Case No: 2413631/2018

EMPLOYMENT TRIBUNALS

Appellant: Nexus Workforce Limited

Respondent: The Commissioners for HM Revenue and Customs

Heard at: Manchester Employment Tribunal (by Video Hearing)

On: 06, 07 and 08 November 2023, 8 December 2024 (in chambers)

Before: Employment Judge M Butler

Representation
Appellant: Mr D Tatton Brown (of King's Counsel)
Respondent: Mr S Lewis (of Counsel)

JUDGMENT

1. The respondent is to remove Mr Evans from the relevant Notices of Underpayment issued against the appellant for failing to pay national minimum wage

2. The appeal against Notices of Underpayment for failing to pay national minimum wage fails and is dismissed.

REASONS

INTRODUCTION

3. This is an appeal against several Notices of Underpayment ('hereinafter 'NoU') made against the appellant for failing to pay the national minimum wage.

4. The appellant, Nexus Workforce Limited (hereinafter referred to simply as 'Nexus'), is an employment agency employing workers that are supplied to Sports Direct International at their Shirebrook site.

5. The relevant NoUs issued (of which there were five in total) by the respondent concerned a period between August 2012 to May 2014, and was in respect of 487 individuals. Notably, this was a period before the appellant company existed. However, liability for failure to pay national minimum wage (if any such failure existed) passed to the appellant by virtue of two TUPE transfers (the first was in

May 2014, between Blue Arrow and Transline, and the second was in May 2017 from Transline to Nexus).

6. The first three relevant NoUs are dated 25 June 2018, with two further notices issued on 22 August 2018 (these were combined with the first batch of Notices).

7. The appellant appealed the Notices on 20 July 2018.

8. In short, this hearing was listed to determine three issues:

    a. Issue 1: Was the respondent "estopped" from issuing the NoUs on Nexus? **("the Esptoppel Issue")**
    b. Issue 2: Was the respondent entitled to use "the 11 minutes" figure **("the 11 Minutes Figure")** as the basis of the NoU calculations? If not, what figure ought it to have used instead? **("the 11 Minutes Issue")**
    c. Issue 3: Were the NoUs incorrect in that they included workers "in" the "travel and subsistence scheme(s)", on the basis that such individuals were "only assigned on a temporary basis"? **("the T&S Issue")**.

9. The appellant did not pursue either the Estoppel Issue or the T&S issue at this hearing. Mr Tatton Brown informed the tribunal and the respondent that the appellant was not pursuing the Estoppel issue from the outset of the hearing, whilst he informed both the tribunal and the respondent that it was not pursuing the T&S issue after the evidence had concluded but before any closing arguments had been made.

10. The only issue left for the tribunal to determine then was the 11-minute issue. And that is the sole focus of this decision.

11. The tribunal was assisted by a primary evidence file that ran to 715 electronic pages, and a separate schedules and database bundle that ran to some 653 electronic pages. In addition, the respondent produced a proposed chronology (although not agreed between the parties, it is presented in a neutral way). Opening notes were also prepared on behalf of both parties. These were read in advance of any evidence being heard.

12. The tribunal heard evidence from Ms J Walker, who was called to give evidence by the appellant. Ms Walker was the Chief Finance Officer of the Appellant and had been the Finance Director of Transline, the legal entity that TUPE transferred to the appellant in May 2017. The respondent called Mr G Davies to give evidence. Mr Davies had acted as a National Minimum Wage Compliance Officer with the respondent and was involved in the issuing of the NoUs to the appellant.

LAW

13. Appeals against NoUs are provided for by s.19C of the National Minimum Wage Act 1998. And at s.19C(1), it provides that appeals against NoUs can only be brought on the following specified grounds:

    (a) the decision to serve the notice;
    (b) any requirement imposed by the notice to pay a sum to a worker;
    (c) any requirement imposed by the notice to pay a financial penalty.

14. Given that this appeal now only concerned the notice requiring the appellant to pay a sum relating to 11-minutes for each worker for each shift worked, then the focus in this hearing is on the appeal ground at s.19C(1)(b) of the National Minimum Wage Act 1998.

15. In respect of appeals under s.19C(1)(b), the Act provides further guidance. At

S.19C(6), it provides that an appeal under this subsection in relation to a worker must be made on either or both of the following grounds:

a. that, on the day specified under section 19(4)(a) above in relation to the worker, no sum was due to the worker under section 17 above in respect of any pay reference period specified under section 19(4)(b) above in relation to him.
b. that the amount specified in the notice as the sum due to the worker is incorrect.

16. I have turned my mind to the issue of the burden of proof in this case. And it is not entirely clear. I note the views of EJ Dunlop in her judgment when determining whether there had been TUPE transfers in this case. EJ Dunlop's analysis is at paragraphs 17-23 of her judgment. Ultimately, she concluded that there is a neutral burden of proof with respect s.19C (although EJ Dunlop does relate this to the task of establishing whether a relevant transfer takes place, it would appear to follow similarly with the other provisions of s.19C). And I have adopted that same approach.

CLOSING SUBMISSIONS

17. I am grateful for both representatives for having produced written submissions in advance of oral closing submissions in this case. I have not repeated these in full here, but they have been considered. And many of the points are touched upon below.

18. Both representatives supplemented their written submissions with oral submissions. This was used to emphasise particular points.

19. Mr Tatton Brown made the following submissions:

a. That the respondent failed in its obligation to provide the appellant with appropriate information.
b. That the powers given to the respondent under the National Minimum Wage legislation were not appropriately applied.
c. That there is a lack of evidence to support the 11-minute figure. The memo relied upon at p.637 does not provide any evidence of actual working practices during the period in question. And the appellant had no opportunity to contribute or comment on it. The respondent has failed to disclose any of the information that supports its position (including the staff survey, worker interviews etc).
d. That the 11-minute figure went unchallenged because of the commercial pressures put on the agencies by Sports Direct.
e. There is only evidence of an agreement, not the underlying evidence that led to it.
f. The appellant accepts that it was not possible to accurately calculate the waiting times, but it does not follow that adopting an 11-minute average was the only appropriate, rational or proportionate approach.
g. A rational and proportionate approach would have been to carry out the investigations, gather evidence, reach a conclusion and then share that information with the affected party. And this is not what happened in this case.
h. The investigation started in 2015. Companies had an obligation at this time to retain information for 3 years. The respondent could have viewed such data. Or could have undertaken other investigations.
i. There was no basis to serve the Notices of Underpayment.
j. The primary submission is for the notices to be repealed. And, in the alternative to substitute the figures with a 30% reduction, that being a rough

calculation based on the agency worker figures provided by Sports Direct.

20. Whilst, Mr Lewis submitted the following in his closing submissions:

    a. The tribunal needs to grapple with two questions. First, were there no sums at all? Secondly, if the sums are incorrect, what figure should be substituted into the Notices of Underpayment instead? There are no other grounds of appeal in s.19C of the National Minimum Wage Act 1998, such as for procedural fairness.
    b. This appeal is really about whether the sums in the NoUs are correct.
    c. The respondent acted rationally, proportionately and reasonably in determining an 11-minutee figure and were entitled to rely upon it.
    d. Mr Evans should not have been included on the notices, and that is the only amendment that is required.
    e. The memo is the best evidence available, and one from which inferences should be drawn.
    f. It was Mr Whitehead's indication that the company had no money and would close that was the final trigger for issuing the notices.
    g. There is no doubt that there was unpaid time spent in security queues, and this could take up to an hour. And workers were entitled to be paid for this time.
    h. It was not practicable to calculate the precise figures at the time the notices were issued or at the time the memo was produced. Only rational and proportionate approach was to use an estimate.
    i. Even if reopened following creation of the appellant company, the end result would have been an estimation of unpaid working time.
    j. The 11-minute figure was reached through agreement between all parties, including Transline, and this was following consultation. This was a figure that was sensibly and reasonably adopted.
    k. There may be an element of commercial agreement, but that does not mean it should be disregarded. It is a serious estimate that was agreed closer to the time by parties better placed to give that estimate.
    l. Parties like Sports Direct have an inbuilt incentive to reach a figure not unreasonably high or low, so the tribunal can have confidence in that figure.
    m. We have the memo, and a single page from Sports Direct, which does not help the tribunal reach a figure that is fairer or better.
    n. The agency staff numbers provided by Sports Direct is not helpful as it is not clear as to how many non-agency staff worked there.
    o. The appellant could have sought further information from Sports Direct, or Blue Arrow to help support its case. However, it did not.
    p. Accept in part that HMRC had options to secure further evidence. However, it cuts both ways. And the appellant has opted to set up a lack of evidence argument instead.
    q. The 11-minute figure remains the best figure, however, in the alternative a modest reduction of no more than 30% could be considered.
    r. The appellant argument appeared to shift toward a fairness argument based on the respondent's published guidance. However, this allows for best judgment to be used.
    s. Appellant should have undertaken sufficient due diligence at time of purchasing business. Or Transline should have made them aware. Or the administrator. That is the route of the alleged unfairness.
    t. Whilst HMRC could have been clearer on use of projected shift data, on balance, this was the most reliable data available.

FINDINGS OF FACT

I make the following findings of fact based on the balance of probability from the evidence I have read, seen, and heard. Where there is reference to certain aspects of

the evidence that have assisted me in making my findings this is not indicative that no other evidence has been considered. My findings are based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why I made the findings that I did.

I do not make findings in relation to all matters in dispute but only on matters that I consider relevant to deciding on the issues currently before me. There are a number of matters that are no longer in dispute in this case, and I make little to no findings on these matters.

21. From around 2012, Sports Direct put in place mandatory security checks that were to take place at the end of a shift, at its Shirebrook site. There was a single queue through which all workers would pass through before they could leave the site.

22. There was a TUPE transfer from Blue Arrow to Transline in May 2014.

23. In 2015, the respondent started investigation into Sports Direct International and associated recruitment agencies. This investigation concerned unpaid working time and included workers at the Shirebrook site. The practices of concern included mandatory security searches that were unpaid. The respondent had visited the site as part of its investigations, and which included interviewing of workers. The initial investigation was concluded at some point during 2015.

24. On 26 January 2016, there was a meeting between the respondent and members from Transline's executive team, which included Ms Walker (although she was a Miss Hardy at that point) (see p.305). Mr Whitehead was there in the capacity as legal representative to Transline and Mr Gomersall was present as a financial advisor to Transline. It was discussed at this meeting that the respondent had concerns about unpaid working time, and that part of this related to mandatory security checks at the Shirebrook site. At this meeting, Ms Walker explained that all NMW queries were to be directed to her and that she wanted to be kept aware of any problems (see p.307).

25. The concern around the mandatory security checks was that the security procedures in place could take some time to pass through. These were mandatory at the end of a shift at the Shirebrook site. Queuing for these procedures could detain employees at work, which was unpaid, for significant (but variable), amounts of time for each shift.

26. Mr Gomersall challenged the accuracy of the meeting notes on 23 February 2016 (see p.310). It was paragraph 9 of the notes that were disputed. And this related to it being recorded that Transline had taken over Blue Arrow under a 'transfer of liabilities'.

27. On 03 June 2016, Mr Murphy, form the respondent, emailed members of Transline, including Ms Walker (see p.362-365). This identified that there was a dispute in respect of whether there had been a TUPE transfer from Blue Arrow to Transline. With the remainder of the email focusing on the underpayment issues at the Shirebrook site, including for non-payment during mandatory security checks.

28. A meeting took place on 15 June 2016 between the appellant and members from Transline, including Ms Walker (see pp.367-368). Part of the discussion at this meeting was around whether there had been a TUPE transfer from Blue Arrow to Transline in May 2014.

29. On 20 June 2016, Mr Whitehead, the appellants legal representative at this time, wrote a detailed letter in response to matters raised at the meeting of 15 June 2016 (see pp.34-36). Within this letter, Mr Whitehead gave a detailed explanation as to why he says there was no TUPE transfer between Blue Arrow and Transline. And

that consequently Transline's liability for underpayment should run from May 2014 only. Ms Walker was aware of this letter at the time.

30. On 28 June 2016, there was a telephone meeting between the respondent and members of Transline. Ms Walker was present. This call concerned the matter of whether a TUPE transfer had taken place between Blue Arrow and Transline.

31. At some point during discussions between the respondent and the interested parties, an agreed position was reached. This was between the affected workers, the agencies and Sports Direct. And one that was accepted by the respondent. The agreed position was that workers on the day shifts at Shirebrook at the material times would have been affected by an average of an 11-minute wait in the security queues before leaving the site.

32. The respondent adopts a 'Best Judgment' approach where there are no records from which a calculation can be made. This can include enabling workers to try to agree with their employer an acceptable figure for the unrecorded time.

33. On 15 July 2016, Ms Walker, on behalf of Transline, sent to the respondent a memo that was being sent to specific workers (p.635). This memo identified that following consultation with Unite and the Sports Direct Forum, it had been identified that certain shifts had been affected by under payments caused by non-payment during mandatory security checks. It is concluded that based on the evidence, a fair average waiting per person per affected shift would be 11 minutes. It also explains that the respondent has been involved in the process and deem it to be an acceptable calculation (pp.636-639). Within this memo, Ms Walker does not disagree with any of the calculation, or the basis for those calculations.

34. It was not possible to undertake a precise calculation of underpayments for workers as there was no information collected in respect of waiting times on each shift, and the effects on individuals. Nor was it possible to undertake a precise calculation as of 15 July 2016. This was the evidence of Ms Walker under cross-examination. Who also confirmed that an estimate at this time was the 'only realistic option'.

35. Transline accepted that over several years, at the Shirebrook site, on certain shifts (this was identified as the day shift only) people would need to queue to pass through the mandatory security checks before leaving work (this is the clear inference from the memo, particularly see pp.637-638). And this is further supported by Ms Walker's acceptance under cross-examination that she had consented to the release of this version of the memo at the time.

36. From January 2016, the security processes at the Shirebrook site were changed to remove this problem.

37. On 03 June 2016, the respondent emailed representatives of Transline, which included Ms Walker (pp.626-628). This email provides details of a conversation between Mr Murphy of the respondent and Ms Walker. It records that there was a confirmed position between the two and that some agreed actions were now required. This confirms that there were delays caused by mandatory security checks, which affected May 2012 to August 2015. It confirmed Transline's liability for underpayments of Blue Arrow workers, if a TUPE transfer is found to have taken place. And it explains the next procedural steps. It records that the 11-minute average waiting time in security is not disputed by the agency (Transline). And that the period that Transline would be liable for would depend on whether a TUPE transfer had taken place. Ms Walker, nor anybody at Transline disputed this record. Or the calculation being used. It is accepted as being an accurate record, and one that was not disputed.

38. A meeting took place on 04 August 2016 between the respondent and members of Transline. The concern was with whether a TUPE transfer from Blue Arrow to Transline had taken place.

39. On 23 August 2016, the respondent sent electronic copies of Notices of Underpayment to Transline (p.640).

40. On 25 August 2016, the respondent emailed Ms Walker (pp.643-645). This email addressed the respondent's position in respect of 440 Leavers, and to further explain that the TUPE question was not yet resolved.

41. On that same day, 25 August 2016, Mr Whitehead emailed the respondent on behalf of Transline (Ms Walker copied in, see p.642). Mr Whitehead declined to provide the Deed of Agreement between Blue Arrow and Transline that the respondent was requesting. The TUPE question had not been resolved by this point.

42. On 07 February 2017, the respondent wrote to Mr Whitehead (pp.38-41). This was a detailed response to Mr Whitehead's letter of 20 June 2016. This letter explained that the respondent had concluded that there had been a TUPE transfer in May 2014, from Blue Arrow to Transline, and that consequently the liabilities under the National Minimum Wage legislation had transferred to Tranline under Regulation 4 of the TUPE regulations.

43. On 10 February 2017, Mr Whitehead on behalf of Transline, responded to the respondent's letter of 07 February 2017. The TUPE issue remained disputed by Mr Whitehead.

44. On 23 February 2017, Mr Whitehead had a phone conversation with the respondent, and followed this up with an email (copying in Ms Walker, see p.42). This again identified that there was a dispute over whether TUPE applied.

45. On or round 10 April 2017, the respondent received documentary evidence from Blue Arrow, with respect the TUPE transfer question. This included the Deed of Agreement, a letter from Sports Direct Global Warehouse Manager at the time, an email from Blue Arrow's then Client Relationship Director, a letter that was sent by Blue Arrow to affected workers, and emails from Blue Arrow to Transline detailing workers who were supposed to be 'TUPE OUT' (see para 16-22 of Mr Davies evidence, which went unchallenged).

46. In May 2017, Transline went into administration.

47. There was a further TUPE transfer in May 2017, this time from Transline to Nexus, the appellant.

48. Before transferring to work for the appellant, Ms Walker was the Finance Director for Transline, and had been since 2010. She remained in this role up to and during Transline going into administration. Mr Whitehead was there in the capacity as legal representative to Transline and Mr Gomersall was present as a financial advisor to Transline. It was discussed at this meeting that the respondent had concerns about unpaid working time, and that part of this related to mandatory security checks at the Shirebrook site. At this meeting, Ms Walker explained that all NMW queries were to be directed to her and that hs ewanted to be kept aware of any problems (see p.307).

49. Ms Walker has been the senior financial executive for the appellant since its inception. She initially had the title of Finance Director. However, she, was 'promoted' to be the Chief Finance Officer for the Appellant in March 2020. In essence, despite the title change, Ms Walker remained in the same role.

50. The information for the affected workers was taken from projections of shifts by Blue Arrow. This was provided to the respondent in 2017. There is no available record of actual shifts worked.

51. On 26 January 2018, Mr Davies explained the calculation he was using in respect of Blue Arrow to a senior colleague for the purposes of getting sign off. Mr Davies got an email reply that same day to confirm that the approach to calculating underpayments was 'sensible' where the unpaid waiting time shift was known and the number of shifts affected.

52. The 11-minute used in the email of 26 January 2018 were for workers that had left Blue Arrow before any TUPE transfer, and was a figure accepted by Blue Arrow. These arrears were paid by Blue Arrow.

53. It is because there was a departure from the normal approach for issuing a Notice of Underpayment that sign off from a senior colleague was needed.

54. The respondent allows for self-correction to take place for employees that had left the employ of the offending company, which in term dispenses of the need to issue a Notice of Underpayment. The same approach is not available where the underpayment concerns current employees.

55. On 12 March 2018, Mr Davies sent a letter to the appellant (pp.445-447). This was to inform it of the underpayment investigation that the respondent was undertaking in respect of the company. This explained the period in question, the agreement of an 11-minute average and the issues around TUPE. This letter also informed the appellant that draft calculations were being drawn up, and that the appellant would have 14 days to review them once they had been received. The only information that was being sought from the appellant was information concerning the TUPE position.

56. Mr Whitehead responded to this correspondence on 15 May 2018. In essence, the appellant rejects the figure of 11-minutes being an agreed figure, and puts the respondent to strict proof on this matter.

57. Mr Davies replied to Mr Whitehead on 30 May 2018 (pp.477-479). In respect of the 11-minute matter, he explains that *'…Nexus only had an interest following the conclusion of the investigation i.e. some-time after the facts had been established and accepted. As the position was accepted by all parties at the time, I am not proposing to re-visit them, not least because I do not believe you will be able to add anything about working practices for a period occurring prior to Nexus taking over the contract. However, if you wish me to explain those facts to you I will be happy to do so*'.

58. On 15 June 2018, Mr Davies had a telephone conversation with Mr Whitehead (a telephone note is at p.490). This conversation focused on the evidence of a transfer between Blue Arrow and Transline. Toward the end of this conversation, Mr Whitehead informed Mr Davies that the appellant did not have the money to pay the arrears and that the appellant would therefore close.

59. Mr Davies decided that he had sufficient information to serve the Notices of Underpayment on the appellant. These were issued on 25 June 2018, as a consequence of the comment made by Mr Whitehead about the financial position of the appellant and in light of what had happened previously with Transline. Two further notices were issued on 22 August 2018 when it became clear that 17 workers had not appeared on the previous schedules.

60. Employment Judge Dunlop decided (the judgment is at pp.548-566) that there was

a relevant transfer between Blue Arrow and Transline in May 2014, and a further relevant transfer between Transline and the appellant in May 2017.

CONCLUSIONS

61. It is clear based on the evidence before me that there was some time spent in security queues at the end of a shift and that this was unpaid. Ms Walker's suggestion that there was no evidence to support that there was any time spent passing through the security checks seems somewhat illogical. If a person must go through a mandatory security process or check and this takes place after the shift has ended, then that must take up some additional time. Whether that be seconds or minutes is a different question. However, either way, some time must be spent completing that process. And the busier the security queues, the longer this would take. And this is particularly emphasised at paragraph 7 of Employment Judge Dunlop's judgment on whether there was A TUPE transfer, where she explained that:

> "Certain practices were identified which had resulted in workers receiving less than the NMW. In particular, for the purposes of this claim, security procedures were in place prior to operatives leaving the site. Queuing for these procedures could detain employees at work, unpaid, for significant, but variable, amounts of time on each shift."

62. It therefore must be the case that any worker that worked on an affected shift during the material period must have a sum of money owed to them. They had additional working time that was unpaid, that had the net effect of not receiving the relevant national minimum wage at the time. Any appeal to the NoUs, insofar as it relates to no sum being due to the workers in question, pursuant to s.19C(6)(a) of the National Minimum Wage Regulations 1998, does not succeed and is dismissed.

63. The only outstanding question for this tribunal is therefore whether the figure based on an average underpayment of 11 minute per affected shift was correct or incorrect (this is an appeal pursuant to s.19C(6)(b)).

64. In challenging the 11-minute figure, the appellant appears to be progressing arguments along the lines of fairness, rather than the figure adopted is an incorrect figure and that there is a more appropriate and rational figure that should have been used. There was a clear focus on the appellant not being a party that agreed to the 11-minute figure, that certain documents had not been provided to the appellant to justify the 11-minute figure and that there should have been a full investigation, following which the respondent should have discussed its findings with the appellant.

65. And I do have some sympathy for the appellant, as this is a company that came into existence after the period in question, and therefore were not at fault for any underpayments nor were they involved in agreeing any figures in relation to it. However, those are not grounds for appealing the NoUs.

66. There were no formal records taken at the time that recorded actual time spent passing through the security process at the end of a shift. And there was no standard waiting time that each worker would be met with at the end of a shift. Each worker would be subject to different waiting times. And this would differ from shift to shift. In other words, it is impossible to calculate the actual figures that each worker spent in a security queue. The evidence simply does not exist. This is not in dispute.

67. Considering this, the affected parties then reached an agreement, which would see the use of an estimation of the average time that a worker spent in the security

queues. This figure was an estimated average figure across the entire period of 01 May 2012 to 31 August 2015. And was agreed by Sports Direct, the workers Union (Unite), the staff forum and the 2 concerned agencies at the time (Blue Arrow and Transline). The agreed figure was an 11-minute daily unpaid wait, which affected all day shifts during that period.

68. This agreed figure was reached through consultation with affected workers. And was made close to the time of the affected periods when knowledge was fresh. The agreed figure involved Sports Direct and the agencies, that would have a commercial interest in ensuring that the agreed figure was not too high, and involved parties that were supporting the worker's interests, and would have an interest in ensuring that the agreed figure was not too low. It therefore appeared to be reached taking into account views from both the employer and worker sides.

69. Notably, Ms Walker, now the CFO for the appellant, was the Finance Director for Transline and was involved in those consultations. And at no point during that period, disputed the use of the 11-minute figure.

70. In these circumstances, the 11-minute figure that was used, in this judgment, is appropriate, reasonable and suitable.

71. This was an agreed figure, that took account of all the affected parties at the time. To allow this appeal to succeed would in effect allow such agreed notices of underpayment to be frustrated whenever there has been a TUPE transfer, for want of discussion and consultation with a transferee.

72. I reject the appellants arguments that its appeal should succeed, particularly as they appear to be focused around a lack of negotiation and agreement with Nexus, and provides nothing that supports that the 11-minute figure should be substituted for an alternative figure. At its height, the evidence relied on by the appellant is the figures relating to agency worker staff between 2012 to 2016 (see p.615). However, this does not provide any explanation as to the numbers of non-agency staff. Nor does it provide any context around the queues and processes themselves. In short, this provides no clear evidence that the 11-minute figure used is inappropriate or unsuitable.

73. The respondent accepts that Mr Evans should be removed from the Notices of Underpayment. And I direct that to be the case.

74. For the reasons explained above, save for removal of Mr Evans from the Notices of Underpayment, the appeal against the Notices of Underpayment fails and is refused.

Employment Judge M Butler

Date: 15 January 2024

JUDGMENT SENT TO THE PARTIES ON

19 January 2024

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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