



# EMPLOYMENT TRIBUNALS

## England & Wales

London South Employment Tribunal (remote) on 25th January 2022

*Claimant*

**Raheel Tanveer**

**Between**

**&**

*Respondent*

**Govia Thameslink Railway Limited**

**Before**

Judge M Aspinall (Sitting as an Employment Judge)

**Appearances**

Mr G Brown (for the Claimant)  
Mr Francis (Counsel for the Respondent)

## Open Preliminary Hearing

### Background

1. Mr Tanveer, the Claimant, is employed by the Respondent as a member of platform staff based at Clapham Junction Railway Station. He has been employed since July 2015.
2. On 9th September 2020 an incident occurred which led to an investigation (which was ongoing when the claim was made), during which Mr Tanveer was 'stood down' from safety critical duties; he was placed on 'light' duties or 'off track'.
3. As a result of that 'stand down' Mr Tanveer was also told that he would not be required to work any Sunday shifts.

### Jurisdictional issue

#### *The Respondent:*

4. Mr Francis, for the Respondent, submitted that the claim pleaded by the Claimant was not in reality one for unlawful deduction from wages. In fact, he averred, the claim amounted to one for breach of contract which, as Mr Tanveer continues to be employed by the Respondent, he is not able to bring to the Tribunal; ergo the Tribunal lacks jurisdiction.
5. In support of his contention, Mr Francis submitted that in order for an unlawful deduction from wages to occur, such wages must have been properly payable in the first place. In this case, he submitted, that the Claimant had not worked on any of the Sundays during the time he was on light duties and so was not entitled to be paid for them.
6. Mr Francis also drew attention to various documents in the bundle:
  - a. Page 104 – contract of employment – paragraph 4: showing that

- Mr Tanveers standard working hours for which his salary was due were 35 per week running Monday to Saturday;
- b. Page 105 – contract of employment – paragraph 4 continued: contractual commitment to work rostered Sundays for which additional payment would be due;
  - c. Page 28 – roster guide for staff – section 9: covering Sunday Working; this was also contained in the 2019 version (page 39);
  - d. Page 10 – terms and conditions of employment – paragraph 3.6 (particularly 3.6.4) which allowed the cancellation without pay, by the employer, of Sunday shifts with 48 hours’ notice;
  - e. Page 131 – minutes of Stations’ Company Council (starts at page 118) – section referring to ‘Contractual Sunday payments’ and the discussion which followed over several pages.
7. Mr Francis cited the case of *Besong v Connex Bus (UK) Ltd* UKEAT/0436/04/RN which held that where an employee has a claim for failure to provide work (and thus to pay wages) the appropriate claim is for breach of contract rather than unlawful deductions from wages.
8. In summary, Mr Francis said that no wages were properly payable for the unworked Sundays where the Respondent had, properly, taken steps to move the Claimant away from safety critical duties whilst they investigated his alleged involvement in a safety incident and that this had not required him to work on Sundays. There could not be a claim for unlawful deduction from wages on that basis. However, the Claimant’s case was that the Respondent had breached his contract by preventing him from working his shifts on Sundays and so deprived him of his contractual right to earn that extra money; that would be a claim in breach of contract if he had left his employment but, as he had not, it could not be.

### *The Claimant:*

9. Mr Brown, for the Claimant, responded that the submissions by the Respondent were wrong; Mr Tanveer was contractually obliged to work his rostered Sunday shifts – or to mutually agree a transfer to another colleague (which, he said, had never happened with Mr Tanveer). He said that, as a result of their actions, the Respondent had stopped Mr Tanveer earning the extra wages payable for Sunday shifts.
10. Mr Brown explained that the Master Roster is prepared some months in advance (August for the following January) and that it is produced by agreement between the employer, union officials and others. He averred that it could not be changed without similar agreement.
11. Mr Brown said that Mr Tanveer was entitled to work those Sunday shifts that were on his roster and that since the Respondent had prevented that, they had unlawfully made deductions from his wages.
12. Mr Brown also submitted that Mr Tanveer was not on light duties or ‘off track’ and that he should, therefore, have been allowed to work his

rostered shifts.

13. Mr Tanveer directed me to his rosters (pages 152-157) which show him as not rostered for Sundays but show that his colleagues were. He also directed me to page 158 which he said showed contingent/agency staff being engaged to work on Sundays contrary to the agreement between the Respondent and the unions.
14. In summary, Mr Brown said that the claim was in the jurisdiction of the Tribunal because the Respondent had deprived the Claimant of his ability to earn the money that working Sunday shifts would bring. He also said that it was a breach of contract issue because they had deprived him of the opportunity to work on Sundays which amounted to an unlawful deduction from wages. He also added that the two Sundays per month amounted to money that Mr Tanveer could earn and that he always worked those shifts until the Respondent prevented him from doing so.

## Conclusions

15. Until the point at which he was moved to different – light or off track – duties in September 2020, Mr Tanveer was rostered to work on 2 Sundays per month. These were in addition to the 35 hours per week for which his salary was paid.
16. Whilst Mr Brown submitted that the Claimant was not on restricted or light duties, in part 8.2 of his ET1, the Claimant describes exactly that change. I am satisfied that this is the case.
17. Also in his ET1, the Claimant goes on to make complaint that “I was not allowed to work any of my contractual Sundays since then [6th September 2020]”. He also wrote that he had made repeated requests to work those Sunday shifts and had repeatedly been rebuffed and told that he was not allowed to work on Sundays or his rostered shifts on Boxing Day. This led to his filing an internal grievance.
18. What he was seeking was the payment of sums that would have been due to him if he had worked those Sunday shifts.
19. The Claimant, rightly, did not seek to claim that he had worked any of those shifts.
20. I find that, as a result of his transfer to other light or ‘off track’ duties, the Claimant was not required by the Respondent to work on Sundays; as a result, his weekly roster was amended to reflect that. I also find that the Claimant’s case is really that in doing so, the Respondent was breaching his contract.
21. I find that because of an incident which required investigation, the Respondent reduced the Claimant’s work patterns to his contracted week (Monday to Saturday), in duties different to those that he would usually perform, and that he was not provided with work on Sundays. This is demonstrated by the weekly rosters to which the Claimant himself directed my attention.

22. The Respondent had no obligation to pay him for work not actually done on a Sunday since that was outside of his salaried hours - for which he was paid.
23. This means that, taking the Claimant's case as pleaded, it is properly a case which should be brought as a breach of contract (per *Besong*). As he remains employed by the Respondent he is not able to bring such a claim and so, this claim must be dismissed as the Tribunal does not have jurisdiction.

## Judgment

1. This hearing has been converted to an Open Preliminary Hearing;
2. The claim is, in fact, one for breach of contract;
3. The Claimant remains in the employment of the Respondent and so cannot bring a claim for breach of contract;
4. The Tribunal does not have jurisdiction to decide the claim as it is one which cannot properly be brought;
5. The claim is dismissed for lack of jurisdiction.

## Judge M Aspinall on Tuesday, 25th January 2022

### Note

Reasons for this judgment having been given orally at the hearing, written reasons will not be provided unless they are requested - by either party - within 14 days of this notice being sent.

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Copy sent to the parties on: 11 March 2022