



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Ms. C. S. Bishop-Matthews**

v

**Rockford's 24/7 Limited**

**Heard at: Birmingham by CVP On: 22 October 2021**

**Before: Employment Judge Wedderspoon**

**Representation:**

**Claimant: In Person**

**Respondents: Mr. Lincoln Bhebe, Director**

### JUDGMENT

1. The claimant's claim of unlawful deductions (holiday pay) is well founded.
2. The claimant is awarded the sum of £280 gross (the respondent is to make any deductions for national insurance and tax).

### REASONS

1. By claim form the claimant brought a complaint for unlawful deductions of wages namely a shortfall of holiday pay at the time of termination of her employment. The date of ACAS early conciliation was 20 March 2021 and the date of the issue of the certificate was 20 April 2021. The claimant's case is that on termination of her contract of employment the respondent failed to pay her for 7 sleep ins. The respondent disputes the claim and asserts that the claimant is not entitled to be paid for 7 sleep ins because she did not do the work.
2. The relevant issues to be determined by the Tribunal are :-
  - (i) what was properly payable to the claimant under her contract; namely were sleep ins part of the claimant's wages;
  - (ii) If they were, what was the claimant entitled to;
  - (iii) is there any financial loss attributable to the non-payment.
3. The Tribunal was provided with an agreed 44 page bundle of documents. The claimant relied upon her own evidence. The respondent's director, Mr. Bhebe had not provided a witness statement but was permitted to affirm his ET3 as his evidence in chief. The respondent's director had some difficulty joining the hearing by video platform so he was permitted to join the hearing by telephone.

The Law

4. Section 13 (1) of the Employment Rights Act 1996 provides “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 relevant statutory provision of the worker’s contract or (b)the worker had previously signified in writing his agreement or consent to the making of the deduction.”
5. Section 13 (3) of the ERA 1996 provides “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 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.”
6. A deduction is a complete or partial failure to pay what was properly payable on a particular occasion.
7. Pursuant to section 24 (2) of the ERA 1996 a Tribunal may order the employer to pay to the worker such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by her which is attributable to the matter complained of.

#### Facts

8. The claimant was employed by the respondent as a support worker from 12 February 2019 until 14 March 2021. The claimant was based at the respondent’s premises The Cart Shed, Lyme Farm, Eardisland, Leominster (‘the home’). In the role of support worker, the claimant supported young people who had been placed in care by the local authority.
9. The claimant’s contract signed by the claimant on 29 August 2020 required her to work on a shift basis (pursuant to clause 4.1) for a 3 day continual period at the home from 8 am to 10 pm. She was required to sleep in for two nights from 10pm to 8am. Remuneration is set out at clause 5.1. It is stated that the current wage was £9 per hour and £40 per sleep in. The holiday year ran from 1 January to 31 December and the claimant was entitled to 245 hours per year.
10. The claimant was paid for sleep ins whilst she was on holiday. This is evidenced by her pay slip dated 30 October 2020 that whilst the claimant was on holiday she was paid for the hours she would have completed if actually at the home on shift plus a sleep in payment of £40. The claimant’s evidence is that this has been agreed with the manager. Mr. Bhebe disputes this and says he had informed the manager he did not agree to this and put this in an email to the manager. The Tribunal has not been provided with this email and there was no suggestion that the claimant had been made aware of the fact that she was not to be paid a sleep in payment as part of her holiday pay.

11. On 12 February 2021 the claimant and her colleagues received notification that the home was going to close and her employment was terminated with 30 days notice. The letter stated *“you will be expected to work the duration of your notice” and your manager Letisha Thompson will inform you of the ties you will need to be present at the placement to your contracted hours.* It further stated *“all payment including owed holiday pay will be paid at the end of the month.”* She was required to work the duration of her notice.
12. On 20 February 2021 (the claimant’s day off) she was informed by her manager, Letisha Thompson that all furniture and beds had been removed. The claimant messaged Ms. Thompson on 24 February 2021 to ask about coming into work and she was informed *“it doesn’t look like we will need you again”*.
13. On receipt of her payslip in February one sleep in payment was missing. She raised this with Ms. Thompson who informed the claimant that it would be included in the March payslip but it was not. The claimant received her final payslip in March no sleep ins were included for March.
14. The claimant’s case is that she should be paid for her 5 sleep ins; she would have been paid this if the business had required her to attend shift; it was part of her remuneration. Further whilst actually on annual leave in 2020 she was always paid for sleep ins which she was due and produced a pay slip to show this occurred in the past. She was not paid for 2 annual leave sleep ins. She relies upon her 30 October 2020 payslip when she was paid for 2 sleep ins when on annual leave at £40 a time.
15. The claimant claims (£40 x 5 = £200); non-payment of 2 annual leave sleep ins at £40 (£40 x2) £80; postage £2.36 for sending the respondent the schedule of loss and also claims £75 off for loss of earnings as she has had to take a day off to attend the hearing.

### Conclusions

16. The crux of this case is whether a sleep in formed part of the claimant’s usual remuneration.
17. The claimant’s contract defines hours of work at clause 4.1 of the contract of employment as *“As you will be required to work on a shift basis the hours and days of work will differ. You will be working on a 3 days 2 nights on then 3 days and nights off rota basis.”*
18. It is a clear expectation of the respondent that the claimant as an employee completes two sleep ins as part of her 3 day shift. She is remunerated for that shift pattern and she is entitled to the hours worked on a 3 day shift plus the two nights of sleep ins. In the circumstances, she was entitled to be paid for sleep ins as part of her remuneration and her holiday pay.
19. Further, the Tribunal also relies upon the custom and practice of paying the claimant whilst on holiday as evidenced by the October 2020 pay slip when the claimant was paid by the respondent holiday pay including her sleep in.

20. There is no dispute by the respondent as to the shifts claimed for only the principle of awarding sleep in payments. The Tribunal therefore concludes that the claimant should have been paid outstanding holiday pay at the date of termination including 7 sleep ins. She was not and she is entitled to claim from the respondent the shortfall; £280.
21. The Tribunal cannot award the sum of £2.36 for postage as a consequential loss of non-payment of holiday pay nor the sum for attendance at the hearing claimed of £75. At present the claimant has not made a preparation time order.

**Employment Judge Wedderspoon**

Date 22.10.2021