EMPLOYMENT TRIBUNALS

Claimant: **Mr Carl Heintz**

Respondent: **Summit Architecture Ltd (in voluntary liquidation)**

HELD AT: London South (by CVP) **ON:** 1 February 2023

BEFORE: Employment Judge Hart

REPRESENTATION:

Claimant: Mr Heintz (representing himself)
Respondent: Mr Newell (representing himself)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The name of the respondent is to be amended to "Summit Architecture Ltd (in voluntary liquidation)".

2. The claimant's claim for severance pay is dismissed upon withdrawal by the claimant.

3. The claimant's claim for breach of contract and / or unlawful deduction of wages in relation to a pay increase in November 2020 does not succeed, and is dismissed.

4. The claimant's claim for breach of contract and / or unlawful deduction of wages in relation to overtime pay between January to November 2021 does not succeed, and is dismissed.

REASONS

INTRODUCTION

1. This is the judgment in relation to the claimant's remaining claims for breach of contract and / or unlawful deduction of wages in relation to a £5,000 pay increase in November 2020 and unpaid overtime between January and November 2021. His claim for breach of contract (notice pay) was determined in his favour at a previous hearing on the 3 November 2022.

THE HEARING

1. The parties attended by CVP. They are both thanked for their assistance during the hearing.

2. It was confirmed at the outset of the hearing that no reasonable adjustments were required by either party.

3. The Tribunal was provided with two hearing bundles, a claimant's bundle of 90 pages ("C/") and a respondent's bundle of 102 pages ("R/"): the references to page numbers in this judgment are to the pages in these bundles. Within the claimant's bundle were the statements of four witnesses that the claimant was relying on but not calling: Mr Anees Imtiaz, Mr Jimi Deji-Tejani, Mr Micaiah Grant-Newell and Mr Jamiul Mohammed Choudhury. The Tribunal explained to the claimant that these would be treated as hearsay and that it was a matter for the Tribunal as to what weight to be attached to their evidence.

4. Neither the claimant nor respondent had provided a witness statement, but instead inserted commentary on the documentation within their respective bundles. The parties were asked to extract their commentary from the bundles and provide it in the form of a paginated witness statement along with a statement of truth, so that it could form their evidence. The claimant provided a statement comprising of extracts from pages C/2-14, 20, 38-39 and 73-74. The respondent provided a statement of 22 pages, of which he was only relying on the text in red.

5. Both parties gave evidence on their own behalf. The Judge asked questions to assist with their evidence in chief and provided assistance to both parties in formulating questions for cross-examination.

6. On completion of the evidence both parties provided oral submissions. Judgment was reserved.

7. During the hearing the claimant had raised that the respondent was in voluntary liquidation. In September 2022 the respondent had received notice for compulsory strike off. On 12 October 2022 this action was suspended, following the claimant's objection. On 3 November 2022 the respondent went into voluntary liquidation and a liquidator was appointed. The hearing was paused

for the Tribunal to consider whether proceedings could continue. The claimant informed the Tribunal that Fortis Insolvency (the liquidator) was aware of these proceedings and on that basis the Tribunal decided to continue and hear submissions. On request by the Tribunal, the claimant forwarded the email from Fortis Insolvency dated 14 November 2022, confirming that they were aware of the tribunal proceedings and sought no involvement other than to be informed of the outcome.

8. Following the hearing, by email dated 2 February 2023, the claimant requested that the Judge be passed a note in relation to his response in evidence regarding his claim for payment for overtime that he thought may had been "misunderstood or misrepresented" ("post hearing note"). The Judge decided to accept this note in evidence and to provide the respondent with the opportunity to respond within 7 days. The parties were written to on the 24 February 2023 with this decision and the respondent provided a response on the 26 February 2023. The representations of both parties have been considered in the writing of this judgment.

CLAIMS / ISSUES

9. The issues had been provisionally agreed at the hearing on the 3 November 2022 (page R/85).

10. At the hearing before this Tribunal the claimant withdrew his claim for severance pay, and it is dismissed upon withdrawal.

11. The parties confirmed that the remaining issues to determine were as follows:

Breach of Contract

11.1 Can the claim be brought in the employment tribunal?
11.2 Is the claim in time?
11.3 The overtime claim:
  (a) Did the claimant work overtime?
  (b) Was the claimant paid for any overtime worked?
  (c) Was the claimant contractually entitled to payment for overtime?
11.4 The increase in salary claim:
  (a) Did the respondent pay an increase in salary in November 2020?
  (b) Was the claimant contractually entitlement to an increase in salary?
11.5 How much should the claimant be awarded as dameeee4rages?

Unlawful deduction of wages

11.6 Is this claim in time?
11.7 The overtime claim:
  (a) Did the claimant work overtime?
  (b) Was the claimant paid for any overtime worked?
  (c) What sum was 'properly payable' to the claimant in respect of overtime worked?
  (d) Did the respondent make an unauthorised deduction from the claimant's wages by failing to pay for overtime worked?
11.8 The increase in salary claim:
  (a) Did the respondent pay an increase in salary in November 2020?

(b) What sum was 'properly payable' to the claimant in respect of this increase in salary?
(c) Did the respondent make an unauthorised deduction from the claimant's wages by failing to pay for the increase in salary?

FACTUAL FINDINGS

12. The Tribunal has only made findings of fact in relation to those matters relevant to the issues to be determined (identified above). There were other matters raised by both parties that are not relevant to these claims and which have not been determined. Where there are facts in dispute the Tribunal has made findings on the balance of probabilities.

13. The respondent is an architecture business, employing 25 architects, designers and staff. Mr Newell was the sole Director until January 2021, when he became co-Director with Ms Nicolette Carter.

14. On 10 August 2020, the claimant commenced employment with the respondent as an architect. He was provided with a written employment contract (pages C/62-70), of which the relevant terms are:

14.1 "Salary": The claimant to be paid a gross salary of £35,000 per annum based on a 40-hour working week *"which is to be reviewed for an increase to £40,000 (forty thousand pounds) after three months from the Date of Commencement*". The claimant's date of commencement was 10 August 2020.
14.2 "Working hours": The claimant's standard hours of work were 9am to 6pm, Monday to Friday, including one hour for lunch break. These hours "*may be varied to meet the needs of the business or section in which you are based. Your role includes ensuring the meeting of deadlines for works completions and cooperation of trades and as a result, to achieve on target time, you are likely to be required to work hours in addition to those above per week in accordance with local trade working bylaws, which will be returned to you or paid as an additional in lieu following the deadline.*" The Tribunal was not provided with any evidence, oral or documentary, as to what was contained in the "local trade working bylaw".

15. The claimant did not receive a pay increase on 10 November 2020 (3 months after the commencement date). There is a dispute as to whether there was a review. The respondent claimed that there was and that the claimant was underperforming which was the reason why his pay was not increased. The respondent has adduced no evidence of this review and the Tribunal does not accept Mr Newell's evidence on this point because it is inconsistent with the offer to make the claimant a partner being discussed around this time (see emails dated 26 September and 18 December 2020 (pages C/16-17)). The Tribunal finds that the reason the claimant did not receive a pay increase was because this was overtaken by the discussions to make the claimant a partner. This is confirmed by the claimant in his witness statement where he stated that "*the reason why this increase was not pushed further was due to the fact that I was made a partner which appeared to be an opportunity of a lifetime for me as the*

estimated profit nearby for the upcoming quarter was estimated to be far higher than this salary increase..." (page C/74).

16. On 23 December 2020, the claimant signed a partnership agreement with Mr Newell and Ms Carter (pages C/58-59). The relevant terms of this agreement are as follows:
    16.1 That the "employment contract terms apply as per contracts in regards employment matters".
    16.2 The claimant to receive a salary of £35,000 per annum payable in monthly instalments.
    16.3 The claimant to receive a profit share of 7.5% on a quarterly basis, the first being on the 30 April 2021.
    16.4 The claimant had "no personal liability for the company".
    16.5 The claimant was "not required to invest or loan money to the company".

    Although this agreement was labeled a "Partnership Agreement" in fact both parties confirmed that the claimant remained an employee of the respondent. The agreement was to share the profit only, and the claimant had no share in the liability and debts of the company.

17. When the claimant entered into the partnership agreement he anticipated, based on the financial information provided at the time, that he would be paid a profit bonus of £2,140 per month (page C/18). In fact the company only made a profit in the first quarter, for which the claimant received a bonus of £2,601, and ran at a loss thereafter.

18. From 1 January 2021 the claimant's role changed to "Head of Planning / Partner". He became responsible for managing a team of young inexperienced architects and for meeting monthly targets. The claimant claims that this resulted in him working unpaid overtime of 45 hours per week between January to May, 40 hours per week in June, 35 hours per week in July to August, 20 hours per week in September and 10 hours per week in November 2021 (page C/14). The respondent accepted that the claimant had done some overtime but disputed the amount arguing in that the output did not justify the hours claimed.

19. The claimant confirmed that he did not keep a record of the hours of overtime that he worked, stating in evidence that his claim was based on his normal working day being 8:30am to 8pm and then 9pm to midnight, and 7-8 hours on Saturday and Sunday. In his witness statement the claimant had stated that *"my usual day for Q1 [Quarter 1] and largely Q2 [Quarter 2] would be to start work at 8:30 am and finish around 7:30 pm. Then have dinner and then work from 9 pm until 1-3am as well as working at least 10 to 12 per day most weekends*" (page C/11). The Tribunal was provided with no timesheets, diary entries or other electronic or paper record of the actual hours worked.

20. The Tribunal accepts that the claimant did do a significant amount of overtime. The claimant's role involved working to deadlines and the employment contract anticipated that the claimant would be required to work overtime. The hearsay evidence of the claimant's witnesses, who were all members of his team, confirms that there was a culture of working overtime in order to meet targets.

The Tribunal does not accept that these are merely the accounts of disgruntled ex-employees as suggested by the respondent, but does consider that their evidence is limited due to the general nature of the evidence provided. Finally the following emails support the claimant's case that there was pressure to work overtime in order to meet targets and gives an indication of the amount of overtime that was done over the material period:

20.1 The email dated 4 March 2021 from Mr Newell to the Claimant stating that if the output of his team was not increased the claimant should "*fire them"* and that the claimant was given "*until the end of March to improve the performance, after that I will have to bring in a manager and you go back to drawing"* (page C/21).
20.2 The email dated 4 March 2021 from the claimant to Mr Newell in which he referred to working "*60-70+ hours including most weekends since January"* (page C/22).
20.3 The email dated 14 May 2021 from the claimant to Mr Newell stating that "*planning and design is running at peak performance and working 1-4 hours overtime per day*…." (page C/26).
20.4 The email dated 28 May 2021 from the claimant to Mr Newell in which he stated "*the team are for sure still working overtime and I have personally worked till midnight all days this week except yesterday*…" (page C/27).
20.5 The email dated 9 June 2021, from the claimant to Mr Newell, where he referred to overtime in relation to his team "*remaining an issue*" but then went on to state that "*I believe that this is now going back to normal levels*" (page C/28).
20.6 The email dated 20 September 2021 from the claimant to Mr Newell in which he referred to his team having worked until 8-10pm in February to May, but did not suggest that this was still the case.

21. In relation to the amount of overtime that the claimant worked, the Tribunal considers that the emails provide a more reliable indication than the two different accounts provided by the claimant. Taking a broad-brush approach, the Tribunal finds that the claimant worked on average 30 hours overtime per week between January to March 2021, based on 60-70+ hours plus weekends and taking into account the likelihood that the claimant did not work overtime every day or every weekend. In April and May the claimant worked on average 15 hours overtime per week. This is based on there being only a single reference to a week when the claimant worked until midnight (28 May 2021 email), no references to working weekends and the general reference to his team working until 8-10pm (20 September 2021 email). The Tribunal considers it likely that the claimant worked at least the same amount of overtime as his team, and takes into account the likelihood that he did not work these hours every day. After May, the Tribunal is prepared to accept that the claimant continued to work some overtime, but considers that the amount was relatively lower (no more than 5 hours per week). This is on the basis of the email of the 9 June 2021 referring to overtime being back to normal levels.

22. Mr Newell stated in evidence it was the respondent's "policy and understanding" that overtime was voluntary and not paid. The Tribunal notes that neither the claimant, nor his team, requested payment or time off in lieu, at any point, for the

overtime worked over this period. During his evidence the claimant was asked by the Judge whether he was content to work overtime and not get paid because he had assumed that he would benefit from the profit share bonus of the partnership agreement. He responded "*100% yes, all motivation for the overtime*". In the post-hearing note the claimant stated that his evidence on this point was "misunderstood or misrepresented" by the Judge stating "*I then clarified my statement immediately to clearly represent what the correct answer was. I mentioned that my motivation for not calling out my overtime initially was due to that I thought the partnership payment would be higher than any overtime payment but that I was expecting as a minimum of my basic contractual right as per my original contract…".* The claimant went on to quote the term in the employment contract on overtime set out above.

23. In order to ensure that the Tribunal has not "misunderstood or misrepresented" the claimant's evidence, it has considered the context in which the question arose. The Judge's notes record that the claimant was referred to emails under "Section E Overtime concerns for the team" (pages C/25-30), and asked why he was referring to concerns for the team not himself. He responded with reference to page C/30 paragraph 4 (evidencing his request for a virtual assistant) stating that the "*reason was that I was a partner and expected some sort of payment. I assumed to work overtime, expecting to get payment and bonus, therefore not my issue"*. It was in response to this comment that the Judge sought clarification about the claimant's reason for working unpaid overtime, and whether he was content for this to be unpaid because he assumed he would benefit from the profit. The claimant confirmed that this was his motivation. The Judge's notes of the claimant's response does not record him clarifying his response, as he now suggests in his post-hearing note.

24. The Tribunal also considered whether the claimant's response as recorded by the Judge was consistent or inconsistent with other statements that he had made in relation to this issue. The Tribunal notes the following:
    24.1 "Section C - Promises on partnership": The claimant wrote that the figures provided to the claimant by the respondent lead him *"to believe that all efforts spent in the first year would pay dividends for years to come"* (page C/18).
    24.2 "Statement of Loss - Partnership Severance / Overtime Payment claim for £32,576": The claimant referred to being promoted and wrote: "*This additional effort was made with the promise of partnership"* (page C/73).
    24.3 Later under the same heading, after setting out the evidence relied upon in support of his overtime claim the claimant wrote *"… the main relevance of the partnership being mentioned in this claim is that it is the main driver for why Carl Heintz dedicated all this extreme amount of overtime and effort causing physical and emotional pain as a result. It was also his firm belief that some sort of severance would eventually be paid out given this effort despite that it was indeed, not ever promised. Hence why the economic compensation is based on the hourly wage times the overtime in hours rather than unpaid partnerships payment or severance package per say".*
    24.4 In cross-examination the claimant was asked whether it was his understanding that under the partnership agreement overtime was not paid, to which the claimant responded that it was "*not clear on overtime*" and that

> he "*assumed overtime would increase profit*". He went on to state that he expected to be paid or receive time off in lieu and then profit share. He was then asked if that was his expectation why he had not asked to be paid or kept records to which he responded: "*because you gave an estimate on the profits that I would get and made big projections; you had the financial records and I did not - I expected to benefit from the profits you were promising".*

The Tribunal concludes from the evidence that the claimant gave, both orally and in writing, that the claimant was not expecting to be paid overtime at the point that he was working the additional hours because he was expecting to reap the benefit through profit related bonuses. This explains why he did not keep any record of the additional hours worked and did not seek payment for those hours at any point during his employment. The Tribunal therefore does not accept that it misunderstood or misrepresented the claimant's evidence in this respect.

25. On 1 September 2021 the claimant's pay was increased to £40,000 per annum, following a meeting between the claimant, Mr Newell and Ms Carter. The claimant was sent an email after the meeting stating "*Good meeting today, I just want to recap on what we said. Pay rise starts today.*" It then goes on to identify agreements in relation to work going forward and ends "*and finally we are going to try to improve the payments terms all ideas welcome*" (page C/72). The claimant responded "*Yes I agree! I very much enjoyed discussing more parts of the company and being more involved in the running of things…..*". What is noticeable about this exchange is that there is no reference to the claimant seeking payment for unpaid overtime or an unpaid pay increase.

26. In November the claimant was informed that he was to be made redundant with one week's notice. On 25 November 2021 the claimant submitted an appeal against his redundancy and sought payment for 4 weeks' notice pay. He then referred to other outstanding topics such as "unpaid pension" and "GoPlans company shares not excluding further legal action" (page C/57-58). The Tribunal understands that GoPlans was another company of the respondent that the claimant became involved with. Again what is noticeable is there is no mention of being owed unpaid overtime or an unpaid pay increase.

27. On 30 November 2021 the claimant's contract was terminated on grounds of redundancy (pages C/52-53).

28. The claimant entered into ACAS Early Conciliation on the 21 December 2021 and received the ACAS certificate on the 31 January 2022. He submitted his claim form on the 19 February 2022. The respondent submitted its response on the 31 May 2022.

THE LAW

Breach of Contract

29. An employment contract is a legally binding agreement whereby an employee agrees to work for an employer in return for pay. The intentions of the parties

are provided for by the terms of the contract. A tribunal must consider the presumed intention of the parties at the time that the contract was entered into: **Casson Beckman & Partners v Papi** [1991] BCC 68 (CA).

30. Contractual terms may be written or oral, expressed or implied, for example by business necessity, by conduct, custom and practice or because it is obvious. It is a general principle of contract law that an implied term cannot override an express term. The express or implied terms of a contract can be varied by the parties at any time by express or implied agreement. A tribunal will often consider the conduct of the parties in determining whether any particular term has been varied. It should be cautious to imply acceptance by conduct where it is to the employee's disadvantage but can more readily infer acceptance by conduct where the variation is to the employee's advantage: **Attrill & Others v Dresdner Kleinwort Ltd & Others** [2012] IRLR 553 (QBD) approving **Solectron Scotland Ltd v Roper & Others** [2004] IRLR 4 (EAT).

31. Where a contractual term provides the employer with a discretionary power that discretion must not be exercised in an irrational or perverse manner, such as to breach the implied term of trust and confidence.

32. In relation to overtime, an employee is only entitled to be paid for overtime worked if there is an express or implied term of the contract providing for such payment. Where a contract of employment provides for paid overtime but the amount is not specified then the law implies that it should be for a "reasonable sum": **Driver v Air India Ltd** [2011] IRLR 992. As was made clear in **Driver**, this includes a situation where the contract stated that payment was in accordance with a document that either did not exist or had not been provided.

33. An employer will be in breach of contract if they fail to comply with one or more of the obligations imposed by the terms of the contract. The aim of damages for breach of contract is to put the claimant in the position they would have been in had a contract been performed in accordance with its terms.

34. An employee may bring a breach of contract claim in the employment tribunal in accordance with the provisions of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. An employee may only bring a breach of contract claim which is 'arising or is outstanding on the termination of employment'. The maximum that a tribunal can award a claimant for a breach of contract claim is £25,000. The normal time limit for bring such a claim is 3 months beginning with the effective date of termination.

<u>Unlawful Deduction of Wages</u>

35. Section 13(1) of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision, or a relevant provision of the workers contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

36. The right only arises where the amount of wages paid by an employer to a worker is less than the total amount of the wages 'properly payable' by him to that worker. What is 'properly payable' is that which a worker is legally entitled to under their contract or otherwise: **New Century Cleaning Co v Church** [2000] IRLR 27.

37. A worker has a right to complain to an employment tribunal of an unauthorised deduction from wages pursuant to section 23 of the ERA. The time limit for bringing such a claim is 3 months from the date that the deduction was made, or where there has been a series of deductions 3 months from the date of the last deduction in the series.

DISCUSSION AND CONCLUSIONS

Breach of Contract

Jurisdiction: can the claim be brought in an employment tribunal and is the claim in time?

38. The Tribunal has first considered if the claim can be brought in an employment tribunal. It has concluded that it can. The claimant was an employee of the respondent and his claim related to breaches of contract that were outstanding on the termination of his employment. However any claim for breach of contract will be limited to the maximum of £25,000.

39. The Tribunal also finds that the claim was brought in time. The claimant's contract was terminated on 29 November 2021 and he submitted his claim form on 19 February 2022, within 3 months of the effective date of termination.

The overtime claim:

Did the claimant work unpaid overtime?

40. The Tribunal has found that the claimant did work overtime, albeit less than has been claimed. It is not disputed that the claimant was not paid for this work.

Was the claimant contractually entitled to payment for overtime?

41. The claimant's contract of employment expressly provides for paid overtime (or time off in lieu) "in accordance with local trade working bylaws". The claimant has not provided the Tribunal with a copy of these bylaws, and it is not known whether such bylaws exist, it therefore falls to the Tribunal to determine what would be a reasonable sum. The claimant has claimed payment at the normal hourly rate, but has also suggested that the industry standard is a third to twice the normal hourly rate with reference to a text book "The Architect in Practice" Wiley, published by David Chappell. The Tribunal considers a reasonable sum would be payment at 1.5%, bearing in mind that working in the evenings and at weekends is anti-social, and the Tribunal is aware that overtime is often paid at an enhanced hourly rate.

42. There is some evidence to suggest that the express term regarding payment for overtime was not adhered to in practice, calling into doubt whether it was ever the intention of the parties that the claimant be paid for overtime worked. Mr Newell stated that any overtime done was not paid, and it was understood that it was not paid. The claimant confirmed that none of the employees in his team who worked overtime sought to be paid, nor were they paid for that work. Apart from the contractual term itself there is no evidence that overtime was paid.

43. However, more problematic for the claimant is that at least some of the terms of his employment contract were varied when he entered into a partnership agreement. The agreement itself is silent as to which employment contract terms "would continue to apply in regards to employment matters" and the parties adduced no evidence of any overt discussions. The claimant accepted in evidence that the position on overtime was not clear. The Tribunal considers that the terms that were varied by the partnership agreement were those in relation to remuneration, and that this included payment for overtime. The reason for this conclusion is based on the claimant's evidence before the Tribunal and his conduct at the material time. The Tribunal has found that the claimant was content to work overtime and not get paid because he assumed that he would ultimately benefit from the profit-sharing arrangement in the partnership agreement. At the time that the claimant entered into this agreement, he was to be paid a salary and was anticipating a bonus of £2,140 a month, with the potential of greater payments as profits increased over the years. This had the potential to more than compensate him for the additional responsibilities and hours worked. The claimant understood that. This explains why he did not keep a record of the hours worked and did not seek payment for these hours at the time. Nor did he seek payment either during discussions of a pay increase on 1 September 2021 or following notice of redundancy in his appeal dated 25 November 2021. Had the claimant truly believed that he was owed overtime payment the Tribunal would have expected him to have raised it on both these occasions. It is only in retrospect, following the termination of his contract, that the claimant has sought payment for the overtime worked. However, when construing the contractual arrangements between the parties the Tribunal has to consider what was the intentions of the parties at the time the agreement was entered into and not how that agreement in fact developed. The Tribunal finds that the intentions of the parties at the time the partnership agreement was made was that any overtime worked would not be paid because this would be compensated for by increased profits.

44. Even in his post-hearing note to the Tribunal the claimant states that he thought the partnership payment would be higher than any overtime payment but that he was expecting to be paid overtime "as a minimum". This suggests that had the profit share been more than the overtime payment he was not expecting to be paid both. There is nothing in either the contract of employment or the partnership agreement to suggest this construction.

45. For all the reasons set out above, the Tribunal concludes that the claimant was not contractually entitled to paid overtime, once he had entered into the Partnership Agreement.

The increase in salary claim

Did the respondent pay an increase in salary in November 2020?

46. It is not disputed that the claimant did not receive a pay increase on 10 November 2020.

Was the claimant contractually entitled to a pay increase in November 2020?

47. The claimant's contract of employment does not expressly state that the claimant would receive a £5,000 pay increase on the 10 November 2020, it merely provided that the salary of £35,000 would be "reviewed for an increase". Therefore the obligation on the employer is to conduct a review, and to do so in a manner that would not be irrational or perverse, such as to breach the implied term of trust and confidence. In fact the Tribunal has found that the respondent did not conduct a review but there is a rational explanation, in that from September 2020 onwards the parties were in discussions regarding a possible partnership agreement. This in effect meant that there was no need for a review. The claimant understood this which is why he did not push for a pay increase at that time, as he admitted in his statement.

48. In any event, any losses would be limited to the period between 10 November and 23 December 2020, when the claimant entered into the Partnership agreement. This specifically provided that the claimant's annual salary was £35,000. From this date the claimant accepted continued payment at the amount because he anticipated that the profit related bonus would be substantially more than the £5,000 increase provided for in his contract for employment.

How much should the claimant be awarded as damages?

49. For the reasons set out above the claimant is not entitled to any award for damages.

Unlawful Deduction of Wages

Is the claim in time?

50. The claim for unlawful deduction of wages in relation to the non-payment of the November 2020 pay increase is out of time. Any entitlement to a pay increase following a review provided under the contract of employment ended with the claimant entering into a partnership agreement which specified that his salary was £35,000 per annum with a 7.5% share of the profits to be paid quarterly. His contract was therefore varied by agreement from this date, and the claimant has no ongoing entitlement to any pay increase provided under his previous contract. The claimant has provide no reason as to why it was not reasonably practicable to submit the claim in time.

51. The Tribunal has accepted the claimant's case was that he continued to work unpaid overtime until he was made redundant. Therefore this claim is in time, the non-payment of overtime being a potential series of deductions up to the

date of termination. Contrary to the submissions of the respondent, a worker is not required to submit a claim for overtime every time it arises, if it forms part of a series. In this case the claim is "a series" since it all relates to the same subject matter, namely overtime.

Was the claimant not paid for overtime and / or not paid a pay increase in November 2020?

52. The Tribunal finds that the claimant was not paid for the overtime worked and not provided with a pay increase for the reasons set out above.

Was overtime and / or pay increase 'properly payable'?

53. A claim for unlawful deduction of wages only arises where the amount of wages paid by an employer to a worker is less than the total amount of the wages 'properly payable' by him to that worker. Since the Tribunal has found that there was no contractual right to either paid overtime or the November 2020 pay increase for the reasons set out above, and no other legal entitlement has been identified, neither claims succeed.

Employment Judge Hart

Date: 9 March 2023