



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Robinson

**Respondent:** Mr DK & Mrs S Patel

**Heard at:** Newcastle upon Tyne Hearing Centre by CVP  
**On:** Monday 17<sup>th</sup> January 2022

**Before:** Employment Judge Speker OBE DL

***Representation:***

**Claimant:** In Person

**Respondent:** Mr D Patel

## JUDGMENT

The decision of the tribunal is as follows:

The claimant has suffered unauthorised deduction of pay and the respondent shall pay to the claimant the sum of £748.44.

## REASONS

- 1 This is a claim brought by Mr Kyle Robinson against Mr DK and Mrs S Patel in which he claims that he is entitled to arrears of pay. This comes under the Employment Rights Act 1996 Section 13 under which employees have the right to bring claims to the tribunal if they maintain that they have suffered deductions from or non-payment of wages and that such underpayment or non-payment is unauthorised.
- 2 Mr Robinson maintains that there was a period of time under which his contractual pay was not given to him, alleging that his contract was for thirty-two hours per week and that on the basis of this following his return to work following injury he has been underpaid in the sum of £997.92. The respondent disputes this maintaining, firstly, that the contract between the parties was for twenty hours per week and that, secondly, there has been no underpayment and that all monies due to Mr Robinson have been paid.

- 3 Reference was made to holiday pay which may or may not be outstanding but that is not a matter which is before me at the present time.
- 4 I received oral evidence from Mr Robinson on his own behalf and from Mr D K Patel on behalf of himself and his wife. I was also provided with written documentation including a statement of terms and conditions of employment about which there were disputes, some rota sheets and payslips and copies of various communications between the parties in the form of text messages and also a grievance letter which was submitted by Mr Robinson to Mr Patel.
- 5 The brief facts as far as are necessary for the purposes of determination of this case are as follows:

- 5.1 The respondent has two shops at one of which the claimant was employed in Middlesbrough. This is a general dealer and off-licence store. The claimant had initially been employed there for a period in 2017 but had left of his own accord, rejoining at the beginning of 2019 following discussions between Mr Robinson and Mr Patel. The parties have a long acquaintance because Mr Robinson recalls going to the shop as early as five years of age with his mother and Mr Robinson and Mr and Mrs Patel knew each other from the long association, Mr Robinson having been a customer of the store for many years. Mr Robinson described them as having a very good and positive relationship for a long period of time.
- 5.2 At the commencement of the employment in January 2019 Mr Patel says that the contract was for twenty hours per week and Mr Robinson says that from the beginning the contract was for thirty-two hours per week. The contract document provided to me states that this was a permanent contract although Mr Patel had suggested at the start of his evidence that it was temporary employment. He then suggested that this was a slip and accepted that it was permanent employment. Mr Robinson states that when he signed the contract the number of hours was not included in the contract form and that he only saw it when these tribunal proceedings were in progress when there was disclosure.
- 5.3 It was notable that there were no written communications from the employers to the employee in this case and that even when the grievance letter was sent there was no reply from Mr Patel. It was also noted that at all times when there was significant occurrences such as the absence from work due to the broken hand and the return to work or subsequently the withdrawal of keys and duties from Mr Robinson that nothing was ever put in writing from the employers.
- 5.4 On 26<sup>th</sup> May 2019 Mr Robinson suffered an accident causing a fracture to his hand which turned out to be more serious than had initially been understood. This meant that Mr Robinson was off work for a longer period than he had expected. Mr Patel accepted this and there was communication between them but the stage was reached where Mr Patel was anxious about when Mr Robinson would be able to return to work as he and his wife needed to make proper arrangements for the business and to ensure proper staffing and to make plans as to when it would be proper to start scheduling in hours for Mr Robinson.
- 5.5 Ultimately Mr Robinson returned to work on 23<sup>rd</sup> August 2021 and he was told that he would be given eighteen hours instead of the thirty-two which he said was his contract. Because of this the claimant maintained that he was being underpaid and that this went on for eight weeks during which he was receiving payment for the eighteen hours rather than the thirty-two hours to which he claimed he was contractually entitled. It was this alleged underpayment for eight weeks at fourteen

hours which gives rise to the present claim of £997.92 applying the hourly rate of £8.91.

5.6 Mr Robinson sent a letter of grievance to Mr Patel in which he clearly stated that the correct contractual number of hours which should be applied between the parties was thirty-two. Mr Patel did not reply to that letter but, within a very short time of receiving the letter of grievance, hours were provided to Mr Robinson at the figure of thirty-two hours per week which was precisely the contractual rate alleged by Mr Robinson. The claimant continued working on that basis and ultimately issued a claim in the tribunal on 11<sup>th</sup> November 2021 because efforts made to try to resolve the dispute between Mr Robinson and Mr and Mrs Patel were unsuccessful.

5.7 On Boxing Day 2021 Mr Patel withdrew Mr Robinson's set of keys from him and told him that thereafter he would be working twenty hours per week, the contractual term which Mr and Mrs Patel alleged applied to the contract. Mr Patel alleged that he felt that the efforts which Mr Robinson was making to try to resolve the matter amounted to him being blackmailed into paying money to Mr Robinson which he felt he was not entitled to receive.

6 Those are the brief facts. Some issues with regard to the withdrawal of the keys and the change in hours to twenty hours from Boxing Day are matters which are not within the jurisdiction of the tribunal today and if they are matters which continue to give concern to Mr Robinson then he must take advice if he wishes and pursue those as separate claims but, as I stated above, the parties continue to be in an employment relationship as Mr Robinson is still employed. Any other claims which he has with regard to current or future underpayment of wages or with regard to holiday pay are matters which remain between the parties and will either be resolved or could give rise to further proceedings but they are not within the jurisdiction of the tribunal today.

7 With regard to my findings I have been required to form conclusions based upon such evidence as I have before me. This includes all of the payslips and the schedules of working hours between the parties and the evidence given on both sides. I have concerns with regard to the contractual document, namely the statement of terms and conditions, bearing in mind that it appears that that was not provided to Mr Robinson at the time the contract began. The purpose of a statement of terms and conditions is to be able to provide clarity between the parties as to the terms of the contract. It is necessary that both sides should have a copy of the contract so that they can be clear about what the terms are and can raise at that early stage any dispute as to the actual contractual terms in case they have been inaccurately or incorrectly described in the document.

8 Taking into account the doubts about that contractual document, but bearing in mind the documents which clearly show that for a period of over two years Mr Robinson was working thirty-two hours per week, I find that that was indeed the contract which existed between the parties. That is fortified by the fact that when Mr Robinson sent in a letter of grievance, which is a formal step based upon advice which he received from appropriate authorities, he made it clear that he considered that his contract was for thirty-two hours per week.

9 If the employers disagreed with that then the obvious step to be taken would have been to reply to that in writing and say that, contrary to what was being alleged, the contract was for twenty hours. Mr and Mrs Patel did not do that but, on the

contrary, their response was to put back Mr Robinson to the thirty-two hours per week which he says was the contractual term of his employment. That provides further support for the finding that I have made that this was a contract for thirty-two hours per week. Whilst I accept that the shifts given in the shop are changeable and that other employees may come and go, Mr Robinson was an employee for three years and during the relevant periods all of the evidence points to the fact that he was working thirty-two hours per week and that I find is the contract between the parties.

10 On that basis I therefore find that there has been an unauthorised deduction of pay and that the sum to be paid by the respondent to the claimant is the sum claimed of £997.92 and that is the order of the tribunal. I have made clear that there are issues going forward and I leave those to be resolved between the parties. I also express the wish that because there has been a long and in the main a very collaborative and friendly relationship between Mr Robinson and his family and the Patels that both sides will endeavour to find a way to overcome these difficulties and move forward constructively.

**EMPLOYMENT JUDGE SPEKER OBE DL**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON**

**27 January 2022**

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