



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hussein

Respondent: Key Security Ltd

Heard at: Sheffield by CVP **On:** 16 January 2023

Before: Employment Judge Rostant

Appearances

For the claimant: In person

For the respondent: Mr D Reed, manager

REASONS

1. The claim before the Tribunal was one of breach of contract.
2. The claim form was presented on 14 October 2022 and the response received on 20 November 2022.
3. The matter was set down for hearing, before a judge sitting alone on 16 January 2023, by a Notice of Hearing dated 8 November. The case was heard by CVP.
4. I heard evidence from the claimant and Mr Reed for the respondent.
5. The essence of the claimant's claim was that whilst employed as a security guard by the respondent he had been required to work many more hours than his normal contracted hours and ought to have been paid at time and half for all of the hours over and above the normal hours.
6. I had available to me a copy of the claimant's contract which both parties agreed was the document which set out the terms of his employment.
7. The following facts are agreed.
 - 7.1 The claimant's hourly rate was £9.90
 - 7.2 The claimant was paid at that rate for every hour that he worked.
 - 7.3 Clause 4.1 of the contract proved that the claimant had a "basic working week" of 30 hours.
 - 7.4 That clause also provided that the claimant might be required to "work extra hours as necessary."

- 7.5 Clause 4.3 provided that the claimant might “on occasion” be required to work “reasonable additional hours.”
 - 7.6 Clause 4.1 provided that where operational circumstances required a “significant change” to the employee’s contract, a certain procedure, specified in the clause, would be followed.
 - 7.7 That procedure entailed discussion with the employee with a view to securing agreement to a change to the contract and made provision for written notice of a change to be given in the event that agreement could not be reached.
 - 7.8 The respondent did not, in respect of the claimant, comply with the procedural requirements described in 7.6 and 7.7.
 - 7.9 For 2.5 years the claimant averaged 43.5 hours per week.
8. I find that since those extra hours were not occasional but regular and frequent and since they persisted for 2.5 years, the provisions described above in respect to a significant change ought to have been followed. The claimant had, in effect, had a significant change to his contract brought about by a requirement to work 13.5 hours a week over his basic hours for the entirety of his engagement with the respondent.
 9. I therefore find that the respondent was in breach of the procedural requirements contained in Clause 4.1 and I uphold his claim to that extent.
 10. Section 131 of the Employment Protection (Consolidation) Act 1978 and Article 3 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 empower me, in a contract claim, to award damages or any other sum due under a contract.
 11. To award damages I must be satisfied that the claimant has suffered loss caused by a breach of a contractual term. To award a sum due under a contract I must be satisfied that the claimant was entitled to money under his contract which he has not been paid.
 12. However, in this case although I find a term of the contract has been breached, the claimant has suffered no loss as a result and I also find that the claimant has been paid all that he is due under his contract.
 13. There is no provision in the contract to pay any hours worked over and above the basic hours at anything other than the standard hourly rate. Indeed, there is a specific provision to the effect that “reasonable” extra hours will be remunerated at the standard rate. The claimant’s argument is that the extra hours were not reasonable because they were not occasional but in effect became normal and ought to have been the subject of the procedure for contractual change.
 14. Had the contractual procedure been carried out, the claimant would either have agreed to a change or have had it imposed on him. In either case, had he chosen to remain with the respondent he would have been remunerated at £9.90 per hour for the new hours.

- 15. There is no term in the contract either express or implied to the effect that “unreasonable” extra hours should be remunerated at time and a half. The fact that the claimant considers that this would have been the fair thing to do is not a basis for me making such an award.
- 16. The claim for damages must therefore fail and I dismiss it accordingly.

Employment Judge Rostant

14 February 2023

Sent to the parties on:

...21 February
2023.....

For the Tribunal Office:

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