

3. Both parties were able to put their positions forward in respect of the material issues and were able to ask questions of the other. The Claimant read from a pre prepared statement.
4. By a Claim Form dated 3 April 2020 the Claimant asserted that he was owed arrears of wages. He had been employed by the Respondent to work as a cleaner at premises operated by True Commerce in Coventry. There was, in fact, little dispute on the facts. It was agreed between the parties that the Claimant was employed to work Monday to Friday between 7 am and 9 am at those premises and that he would be paid the minimum wage which, at the material time, was £8.21.
5. It was further agreed that the Claimant was employed between 8 January 2020 and 21 February 2020 when he was dismissed. That period constitutes 33 days' work and the Claimant asserts that he should be paid a total of £541.86 for that work.
6. It was further agreed that the Claimant has not been paid any sums at all for the work that he undertook. In the Response the Respondent set out their position and they partially opposed the Claim as follows:
 - a) On 31 January, the Claimant could not unlock the door on site and so although he attended for work, he did not actually do any and so should not be paid for those 2 hours.
 - b) Between 3 and 21 February Mr Pascoe worked jointly with the Claimant on site because there had been complaints about the quality of the Claimant's cleaning. As a result, the Claimant only did half of the cleaning and so 15 hours (5 hours per week over 3 weeks) should be deducted.
7. The Respondent's position was that in the circumstances it admitted that £402.29 was due and owing to the Claimant and that the dispute was over the remaining £139.57. No explanation was given as to why the sum that they accepted was due had not been paid over previously.
8. In the course of the hearing today Mr Pascoe, on behalf of the Respondent accepted that the issue set out at paragraph 6(a) above was not the fault of the Claimant and he had been there during the working hours he was contracted for. He also confirmed that the Respondent had been paid by the client for those two hours and indicated that those two hours were properly payable to the Claimant. That places the undisputed sum at £418.71 and the disputed sum at £123.15.
9. The issue to be determined was a narrow one. The Claimant's entitlement under the oral contract was to be paid the minimum wage for 10 hours a week or 2 hours per day. The Respondent's position in legal terms was that on 3 February 2020 there was a variation to the contract of employment so that the Claimant only worked one hour per day thereafter.

10. As in the formation of the contract it is essential that the terms of any proposed variation is clear and certain. Although the sums here are not substantial in the general scheme of things the suggested variation in this case had the effect of halving the Claimant's pay and so was of some import to him.
11. I am satisfied that Mr Pascoe received a complaint from the client about the standard of the Claimant's cleaning. Whether that was justified or not is immaterial to the decision I have to make on the relevant issues. It is agreed that from 3 February 2020 that Mr Pascoe came in with the Claimant to assist the Claimant and that the intention was to bring the work up to the requisite standard so as not to lose the client. The Claimant accepts that Mr Pascoe said that he was coming in to do half the work but did not consider that this meant that he would only be paid for one hour's work.
12. On the evidence I have heard from both parties I am not satisfied that Mr Pascoe made it clear to the Claimant that he was varying his contract so that he would only be paid for one hour per day as opposed to 2 hours per day. That may have been in the mind of Mr Pascoe, but it was not shared with the Claimant, who was entitled to believe that his existing terms and conditions remained in place in the absence of any contrary indication.
13. In my view Mr Pascoe coming into assist does not equate to an automatic assumption that there will be a change to the Claimant's contract. It is a regular occurrence when there are performance issues for another employee to come into assist and guide the underperforming employee but it does not automatically or indeed in my experience ever mean that the underperforming employee's hours are reduced just because of the assistance they are getting.
14. The net result of Mr Pascoe's assistance may have been that the work was shared and a consequence of that may have been that the Claimant finished earlier than he otherwise would have done but I do not consider that there was any clear and unequivocal communication of any variation of contract that would have enabled the Claimant to consider whether he wished to accept the variation or not so that his pay was going to be halved.
15. On that finding therefore the Claimant continued to be engaged to work 2 hours per day and is entitled to be paid for that period. Not only should the undisputed sum of £418.71 be paid but so should the disputed sum of £123.15 (Totalling £541.86).

Employment Judge Self

Date 15/09/2020