did not transfer any bank staff out at this time.

36. The respondent has not subsequently found it necessary to ask any of the staff who supported the grievance to move. Although the respondent has recently again approached full establishment, the number of bank staff has reduced as some have moved on. Recently, one of the staff who was party to the original grievance approached the respondent as the hours available at Holmbury Dene as predicted had begun to reduce. She requested a move to another service where she knew there was a vacancy for a bank staff. This was granted.

Claimants' case

37. Mr Orior made oral submissions on behalf of both claimants. However, in order better to understand the claimants' respective cases, the Tribunal sets out the essence of their case as explained in their witness statements and cross-referenced to the documents bundle.

38. Mr Peter's employment with the respondent as a support worker commenced on 6 December 2016 [89-90]. He was contracted to work 38 hours per week [92]. Because of his family circumstances, that proved to be challenging for Mr Peters, who needed flexible working arrangements [87]. In his view, he did not resign, but simply requested flexible working [103].

39. On 27 May 2017 the respondent offered Mr Peters a new contract as a support worker on the bank. This is said to support a custom and practice thereafter of flexible working [105-106]. On 18 January 2018 Mr Peters completed his probation period so that his position became permanent [113]. His place of work changed to Holmbury Dene, from 24 May 2018, although the document recording this was not signed [111, 115].

40. It is said that Mr Peters was rostered in a similar way to other staff and shifts were offered to him, but not to cover for other staff [450-500]. He continued to work flexibly as rostered [256-500]. From May 2019, for reasons that the Tribunal need not explore, Mr Peters was absent from work due to ill health and was unable to work his shifts. On 21 January 2020 the respondent "threatened" to terminate his employment if he did not take up his shifts [117, 119, 121]. His employment subsequently ended.

41. Mr Orior entered the United Kingdom on a student visa in 2008 [187]. His visa limited him to working no more than 20 hours per week. In 2009 he applied to the respondent for work and was engaged as a support worker on the respondent's bank at its Holmbury Dene site [131-144].

42. In 2010 there were changes to the supervision arrangements for bank staff [169]. Mr Orior places considerable emphasis upon a communication dated 16 October 2010 [177] that refers to there being enough work at Holmbury Dene for him to be able to fulfil his 20 hours per week and that he would not then have enough hours to work at another site. Mr Orior describes this as being a minimum of 20 hours per week. He points to evidence of him working 20 hours per week at this time and being assigned shifts accordingly [181].

43. By July 2011 Mr Orior was assigned more or less permanently to Holmbury Dene [185]. By 2012 he was no longer subject to the restrictions of a student visa [191-197]. From this point onwards, at least, Mr Orior regarded himself as a salaried employee.

44. In Mr Orior's assessment, he and Mr Peters were employed by the respondent as employees doing the same job as salaried employees alongside whom they worked. His position is that, as a matter of mutuality of obligation and of custom and practice, he and Mr Peters were employed under flexible employment

contracts – by which he appears to infer that they were guaranteed a minimum number of hours, which were to be worked flexibly on both sides. This meant, in his assessment, that they worked fewer hours than full-time employees; those hours were compressed over fewer days; and that this was worked as flexitime, with a choice as to start and finish and days of work. Their case is that the respondent provided them with flexible hours contracts over a period of 3 years (Mr Peters) and 10 years (Mr Orior).

45. As Mr Orior put it, this was an implied term of the contract through custom and practice as a result of mutuality of obligations. The custom and practice was the hours worked by the claimants due to the mutuality of obligations between the respondent and the claimants. The claimants worked varied hours as a matter of custom and practice, which was long-standing, continuously applied, acknowledged and expected by all. The claimants worked minimum hours throughout their employment, ranging from 38 hours and 20 hours respectively. This was reflected in the roster and in the payroll records, although incomplete.

46. The claimants raised a grievance about their minimum hours in December 2018 [501-503, 541-542]. Although the respondent did not accept that they were entitled to minimum hours, the respondent did accept that they were employees and that there was mutuality of obligations. Nevertheless, it is Mr Orior's case that he was not working on a zero-hours contract, but was working to a flexible contract with minimum hours as a result of changes to the employment relationship.

Respondent's case

47. Ms Pennington made oral submissions on behalf of the respondent, but its case can be more easily gleaned from the company's ET3 response form.

48. The respondent's case is that it offers two types of contract to support staff. Salaried staff (full or part-time) work a shift pattern as determined by the home manager, to cover the 24-hour period. Bank staff work flexibly on a zero-hours contract and are offered work as required to cover for salaried staff holidays, sickness or other absence and vacancies, to ensure appropriate levels of support at all times. Their terms and conditions state that there is no guarantee of hours being assigned and there is no obligation on them to accept any hours offered. In practice hours are always available. If no hours are worked for a period of three months the staff member is contacted to clarify why - to check that they are being offered shifts and if they continue to be available to take them up.

49. Individuals apply for the different types of contract, dependent on their personal circumstances. Many people cannot commit to the hours required on salaried contracts due to caring commitments, study or other employment, and request bank contracts so they can work hours around those other commitments. Support staff may request to transfer between the two types of contract if their circumstances change - the job descriptions, experience etc required are identical. Following a request a short meeting is held to ensure that the individual understands the difference between the contracts and can fulfil the

terms and conditions. The option to request a change of contract has always been, and remains, open to the claimants.

50. No information or details about the specifics of the claims are made – in relation to the hours each individual claims to have worked which has created "custom and practice", or what the implied terms are in their contracts. The respondent believes that both it and the claimants have been working in accordance with the terms and conditions of their contracts.

Relevant legal principles

51. This is not a case in which legal principles are really in issue. It is a case in which the findings of fact are central to the decision. Nevertheless, whether a term can be implied into an employment contract and whether an express term has been varied, for example, by custom and practice or the conduct of the parties, is a question of law (or a mixed question of law and fact).

52. The Tribunal had regard to Part 1 and Part 2 of the Employment Rights Act 1996. Otherwise, the relevant legal principles may be summarised in the following way.

53. A term will not be implied into an employment contract merely because it is reasonable or fair to do so. A term is only implied in order to give effect to the presumed intention of the parties at the time the contract was made. That may be done in order to give business efficacy to the contract; or as a result of custom and practice; or to reflect the way the contract has actually been performed; or because such a term was obviously intended. Nevertheless, an implied term cannot override an express term, unless to qualify it or to restrict how it may be applied in practice.

54. In this case, the claimants rely upon custom and practice as giving rise to an implied term. But that may be as a result of a confused use of the term "custom and practice", which more usually refers to a term that is regularly adopted in a particular trade or industry, in a particular locality or by a particular employer.

55. What the claimants appear to mean is that an implied term is required to reflect the actual conduct of the parties in relation to their particular employment contracts. The case law suggests that a term may be implied into an employment contract on the basis of how the parties have operated the contract in practice in all the facts and circumstances of the case. What is relevant, however, is what the parties intended when the contract was originally made.

56. For that reason, it may be that the implication that the claimants seek to make is that their employment contracts have been varied by the conduct of the parties (what they describe as "custom and practice"). Strong evidence of a mutually agreed variation of the original contract is required. In the absence of express agreement, agreement might be capable of being implied from the conduct of the parties – see *Jones v Associated Tunnelling Co Ltd* [1981] IRLR 477 EAT. Here a distinction is usually made between variations with immediate practical effects and those without.

Discussion and conclusion

57. The Tribunal accepts the essence of the respondent's defence to these claims. Although the claimant's claims may have been brought in good faith and without any vexatious intention, they are in the final analysis mistaken, misplaced or misconceived.

58. The claimants' consistent reference to their cases being founded upon "mutuality of obligations" is misdirected. It is not in issue that they were employees employed under contracts of employment and that there were mutual obligations between the parties. What is in issue is the terms of those employment contracts – whether they were zero-hours employees, as the respondent contends, or whether they were full-time employees with guaranteed hours, albeit able to work flexibly, as the claimants contend

59. Written contractual terms and conditions of employment were given to Mr Orior and Mr Peters within 28 days of starting employment with the respondent (in Mr Peters's case replacing his original employment contract). These contracts made it clear that they were offered and they accepted zero-hours contracts. Under the terms of these contracts they were to advise the respondent of their availability to work and the respondent would offer them shifts if available. There was no guarantee that the respondent would offer a fixed amount, or any, hours. There was no requirement for them to accept any specific shifts offered. There was an understanding under the bank procedure that the respondent would offer shifts where available and that the claimants would make themselves available to work some shifts.

60. This differs from respondent's salaried contracts, whereby staff on fixed hours (usually 38 hours per week – as was Mr Peters's position originally) are required to work the full amount of hours according to a rota set by the manager, and could not decline shifts. The respondent's relationship with both claimants throughout their employment was based on a mutual understanding of their contracts. The claimants advised the respondent of their availability and accepted or refused shifts offered as they wished. Neither claimant worked a set pattern of shifts or number of hours throughout their employment. There was no mutual understanding or agreement to any change in the contractual relationship.

61. So far as Mr Peters's employment contract is concerned, the position is addressed in paragraphs 18-20 of Ms Pennington's witness statement and in the documents bundle at [97-99, 102, 105 and 107-110]. See particularly clause 7 at [108].

62. So far as Mr Orior's employment contract is concerned, the position is addressed in paragraphs 9-17 of Ms Pennington's witness statement and in the documents bundle at [143-144 and 147-150]. The evidence does not support an employment contract of 20 hours per week. A contention to the contrary is based upon a misunderstanding of how Mr Orior was treated when employed on a student visa. That was the maximum number of hours for which he could be employed, not a guaranteed minimum number of working hours. Thereafter, he had no minimum working hours and was subject to any maximum required

by the working time regulations. The evidence of the rotas and pay slips demonstrate this.

63. There is no compelling evidence that either claimant's employment contracts were replaced or varied by custom and practice (or the conduct of the parties), or that any vacuum or gap in their employment terms was filled by custom and practice (or the parties' conduct). In short, there was no scope for any implied term to displace the clear express terms of their employment contracts.

64. Applying Part 1 of the Employment Rights Act 1996, the claimant's' written employment contracts complied with the respondent's legal obligation to provide statutory statements of employment particulars. The relevant term as to their contractual hours of work is clear.

65. Applying Part 2 of the Employment Rights Act 1996, there has been no unauthorised deductions from or non-payment of wages. Both claimants were paid for hours actually worked and for which wages were properly payable. There were no other hours, such as so-called minimum or guaranteed hours, that were not paid for or for which wages were properly payable.

66. There has been no breach of the contracts of employment of either claimant. The express terms of the employment contracts have been complied with. There have been no breaches as to contractual requirements as to hours of work or as to wages payable. The claims are simply misconceived, as Judge Hyde hinted at when case managing these proceedings at an earlier stage.

67. The claims are not well-founded and are dismissed.

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Judge Brian Doyle
Date: **29 June 2021**

REASONS SENT TO THE PARTIES ON
Date: **30 June 2021**

FOR THE TRIBUNAL OFFICE