



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

**Sonia Deborah Richards**

**v**

**Community Accountancy Self  
Help**

**Heard at:** London Central

**On:** 10 November 2022

**Before:** Employment Judge Heydon

## Representation:

**Claimant:** Petronela Proteasa (Solicitor), Nucleus Legal Advice  
Centre

**Respondent:** Thomas Fitch, Respondent's Chief Executive

## JUDGMENT

1. The Claim for unlawful deduction of wages is well founded. The Respondent has made an unlawful deduction from the Claimant's wages and is ordered to pay the gross sum of £16,893.17, in respect of the amount unlawfully deducted, as of 10 November 2022.

## REASONS

### Claim and Issues

1. The Claimant in this case is Sonia Deborah Richards, and the Respondent is Community Action Self Help.
2. Ms Richards has brought a claim for unlawful deduction of wages by way of a claim filed on 28 June 2022. Put briefly, she claims that the Respondent has unlawfully deducted 50% of her pay since 1 November 2021. It is agreed that the deduction was made and the issue for determination is whether the deduction was authorised by Ms Richards' contract of employment.

**Procedure**

3. A preliminary hearing took place on 21 September 2022 before Employment Judge Wisby, at which case management orders were given. The final hearing took place on 10 November. At the final hearing, Ms Richards was represented by a solicitor, Ms Proteasa and the Respondent was represented by its Chief Executive, Mr Fitch. I have had sight of witness statements from both Ms Richards (accompanied by a bundle of documents) and Mr Fitch. Both of these witnesses also gave oral evidence to the tribunal.

**Facts**

4. Ms Richards has been employed by the Respondent as a community accountant. She was employed under a contract in 2001, and remains employed there to this day.
5. Under the terms of her contract she was to be paid an annual salary of £32,535 in monthly instalments. She was to work 7 hours per week on Monday to Friday. The precise hours of work were flexible, but there were core hours of 10am to 4pm. The contract provided that she was expected to be flexible to meet the needs of the business.
6. The Respondent employer is a small charity and a company limited by guarantee. At present it has only 3 staff, which includes Ms Richards, and Mr Thomas Fitch, the Chief Executive.
7. The written contract also included the following terms:

“Changes to Working Hours

It may be necessary to change your working hours, on either a temporary or permanent basis, in order to meet the commercial needs of the Charity. As much notice as possible will be given to you regarding any changes in working hours and you are asked to fully co-operate with regard to temporary changes. Although permanent changes to working hours would only be introduced after full consultation, you would be expected to co-operate and not to unreasonably withhold your consent to any changes.

.....

Short Time Working

Due to emergency and unforeseen circumstances, the Charity may be unable to provide full-time work for all employees from time to time. It is the Charity’s wish to retain employees in the business and for employees to have job security. Prior to considering implementing short-time working, the Charity will endeavour to consider every other alternative including investigating other jobs that you may be able to perform. However, if this is

not possible this could include temporarily placing you on short time working or laying you off from work. In these circumstances you will be paid for those hours worked, or in accordance with the statutory guarantee pay provisions.”

8. By June and July 2021, it was apparent that the charity was in significant financial difficulties, with it having suffered a considerable loss of its income. In addition, its small staff and voluntary trustees had been hard hit by illness, including Mr Fitch who had been very ill with COVID-19, and is still suffering from long Covid to this date.
9. Around this time, Mr Fitch consulted Ms Richards about her potential redundancy. During the course of that consultation, the charity did not put to Ms Richards any alternative options to resolve the charity’s financial difficulties. Neither did Ms Richards make any alternative proposals.
10. On 2 November 2021, Mr Fitch wrote to Ms Richards informing her that, due to the charity’s solvency problems and the reduction in work for Ms Richards, from 9 November, her working hours and pay would be reduced by 50%. He stated that he anticipated that the charity would close on 30 November 2021, but that there may be a small amount of slippage.
11. In fact, Ms Richards’ salary was cut by 50% from 1 November. Ms Richards did not consent to this reduction to her hours and salary, and on 23 November wrote back to Mr Fitch and to the charity’s trustees, stating that this was a change to her contract of employment with which she did not agree, and on which she had not been consulted. She stated that she would continue working under protest.
12. On 29 November, Mr Fitch sent Ms Richards a redundancy letter, stating that there would be a creditor’s liquidation and that her last working day would be 28 February 2022. In that letter, Mr Fitch stated that Ms Richards was currently on short time working of 50% and that this arrangement would continue.
13. Mr Fitch’s worst fears turned out to be incorrect, and the charity successfully managed to avoid insolvency, and remains operating to date. However, the amount of work available continued to be reduced, and one year later Ms Richards has remained working at 50% of her originally contracted hours and pay.
14. During this time, communication was patchy, at least in part due to Mr Fitch’s ongoing illness. Ms Richards was not given notice that she would not, after all, be made redundant on 28 February. She continued to work on 50% hours and 50% pay but was unclear as to her employment status or the insolvency status of the charity, and made enquiries as to what was happening on several occasions. On 2 March, she wrote to Mr Fitch asking, amongst other things, for the information she needed to claim her redundancy pay. On 10 March, Mr Fitch replied stating that she remained an “...employee on short time working”.
15. On 3 May, Ms Richards wrote again to Mr Fitch confirming that she did not consent or agree to the reduction in her salary or short time working. On 16 May 2022, solicitors for Ms Richards wrote to Mr Fitch reiterating Ms Richards’

objection to the reduction in her hours and pay, and seeking clarification as to her employment status, the insolvency status of the charity, and entitlement to any redundancy payment. There was no reply to the letter.

16. On 28 June 2022, Ms Richards commenced proceedings in the Employment Tribunal. She claimed that there had been an unlawful deduction from her wages in that 50% of the salary to which she was contractually entitled had been withheld.

### Law

17. Section 13(1) of the Employment Rights Act 1996 provides that an employer must not make any deductions from wages, unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.

### Conclusions

18. Ms Richards never agreed to the reduction in her hours and pay, to which she was contractually entitled, indeed, she expressly objected on several occasions. Neither party claims that the deduction was required or authorised by a statutory provision. Therefore, the only issue for me is whether the reduction in pay was authorised by a provision of Ms Richards' contract.
19. The Respondent points to the two clauses in the contract of employment which it says authorises the Respondent to unilaterally reduce hours and pay. These are the terms headed "Changes in Working Hours" and "Short time working". Both are set out in full in paragraph 7 above.
20. In the case of any ambiguity in the meaning of these clauses, they must be interpreted in favour of the employee, both because of the imbalance in bargaining power between the parties when negotiating the contract, and also because clauses which allow unilateral variation of fundamental terms of the contract should be interpreted restrictively.
21. I interpret the clause on changes to working hours as being only about changes to the working pattern i.e. the hours at which work must be performed, not the total number of hours. It makes no reference to a reduction in pay. In any event, permanent changes may only take place with full consultation. The changes have now lasted for a full year, so should be regarded as permanent. There has been no such consultation – the only consultation which took place relatedly solely to redundancy.
22. The clause on short time working also refers to "lay-offs" and I accept the Claimant's submission that the terms should be interpreted in line with the meanings given to those terms in section 147 of the Employment Rights Act

1996 i.e. in circumstances where the employee would be entitled to a redundancy payment. In this case, Ms Richards' hours were not less than 50%, so she would not be entitled to a redundancy payment. Therefore, this clause also does not authorise this particular reduction in hours and pay. In addition, the clause only authorises short time working on a temporary basis. Again, the changes in hours and pay as applied to Ms Richards have not been temporary.

23. I therefore conclude that there was no lawful basis for the deduction from Ms Richards' pay.

Remedy

24. Ms Richards' pay was reduced to 50% of her entitlement with effect from 1 November 2021. As of the date of the hearing, her salary had therefore been reduced by 1 year and 1 week. I calculate her loss as follows:

1 week's pay	£625.67
1 year's pay	£16,267.50
<u>TOTAL PAYABLE</u>	<u>£16,893.17</u>
(GROSS)	

25. The Claimant argued that this award should be uplifted by 25% due to the Respondent's unreasonable failure to comply with the ACAS code in as much as it failed to treat Ms Richards' objection to short time working as a grievance. In all the circumstances, taking into account the size of the organisation, number of staff, and the considerable pressures on the charity at the time owing to the long-term illness of the key member of staff, I do not find that there was such an unreasonable failure. I therefore apply no uplift, and the total gross figure payable is £16,893.17.

Employment Judge Heydon

Dated: 10 November 2022

Judgment sent to the parties on:

09/12/2022

For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.