



EMPLOYMENT TRIBUNALS

Claimant: Mr A Singh

Respondents: (1) Ramgarhia Gurdwara Sikh Temple Bradford, its trustees
(2) Mr Notay
(3) Mr Riyat
(4) Mr Panesar
(5) Mr Chana
and its committee members
(6) Dr Kuldip Kaur Bharj
(7) Mr Surinder Singh Manku
(8) Mr Surinder Singh Bansal
(9) Mr Sukdev Singh
(10) Mrs Sukwinder Kaur

Heard: in Leeds

On: 31 July 2023, 1 August 2023, 2 August 2023, 3 August 2023 and, in chambers, on 4 August 2023

Before: Employment Judge Ayre (sitting alone)

Representation

Claimant: Mr C Singh, lay representative

Respondent: Mr K Ali, counsel

Punjabi interpreter: Mr Mumtaz

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claim for unlawful deductions from wages as it was presented out of time.
2. The claim for holiday pay succeeds. The respondent is ordered to pay to the claimant the sum of £921.94 in respect of 3.4 weeks' holiday pay.
3. The respondent did not fail to provide the claimant with a written statement of employment particulars. This claim fails and is dismissed.

REASONS

The Background

1. The claimant was employed by the respondents as a Sikh priest from 15 August 2021 until 30 September 2022. On 22 December 2022 the claimant presented a claim to the Employment Tribunal. Early conciliation took place:
 1. against the Sixth Respondent and Nirmal Singh Nauty from 20 December 2022 to 21 December 2022;
 2. against 'Ramgarhia Gurdwara' from 21 December 2022 to 22 December 2022;
 3. against Ramgarhia Sikh Temple Bradford, Dalbir Singh Kundi, Amrik Singh Chana, and Amarjit Singh Riyait from 28 March 2023 to 29 March 2023.
2. The claim form named the following respondents: Mrs Kuldip Kaur Bars, Mr Surinder Singh Manku, Mr Nirmal Singh Nauty, Mrs Surinder Kaur, Mr Chaman Singh, Mr Surinder Singh Bansal and Mr Sukhdev Singh.
3. On 14 February 2023 the claim was rejected against respondents Mrs Sukhvinder Kaur and Ramgarhia Gurwarda (Sikh Temple). After reconsideration, the claim against those respondents was accepted on 23 February 2023.
4. In the claim form the claimant alleged that he worked 111 hours each week.
5. A Preliminary Hearing took place before Employment Judge Bright on 24 April 2023. At that hearing the name of the respondents was amended by consent to the names listed above.
6. It was also clarified at that hearing that the claims are ones of unlawful deductions from wages and for holiday pay. The case was listed for a preliminary hearing in public on 15 May 2023 to determine whether the claims had been made in time. The respondent subsequently admitted that the claims had been made in time. The hearing that was due to take place on 15 May 2023 was vacated by consent and the

claim progressed to final hearing.

The Issues

7. The issues that fell to be determined at the hearing were identified at the Preliminary Hearing. At the start of this hearing the parties confirmed that they remain the issues in the claim. The issues that therefore fall to be determined are:

Unlawful deduction from wages

1. What was properly payable under the claimant's contract of employment?
2. What amounted to 'work' under the claimant's contract?
3. How many hours of 'work' did he do each week?
4. Did he receive the National Minimum Wage for hours worked? The parties agreed that the pay reference period for the claimant is two weeks, as he was paid fortnightly. The claimant alleges that the type of work he performed was unmeasured work (within the meaning of Regulation 44 of the National Minimum Wage Regulations 2015 ("the **NMWR**"). The respondent says it was salaried work.
5. If he did not receive what was properly payable, how much is the claimant owed? Mr C Singh confirmed at the start of the hearing that the amount claimed by the claimant by way of unpaid wages is £45,904.20.
6. During submissions at the end of the hearing, Mr Ali helpfully produced a table of calculations, in which he set out each pay reference period that he had calculated for the claimant, the hours worked during that period and the payments made to the claimant. He calculated that the claimant had been underpaid on 6 different occasions, with the last underpayment being in respect of the reference period ending on 21 January 2022. He accepted that the claimant had been paid less than the national minimum wage during those 6 reference periods, with the total amount of the underpayment coming to £432.
7. I have therefore also considered the following issues in relation to the claim for unlawful deduction from wages:
 - i. Was the claim made within the time limit in section 23 of the Employment Rights Act 1996? Specifically:
 1. Was it made within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
 2. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation

extension) of the last one?

3. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
4. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Holiday pay

8. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when his employment ended?
9. What was the relevant daily rate of pay?
10. Did the respondent pay the claimant the relevant daily rate of pay?
11. If not, what compensation should be awarded to the claimant? Mr C Singh confirmed at the start of the hearing that the claimant claims to be entitled to the sum of £4,952.51 in respect of holiday pay. Mr Ali conceded that the claimant is entitled to 3.4 weeks' holiday pay in the total sum of £921.94 (calculated using a net weekly salary of £217.16 based on a 30 hour working week).

Statement of employment particulars

12. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of his employment particulars, contrary to section 1 of the Employment Rights Act 1996?
 13. If so, and the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002?
 14. Would it be just and equitable to award four weeks' pay?
8. The claimant's case, in summary, is that he worked 111 hours a week but was only paid for 30 hours a week.

The Proceedings

9. The respondent had prepared a bundle of documents for use at the hearing. The claimant produced a supplemental bundle. At the start of the hearing the representatives were given time and produced an agreed bundle combining the documents relied upon by both parties.
10. On the first day of the hearing Mr C Singh suggested that extracts of a diary kept at the temple, which were in the bundle, may have been redacted. Mr Ali agreed to

bring the original diary to the hearing and did so on the second day of the hearing. Having had the opportunity to examine the diary, Mr C Singh told the Tribunal that he accepted that the diary had not been redacted.

11. In support of the claimant's case, Mr C Singh produced copies of:

1. The reserved judgment of Employment Judge Oliver in Employment Tribunal case number **1401010/2021** (a claim brought by Mr Jogender Singh against members of the management committee of the Bristol Sikh Temple);
2. The record of a preliminary hearing in Employment Tribunal case number **1401467/2022** (a case brought by Mr H Singh against members of the management committee of the Bristol Sikh Temple); and
3. The judgment of the EAT in ***Mr T Singh v The Members of the Management Committee of The Bristol Sikh Temple and others UKEAT/0429/11/ZT***

12. Mr Ali produced, in submissions, a document entitled "Respondent's NMW Calculations for trial on 31 July – 4 August 2023" which contained a table of calculations of payments owing and paid to the claimant in each pay reference period during the course of the claimant's employment.

13. I heard evidence from the claimant and, on his behalf, from Mr Jogender Singh. Dr Kuldip Kaur Bharj (the Sixth Respondent) and Mr Surinder Singh Manku (the Seventh Respondent) gave evidence on behalf of the respondents. In accordance with an order made by Employment Judge Bright, the witnesses gave their evidence without the use of witness statements.

14. At the start of the hearing, I asked each party how many witnesses they intended to call. The claimant's representative told me that the claimant intended to call one witness in addition to himself. The respondent's representative said the respondents intended to call three witnesses. Subsequently however, Mr Ali indicated that the respondent would not be calling its third witness.

Application by claimant to call an additional witness

15. The claimant and his witness gave evidence first. At the end of the second day of the hearing, after the conclusion of the claimant's evidence, and part way through the evidence of Dr Kuldip Kaur Bharj on behalf of the respondents, Mr C Singh indicated that he wished to call an additional witness for the claimant, Mr Harjit Singh. I was told that Mr Harjit Singh was currently in India but due to return to the UK later in the week. I indicated to Mr C Singh that if the additional witness was able to give evidence by 10 am on the fourth day of the hearing, I would permit him to do so.

16. On the morning of the third day of the hearing Mr C Singh indicated that Mr Harjit Singh was not due to return to the UK until the evening of the fourth day of the hearing and would only therefore be able to give evidence on the final day. I asked both representatives to address me on the question of whether to allow Mr Harjit Singh to

give evidence.

17. Mr C Singh indicated that he believed the evidence of Mr Harjit Singh would be helpful because he also worked at the respondents' temple as a Sikh priest, albeit after the claimant's employment had terminated. He also said however that 'it was not important' and 'did not matter' whether Mr Harjit Singh were allowed to give evidence.
18. The reason, he said, that this witness had not been identified earlier was that he was still employed by the respondent until 15 June 2023. Until part way through the final hearing Mr C Singh believed Mr Harjit Singh to be in India throughout the hearing, and it was only when the claimant was in contact with Mr Harjit Singh during the course of the hearing that the claimant became aware that Mr Harjit Singh would in fact be returning to the UK before the end of the hearing.
19. Mr Ali submitted on behalf of the respondents that the evidence of Mr Harjit Singh would be of limited relevance. If he were to be allowed to give evidence on the final day of the hearing it may not be possible to conclude the hearing within the time allocated. There is a public interest in finishing this case within the 5 days allocated to it.
20. Having considered the submissions of both parties it was my decision not to delay the hearing so that the claimant could call the additional witness. In reaching this decision I considered the overriding objective which obliges Tribunals to deal with cases fairly and justly, which includes:
 1. Dealing with cases in ways which are proportionate to their complexity and importance;
 2. Avoiding unnecessary formality and seeking flexibility;
 3. Avoiding delay, so far as compatible with a proper consideration of the issues; and
 4. Saving expense.
21. The date for this hearing was fixed at a Preliminary Hearing in April at which Mr C Singh was present and at which he indicated that just the claimant would be giving evidence. The application to introduce a new witness was made for the first time after the conclusion of the claimant's evidence and part way through the respondents' evidence.
22. The evidence of Mr Harjit Singh appeared to be of marginal relevance at best, given that he was not employed at the same time as the claimant. I would have allowed Mr Harjit Singh to give evidence if he could be present at 10 am on the fourth day of the hearing, such that the hearing could be completed within the allocated listing.
23. However, if I were to allow him to give evidence on the final day of the hearing (day

five), the respondent may wish to call its third witness or recall its other witnesses, and there would then need to be submissions. We would likely lose the fourth day of the hearing, and go part heard.

24. The date for this hearing was fixed by agreement with the parties in April. I was told that Mr Harjit Singh was dismissed on 15 June, some six weeks before the start of the final hearing, and there was therefore plenty of time for the claimant to make arrangements for him to attend or to seek a variation of the hearing dates. The claimant's representative had not mentioned him at all until part way through the respondents' evidence.
25. In the circumstances it would not in my view be in line with the overriding objective to delay the hearing and put the parties to additional expense by allowing the claimant to call this additional witness. It was in my view still possible for me to give proper consideration to the case without the evidence of this additional witness.

Concession and withdrawal of concession

26. At the start of the second day of the hearing, Mr Ali indicated that the respondents conceded that they had made an unlawful deduction from the claimant's wages in the sum of £2,018.87 which was deducted for rent. The respondents conceded, he said, that there was no written agreement in relation to the deductions for accommodation, and that therefore there had been an unlawful deduction from wages.
27. At the start of the third day of the hearing, Mr Ali applied to withdraw the concession. He indicated that, whilst doing research after the second day of the hearing, he realised that he should not have made the concession. The concession had, he said, been made on the basis that the respondents considered that absent a written agreement there was no basis for making the deduction. He had however now become aware of an unreported EAT decision – ***Eastern Eye (Plymouth) Ltd v Hassan UKEAT/0380/14*** in which, he submitted, the EAT held that deductions for accommodation costs that were authorised by the National Minimum Wage legislation fall within section 13(1)(a) of the Employment Rights Act 1996 (deductions authorised by virtue of a statutory enactment).
28. The Tribunal has, Mr Ali submitted, discretion to allow the withdrawal of a concession and the factors to be taken into account are those set out in ***Nowicka – Price v The Chief Constable of Gwent Constabulary [2009] EAT*** and in Civil Procedure Rule 14 and Practice Direction 7.2.
29. I gave Mr C Singh the opportunity to make representations in relation to the application to withdraw the concession, and then adjourned to consider the application.
30. My decision was that it would be in the interests of justice and in line with the overriding objective to allow the respondent to withdraw the concession. The key considerations in my view were the reason and justification for the application to

withdraw, and the balance of prejudice to the parties.

31. I accept that the application to withdraw the concession was made in good faith, and that the concession was made on the basis of a genuine misinterpretation of the law, which Mr Ali has, to his credit, taken full responsibility for. The concession had been made just 24 hours earlier and had been promptly withdrawn.
32. I considered the prejudice to both parties of allowing or refusing the application. I could see no prejudice to the claimant if the concession were to be withdrawn. The claimant had been able to prepare for trial on the basis of the respondents' original case, without the concession, and would have the opportunity to cross examine the respondents' witnesses and make submissions on the original case. The claimant could still run the case that he had prepared to run. Mr C Singh did not suggest that the claimant would be prejudiced if the concession were to be withdrawn when given the opportunity to make representations on the issue.
33. In contrast however, the respondents who are a charitable organisation and individual volunteers would, if the concession could not be withdrawn, be forced to pay to the claimant a windfall to which he may not be entitled.

Adjournment

34. On day three of the hearing I became unwell and had to adjourn the hearing at lunchtime for the rest of the day. I am grateful for the parties' understanding in this respect. The hearing resumed on day four and the evidence and submissions concluded by lunchtime on that day. Judgment was, by agreement with the parties, reserved.

Further submissions

35. During the course of closing submissions, Mr Ali produced a table headed "Respondent's NMW calculations for trial on 31 July – 4 August 2023". In that table Mr Ali set out his calculations of the payments received by the claimant in respect of each pay reference period during his employment with the respondents. In the table the respondents admitted that the claimant had not been paid the National Minimum Wage in 6 pay reference periods. The last of those pay reference periods ended in the week of 21 January 2022, approximately 11 months before the claimant began early conciliation and issued proceedings.
36. Neither party addressed the question of time limits in relation to the claim for unlawful deduction from wages during their submissions. Upon reflection, I formed the view that they should be given the opportunity to do so. I therefore directed that the parties should be given additional time to submit written submissions on the question of time limits. The claimant's representative submitted a large volume of written submissions and additional documents by way of further evidence, specifically:

1. On 8 August 2023 he submitted 9 pages of additional submissions and evidence which was not related to the question of time limits;

2. On 15 August 2023 he submitted 134 pages of submissions and documents. The submissions related to the question of time limits and have been taken into account. The documents are ones relating to the conduct of this litigation, including previous case management orders and correspondence with the Tribunal. I have considered these documents.
 3. On 21 August 2022 he submitted twenty pages of submissions and documents which contained primarily comments on evidence given during the hearing, and which were not relevant to the question of time limits, together with a document running to 26 pages headed 'Respondent's Disclosure';
 4. On 22 August 2023 he submitted 19 pages of additional submissions;
 5. On 7 September 2023 he submitted 55 pages of additional submissions and documents relating primarily to another priest, Mr Harjit Singh, who he says was employed by the respondents after the termination of the claimant's employment;
 6. On 11 September 2023 he submitted 65 pages of additional submissions and new evidence, again relating primarily to Mr Harjit Singh;
 7. On 12 September he submitted a further 40 pages of additional submissions, relating to Employment Tribunal judgments in other cases involving Sikh priests and suggesting that Mr Harjit Singh should be allowed to give evidence in this claim.
37. The respondents sent in written submissions on 14 August 2023. On 7 September and 13 September 2023 the respondents wrote to the Tribunal objecting to the consideration by the Tribunal of the additional documents submitted by the claimant's representative.
38. With the exception of the submissions and documents sent in by the claimant's representative on 15 August 2023 which are relevant to the question of time limits, I have not taken account of any of the other submissions or documents submitted by the claimant's representative after the end of the hearing. The claimant had the opportunity to make submissions during the course of the hearing, and to adduce such evidence as he considered appropriate. The only issue that required additional submissions was the question of time limits.

Findings of fact

39. This is a claim in which there were significant conflicts of evidence between the claimant and the respondents and limited written evidence of the claimant's hours of work. Where there were conflicts between the evidence of the claimant and the respondents, I have preferred the evidence of the respondents' witnesses. Their evidence was consistent with each other and with the limited contemporaneous documentary evidence before me – specifically the contracts of employment which set out the claimant's normal hours of work, the claimant's own records of his working

hours, and the temple diary, which recorded special events taking place in the temple.

40. Some of the evidence given by the claimant to the Tribunal was difficult to believe, if not incredible. For example, the claimant told the Tribunal that he worked 111 hours a week, only sleeping 2 or 3 hours a day. He said that on some days he worked 24 hours a day. He told the Tribunal that he was not allowed to leave the Temple without permission, whilst also accepting that he did leave regularly. He said in evidence that it took him 2 hours to shut and lock the doors and windows of the Temple, whilst accepting that there were just 5 or 6 doors and 15 to 16 windows to close. Dr Kuldeep Kaur Bharj's evidence, which I accept, was that during Covid she had closed the Temple's windows and doors, and it took no more than 5 or 10 minutes to close the windows, 5 minutes to close the outside doors and 5 to 10 minutes to close and lock the side gates. It took her 15-20 minutes in total to close the temple. It therefore appears that the claimant has exaggerated the time that it took to carry out some tasks.
41. The claimant's evidence was not supported by any documentary evidence. On the contrary, the documentary evidence suggested that the claimant worked approximately 30 hours a week. Those were the hours of work that were specified in his successive contracts of employment. Particularly telling was the fact that the claimant had kept his own contemporaneous records of his working hours. Those records did not support his claim to have consistently worked 111 hours a week
42. In addition, the claimant's position as to the number of hours worked each week has been inconsistent and has changed during the course of these proceedings. In a box on the ET1 form the claimant's representative put the claimant's weekly hours of work as 111. In the details of claim however the claimant's representative wrote:

"I have yet to get the full facts from him about his job he did and to work out and calculate the exact (or near enough) hours he worked."
43. This suggests that the figure of 111 hours was included in the claim form without detailed consideration of the number of hours worked.
44. In further and better particulars the claimant suggested he worked 86 hours a week. In his submissions Mr C Singh said that '111 hours a week is probably wrong', that 'something like 86 would be reasonable rather than 111', that he was not going to try and explain the 111 hours because he couldn't, and 'I haven't a clue' about the records of working hours kept by the claimant. In contrast, the respondent has maintained consistently that the claimant worked 30 hours a week, which were the hours set out in his contracts of employment.
45. The claimant was employed by the respondents as a giani or granthi (Sikh priest) at the Ramgarhia Gurdwara Sikh Temple in Bradford ("**the Temple**"). His employment began on 15 August 2021 and ended on 30 September 2022. The claimant was one of two gianis who worked at the Temple. The claimant, at his request, was provided with living accommodation in the Temple itself. The other giani, Mr Sukchien Singh

worked a total of 25 hours a week and, during the time that the claimant was employed by the respondents, did not live in the Temple.

46. The Temple is run by a management committee made up of volunteers. The Temple has suffered financially during and after the Covid pandemic and is just breaking even financially. On a day to day basis the claimant reported to Surinder Singh Mankhu who is a member of the management committee.
47. The claimant was employed on a series of fixed term contracts. He was provided at the start of his employment with a written statement of employment particulars which he signed on 12 September 2021. The statement provided that the claimant would be employed for a fixed period of six months and contained the following provisions:

“2. Job description

- i. Perform all religious events and rites as planned by the Gurdwara Committee.*
- ii. Ensure all religious events and activities are carried out in accordance to the Reyat Marayda of Shiromani Gurdwara Parbandhak Committee.*
- iii. Work with the Gurdwara’s Committee and comply with Committee resolutions.*
- iv. To always comply with the Gurdwara’s Constitution....*

4. Pay and hours of work

Your rate of pay is the minimum statutory pay

(a) Hourly rate at national Living Wage level and currently is at £8.91

(b) Working hours – 30 hours per week. The total weekly salary will be £267.30. This will be paid weekly in arrears

(c) You will be required to work regular Saturdays and Sundays and occasionally you will be required to work public holidays

You must keep a record of hours worked and duties carried out per week.

5. Holidays

You are entitled to 2 weeks holiday in this 6 month period....”

48. The claimant’s hours of work were discussed at the time his employment started. It was agreed that the claimant would work 30 hours a week and that if he worked more than 30 hours in any week, he would inform the respondents and would be paid overtime. The claimant’s duties were also discussed and agreed. The claimant had a good working relationship with Dr Bharj and other members of the management committee and was able to raise issues with them without fear of repercussion.

49. On 3 April 2022 the claimant signed a new contract, for a further period of 6 months running from 14 February 2022 to 14 August 2022. That contract included the same provisions relating to job description, pay and hours of work and holidays, save that the contract provided for the claimant to be paid fortnightly in arrears and stated that holidays must be approved at least 8 weeks in advance.

50. A third contract was signed by the claimant on 1 September 2022 and was stated as applying for 6 months from 15 August 2022 to 18 February 2023. The only difference in the job description, pay and hours of work and holiday provisions in this contract was that the hourly rate of pay was stated as being £9.50.

51. The contract signed by the claimant on 1 September 2022 contained details of:

1. The names of the employer and the employee;
2. The date when the claimant's employment commenced;
3. The date continuous employment began;
4. The rate of pay and the intervals at which the claimant would be paid;
5. The claimant's normal hours of work;
6. Holiday entitlement;
7. Sickness absence and sick pay;
8. Pensions;
9. Notice of termination;
10. Job title;
11. The length of the employment, which was for a fixed period of six months;
12. The place of work;
13. The fact that no collective agreements applied to the employment; and
14. Details of the respondent's disciplinary and grievance procedures.

52. Throughout the course of his employment with the respondents the claimant lived in the Temple. The claimant suggested that he was required to live in the Temple. I do not accept his evidence on this issue. The other priest who worked at the Temple did not live in, and the Temple had fixed opening hours. One of the priests had to be present at the Temple during the opening hours, but outside of those hours members of the congregation had to arrange a visit and there was no requirement for either priest to be present. The claimant was free to leave the Temple and to come and go as he pleased outside of his working hours.

53. The claimant was initially charged rent for living in the Temple. He suggested that it is normal for a Sikh priest to be able to live in the Temple without charge. Dr Bharj's evidence, which I accept, is that each temple determines its own terms and conditions and that there are other gianas in other temples in the UK who pay rent.
54. Over the course of a period of weeks at the start of his employment, the claimant negotiated with the respondents about the terms of his contract, in particular about a weekly deduction that it contained for accommodation costs. The respondents initially proposed to charge the claimant £100 a week for accommodation, which they would deduct from his wages. At the claimant's request they agreed to reduce the deduction that would be made from wages in respect of accommodation from £100 a week to £75 a week. Subsequently the respondents agreed to reduce the rent further to £50 a week after the claimant raised the issue of the state of the accommodation with Dr Bharj. Following further meetings, the rent was reduced again, at the claimant's request, to £40 a week. The claimant said that he could not afford to pay any rent, so the respondents stopped making any deductions from his pay in respect of rent.
55. The total deductions made from the claimant's salary in respect of rent from the start of his employment to 24 December 2021 were £848.50, an average of £44.66 a week. From then until the termination of the claimant's employment (a period of 40 weeks) a total of £1,170.17 was deducted from the claimant's wages for rent, an average of £29.25 a week. No deductions at all were made from the claimant's wages in respect of accommodation after 10 July 2022.
56. Before the claimant started working for the respondents, there was a discussion between the claimant, Surinder Singh Manku, Dr Bharj and Surinder Singh Bansal. The claimant's hours of work were discussed, and it was agreed that the claimant would work 30 hours a week. It was agreed that if the claimant worked more than 30 hours in a particular week, he would inform the respondents and they would pay him accordingly.
57. All versions of the claimant's contract stated that his normal working hours were 30 hours a week. The claimant's normal working hours were 8 am to 11 am and again from 4pm to 6.30 pm on Wednesdays, 8 am to 1 pm on Thursdays, Fridays and Saturdays, and from 7 am to 2 pm and 4 pm to 6.30 pm on Sundays. Mondays and Tuesdays were his days off and he was not required to work at all on those days.
58. The other priest in the Temple worked from 8 am to 10.30 am and from 3.30 pm to 6.30 pm on Mondays and Tuesdays, from 3.30 pm to 6.30 pm on Thursdays, Fridays and Saturdays and from 8 am to 1 pm on Sundays – a total of 25 hours a week.
59. The claimant did not complain about his working hours at any time during the course of his employment. He was able to claim overtime if he worked more than his normal working hours and did so on occasion when the other priest was on holiday. He accepted in evidence that on each occasion that he had told his employer he had worked more than 30 hours a week and asked to be paid extra, he had been paid overtime.

60. It is difficult to believe that the claimant was working 81 hours every week on top of the 30 hours he was paid for, as he now claims, and yet he made no complaint about it at the time, despite being able to ask for overtime payments. The claimant left his previous job because he believed he was not being paid the correct wages, yet during the 59 weeks that he was employed by the respondents he made no complaint that he was being underpaid and his evidence was that he did not look for another job during this time.
61. The working hours of the claimant and the other priest, Mr Sukchien Singh, were organised so that one of them was rostered to work and present whenever the Temple was open to members of the congregation. The Temple was open to members of the congregation from 8 am to 11 am and from 4 pm to 6pm.
62. If a member of the congregation wanted to visit the Temple outside of the normal opening hours they had to telephone and make arrangements to do so. In practice this rarely happened. Mr Surinder Singh Manku's evidence, which I accept, was that during a three month period there would only be one or two occasions when a member of the congregation turned up at the Temple outside normal opening hours without telephoning. Mr Manku was aware of this because he would receive telephone calls from the members of the congregation saying that there was no one at the Temple, and he would go to the Temple to open it as he had a set of keys.
63. The claimant suggested that he was required to be present in the Temple outside of the 30 hours a week and could only leave with permission. The evidence of Mr Surinder Singh Manku and Dr Bharj, which I accept, was that there were no expectations on the claimant outside of his working hours, and that he was free to go wherever he wanted. He did not need permission to leave the Temple. The claimant also gave evidence that he was able to leave the Temple to go for a walk in the park, to buy milk, or to go to the bank without asking for permission.
64. The claimant was merely required to inform the respondents if he would not be sleeping in the Temple overnight, so that the respondents knew, in case of fire or other emergency, whether there was someone in the building or not.
65. The bundle of documents before me contained copies of the claimant's bank statements. These showed cash withdrawals being made from the claimant's bank account at various locations. On many occasions several withdrawals were made on the same day, in different locations. This evidence was not consistent with the claimant being required to be present at the Temple at all times unless he was given permission to leave.
66. The claimant said that in addition to the hours set out in his contract, he was also required to be present in the Temple during holy festivals and events. There was very limited evidence before me however of such events taking place. For example, during the time that he was employed at the Temple, there were only four funerals.
67. Where events such as funerals and weddings took place, the claimant would occasionally work additional hours. The claimant was paid for these additional hours

from fees charged to members of the congregation. During festivals, such as the annual festival of Diwali or Bandi Chhor Diwas, the priest is required to lead prayers and help to prepare holy food although food is mainly prepared by volunteer members of the congregation.

68. The claimant was paid extra for working during festivals and special events. For example, he was paid the following, on top of his normal salary:

1. £80 for each Sehj Paath (reciting of the Guru Granth Sahib) and £20 for each prayer at a funeral;
2. £11 for each recital of the Sukhani Sahib Paath prayer, which takes 45 minutes and which he did ten times during the course of his employment;
3. £170 for performing 'Sehj Paaths' in October and November 2021;
4. £300 for performing Akhand Paaths (recitation of Guru Granth Sahib); and
5. £20 a week in addition to his normal salary for his contribution to Sunday worship, during his normal working hours on Sunday.

69. In the claim form Mr C Singh wrote on the claimant's behalf, that the claimant:

1. Had to sleep at the Temple to 'keep security watch from 6pm to 8am';
2. Was responsible for looking after the Temple 24 hours a day;
3. Was responsible for cleaning the Temple and washing all the clothes and sheets from the prayer hall;
4. Made Kra Prashad (holy food) in the morning;
5. Had to do morning and evening prayers 5 days a week;
6. Worked 111 hours a week; and
7. Kept a record of all of the hours that he worked.

70. These assertions were not however supported by the evidence before me. The respondents' evidence, which I accept, was that the claimant's duties were to:

1. Escort the Guru Granth Sahib Ji (the Sikh scripture) from their resting place to the prayer hall each morning except Mondays and Tuesdays when the other giani performed that duty. This task, referred to as 'Parkash' takes approximately 45 minutes;
2. Prepare sacred food, Karah Parshad, on Sundays when prayers were being held if there were additional worship or prayer events. Preparing this food takes approximately 30 minutes;

3. Returning the holy scriptures back to their resting place in the evening, a task that takes 30-45 minutes; and
 4. Greeting the congregation during the day during the Temple's opening hours.
71. During and after the Covid pandemic, the number of visitors to the Temple reduced. Most worshippers only come to the Temple on Sunday. The priests are required to bring the holy scriptures to the prayer hall in the morning and return them in the evening to their resting place, but other than that there are very few duties for the priests to perform.
72. The Temple has its own security system which includes two CCTV systems, one of which is considered to be very advanced. As a result the claimant was not required to perform security duties other than closing the Temple doors and windows when the Temple closed in the evening, except on Mondays and Tuesdays.
73. During three weeks of his employment the claimant worked extra hours covering for the other giani, Sukchien Singh. He told the respondents that he had worked extra hours and they paid him for those extra hours. The claimant accepted in his evidence that he had not, on any other occasion, told the respondents that he had worked more than 30 hours a week or asked to be paid for additional hours.
74. Whilst he was employed by respondents the claimant created a document that he headed 'timetable' and which he used to record the hours he worked. The document, which was in evidence before the Tribunal, showed the claimant working between 30 and 35 hours a week.
75. The claimant was entitled to 5.6 weeks' holiday a year. He was employed by the respondent for 59 weeks and during that time accrued holiday of 6.4 weeks. He took one week's holiday in March 2022 and on 11 March 2022 was paid £267.30 gross for that holiday. He took another two weeks' holiday in July/August 2022 and, on 12 August 2022 was paid the gross sum of £570 in respect of two weeks' holiday pay.
76. The claimant's gross weekly pay at the time his employment ended was £271.16.
77. The question of time limits was raised by the respondents in their response to the claim, and the case was originally listed for a preliminary hearing on 15 May 2023 to consider the question of time limits. The respondents subsequently wrote to the Tribunal indicating that they conceded that the claims had been brought on time.
78. In response, on the instruction of Employment Judge Shepherd, a letter dated 12 May 2023 was sent to the parties. That letter contained the following wording:
- "...On the basis that the respondent accepts that the claims have been brought within time, it is proposed that the preliminary hearing listed on 15 May 2023 is vacated and the case will proceed to the final 5 day hearing commencing on 31 July 2023.*

Please confirm that this is the position by return email."

79. In a Record of the Preliminary Hearing on 15 May 2023, Employment Judge Lancaster ordered that:

“Upon reading the respondents’ email of 10th May 2023 and following the claimant’s reply on 13th May 2023 to the ensuing letter from the tribunal sent on 12th May 2023, the preliminary hearing listed for today is BY CONSENT vacated and postponed out of the list. The final hearing will still take place as listed on 31st July 2023.”

80. There has been no judicial determination of the question of time limits.

81. I find, on the evidence before me, that the claimant worked 30 hours a week. I also find that the claimant was paid fortnightly and that the sums he was paid were those set out in the Respondent’s NMW Calculations submitted by the respondent. After deductions for accommodation, the claimant was paid at or above the National Minimum Wage in every reference period that he worked for the respondent, with the exception of six occasions. The last of the underpayments was for the pay reference period including the weeks of 14 January 2022 and 21 January 2022

The law

Time limits

82. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deductions from wages in the Employment Tribunal. The time limit for bringing such claims is contained within sub-sections 23(2), (3) and (4) which provide as follows:

“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....

(3) Where a complaint is brought under this section in respect of –

(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

83. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it. The parties cannot agree to waive a time limit, so even if a respondent does not seek to argue that a claim is out of time, the Tribunal still has no

jurisdiction to hear the claim if it is in fact out of time. The Court of Appeal in ***Radakovits v Abbey National plc [2010] IRLR 307*** confirmed that time limits go to jurisdiction and that jurisdiction cannot be conferred on the Tribunal by agreement or waiver, so that an employer's decision not to raise a time point will not bind the Tribunal.

84. The principle that a Tribunal cannot hear a claim that is out of time applies even where the respondent admits that the claim has merit. In ***Bewick v SGA Forecourts Ltd ET Case No.2501693/2014*** the respondent admitted that it owed holiday pay to the claimant. The claimant presented her claim nine days' late, however. The Tribunal concluded that it was reasonably practicable for her to have presented her claim in time, and that it therefore did not have jurisdiction to hear the claim.

85. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –

1. The question of reasonable practicability should be interpreted liberally in favour of the claimant;
2. It is a question of fact as to whether it was reasonably practicable for the claimant to present his claim on time; and
3. It is for the claimant to prove that it was not reasonably practicable for him to present his claim on time.

Unlawful deduction from wages

86. Section 13 of the Employment Rights Act 1996 states that:

“(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...

(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.”

87. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4)

which provide as follows:

“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

...

(b) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....

(3) Where a complaint is brought under this section in respect of –

(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

88. A failure to pay the National Minimum Wage will amount to an unlawful deduction from wages.

Holiday pay

89. Claims for holiday pay can be brought either as complaints of unlawful deductions from wages, as claims under the Working Time Regulations 1998 (“**the WTR**”) or, if they arise or are outstanding on the termination of the claimant’s employment, as claims for breach of contract.

90. Regulations 13 and 13A of the WTR contain the right for all workers to 28 days’ paid holiday a year. Regulation 14 deals with compensation for untaken annual leave on the termination of employment and provides that:

“(1) Paragraphs (1) to (4) of this regulation apply where –

(a) A worker’s employment is terminated during the course of his leave year, and

(b) On the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave...”

National minimum wage

91. The relevant statutory provisions are contained within the National Minimum Wage Act 1998 (“**the NMWA**”) and the National Minimum Wage Regulations 2015 (“**the NMWR**”).

92. Section 1 of the NMWA contains the right for workers to be paid at a rate which is not less than the National Minimum Wage in respect of any work in a pay reference period.

93. Section 17 of the NMWA states that:

“(1) If a worker who qualifies for the national minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the national minimum wage, the worker shall at any time (“the time of determination”) be taken to be entitled under his contract to be paid, as additional remuneration in respect of that period, whichever is the higher of

- (a) The amount described in subsection (2) below, and*
- (b) The amount described in subsection (4) below.*

(2) The amount referred to in subsection (1)(a) above is the difference between –

(a) the relevant remuneration received by the worker for the pay reference period; and

(b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the national minimum wage.

94. Section 28(2) of the NMWA sets out the reverse burden of proof that applies in claims involving payment of the National Minimum Wage. It provides that:

“...(2) Where –

(a) a complaint is made –

- (i) To an employment tribunal under section 23(1)(a) of the Employment Rights Act 1996 (unauthorised deductions from wages)...*

it shall be presumed for the purposes of the complaint, so far as relating to the deduction of that amount, that the worker in question was remunerated at a rate less than the national minimum wage unless the contrary is established.”

95. The relevant provisions of the NMWR include the following:

“6 Pay reference period

A “pay reference period” is a month, or in the case of a worker who is paid wages by reference to a period shorter than a month, that period.

7 Calculation to determine whether the national minimum wage has been paid

A worker is to be treated as remunerated by the employer in a pay reference period at the hourly rate determined by the calculation –

R/H

Where –

“R” is the remuneration in the pay reference period determined in accordance with Part 4;

“H” is the hours of work in the pay reference period determined in accordance with Part 5.

9 Payments as respects the pay reference period

- (1) The following payments and amounts, except as provided in regulation 10, are to be treated as payments by the employer to the worker as respects the pay reference period –
- (a) Payments paid by the employer to the worker in the pay reference period (other than payments required to be included in an earlier pay reference period in accordance with sub-paragraphs (b) or (c));
 - (b) Payments paid by the employer to the worker in the following pay reference period as respects the pay reference period (whether as respects work or not);
 - (c) Payments paid by the employer to the worker later than the following pay reference period where the requirements in paragraph (2) are met;
 - (d) Where a worker’s contract terminates then as respects the worker’s final pay reference period, payments paid by the employer to the worker in the period of a month beginning with the day after that on which the contract was terminated;
 - (e) Amounts determined in accordance with regulation 16 (amount for provision of living accommodation) where –
 - (i) The employer has provided the worker with living accommodation during the pay reference period, and
 - (ii) As respects that provision of living accommodation, the employer is not entitled to make a deduction from the worker’s wages or to receive a payment from the worker.

21 The meaning of salaried hours work

- (1) “Salaried hours work” is work which is done under a worker’s contract and which

meets the conditions in paragraphs (2) to (5) of this regulation.

- (2) *The first condition is that the worker is entitled under their contract to be paid –*
- (a) *an annual salary; or*
 - (b) *an annual salary and one or both of –*
 - (i) *a performance bonus; and*
 - (ii) *a salary premium.*
- (3) *The second condition is that the worker is entitled under their contract to be paid that salary of salary and performance bonus or salary premium (or all three) in respect of a number of hours in a year, whether those hours are specified in or ascertained in accordance with their contract (“the basic hours”).*
- (4) *The third condition is that the worker is not entitled under their contract to a payment in respect of basic hours other than –*
- (a) *an annual salary; or*
 - (b) *an annual salary and one or both of –*
 - (i) *a performance bonus; and*
 - (ii) *a salary premium.*
- (5) *The fourth condition is that the worker is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week, month or other period, in instalments which –*
- (a) *are equal and occur not more often than weekly and not less often than monthly; or*
 - (b) *occur monthly and vary but have the result that the worker is entitled to be paid an equal amount in each quarter....*

30 The meaning of time work

Time work is work, other than salaried hours work, in respect of which a worker is entitled under their contract to be paid –

- (a) *by reference to the time worked by the worker;*
- (b) *by reference to a measure of output in a period of time where the worker is required to work for the whole of that period; or*
- (c) *for work that would fall within sub-paragraph (b) but for the worker having an*

entitlement to be paid by reference to the period of time alone when the output does not exceed a particular level....

44 The meaning of unmeasured work

Unmeasured work is any other work that is not time work, salaried hours work or output work."

96. Section 9 of the NMWA and Regulation 59 of the NMWR place an obligation on employers to keep records "*sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage*". Those records are to be kept for a period of six years.

Submissions

97. I summarise briefly below the submissions made by each party. The fact that a point made in submissions is not mentioned here does not mean it has not been considered.

Claimant

98. On the question of time limits, Mr C Singh submitted, on behalf of the claimant, that:

1. Although the respondents had raised time limits as an issue in their ET3, they had subsequently agreed that the time limits were no longer an issue;
2. The respondents having subsequently agreed that time limits were no longer an issue had accepted that the claims were made in time;
3. The parties had agreed to vacate the Preliminary Hearing listed to consider the question of time limits by way of consent order, which cannot be appealed or revisited; and
4. The question of time limits has already been resolved and determined by Employment Judge Shepherd on 12 May 2023 and by Employment Judge Lancaster on 15 May 2023;

99. In relation to the substantive issues in the claim, Mr C Singh submitted that the job of a Sikh priest is 24 hours a day and that the claimant was required to live in the Temple. He referred me to the case of ***Mr J Singh v Birkramjit Singh and others (members of the management committee of the Bristol Sikh Temple) 1401010/2021*** a first instance decision in which it was held that the respondents failed to pay the claimant the national minimum wage and for holiday pay.

100. He accepted that the claimant had signed a written contract of employment and submitted that he was a vulnerable individual who had been subject to modern day slavery. He acknowledged that he had referred to the claimant working 111 hours a week and submitted that was 'probably wrong' and that 'something like 86 would be reasonable rather than 111'. He also submitted that he did not understand the

claimant's records of working hours and that he was unable to explain the 111 hours.

Respondent

101. On the question of time limits, Mr Ali submitted that:

1. The last underpayment of National Minimum Wage was for the two weeks ending on 14th and 21st January 2022;
2. The claimant should have commenced early conciliation by 20 April 2022, but did not do so until 20 December 2022. The claim is therefore 8 months out of time;
3. There was no evidence before the Tribunal to suggest that it was not reasonably practicable for the claimant to submit his claim in time. The claimant was working for the respondent until 30 September 2022; and
4. The claimant did not present his claim within such further period as was reasonable. The delay was excessive and unreasonable. There is no persuasive or compelling explanation for the delay.

102. Mr Ali conceded, in submissions, that the claimant was entitled to accrued holiday pay of 3.4 weeks, at a net rate of £271.16 per week, giving a total payment due to the claimant of £921.94

103. In relation to the claim for unlawful deduction from wages Mr Alis submitted that:

1. The Tribunal should prefer the respondents' evidence to that of the claimant which was highly unreliable and not truthful. It was, for example, highly unlikely that the claimant only slept 2 or 3 hours a night over the 59 weeks of his employment;
2. The claimant's own written records of his hours of work were inconsistent with his claim to have worked 86 or 111 hours a week. There was no explanation of how the claimant calculated the 111 hours.
3. The claimant said that he had left his previous job after three months because he was not being correctly paid, but for a whole 59 weeks' employment with the respondent, there was no evidence of him looking for other work. It was implausible that the claimant would not have taken action sooner in relation to an 81 hour a week shortfall in pay;
4. There was evidence that the claimant was able to leave the Temple as he pleased. Another priest worked most days;
5. The first instance decision in **Mr J Singh v Birkramjit Singh and others** is not binding and there are a number of differences between that case and this one. In the Bristol case the Tribunal found that the respondents' witnesses were not reliable, and there was no evidence at all of any agreement on

working hours. In contrast, in this case there is evidence of three contracts stating the claimant's working hours were agreed as being 30 a week.

104. Mr Ali admitted that there had been six pay reference periods in which the claimant's wages fell below the National Minimum Wage, resulting in a total shortfall of £432.

105. Finally, Mr Ali submitted that the respondents had provided the claimant with a written statement of employment particulars.

Conclusions

106. The following conclusions are reached having considered the legal principles set out above, the evidence before me and the submissions of both parties, including the written submissions on time limits sent in by both parties after the conclusion of the hearing. I have not taken account of the additional documents and submissions submitted by the claimant's representative after the hearing.

Unlawful deduction from wages

107. The burden of proving that the claimant has been paid the National Minimum Wage lies with the respondents. There is, therefore, a presumption that the claimant was paid less than the National Minimum Wage unless the respondents prove otherwise (*Ajayi v ABHu (No 2) [2018] IRLR 1028*). The Judge also observed in the *Ajayi* case that the court can only do its best using the material that is available to it.

108. This is a case in which there is very little documentary evidence of the claimant's hours of work. Even the claimant's representative accepted, in his oral submissions at the end of the hearing that the number of hours claimed at 111 was 'probably wrong'. He said that the claimant had given him that number as hours worked, but that when they sat down to discuss the question of hours worked the representative advised the claimant that 86 hours would be 'more reasonable' than 111.

109. No credible justification was provided for either the number of 86 hours a week or for 111 hours a week. Even the claimant's own records of his hours of work show nowhere near 86 hours a week. It is quite simply not credible that he worked anywhere near those hours. He raised no complaint about hours worked at any point during the course of his employment, despite clearly feeling comfortable raising issues with the respondents. He negotiated successfully on the question of rent and claimed (and was paid) overtime on occasion. He provided no evidence or explanation as to why he had claimed overtime on occasion but not claimed for 86 or 111 hours a week on other occasions.

110. I have had to reach conclusions on the claimant's hours of work on the basis of the evidence before me. The respondents' evidence was credible, and the evidence given by its witnesses was consistent with the normal hours of work set out in the claimant's contracts of employment. It is regrettable that the respondents did not take more steps to ensure that the hours worked by the claimant were recorded, but

they are a very small employer and did take some steps by asking the claimant to record his working hours. No doubt in future they will wish to ensure that they have better records of hours worked and payments made.

111. I find, on the evidence before me, that the claimant's normal hours of work were 30 hours a week. The amount properly payable to the claimant under his contract of employment was the prevailing National Minimum Wage rate for 30 hours each week. I also find that the claimant worked an average of 30 hours a week throughout the course of his employment with the respondents.
112. There were some occasions when the claimant worked more than 30 hours, but when he did, he was paid overtime or paid additional fees by the congregation for carrying out specific additional duties. I also find that the claimant worked 30 hours a week save in the weeks when he claimed overtime or was paid extra by members of the congregation for carrying out special or additional duties.
113. I also find that the claimant was paid fortnightly and that the sums he was paid were those set out in the Respondent's NMW Calculations submitted by the respondent. After deductions for accommodation, the claimant was paid at or above the National Minimum Wage in every reference period that he worked for the respondent, with the exception of six occasions. The last of the underpayments was for the pay reference period including the weeks of 14 January 2022 and 21 January 2022
114. I am satisfied that the relevant pay reference period for the purposes of the National Minimum Wage calculations was a fortnight as the claimant was paid fortnightly.
115. I have then gone on to consider which of the four categories of work provided for in the NMWR the claimant's work falls into: time work, output work, salaried hours work or unmeasured hours work. The respondent submits that it is salaried hours work, the claimant says it is unmeasured hours work.
116. It is my view that, on balance, the claimant's work falls into the category of salaried hours work as it meets the following conditions:
1. The claimant was entitled under his successive contracts to be paid a fixed salary for fixed hours. His salary is expressed as a fixed amount each week. His annual salary and annual hours of work are ascertainable from the contracts of employment.
 2. The claimant was not contractually entitled to any other payments for basic hours worked; and
 3. It appears from the terms of the contract that the claimant was entitled to be paid irrespective of the number of hours worked.
117. Whilst there is an argument that the work carried out by the claimant is time work,

given that the contracts express an hourly rate for the work carried out, and the claimant was not paid solely by reference to the number of hours worked. I accept Mr Ali's submissions that a purposive approach is required to determine which is the most appropriate category of work. Looking at the claimant's contracts, the annual hours of work and the annual salary are easily ascertainable. The fact that the claimant may on occasion work and be paid overtime does not take his work outside of the salaried hours category.

118. I do not accept Mr C Singh's argument that the claimant's work falls into the unmeasured work category.
119. Having established the pay reference period of two weeks, and that the claimant was employed to perform salaried hours work, the next question is to consider whether the claimant has received the National Minimum Wage for each pay reference period. Mr Ali has on behalf of the respondents, helpfully prepared a breakdown of payments made to the claimant in respect of each pay reference period, calculating the total pay during the pay reference period and the total number of hours worked, namely sixty and taking account of deductions for rent and the accommodation offset. He has then calculated the hourly rate of pay paid to the claimant in each pay reference period.
120. The respondents' calculations show that in most of the pay reference periods during which he was employed by the respondents, the claimant was paid at or over the National Minimum Wage. There are only six exceptions to this, the last of which is for the two week pay reference period ending on 21 January 2022.
121. Mr C Singh did not challenge these calculations in his submissions and has not provided any credible alternative calculations. The Schedule of Loss did not contain any meaningful breakdown or calculation in support of the claimant's claim. The calculation of lost earnings in the Schedule of Loss are manifestly wrong, for example, they refer to the claimant having been employed for 74.5 weeks, when in fact his employment lasted for 59 weeks.
122. I accept the calculations prepared by Mr Ali on behalf of the respondents and find that there was no underpayment of National Minimum Wage after the week ending 21 January 2022.
123. The claim form was presented on 22 December 2022, some eleven months after the last underpayment of National Minimum Wage. The claimant did not commence early conciliation within three months of the last underpayment, and therefore does not benefit from any extension of time in respect of the early conciliation period. The claim for unlawful deduction from wages in respect of the underpayment of National Minimum Wage is therefore eight months out of time.
124. The burden of proving that it was not reasonably practicable for the claimant to present his claim on time rests with the claimant. I have not been presented with any evidence, or indeed any submissions from Mr C Singh as to why it was not reasonably practicable for the claimant to present his claim earlier. Similarly, there

has been no attempt on the part of the claimant to argue that he presented his claim as soon as was reasonable after the expiry of the primary three month time limit and no evidence on that issue.

125. Rather, Mr C Singh, in his submissions, focussed on the fact that a previous Preliminary Hearing to consider time limits had been vacated at the request of the parties. Whilst that is correct, no determination of the question of time limits has been made at any point in these proceedings. It cannot therefore be said that any judicial decision has been taken that the claim for unlawful deduction from wages was presented on time. The issue is not therefore *res judicata*.

126. Time limits are a jurisdictional issue. They cannot be waived by the parties, even if both parties consent and even if the claim has merit. The fact, therefore, that the parties agreed that there was no longer a need for a preliminary hearing on the question of time limits is not determinative of the issue.

127. The complaint of unlawful deduction from wages in relation to underpayment of the National Minimum Wage prior to and including 21 January 2022 is therefore out of time and the Tribunal does not have jurisdiction to hear it.

Holiday pay

128. The burden of proving that the claimant is entitled to additional sums by way of holiday pay rests with the claimant. The calculations of holiday pay put forward by the claimant are unclear and not supported by the evidence. They are based on a figure of £1,054.50 for weekly salary. This figure is manifestly incorrect, given that the claimant only worked 30 hours a week.

129. The claimant's contracts of employment provided for the claimant to receive two weeks' holiday every six months, or four weeks' holiday a year. This is less than the entitlement to 28 days' holiday a year provided by the Working Time Regulations 1998, so the entitlement set out in the Working Time Regulations takes precedence over the entitlement set out in the claimant's contracts

130. .

131. The claimant was employed by the respondents for a period of approximately 59 weeks. During that period he accrued approximately 6.4 weeks' holiday under the Working Time Regulations and was paid for three of those weeks. He is therefore entitled to 3.4 weeks' holiday pay on termination of his employment.

132. I accept the respondents' submission that the claimant's net weekly pay was £271.16 and that the claimant is entitled to 3.4 weeks' holiday pay calculated at that weekly rate. This gives a total entitlement to holiday pay of £921.94 net (3.4 x 271.16). The claimant has not discharged the burden of proving that he is entitled to any greater sum by way of holiday pay.

133. The claim for holiday pay therefore succeeds and the respondent is ordered to

pay the net sum of £921.94 to the claimant in respect of holiday pay.

Statement of employment particulars

134. The claimant was provided, shortly after the start of his employment, with a 'written statement of employment' which set out the terms of his employment contract. He was subsequently provided with and signed two further contracts.
135. The contract which was in force when the claimant's employment terminated was the one that he signed on 1 September 2022. That contract contained all of the particulars required by section 1 of the Employment Rights Act 1996. The respondents were, therefore, not in breach of their duty to give the claimant a written statement of his employment particulars at the date when these proceedings were commenced.
136. The allegation that the respondents were, at the time these proceedings began, in breach of their obligation under section 1 of the Employment Rights Act 1996 to provide a written statement of employment particulars therefore fails and is dismissed.

Employment Judge Ayre

Date: 19 October 2023

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