



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms V Matasovska

v

Novus Care Limited

Heard at: Cambridge (by CVP)

On: 10 November 2021

Before: Employment Judge Bloom

Appearances

For the Claimant: In person

For the Respondent: Mr H Patel, Director

JUDGMENT

The Claimant's claim for Unlawful Deduction of Wages fails and is therefore dismissed.

REASONS

1. On 1 February 2021 the Claimant presented a claim to the Employment Tribunal for Unlawful Deduction of Wages. The Claimant was engaged as a Care Worker working at a home of one of the Respondent's clients. She worked for a period of 35 days in June, September and October 2020.
2. Contractually the Claimant was entitled to receive a flat rate for each ten hour shift in a minimum sum of £87.86. The Claimant accepts such payments were made to her, but alleges she worked many hours in addition to the ten hours applicable in relation to each shift, and therefore should have been paid a greater sum.
3. The Claimant's claim was presented to the Employment Tribunal before the Supreme Court gave Judgment in the case of Tomlinson-Blake v Mencap. That case has now decided that any worker who is permitted to sleep during a shift and is only required to respond to emergencies, is not entitled to have those hours included in any National Minimum Wage calculation. I explained that authority in detail to the Claimant as she was not aware of it.

4. The Claimant was unable to provide to me any evidence of any kind that showed that she actually worked hours in excess of ten hours per shift. The Respondent informed me that they also had no evidence to determine the issue. The burden of proof is on the Claimant to prove her case and in the absence of any documentation supporting her claim, the claim inevitably fails.
5. The Claimant's claim, as a consequence, is dismissed.

16 November 2021

Employment Judge Bloom

Sent to the parties on:
29 November 2021

For the Tribunal Office