



outstanding pension contributions. However, it disputed the overtime monies the claimant stated in her claim form were owed. The respondent asserted that the claimant was contracted to work 37.5 hours per week. However, the claimant agreed to reduce her hours to further her studies, she agreed to work three days in the office and to lower her other two contractual days at home so that she would not lose out on her salary and status as a full time employee. The respondent further asserted that that it was agreed that any overtime would only be made if the claimant was required to work any extra shifts above her weekly contractual hours of 37.5. The respondent accepted that the claimant did work some shifts but awaited a detailed schedule of the extra shifts from the claimant, for what the claimant claims was owed to her.

- (4) The claimant sought the sum of £4,340.00 broken down as follows:
- 3.1 £417 in unpaid wages;
  - 3.2 £3,480 in respect of 58 shifts of unpaid overtime at the rate of £60 per shift;
  - 3.3 the sum of £36.40 in respect of unpaid pension contributions for the month of May 2022;
  - 3.4 the sum of £48.40 in respect of unpaid pension contributions for the month of June 2022; and
  - 3.5 the sum of £358 which the claimant had loaned to Ms Shah for a plane ticket to Lebanon.
- (5) Ms Shah accepted that the sum of £417 was due in respect of unpaid wages. She asserted that the pension contributions had been paid to Nest. Finally, she asserted that the money for the ticket to Lebanon was a personal matter not related to the claimant's employment.
- (6) The claimant accepted that the money for the ticket to Lebanon was a personal issue. I explained to the claimant the Tribunal did not have jurisdiction to deal with the non-payment of personal loans. As such, the claimant agreed to withdraw her claim in relation to the non-payment of the personal loan she had given to Ms Shah, following which such claim was dismissed on withdrawal.

### **Evidence**

- (7) I was presented with a bundle of 122 pages and a witness statement from the claimant. The respondent did not produce a witness statement but I permitted Ms Shah to give oral evidence.

### **Issues**

- (8) The issue for the Tribunal to determine was whether the monies claimed by the claimant in respect of overtime payments and the Nest pension contributions properly payable to her.

### Strike out application and application for an adjournment

- (9) After clarifying the claim, the respondent made an application for the claim to be struck out on the basis that the claimant had failed to comply with case management orders issued by the Tribunal on 21 October 2022 and, in particular, that the claimant provide the Tribunal and the respondent with a schedule of loss by 18 November 2022. The claimant disputed that she had failed to comply with the case management orders and on 13 February 2023 sent to the Tribunal a copy of an email dated 17 November 2022 which she had sent to Ms Shah which detailed the sums she was claiming. Attached to this email was wages slips, letters from NEST and evidence of payment to travel. Ms Shah was of the view that this was inadequate because the claimant had not provided specific dates of when she alleged the payments had fallen due.
- (10) I was satisfied on the information before me that the claimant had provided sufficient information on what she was seeking and it would not be in line for the overriding objective for the claim to be struck out. I was satisfied that the prejudice to the claimant would be greater if her claim was struck out than any prejudice to the respondent in not having all the dates. I was satisfied that it would not be in line with the overriding objective to strike out the claim and that a fair hearing was possible.
- (11) Ms Shah then asked for an adjournment of the hearing so that she had time to prepare. Given that the bundle was not big and the fact that the respondent had indicated in its Response that it would pay the outstanding monies to the claimant but had failed to do so I was satisfied that it was not in line with the overriding objective as this would cause further delays. As such, the application for an adjournment was refused but I indicated that I would adjourn to enable Ms Shah to read the bundle and to check her own records. The hearing was duly adjourned from 10.24am to 11.04am. Following the adjournment Ms Shah, accepted for the respondent, that the claimant was due payment for 19 shifts, leaving a further 39 shifts in dispute – see further below.

### Facts

- (12) I make the following finds of fact based on the information before me and after hearing evidence from the claimant and Ms Shah.
- (13) The claimant was employed by the respondent from 1 June 2021 to 30 June 2022 as an immigration case worker.
- (14) The claimant was contracted to work 37.5 hours per week to be worked between 9.00am to 5.30pm, Monday to Friday.
- (15) In August 2021 Ms Shah, on behalf of the respondent, asked the claimant to assist on duty calls on top of her contracted hours. It was verbally agreed that the duty shift would amount to overtime if a shift fell outside of the claimants contracted hours and that the claimant would get paid £60 for completing each overtime shift.
- (16) In October 2021 the claimant started her LLM and requested flexible working. It was agreed that the claimant would cover evening or weekend shifts providing duty calls in lieu of the same number of contracted days in the event she had to take a day off work to attend university. The claimant carried out casework

(assisting on asylum and domestic violence cases) in the day and during the evening or weekend shifts to provide duty advice to detained persons without leave to remain in the UK. Depending on how quickly she would clear the duty calls, if time allowed, the claimant would then go through her work emails or try to catch up with her case work.

- (17) However, by November 2021 the claimant found herself struggling as a case worker because she was no longer a full-time immigration worker given that she was doing duty advice in the evening/weekend shifts in lieu. However, she was still expected to work as a full-time immigration caseworker as the evenings and weekends were for duty calls. As such, from 10 November 2021 onwards the claimant stopped going to university for the first term and continued to work in the office from Monday-Friday, 9.00am to 5.30pm. The claimant produced her attendance record from university which showed that the claimant did not attend any seminars in December 2021. As such, there was no need for her to make up time during the evenings and weekends as she was working her full time hours as normal and any work undertaken in the evenings and weekends was overtime. Indeed, the claimant's average attendance for the academic year 2021/2022 was 25%.
- (18) For the second semester the claimant has evening seminars on Monday (4-6pm) and Tuesday (5-7pm). To make up for her time the claimant would start work at 7am, work through her lunch break and would finish at 3.30pm on those days so she did not need to leave work. The claimant was also absent from work on one Friday in February to attend a seminar and made up her time in the evening/weekend but did not attend any other Fridays due to workloads.
- (19) Ms Shah accepted that the claimant was owed payment for 19 over time shifts at £60 per shift with 39 shift being in dispute as follows:

**December 2021**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
2 December 2021	Disputed
9 December 2021	Disputed
10 December 2021	Disputed
16 December 2021	Disputed
17 December 2021	Disputed
18 December 2021	Accepted
23 December 2021	Disputed
24 December 2021	Disputed
25 December 2021	Accepted
30 December 2021	Disputed
31 December 2021	Disputed

**January 2022**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
1 January 2022	Accepted
3 January 2022	Disputed
7 January 2022	Disputed
8 January 2022	Accepted

12 January 2022	Disputed
16 January 2022	Accepted
18 January 2022	Disputed and which the claimant accepted was a mistake
21 January 2022	Disputed
22 January 2022	Disputed
27 January 2022	Disputed – the claimant accepted that this was an error and she was not claiming for this day
28 January 2022	Disputed
29 January 2022	Accepted

**February 2022**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
4 February 2022	Disputed
5 February 2022	Disputed
11 February 2022	Disputed
12 February 2022	Disputed
18 February 2022	Disputed
19 February 2022	Disputed
26 February 2022	Disputed

**March 2022**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
4 March 2022	Disputed
5 March 2022	Disputed
11 March 2022	Disputed
12 March 2022	Disputed
18 March 2022	Disputed
19 March 2022	Disputed
25 March 2022	Disputed
26 March 2022	Disputed
29 March 2022	Disputed

**April 2022**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
1 April 2022	Disputed
2 April 2022	Accepted
8 April 2022	Disputed
9 April 2022	Accepted
22 April 2022	Disputed
29 April 2022	Disputed

**May 2022**

<b>Date</b>	<b>Accepted or Disputed by respondent</b>
2 May 2022	Accepted
4 May 2022	Accepted
7 May 2022	Accepted
9 May 2022	Accepted
12 May 2022	Disputed
13 May 2022	Accepted
14 May 2022	Accepted
16 May 2022	Accepted
23 May 2022	Accepted
27 May 2022	Accepted
28 May 2022	Accepted
29 May 2022	Disputed
30 May 2022	Accepted

- (20) As such, 39 shifts remained in dispute. However, the claimant was able to demonstrate by way of her attendance record for university, What'sApp messages from the claimant asking her to cover additional shifts and rota sheets that she had worked for all of the above shifts which were in dispute save for 8 dates as follows: 29 May 2022, 29 March 2022, 18 February 2022, 19 February 2022, 26 February 2022, 2 December 2021, 9 December 2021 and 10 December 2021.
- (21) In respect of the payments to the claimant's pension the claimant produced letters from NEST dated 11 September 2022 and 11 October 2022 indicating that the respondent had been reported to the pensions regulator for not paying the employer's pension contributions for May 2022 and June 2022. The respondent has not produced any evidence to show that these payments have been discharged.

**The Law**

- (22) Section 13 of ERA provides:

*(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.*

*(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

*(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(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."*

Section 27(1) of ERA provides:

*"(1)In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—*

*(a)any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.."*

## **Conclusions**

- (23) In reaching my conclusions I have carefully considered the oral and written evidence before me and the representations made by the parties.
- (24) The respondent has already accepted that the claimant is entitled to (1) outstanding wages in the sum of £417; and (2) 19 overtime telephone shifts at the rate of £60 per shift totalling £1,140.00.
- (25) Based on the information before me I am also satisfied that the respondent has not made payments into the claimant's NEST pension and these payments are properly payable. Therefore the claimant is entitled to unpaid pension contributions in the sum of £84.80 (£36.40 for May 2022 and £48.40 for June 2022).
- (26) In relation to the remaining 39 shifts in dispute, the claimant has been able to produce evidence that she worked telephone overtime shifts in respect of 31 shifts. She was not able to provide evidence of her working telephone overtime shifts on 8 occasions. As such, I am satisfied that overtime payments at the rate of £60 per telephone shift for a further 31 telephone overtime shifts amounting to £1,860 are properly payable to the claimant.
- (27) As such, the respondent is ordered to pay the claimant the total sum of £3,000 in respect of 50 telephone overtime shifts, £417 in respect of outstanding wages and £84.80 in respect of unpaid pension contributions. The payments in respect of the outstanding wages and telephone overtime shifts being subject to PAYE.

Employment Judge Choudry  
16/07/2023