



EMPLOYMENT TRIBUNALS

Claimant: Mr Eric Adjei

Respondent: The Secretary of State for Justice (HMP Wandsworth)

Heard at: London South ET via CVP **On:** 28 June 2022

Before: Employment Judge Rea

Representation

Claimant: Mr Eric Adjei (Litigant in Person)

Respondent: Ms Marianne Tutin (Counsel)

JUDGMENT

1. The Secretary of State for Justice is added as a respondent in substitution for HMP Wandsworth in these proceedings, under Rule 34.
2. The Respondent has made an unauthorised deduction from the Claimant's wages and must pay the Claimant £374 subject to deductions for income tax and National Insurance contributions.

REASONS

Background

1. The Claimant has been employed by the Respondent as a Prison Officer since 13 June 2016. Until 15 August 2021, he was assigned to HMP Wandsworth as his home establishment, after which he subsequently transferred to HMP/YO Feltham.

Claims and Issues

2. The Claimant has brought a claim for unlawful deductions from wages before the Tribunal, pursuant to s.13 of the Employment Rights Act 1996 ("ERA").
3. The Respondent confirmed at the outset of the hearing that it now accepts the Claimant's claim was brought in time and the Tribunal does have jurisdiction to hear it. Ms Tutin confirmed that she was no longer relying on the section of her written submissions relating to this time point.
4. Ms Tutin also clarified that the correct name of the Respondent is 'the Secretary of State for Justice' which is responsible for all of HM Prisons, including HMP Wandsworth, where the Claimant was employed at the relevant time. This was not disputed by the Claimant and so the Tribunal recorded that the name of the

- Respondent would be changed accordingly.
5. The Claimant's claim relates to three overtime shifts which he worked at establishments other than HMP Wandsworth, his home establishment. These were all 'bedwatch' shifts, meaning an overnight security observation of a prisoner admitted to hospital. The details of these shifts are as follows:
 - a. A Bedwatch shift on 3 June 2020 from HMP Elmley at Medway Hospital, with a total of 12 hours worked.
 - b. A Bedwatch shift on 16 June 2020 from HMP Littlehey at Addenbrooke Hospital, with a total of 11 hours worked.
 - c. A Bedwatch shift on 11 July 2020 from HMP High Down at St. George's Hospital, with a total of 17 hours worked.
 6. It is accepted that the Claimant did in fact work these shifts. However, the Respondent's position is that the Claimant was not authorised to work these overtime shifts as he did not satisfy the relevant protocols and requirements which were preconditions for payment to be made to him in respect of them. The Claimant's position is that he did not breach the Respondent's protocols or, if he did, such protocol should not have been in force at the relevant time and, that he therefore is entitled to payment for these shifts.

Procedure, documents and evidence

7. The hearing started late due to some technical issues encountered with CVP by the Respondent's witness, Mr Harsimran Sethi. These were successfully resolved enabling him to fully participate in the hearing.
8. The Tribunal referred to witness statements provided by the Claimant and Mr Sethi, written submissions prepared by the Claimant and Ms Tutin and, a bundle of documents prepared by the Respondent comprising 357 pages. As the parties had been unable to agree a joint hearing bundle prior to the hearing, this bundle of documents incorporated in full a bundle prepared by the Claimant and therefore contained a significant number of duplicate documents. It was agreed that the Tribunal would refer solely to this joint bundle. Ms Tutin helpfully assisted in confirming the updated page numbers in the Claimant's witness statement to reflect this.
9. The Tribunal had not received some of the relevant documents in the case until the morning of the hearing and therefore EJ Rea had not had an opportunity to review these fully in advance. The parties agreed to proceed with hearing the evidence during which the Tribunal would be taken to the most relevant documents.
10. It was agreed at the outset that it would not be possible to determine the case within the time allocation of 3 hours and, as Ms Tutin had a prior engagement for the remainder of the day, the decision would need to be reserved. The Tribunal subsequently considered in detail all the documents referred to above before reaching its decision in this case.

The Law

11. The statutory prohibitions on deductions from wages are contained in Part II of the Employment Rights Act 1996 (ERA). The general prohibition on deductions is set out in s.13. A right arises where monies have not been paid which are "properly payable". There must be an actual failure to pay and it must relate to money that is due to the individual.

13.— Right not to suffer unauthorised deductions.

(1) 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 a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

.....
(3) 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 the 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.

Findings of Fact

12. Did the Claimant properly submit a request for payment for each of the three shifts?

The Respondent accepts that the Claimant submitted a retrospective claim for overtime payment in respect of all three bedwatches on 11 October. This was refused by Governor Sethi on 12 October 2020 and then escalated by the Claimant to the Governing Governor on 2 December 2020, who also refused it. The Claimant re-submitted the claims on 7 January 2021. The Claimant maintains that claim forms were attached to the email request. The Respondent denies this, but no evidence has been provided confirming this either way.

The claims were not made by way of a timecard using the Respondent's SOP system. The Tribunal finds that this was not possible as the hours had not been added by the Respondent to the Claimant's timecard, due to them being disputed. The Tribunal finds that the Claimant did submit a valid request for payment for each of the three shifts, albeit not via the Respondent's preferred method.

13. Has the Claimant demonstrated that he was entitled to be paid for these shifts?

The Respondent maintains that the Claimant breached a number of its protocols which were preconditions, meaning he was not entitled to be paid if they were not satisfied. In particular:

a. Did the Claimant's 1st bedwatch overlap with his original shift contrary to the Additional Hours Protocol?

The Respondent says he had time off in lieu and that there was an overlap with his underlying shift. The Claimant says it was his rest day. The witness evidence on this point was directly contradictory. Neither party produced documentary evidence to conclusively establish the Claimant's rota for the relevant time period. The Respondent's notes of the investigation meeting record that the Claimant did not say it was his rest day, however, the Claimant insists that the investigation notes are inaccurate. The Respondent's witness had not checked the point himself and relied on what he had been told by others.

The Tribunal finds on the balance of probabilities that the Claimant's knowledge and recall is likely to be more reliable on this point and that he undertook this overtime on a scheduled rest day.

b. Did the Claimant work at establishments outside the M25 in breach of policy?

On 28 April 2020, HMP Wandsworth introduced additional restrictions on employees working overtime shifts at other locations outside the M25 area. These measures were aimed at controlling the spread of coronavirus. It is

accepted that the bedwatches which the Claimant worked on 3 and 16 June 2020 were located outside the M25. The Claimant has argued that the policy should have been amended following a change to the Government's national guidelines in May 2020 regarding essential travel. A number of other London prisons run by the Respondent did apparently update this policy at that time. He also argues that the way it applied to him made little sense as he had to travel further to his home establishment than the locations outside the M25 at which we worked the overtime shifts. However, regardless of the sense or otherwise of the Claimant's objections, the fact is that HMP Wandsworth had not amended its policy at the relevant time. When the Claimant sought and obtained verbal permission to work overtime shifts on these dates, this did not extend to permitting him to work at locations outside the M25 area.

- c. Did the Claimant fail to request written permission with at least 2 working days' notice?

The Claimant accepts that he did not request written permission with at least 2 working days' notice. The Tribunal finds that, in reality, it was not always possible to comply with this requirement and that the Respondent therefore did not rigidly enforce this in all cases. In relation to the three bedwatches in question, the Respondent provided verbal permission for the Claimant to work these shifts despite the short notice given and in effect it therefore waived this requirement on each of these occasions.

- d. Did the Claimant fail to comply with the other information requirements (i.e. the details of the proposed overtime, their shifts the day before and after, and the date of their protected rest date)?

The Respondent maintains that the Claimant did not provide the required information. The Claimant maintains that he did provide this information verbally which was accepted. The Tribunal finds that the Respondent did not rigidly require this information to be provided in writing and that it could be given verbally instead. As permission was given in each case, the Tribunal finds that on the balance of probabilities the Claimant must have complied with the information requirements to the extent they were required.

- e. In relation to the 3rd shift did the Claimant fail to provide a compliant defensible decision log in contravention of the Cross-Site Working Protocol?

It is accepted that the document provided did not comply with the requirements set by HMP Wandsworth's policy as the correct template was not used, the required information not provided and, it had been signed by someone other than the Governor. The Claimant pointed out that this decision log was provided direct by the other prison and, he therefore had no control over the form or content used by them or who signed it. The Respondent does not dispute this but maintains that nevertheless as the document was not compliant the requirement was not fully satisfied.

The Tribunal has carefully considered the Respondent's protocol and finds that the precondition for payment which applied to the Claimant was that he gain assurance from the other prison that the additional resource was required and, that a defensible decision log would be completed by the Governor and provided to HMP Wandsworth. The Claimant satisfied this precondition as he requested and obtained this assurance. Any failing by the other prison in completing this defensible decision log did not alter that

fact.

Conclusion

14. Applying the law and the finding of facts to each of the three bedwatches the Tribunal concludes as follows:
 - a. The Claimant was not entitled to be paid in respect of the overtime shift worked on 3 June 2020.
 - b. The Claimant was not entitled to be paid in respect of the overtime shift worked on 16 June 2020.
 - c. The Claimant was entitled to be paid in respect of the overtime shift worked on 11 July 2020.

15. The Claimant worked a shift of 17 hours (including 3 hours of travel time) at HMP High Down on 11 July 2020. The Claimant's hourly rate at the time was £22. The Claimant is therefore entitled to an award for unlawful deduction from wages in the sum of £374 (17 x 322). This is subject to deductions for income tax and National Insurance.

Employment Judge Rea

16 November 2022