



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Hazi

**Respondent:** Aspire-Igen Group Ltd  
**Heard remotely by CVP on:** 21 June 2023

**Before:** EJ Rogerson

## **Representation**

Claimant: in person

Respondent: no attendance

# JUDGMENT

The claim for compensation for unpaid wages fails and is dismissed.

# REASONS

1. The claimant claims £12,072.82 in unpaid wages for over 1000 hours of TOIL she worked in the period from August 2021 to December 2022 which she was unable to take before her employment was terminated by reason of redundancy on 24 March 2023.
2. The respondent did not attend the hearing. An email was sent on 20 June 2023, at 3.30pm by a Caroline Harrison presumably on behalf of the respondent informing the tribunal that the respondent was in administration, all employees (including Ms Harrison) had been made redundant and the permission of the administrator would be required for this hearing to proceed.
3. A Companies House search conducted today shows that the company is still active and was active when these proceedings were brought. In the absence of any evidence to the contrary and with the claimant's agreement I decided I should proceed and determine the claim on its merits in accordance with the overriding objective of avoiding delay.
4. In the claim form the claimant says she was owed 6 months of time off in lieu (TOIL) she accrued between August 2021 up to December 2022. She worked as an enrolment officer and did the work to cover the extra workload.
5. In deciding the claim, I considered the claim form, the response, the parties' documents, and the claimant's witness statement. The

respondent acknowledges the claimant was a hardworking and conscientious employee. It is accepted accrued untaken TOIL was outstanding when the claimant was made redundant. The claim is resisted on the grounds that there was no contractual entitlement to pay for TOIL only to take time off in lieu of the extra hours that had been worked.

6. The respondent is a 'not for profit' organisation and the only circumstances in which any extra work resulted in extra pay was when prior authority was obtained for an extra wage to be paid. There was only one occasion when this had occurred in relation to extra work performed for an OFSTED inspection when overtime pay was agreed for the claimant and others. On that occasion the claimant was paid for the extra 16 hours overtime worked.
7. The claimant confirmed that was the only occasion she had received pay for any extra hours worked. She understood she was entitled to time off in lieu. Her position was that she had made a request for monetary payment instead of time off for the extra hours she had worked. That request was rejected by a director (Dawn Hardy). Instead on 17 January it was agreed that the time off in lieu should be taken from that date onwards. Arrangements were made for this to happen.
8. The claimant says *"Dawn went back on the agreement on the 8 February 2023 as they were making people, including me redundant. The claim is for unpaid wages"*
9. In the ET3 response the reason for redundancy provided was the closure of the claimant's place of employment. Reliance was placed on the TOIL policy which provides as follows:  
"Additional Hours/Overtime  
There maybe occasions when you will be asked to work additional hours/ overtime that is beyond your normal daily hours or your rest days. as a condition of employment we reserve the right to ask you to work overtime (taking into account any obligations placed on us by WTR)..... all over time must be agreed and authorised in advance by your manager and is not guaranteed".
10. The only occasion the claimant and others were paid overtime was for 16 hours overtime authorised by a director. On that occasion payment was approved before the extra hours were worked (the respondent anticipated and could plan for the extra wage bill).
11. The fact that this had only happened once during the claimant's employment indicates the policy was applied and employees knew extra hours would not result in extra payment only in time off in lieu. That was why she applied for payment to be made retrospectively however her request was refused which left her with outstanding untaken TOIL when she was made redundant.

## **Conclusions**

12. The claimant is claiming unpaid wage of £12,000 pounds for additional hours worked knowing that there was never any agreement with her employer for payment prior to or after she worked the extra hours.

13. She was paid her normal working hours but never for any additional hours unless payment was authorised by a director. Only on one occasion was that prior authorisation provided which resulted in an extra payment.
14. For any additional hours voluntarily worked by the claimant up to December 2022 the claimant only ever had hope that her employer would agree to pay her. That hope was extinguished when the decision was made in January 2023 that she would not be paid for the extra hours but could take time off in lieu. That is the agreement she made with her employer which was broken by her redundancy which prevented her from taking the time off. Had her employment continued she would have taken the time off.
15. In those circumstances the sum claimed for payment for the extra hours is not recoverable as 'unpaid wages' because it was never 'properly payable' under the contract of employment or in connection with her employment under section 13(3) Employment Rights Act 1996 and the meaning of wages under section 27 Employment Rights Act 1996.
16. For those reasons the type of complaint pleaded as "other payment of TOIL" and/or "unpaid wages" fails and is dismissed.
17. I sympathise with the claimant who has worked extra hours and reasonably feels her employer has taken advantage of her hard-working nature and work ethic and benefited from it. However, much sympathy I feel I am bound to apply the law to the facts as they are in this case and not as the claimant would have liked them to be.
18. The claimant has found new employment where she tells me there is better management of working hours to avoid TOIL building up and becoming unmanageable ensuring it can be taken after the extra hours are worked. This shows that it was the application of the respondents TOIL system that was at fault in this case. Allowing extra hours to be worked by employees without management control had resulted in the claimant losing out. Hopefully this will not happen to the claimant again and she might take some comfort from knowing that given the recently reported closure and administration it is unlikely she would have recovered any sum awarded if she had succeeded.

**Employment Judge Rogerson  
21 June 2023**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS