



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Cunha

**Respondent:** ZCO Ltd

**Heard at:** London South (by CVP)

**On:** 16 June 2023

**Before:** Employment Judge Rice-Birchall

## Representation

Claimant: In person

Respondent: Miss Kennedy-Curnow

**JUDGMENT** having been sent to the parties on 29 June 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Background

1. The claimant presented a claim to the Employment Tribunal on 24 February 2022. The claim raised a complaint of unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 (ERA) which the claimant says has been ongoing since 1 August 2021. This claim is in respect of the period from August 2021 until February 2022. The respondent denies the claim and argues that the claimant has been paid for the hours worked and they were entitled to reduce pay and/or change the claimant's contracted hours.
2. The claimant works for the respondent as a Post Office Counter Clerk. He has been employed since 23 April 2020 and his employment is continuing.
3. The claimant is claiming £928.41 which is the difference between what the claimant alleges are his contracted hours of 30 hours per week and the hours he is currently working.

## The issues

4. The Tribunal explained the issues to the parties as follows: what was the agreement as to payment of wages; was it varied; what was the pay date; what is owed? More formally: what was properly payable to the Claimant, what was he paid, was there any shortfall between the two and did that amount to an unauthorised deduction from wages?

## The evidence

5. The Tribunal had the following documents: the claim and response; the claimant's witness statement; the Respondent's bundle and witness statements from Mr Gummakonda, Area Manager for the respondent and Mr Bobat, Contracts Manager for the respondent.
6. The Tribunal heard evidence from the claimant and Mr Gummakonda and Mr Bobat on behalf of the Respondent, and oral submissions from both parties.

## The findings of fact on the balance of probability

### The claimant's employment

7. The claimant was employed to work at the respondent's New Malden branch, for 30 hours per week. His employment commenced on 23 April 2020. The claimant is paid an hourly rate.
8. He was employed under a contract of employment dated 3 July 2020.
9. That contract contains the following clauses:
  - a. Place of work: You will normally be required to work at New Malden Post Office.....and attend any customer sites as required to suit the needs of the business; and
  - b. Hours of work: Your normal hours of work are 30 per week, 9am to 530pm. Monday to Saturday. You may be required to work additional hours when authorised....
10. The contract has an introductory paragraph as follows: "This Statement, together with the Employee Handbook, forms part of your Contract of Employment (except where the contrary is expressly stated)...."
11. The handbook contains the following clauses (which are not expressed to be non-contractual):
  - a. Job flexibility: It is an express condition of employment that you are prepared, whenever necessary, to transfer to alternative departments or duties within our business. During holiday periods etc it may be necessary for you to take over some duties normally performed by colleagues. This flexibility is essential for operational efficiency as the type and volume of work is always subject to change.

- b. Mobility: It is a condition of your employment that you are prepared, whenever necessary, to travel to any other of our shops within reasonable travelling distance on a temporary basis. This mobility is essential to the smooth running of our business.
- c. Shortage of work: If there is a temporary shortage of work for any reason, we will try to maintain your continuity of employment even if this necessitates placing you on short time working, or alternatively, lay off. If you are placed on short time working, your pay will be reduced according to time actually worked. If you are placed on lay off, you will receive no pay other than statutory guarantee pay.

### Reduction in hours

- 12. On 1 August 2021, due to financial pressures resulting from the COVID-19 pandemic, the respondent decided to reduce the number of hours its employees were required to work.
- 13. This reduction was communicated to all employees, including the claimant, on 17 August 2023.
- 14. He complained, inter alia, about the reduction in hours on 6 September 2021. He stated that he did not like working at the Wembley branch because the staff facilities were poor in comparison to New Malden and that he had only been given 8 hours per week to work.
- 15. Mr Bobat, who heard the grievance, delivered an outcome letter on 17 September 2023. The outcome states, inter alia, that the reason the claimant had fewer hours was because he refused to work at other sites; that there were fewer hours available at New Malden and they were trying to accommodate staff and their contracted hours as best as possible; and that the reason the claimant had been moved to Wembley was because the claimant was the closest geographically to that store. It reminded the claimant that it was part of the claimant's contract that they could change his working location. The letter confirmed that the respondent was able to offer the claimant 8 hours weekly in New Malden and the balance of the contracted hours at Wembley.
- 16. The claimant appealed. He proposed that he would work 8 hours per week at Wembley and the balance at New Malden.
- 17. On 24 September 2021, the claimant's proposal was accepted. The offer for him to work 3 days in New Malden and 1 day at Wembley was confirmed to him in writing on 27 September 2023. This meant that the claimant's hours would be back to 30: 22 at New Malden and 8 at Wembley.
- 18. The claimant refused the respondent's offer, and, instead, accused the respondent of treating him unfairly in comparison to other staff. The claimant admitted in his oral evidence that he was complaining and refusing the offer of additional hours not because the respondent was not entitled to require him to work elsewhere, but because he felt he was

being unfairly treated in comparison to other staff. The Tribunal makes no findings on that as it understands that that will be the subject of another claim the claimant is bringing against the respondent.

## **The law**

19. Unauthorised deductions from wages are governed by Part II of the Employment Rights Act 1996 (“ERA”). Section 3 ERA prevents an employer from making any deduction from the wages of workers unless it is: a) authorised by statute. This enables the employer to deduct from wages the PAYE tax and National Insurance payments as required by law or payments following a court order; b) authorised by a “relevant provision in the contract”. There is no requirement that the term of the contract should be in writing, and the term in question can be an implied rather than express term. However, it is necessary for the employer to have notified the worker in writing of the existence of the term before making the deduction; or c) previously agreed in writing by the worker that the deduction may be made.
20. It is important to note that a), b) and c) set out above are the only methods by which a deduction from wages may be authorised. Where the deduction is said to be authorised by an agreed variation of the contract, although that agreement does not need to be in writing, it must be communicated in writing to the employee.
21. Where the total amount of any wages that are paid by an employer to a worker is less than the total amount of the wages that are properly payable to the worker on that occasion, the amount of the deficiency will be treated as a deduction made by the employer from the worker’s wages.
22. Under section 23 ERA, a worker can make a claim to the Employment Tribunal asking for a declaration that the employer has made unauthorised deductions and an order that the employer repay the sums deducted. To decide whether there has been an unauthorised deduction, the Tribunal will have to consider the facts and, if necessary, decide what the contract meant. The Tribunal claim must be made within three months of the date of the deduction or, if the worker has made a payment to the employer, of the date when the payment was made, subject to allowance for the period of time that the matter is being dealt with by ACAS under the Early Conciliation process.
23. Under section 23(3) ERA, if the employer made a series of deductions, the time limit runs from the last deduction. In this situation, a claim could be made for deductions going back more than three months, eg for an ongoing reduction of wages which has not been agreed.

## **Conclusions**

24. The starting point is to ascertain what the claimant was entitled to be paid under his contract of employment.

25. The claimant was paid hourly and was contracted to work 30 hours per week.
26. However, the respondent had the contractual right, under the clause in its handbook (see below), to reduce the claimant's hours and to pay the claimant only for the hours worked in those circumstances: "Shortage of work: If there is a temporary shortage of work for any reason, we will try to maintain your continuity of employment even if this necessitates placing you on short time working..... If you are placed on short time working, your pay will be reduced according to time actually worked...."
27. Further, the respondent had the right, in the contract, to require the claimant to work at locations other than New Malden: Place of work: You will normally be required to work at New Malden Post Office,....and attend any customer sites as required to suit the needs of the business.
28. In fact, the claimant proposed to work 3 days in New Maldon and 1 day in Wembley, but then refused that offer when it was confirmed by the respondent.
29. Accordingly, under the terms of the contract, the claimant is only entitled to be paid for the hours he has worked and the respondent has not made an unauthorised deduction from the claimant's wages. Further, the claimant's hours are not now reduced by the respondent, but the claimant has refused to attend work at Wembley, so resulting in reduced hours and a reduction in his pay.
30. The claimant has been paid in accordance with his contract. For the avoidance of doubt, the claimant is not entitled, under his contract, to work at new Maldon for 30 hours per week, and the respondent has flexibility to require the claimant to work at other branches.
31. The claimant's claim that the respondent has made an unlawful deduction from his wages fails and is dismissed.

**Employment Judge Rice-Birchall**  
Date: **12 July 2023**

JUDGMENT SENT TO THE PARTIES ON  
Date: **29 August 2023**

FOR THE TRIBUNAL OFFICE

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