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EMPLOYMENT TRIBUNALS

Claimant: Mr S Fordham
Respondent: Orridge & Co Limited
Heard at: East London Hearing Centre
On: 25 and 26 July 2019
Before: Employment Judge Hallen

Representation

Claimant: Mr G Baker (Counsel)
Respondent: Mr L Wilson (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

- 1** The Respondent made unlawful deductions from wages of the Claimant contrary to Section 13 of the Employment Rights Act 1996 ('ERA 1996') for those occasions where the Claimant was undertaking driving duties on behalf of the Respondent for the two-year period immediately preceding the lodgement of this claim. The unlawful deductions of wages are at the Claimants contractual rate of pay and are limited to those occasions when the Claimant picked up and dropped off colleagues from their places of home whilst travelling to and from the Respondent's client's work sites.
- 2** The remedy hearing is listed for 13 December 2019 and directions in respect of the remedies hearing are given at the end of this judgment.

REASONS

Issues

1 This case was listed before Employment Judge Ross sitting alone on 13 June 2019 as a short track final hearing with a time estimate of 3 hours. On that occasion, Judge Ross decided that there was insufficient time to deal with the case and listed it for a 2-day hearing on 25 and 26 July 2019 giving directions at that time for the preparation for this hearing. In addition, with the consent and agreement of the parties at that time, the issues were defined by Employment Judge Ross.

2 It was agreed by the parties that the Claimant was engaged in time work as defined in the National Minimum Wage Regulations 2015.

3 The first issue for the Tribunal was to answer whether the Claimant was required to pick up colleagues from their homes and drive them to and from work sites?

4 If so, did the Claimant's contract entitle him to be paid at his contractual salary (£9.90 per hour):-

4.1 During journeys between his home and colleague's homes and/or

4.2 During journeys between the colleague's homes and the clients work site?

4.3 If the answer to (4.1) is yes, but (4.2) is no, was the Claimant entitled to be paid the national minimum wage whilst driving colleague's to and from work sites and/or driving alone on the way to pick up or having dropped off colleague's?

4.4 If the answer to either (4.2) or (4.3) is yes, what (if any) deductions from wages have the Respondent's made, contrary to Section 13 of the Employment Rights Act 1996. The latter question is one in respect of remedy and directions are given in respect of this issue at the end of the judgment.

5 At the outset of the case, the Claimant's Counsel confirmed that the Claimant's claim concerned his entitlement to pay for his travel to and from client's sites. The essence of the claim was simplified by Counsel. Was the Claimant entitled to be paid:-

5.1 Only when he was on site on the Respondent's client's premises? ("*the onsite basis*"); or

5.2 When he was providing transportation services to the Respondent by driving fellow employees to client's premises and returning them to their homes prior to and after completing the onsite basis duties? ("*driver duties*").

6 The Claimant accepted that he was not entitled to be paid during all travel from home to the client sites. On many occasions he was not required to undertake driver

duties and was in effect a 'solo driver'. The Claimant's case was that on the proper construction of his contract of employment, he was entitled to be paid for driver duties. It was asserted by the Claimant at the outset that by restricting payments to him of his contractual pay on the onsite basis only, the Respondent had made unlawful deduction from wages that were properly payable to the Claimant contrary to Section 13 of the ERA 1996. Alternatively, the Claimant stated that he was entitled to be paid the national minimum wage for the driver duties.

7 At the hearing, the Claimant gave evidence in person having prepared a written witness statement which was read by the Tribunal. The Respondent called two witnesses, Melanie Allison, Senior Regional Manager for the Respondent and Priya Kapoor, Controller employed by the Respondent. Both of these witnesses prepared witness statements. The party's representatives prepared skeleton arguments and the Tribunal was referred specifically to two cases namely *Whittlestone v BJB Home Support Limited UK EAT-0128/13* and *Royal Mencap Society v Tomlinson Blake 2018 EWCACIV1641*. In addition, there was an agreed bundle of documents prepared for the hearing. The witnesses were subject to cross-examination and questions from the Tribunal.

Facts

8 The Respondent is large stock taking business which deals with stock taking and audit of retail companies. There are a total of four big stock taking companies which deal with retail audits country wide, Orridge being one of them. The company engages approximately 1000 casual workers of whom approximately 300 are designated drivers. All of the Respondent's workers are field based. They travel from their home to their place of work (which varies each day but which is very rarely more than one place of work in a day) and then home again.

9 All of the Respondent's workers are paid on an hourly rate basis for the hours worked. They are paid at the national minimum wage to start with. The Claimant who is a Supervisor is paid at the contractual rate of £9.90 per hour which is above the national minimum wage rate. Generally speaking the workers are not paid travel time except where they travel to a particular site which is more than three hours away in which case they have the option of taking a "travel day". If the particular count is more than 3 hours away in respect of travel time, a worker can decline or accept the count. If they accept, they can either travel to the count directly, or can choose the travel day and travel to the count on the day before the count is due to start. For this, workers are paid a flat rate. In addition, they are provided with accommodation, paid for by the Respondent and an amount for overnight food and breakfast. Occasionally, workers may also be offered a travel day post count if it is a particularly far away count.

10 Workers are divided into three categories: Supervisor which the Claimant is and was, Controller and Counter. A supervisor has overall responsibility for the job referred to as the count. A Controller reports into the count Supervisor and manages and directs the Counters and the Counters carry out the vast majority of the actual stock taking. There is also the occasional fourth category called "Buddy". This is where an individual will attend a count with the Supervisor to assist the Supervisor in setting up the necessary equipment at the start of the count. It is also a mechanism by which a Counter can be upscaled to become a Controller or Supervisor.

11 The Respondent operates a casual workers portal ('the portal'). All counts are uploaded onto the portal at approximately one week prior to the start of the count. Workers then have the option to indicate whether they are available for work or not available; for instance, if a worker is on holiday, or does not wish to work, they can indicate this on the portal. If a worker is unavailable then they will not be scheduled on any counts.

12 If a worker indicates they are available for work on the system they will be scheduled on to available counts at client's sites. If a worker receives notification of the count, the worker then has the choice of accepting or declining the job. The decision to accept or decline the job is entirely up to the worker. The worker does not need to provide a reason for declining the job and there are no penalties for this. If the worker chooses to accept a count they will be allocated to that count on the portal. Once allocated to an account, workers can view who else is allocated to that count. On the screen, it indicates how they intend to travel to work i.e. public transport, car, car group with driver or coach. The Respondent typically allocates workers to a count be they Counters, Controllers or Supervisors where there is a nominated driver who lives within the locality who is able to take all of the workers to a specific count which all of them can attend together if at all possible. The Tribunal was shown a time sheet which was at page 147B of the bundle which indicated a particular count at the Co-Op in "Well Hall" on which five workers were allocated on 5 March 2018. Those workers were Allen Simmonds specified as the Buddy, Christopher Constantine allocated as a Counter, Gary Parker indicated as a Counter, Katie-Jane Burgess indicated as a Counter and the Claimant indicated as the Supervisor and driver of the vehicle that transported three of these individual to this specific count. The start time was specified as 6am in the morning with various different finishing times for the Counters specified. The Supervisor and nominated driver being the Claimant had a finish time which was the latest of all of the Counters which was 4pm. The end time for the Claimant as designated driver and Supervisor accounted for his time dropping off the rest of his team to their homes on the day of that specific count. The time sheet also indicated that there was no overnight stay on this particular count.

13 The Respondent gave evidence to the Tribunal which was not accepted that workers on specified counts where there was a nominated driver were free to contact each other to arrange to commute together if they so wished. The Respondent sought to persuade the Tribunal that the arrangement was no more than a car pool arrangement and that the workers were free to contact each other as and when they chose to do so. The Tribunal did not accept this evidence. As was clear from the document at page 147B, the job date was on 5 March 2018 and was at the Well Hall location of the Co-Op store and included a number of different categories of worker with the Claimant being the Supervisor and the designated driver which was a definition given to him by the Respondent. The abbreviation 'D' signifying driver was added to the form which applied to the Claimant as the designated driver for that particular count. It also specified that the occupants of the vehicle were three and that the mileage travelled was 180. Furthermore, evidence was given to the Tribunal by both the Respondent and the Claimant that the Claimant from almost the outset of his employment used his personal vehicle for transport to and from counts during which time he would pick up workers on a regular basis that were close to his home as evidenced by the document 147B. From November 2017, the Claimant was provided with a hire vehicle by the Respondent to enable him and other workers allocated to a specific count to be transported by the Claimant to those counts with the Claimant being the designated driver. The vehicle was for business use only and was taxed and insured by the Respondent for such use. The Respondent accepted that

the Claimant is still using this hire vehicle to this date. It is a mandatory requirement of the casual workers portal that once a job has been accepted, workers must attend a specified location by the "start time" outlined on the portal. In addition, nominated drivers as shown at page 87 of the bundle (an extract from the casual workers handbook and a contractual document), stated as follows "*if you are the driver for any events you must contact passengers to make the appropriate arrangements. If you are unable to contact your passengers you must inform control as soon as possible. Similarly, if you are a passenger and you are not contacted, you must inform control of your situation*". Those workers who drive to the counts in their personal cars receive a mileage allowance. This covers the cost of fuel and wear and tear of their vehicle. Those workers who drive in pool cars or hire cars provided by the Respondent are provided with a fuel card which can be used to pay for fuel.

14 The Claimant gave evidence to the Tribunal which was accepted that as the designated driver when he confirmed a job on the casual workers portal, he informed the Respondent's control office and a group of workers who lived in the vicinity of the Claimant were allocated to the specific job by the Controller. Furthermore, the Claimant was required as the designated driver to utilise his vehicle to collect these workers from their home addresses and transport them to the client site in question and thereafter after the onsite duties were completed to transport them home again. It was the Respondent that did the allocation based upon those workers indicating their availability for a specific job in question and the designated drivers such as the Claimant was as the Respondent admits 'requested' to collect and transport those workers allocated to those specific jobs to the specific client sites in question. The Claimant specified that there would have been no need for him to have been provided with a hire vehicle which was insured for business use by the Respondent if he was not required to collect his colleagues from their home addresses and then transport them to and from work. The Claimant confirmed that he could not use the hire vehicle for personal use and that at the time that he had to drive to client sites which was often as early as 5am, there was no public transport available to him and/or to other workers that were allocated to the client sites in question. The Tribunal also accepted the Claimant's evidence that he was told by the Respondent's Controller, Ms Kapoor to utilise the hire vehicle that was given to him as much as possible as there was no point of him having it if he was not in a position to pick up other workers for allocated jobs. The Claimant gave evidence that if he did not pick up workers for a specified count, the job would either go void or would not get done. The Tribunal accepted this evidence.

15 The Respondent sought to persuade the Tribunal that there were other drivers and/or other workers available to undertake such jobs at short notice. However, the Tribunal did not accept this evidence. It was clear from the stipulation at page 87 headed Travel Arrangements that the nominated driver of any event must contact passengers to make the appropriate travel arrangements for the specified counts and often such travel arrangements had been made by the nominated driver shortly before the count and to ensure that the counters were available for collection from their homes at an early hour. If the Claimant as a designated driver was not in a position to collect the workers on the specified count, the job was more likely than not to go void that is short of workers or not go ahead at all. This explained the stipulation at page 87 of the bundle of documents which appeared to be a mandatory requirement placed upon designated drivers of vehicles and clearly was designed by the Respondent to avoid any last minute hiccups.

16 The Claimant's contract was at Tab 9 of the bundle of documents and incorporated the UK Casual Worker Portals starter pack as well as the Respondent's Owner Driver Policy which was at Tab 10 of the bundle of documents. At page 62 of the bundle was Section 9 which specified the main terms of engagement (*'the terms'*). The main terms of engagement specified *"this document sets out the terms together with those terms in the casual workers handbook which governs any period that you are engaged by the company"*. It also specified *"the company is not obliged to offer you work, and you are not obliged to undertake it. You agree that you are not an employee of the company."* At clause 2, the Claimant's duties were set out as follows *"you are engaged as a casual stock taker working at client's premises across England and Great Britain. You agree to undertake reasonable duties other than those which you have been specifically engaged."* There was no job description in the casual workers handbook at Tab 12 of the bundle of documents save for a brief description of basic count procedures which was Section 9 of the handbook which was at page 82. The Respondent sought to persuade the Tribunal that driving duties were outside the scope of duties set out at clause 2 of the main terms of engagement specifically the second sentence which read *"you agree to undertake reasonable duties other than those which you have been specifically engaged."* It was asserted that other duties included in addition to stock taking, training and/or mentoring but did not include providing transportation services to the Respondent by driving fellow employees to client's premises and returning them to their homes after the onsite duties. The Tribunal could not see that there was any legitimate or sensible distinction that could be made by the Respondent in this regard. It seemed to the Tribunal that the Claimant as a designated driver using a vehicle supplied and insured by the Respondent was undertaking "reasonable duties other than those that you have been specifically engaged" (as per his contract) when undertaking driving of fellow employees to and from client's premises.

17 Clause 4 of the main terms of engagement specified that "you are only entitled to be paid for the hours/shifts actually worked by you personally" (*"the actually worked clause"*).

18 At page 68 of the bundle was the Respondent's own driver policy which stated that before any casual worker can use their vehicle for business purposes, they must hold:

18.1 A valid UK drivers license;

18.2 A valid UK MOT certificate;

18.3 Valid insurance cover (to include if possible business use, if you decide not to have the Orridge business use top up cover)'.

19 At clause 1 of that policy at page 68 it specified:

"whilst driving on Orridge company business, the Orridge company insurance policy will cover you for injuries to third-parties including passengers in a third-party vehicle and/or your vehicle."

At page 78 which was in the Casual Workers Handbook under "Conditions of Work", the handbook provided that:

“You are not entitled to pay whilst travelling to or from a place of work unless exceptional circumstances are deemed to apply by the Operations Director.”

20 At page 87 under Section 18 ‘Travel Arrangements’ it is specified:

“if you are the driver for any event you must contact passengers to make appropriate arrangements. If you are unable to contact your passengers, you must inform control as soon as possible. Similarly, if you are a passenger and you are not contacted, you must inform control of your situation.”

21 At page 90 of the handbook at Section 28, it specified as follows: -

21.1 *“Driving own vehicle or vehicle hired by Orridge to drive on company business*

21.2 *If using your own vehicle to carry out your duties and you have not been scheduled to travel with colleagues a mileage allowance may be paid to you. This will be in accordance with the rate applicable at the time.”* In the same section at page 91 it specifies as follows *“only authorised personnel may drive company and/or customers vehicles.”*

22 The Claimant’s job role and responsibilities were summarised in the Respondent’s Response Form from pages 25-26 of the trial bundle as follows:

“At all material times, the Claimant is and remains engaged by the Respondent as a casual worker to carry out counter services with the Respondent’s clients with no obligation to provide services. If work is offered and with no obligation on the Respondents to offer work. The work available on any given day varies from location to location and indeed from client to client of the Respondent, so the Claimant could be and is required to travel to different sites each day. The Claimant is a peripatetic worker.”

“7 some casual worker, including the Claimant on regular occasions are requested to collect and drop off other casual workers and take them to the designated site from where the assignment will be carried out on any particular day. The Claimant initially used his own vehicle for transport to and from the place of work. He was provided with a hire car, paid for by the Respondent on or around 29 November 2017 to enable his own vehicle to be repaired. The Claimant remains in possession of the hire vehicle to this day.”

“8 by virtue of having access to a car by the Respondent, the Claimant is requested but, contrary to his assertion, is not required to collect other casual workers en route to the location of an assignment on any particular date”.

23 From the beginning of his service with the Respondent, the Claimant was requested to pick up colleagues en route to whichever site he had been allocated. At page 147A of the bundle of documents is a text sent by the Respondent’s controller specifying that the Claimant was required to pick up a worker from a specific allocated job. In addition, at page 147B is a time sheet which also showed that a specific job on 5 March

2018 at the Co-Op in Well Hall had the Claimant as the designated driver along with three other workers in his vehicle. The Claimant gave evidence that the colleague's concerned sometimes lived 20 miles from his home address and not necessarily in the direction of the site allocated. This additional time travelling to the site meant that the Claimant had to leave his house even earlier. The Claimant was paid a mileage allowance for use of the company vehicle on the occasions where he was allocated colleagues to pick up for designated tasks. The hire car allocated to the Claimant which he still uses is to be used for company business only. The Claimant never actually asked the company to provide the car for him but it was supplied to him and used by him on many occasions so that he could travel with allocated colleagues to client sites. Indeed, the Claimant gave evidence that the Controller of the Respondent said to him that he had been allocated a hire vehicle which had to be utilised by him for that purpose.

24 The Claimant raised a formal grievance in February 2018 (page 147B) stating that he believed that he should be paid at his contractual rate for driver duties for picking up the first person en route to the allocated site. He believed that he was on company time from that moment on as the designated driver. The Claimant's grievance was not upheld (page 149) and the Claimant appealed the decision in April 2018 (page 151). The Claimant received the outcome letter in October 2018 (page 174-175) and again his appeal was not upheld. As a consequence of the grievance being dismissed, the Claimant made this application to the Tribunal for unlawful deduction of wages.

Law

25 Pursuant to Section 13(1), an employer shall not make a deduction from wages of a worker employed by him unless –

- “(a) the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the workers contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction”.

Subsection (3) of Section 13 states ‘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 of 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 workers’ wages on that occasion’.

26 Pursuant to the National Minimum Wage Regulations 2015, Regulation 30 the meaning of Time Work is as follows “Time Work is work, other than salaried hours work, in respect of which a worker is entitled under their contract to be paid-

- 26.1 By reference to the time worked by the worker;
- 26.2 By reference to a measure of output in a period of time where the worker is required to work for the whole of that period; or

26.3 For the work that would fall within subparagraph (b) but for the worker having an entitlement to be paid by reference to the period of time alone when the output does not exceed a particular level.”

27 Pursuant to regulation 34 ‘the hours when a worker is travelling for the purposes of time work, where the worker would otherwise be working, are treated as hours of time work unless the travelling is between –

27.1 ‘The workers home, or a place where the worker is temporarily residing other than for the purposes of working, and

27.2 A place of work or a place where an assignment is carried out’.

28 Sub section 2 in paragraph (1) states ‘hours treated as hours when the worker would “otherwise be working” include –

28.1 “hours when the worker is travelling for the purposes of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;

28.2 hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the workers hours of work vary either as to their length or in respect to the time at which they are performed.”

Tribunals Conclusion

29 The Claimant in this case is a casual worker and not an employee of the Respondent. Any services he provides for the Respondent are entirely voluntary. The company is not obliged to offer him work and he is not obliged to undertake it. This is made clear at page 62 of the bundle of documents which is Section 9 of the main terms of engagement. Clause 2 which specifies the Claimant’s duties states that he is engaged as a casual stock taker working at the client’s premises across England and Great Britain. In addition, he agrees to undertake reasonable duties other than those that he has been specifically engaged. Whilst at the client’s premises, the Claimant was a Supervisor undertaking stock taking duties. The question for the Tribunal to answer was whether the Claimant’s driver duties fell within the definition of his contractual duties. The Respondent sought to persuade the Tribunal that such duties were outside the requirement for the Claimant to undertake reasonable duties other than those of stock taking at client’s premises. The Tribunal did not accept this contention. The Respondent admitted in its Grounds of Resistance and in evidence by its witnesses that the company requested and still requests that the Claimant work additional hours as a designated driver. Furthermore, in evidence, the Tribunal accepted that the Respondent allocates drivers to specific stock takes at client’s premises based upon their availability and home location whereby a designated driver collects all of the designated stock takers for that specific count from their home addresses and transports them to and from the nominated stock take. This was shown at page 147B of the bundle of documents which was an example of a timesheet for one such job. The Respondent did not dispute that such assignments took place on a regular basis with the Claimant being a designated driver and a Supervisor on such stock takes.

30 Secondly, the casual workers handbook which is part of the contractual documentation at Tab B of the bundle of documents provides mandatory instructions to drivers demonstrating that those designated drivers undertaking driving duties “must contact passengers to make the appropriate arrangements”. Such mandatory requirements have to be undertaken by the designated drivers after the jobs have been allocated whereby the designated driver is required to contact the other stock takers who are also on the assignment to travel together to such an assignment. Failure to do so could lead to the assignment not taking place at all or the assignment going short in that there would not be enough workers to undertake such assignment. The Tribunal did not accept the Respondents evidence that alternative arrangements could be made at short notice for alternative drivers to take over especially as the driver duties occurred very early in the morning and there was no evidence presented to the Tribunal that its control office was open all night to facilitate such alternative arrangements being made. In addition, this specific stipulation in the casual workers handbook showed how important it was for the Respondent that the designated driver organise collection and delivery of staff without last minute mishaps occurring.

31 Thirdly, the Claimant was provided with a company vehicle being a hire vehicle which was insured for business purposes by the Respondent and which he was expected to utilise by the controller as much as possible by collecting other workers to attend other assignments that had been allocated to him on a regular basis. In addition, there was communication between the Controllers and the designated drivers to ensure that colleagues were collected. One such example was at page 147A which was a text by the Controller to the Claimant to collect a specific worker for a specific assignment. It seemed clear to the Tribunal that the Claimant was undertaking work pursuant to his duties as defined by the main terms of engagement at page 62 when undertaking such driving duties as the designated driver. Consequently, the Tribunal concluded that the Claimant’s driver duties fell within the definition of his contractual duties within his terms of engagement. Indeed, the Respondent was not able to suggest to the Tribunal that such driver duties in respect of collecting other colleagues to attend designated stock takes fell outside the definition of reasonable other duties which the Claimant had been specifically engaged to undertake pursuant to clause 2 of the main terms of engagement. The evidence showed that the Claimant spent a large amount of time in his current job effectively acting as a taxi service for the Respondent transporting other counters to the Respondents clients work sites and back home after such assignments were completed. The driver duties the Claimant performed were essential for the Respondent’s business and profitability. Otherwise, the Respondent would be required to pay mileage to each of their workers and/or issue them with company cars.

32 The Claimant’s entitlement to pay is based on the hours that “he has actually worked”, pursuant to clause 4 of the terms (page 62). Consequently, the question for the Tribunal was whether hours spent driving other individuals for the Respondent (driver duties) were hours that the Claimant has “actually worked”.

33 On a sensible construction of clause 4 of the Claimant’s contract hours performing driver duties were hours that the Claimant “actually worked” and therefore he has a contractual right to be paid for such duties. In this regard it was unsurprising to the Tribunal that when the Claimant used his own car to provide driver duties, the Respondent insisted that he agree to a company policy about the insurance and condition of the vehicle during its use for “Orridge business purposes” (page 68). And when the Claimant used the company hire vehicle, a similar policy applied. The Claimant was explicitly

informed that the vehicle was not for personal use and that he had to be authorised by the company to drive such vehicle (page 91).

34 With respect to paragraph 1 of the handbook which states “you are not entitled to pay whilst travelling to and from a place of work” (page 78), the Tribunal accepted that this provision did not apply to the Claimant’s performance of his driver duties as the designated driver. Firstly, when the Claimant was providing driver duties, he was already at a place of work namely his car. He was already working effectively as a taxi driver on behalf of the Respondent. Secondly, the other individuals that the Claimant picked up did not live at work sites. If the clause applied to driver duties it would only exclude journeys “to and from a place of work”. That would not in the Tribunal’s view include:

34.1 Journeys to the house of a colleague the Claimant was picking up as the house was not a “place of work”;

34.2 Journeys from the colleague’s house to the Claimant’s house for the same reason.

35 The use of the word “travelling” in the sentence of clause 1 of the handbook indicated to the Tribunal that what was envisaged by the sentence was the Claimant getting himself to and from work sites as a “solo driver”. The Claimant accepted that on occasion he was a solo driver and did not have driver duties whereby he was requested to collect his colleagues from their home addresses. He was not making any claim in respect to those occasions. When the Claimant was driving to pick up and drop off other employees he was not “travelling to and from a place of work” but providing driver duties as requested by the Respondent. Such driver duties fell within the parameters of his contractual duties and specifically clause 2 of the main terms of engagement page 62 of the bundle of documents.

36 As a consequence of the above, the Tribunal finds that on those occasions that the Claimant was the designated driver undertaking driver duties, he was entitled to be paid at his contractual hourly rate travelling to the homes of colleagues to pick them up to attend the designated stock take and then to transport those colleagues to the designated sites. Furthermore, the Claimant was entitled to be paid his normal contractual hours for such occasions when he as the designated driver was undertaking driver duties transporting those colleague’s back to their homes following the stock take in question. For such occasions the Claimant was effectively a taxi driver for the Respondent so should be paid his contractual wages for the entirety of such trips. He was not a solo driver driving to and from work on such occasions.

37 The Claimant’s counsel in his submission invited the Tribunal to make a finding in respect of the Claimants entitlement to receive the national minimum wage whilst undertaking driver duties but given the Tribunals findings above, it was not necessary to do so.

38 The Tribunal listed the remedies hearing to take place for 1 day on Friday 13 December 2019. The following directions are given in respect of that hearing:-

39 It is ordered that the parties shall exchange on a mutual basis, lists of documents in their power of possession or control relating to remedies and specifically documents

relating to occasions when the Claimant was acting as the designated driver undertaking driver duties for the two years period immediately preceding the institution of these proceedings to include time sheets, wage slips, and any other documents that show the duration of time that the Claimant was undertaking driver duties. Such disclosures to occur on a mutual basis on or before **27 September 2019**.

40 On or before **25 October 2019**, the parties shall agree a core remedy hearing bundle index paginated and assembled in chronological order containing all such remedy documents.

41 On or before **15 November 2019**, the parties are to exchange on a mutual basis their written witness statements that relate to the remedies issue.

42 The Claimant and the Respondent are to liaise as to the preparation of the trial bundle with each dividing the costs of the preparation of the bundle amongst themselves.

43 The remedy hearing is to take place on **Friday 13 December 2019** for 1 day before the same Tribunal.

Employment Judge Hallen

Date: 2 August 2019