



EMPLOYMENT TRIBUNALS

Claimant: Ms L Razeghi Khosravieh

Respondent: Sky UK Ltd

Heard at: London South (remote hearing) **On:** 20 October 2023

Before: Employment Judge B Smith (sitting alone)

Representation

Claimant: In person

Respondent: Ms B Clayton (Counsel)

JUDGMENT having been sent to the parties on **1 November 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

Introduction

1. The claimant is employee of the respondent. The respondent is part of Sky group which provides news, broadcasting, on-demand streaming, broadband and telephone customers. The claimant's employment started on 20 November 2018 in the role of Associate Software Developer. She then had the role of OMS Team Lead effective from 14 February 2023 and continues to be employed by the respondent.
2. The claimant brings a claim of unlawful deduction from wages. The claim concerns payment for overtime that the claimant says is payable by the respondent. The respondent denies the claim on the basis that no paid overtime was agreed and it is not generally payable according to the

claimant's contract. It also denies that the time claimed by the claimant amounted to work.

Procedure, documents, and evidence heard

3. The claimant represented herself. The respondent was represented by Ms Clayton (Counsel). The parties agreed to the hearing being by remote video hearing and no reasonable adjustments were requested. Breaks were offered by the Tribunal as required by the parties. The claimant gave evidence in chief under affirmation and was cross-examined. The respondent's witness was Alex Barnett. His evidence in chief was as set out in his undated witness statement. He was available for cross-examination by the claimant and answered a small number of additional questions.

4. The parties confirmed during the hearing that the documents relied on were as follows, some of what follows are references to file name for convenience and clarity:
 - (i) Hearing Bundle (267 pages in PDF);
 - (ii) Claimant payslip 25.3.22;
 - (iii) Out of Cycle Increases email 1;
 - (iv) Out of Cycle Increases email 2;
 - (v) Contribution and Origination - OMS Teal Lead Job Description;
 - (vi) Additional documents (2) - ie. messages, and 2 x spreadsheets;
 - (vii) Claimant's documents:
 - a. Ticket Form - Sky HR Portal 22-08-2023;
 - b. Sky Bonus Plan UK&I FAQs All employees FINAL;
 - c. Salary Review conversation guidance;
 - d. Claimant Payslip 27.2.30;
 - e. Breakdown calculations spreadsheet [password protected];

- f. Email New Bonus plan 2023 - Razeghi, Ladan (OMS Team Lead) – Outlook;
 - g. Email Jan overtime;
 - h. Email - Conflict of Intrest and Contract - Razeghi, Ladan (OMS Team Lead) – Outlook;
 - i. Claimant payslip 26.3.21; and
 - j. Pay FAQ document.
5. In light of there being many documents which were not included in the hearing bundle, during the start of the hearing it was confirmed that the Tribunal had all of the documents required to make its decision, including using the chatbox function to provide the parties with a written list of the documents it had. There was some duplication between the standalone documents and the hearing bundle.

The claim

6. At the start of the hearing the details of the claim were clarified by the claimant. This was necessary in part because, over time, there had been a lengthy dispute between the claimant and the respondent over various aspects of her pay and some of those had been resolved by the time of the hearing. The claimant confirmed that what was outstanding was a £40 underpayment for February 2023 and payment for overtime. The overtime claim was not specified in more detail, other than she said it should be at least 4-5 week's pay. In light of the respondent having offered to make payment of the £40 for February 2023, that element of the claim was withdrawn. It followed that the only part of the claim to be determined was whether or not the respondent owed the claimant 4-5 weeks of overtime pay. The claimant says that the overtime was worked because of the time spent at work dealing with her pay dispute.

7. During the hearing the claimant confirmed that she was just pursuing a claim in regards to overtime as wages. She did not seek through this claim to pursue complaints about whistleblowing or discrimination.

The Law

8. The right not to suffer an unauthorised deduction is contained in section 13(1) of the Employment Rights Act 1996 (ERA). This says that:

'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.'*
9. A complaint to the Employment Tribunal of an unauthorised deduction of wages is made under section 23 ERA. Claims can be brought by employees or workers. Wages are defined in section 27 ERA. Section 27(1) says that wages means *'any sums payable to the worker in connection with his employment'*. Salary, weekly and hourly pay are included in this. This is sufficiently broad to include overtime pay.

10. Section 13(3) ERA says that:

'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.'

11. A deduction is a failure, whether complete or partial, to pay what was properly payable on a particular occasion. This case is about whether or not the overtime claimed by the claimant is properly payable.

Submissions

12. The respondent submitted that it was for the claimant to prove her entitlement to overtime, and there was an obligation on her to quantify her claim. The respondent submitted that the claimant had failed to do both. The respondent also submitted that the claimant's evidence as to what she was doing did not amount to work because it concerned her researching the law on what she should be paid, and how to claim for it. Also, the respondent relied on the fact that, on the claimant's evidence, the time spent on the dispute was not requested in advance.
13. The claimant submitted that the written terms of the contract should not be relied upon because there had been lots of changes to it since, such as about her bonus. She submitted that time spent on pay issues did amount to work because dealing with administration and policies was part of her role.

Findings

14. I make the following findings of fact based on the oral and written evidence.
15. The claimant was an employee of the respondent since 20 November 2018. She continues to be employed at the respondent. She was promoted to her new role as of 14 February 2023. Alex Barnett is a Senior Engineering Manager at Sky and is the claimant's line manager.
16. The claimant's written contract of employed (at bundle page 27) dated 20 November 2018 includes terms that she is paid a reference salary, and she is required to work during the respondent's normal business hours of 9am to 5:50pm for 37.5 hours a week, excluding one hour for lunch. The terms state that she may be required to work beyond those hours based on business needs, and her remuneration was calculated on the basis that she would work as necessary during as well as outside normal business hours in order properly to perform her duties. It expressly states that '*Accordingly, you will not be paid for any additional hours worked outside normal business hours*'.

17. The claimant spent some of her time in dispute with the respondent over arrears of pay. She also spent some time in her evenings reading on what she was entitled to. Overall, time that the claimant spent on the dispute included during working hours, the evenings, and whilst she was on holiday.
18. When the claimant became a team leader she did do some paid overtime for the respondent between January and May 2023. However, this had been pre-agreed by the claimant's manager. The claimant also spent some time conducting research in order to bring her claim to this Tribunal. The claimant's manager at no stage agreed for her to do overtime in order to resolve the dispute about pay arrears.
19. The way that paid overtime operated in practice for the claimant's role at the respondent was that it had to be requested and authorised in advance. Overtime pay was not available for the circumstances that the claimant described during the hearing, such as resolving a pay dispute or preparing an employment Tribunal claim. Also, the respondent did not request that the claimant work during her annual leave. There was no requirement by the respondent for the claimant to work beyond her normal working hours save as when paid overtime was agreed in advance or as agreed time in lieu. This is because of the clear oral evidence of Mr Barnett and is consistent with the written terms of her employment.
20. In light of the witness evidence of Alex Barnett and the claimant's written employment contract I find that the claimant had no contractual entitlement to paid overtime, save as when it was expressly authorised by the respondent in advance.

Conclusions

21. The claim is unsuccessful. I do not find that the overtime claimed is properly payable. First, this is because the claimant had no contractual right to paid overtime that was not agreed in advance with the respondent. This is because of the plain reading of her written contract and the evidence of Alex Barnett. I do not accept the claimant's submission that the written terms should be disregarded as a result of later changes because she did not provide clear and substantial evidence that the terms had been changed in respect

of overtime, save as outlined by Mr Barnett (namely, that paid overtime could be authorised by the respondent in advance at its discretion). Even if the respondent had amended the contractual terms for other matters, such as her bonus or salary, that did not change the express written provision that overtime was not payable. It was open to the respondent to amend that on a case-by-case basis, as happened for the overtime that the respondent did pay the claimant for work done before May 2023. However, that did not amount to a free-standing right to paid overtime as the claimant wanted it to be.

22. In the alternative, even if the written terms and conditions had been superseded such that they no longer applied, I do not find that there was sufficient clear evidence to demonstrate a contractual right to paid overtime in the circumstances claimed by the claimant on the basis of any express or implied communications (whether spoken or in writing).
23. Second, I agree with the respondent that at least some of the time spent by the claimant did not amount to work as part of her employment contract. I accept that, to a degree, an employee's administrative tasks in correcting pay errors could form part of their day to day duties. However, the evidence of the claimant suggested that the number hours she was claiming for, which were only specified in a vague sense and were not clearly particularised, went well beyond this. Also, time spent preparing for an Employment Tribunal claim would not normally form part of your day to day duties. This is what a preparation time order under rule 76 of the Employment Tribunal Rules of Procedure 2013 is for. However, none of the circumstances in which such an order can be made appear to apply on the information available to the Tribunal.
24. For completeness, even if the claimant's claim was reconsidered as a claim for breach of contract, any such claim would fail for the same reasons as above. The claimant was not, as a matter of contract, entitled to paid overtime in the circumstances as happened in her case. This is because any additional time the claimant spent outside of her normal working hours, as described, was not authorised by the respondent in advance.

25. Accordingly, the claim for unlawful deduction of wages is not well-founded and is dismissed.

Employment Judge **B Smith**

20 November 2023