Case No: 3301845/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Hudek	v	Brake Bros Limited
Heard at:	Watford (by CVP)	**On**:18 October 2023
Before:	Employment Judge Hunt	

Appearances
For the Claimant: In person
For the Respondent: Mr Moore (solicitor)

JUDGMENT and reasons having been given on 18 October 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following written reasons are provided.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a lorry driver from 18 February 2019 until 31 December 2021. He remained in employment after that date, but his role changed to Training Support Driver from 1 January 2022 onwards and he remains in that position.

2. The Claimant filed a claim form with the Tribunal on 14 February 2023. He alleges that the Respondent unlawfully failed to pay him for work done in excess of his contracted hours. Specifically, he alleges that he regularly worked 50+ hours per week, when he was contracted to work for 45 hours, which is all he was paid for. In response to a written request from the Tribunal for clarification of the claim, the Claimant stated that he believed he was underpaid throughout the whole of 2021 and 2022. The Claimant re-affirmed at the hearing that this was the only period for which he was claiming unpaid wages, his actual working hours having reduced to correlate to his contract since 1 January 2023. In practice, the Claimant explained that his working time has reduced because the Respondent has reduced the number of deliveries he has to make on each shift.

3. The parties agreed that the Claimant had regularly worked in excess of his contracted hours in the relevant period. The only issue in dispute was whether the Claimant was entitled to remuneration for this additional work.

4. The parties provided the Tribunal with a 145-page bundle. It included a copy of the Claimant's employment contract, which consisted of two separate

documents: a contract made up of two parts (specific and standard terms), and an addendum. The parties also provided witness statements, oral evidence and submissions, all of which were very helpful to my determination. I am grateful to both parties for their valuable assistance both in the preparation of the claim and at the hearing.

The Employment Contract

5. The first part of the Claimant's employment contract was entitled "*Specific Terms*". A copy was provided at p.39 of the bundle. It stipulates that the Claimant's "*normal weekly working hours are 45 (to include breaks/not including breaks) completed within any 5 shifts from 7*". The parties explained at the hearing that a "shift" correlates to a day's worth of deliveries. Due to the nature of the role, the precise length of each shift will vary. The contract states that shifts are expected to "average" 9 hours, including breaks. Accordingly, subject to the contract addendum I refer to below, the Claimant was expected to work five shifts a week, the average length of which would be 9 hours each. This situation was well understood by both parties and the Claimant raises no complaint about the length of any individual shift he was required to complete.

6. The second part of the contract was entitled "*Standard Terms*". Under sub-heading "*Normal hours of work and Overtime*", clauses 11-23 related to lorry drivers, which are the provisions most relevant to this claim. They read as follows:

> "11. Subject to either clauses 12 to 17 or 24 to 27 below (as determined by your role), your normal hours of work are as per your specific terms.
>
> Drivers only
>
> *Normal Hours (Drivers)*
>
> 12. Subject to clause 17, you are required to work 5 shifts each week. These shifts may be rostered to take place on any day/night(s) (Sunday through Saturday) of the week at any time of the day and/or the night.
>
> 13. Your job role requires you to work such hours for each working shift as are necessary for the proper performance of your work duties on each shift.
>
> 14. Subject to clause 13, the average length of a shift will normally be 9 hours (inclusive of your paid break entitlement(s) under clause 23).
>
> 15. As a Driver your normal weekly working hours (as set out in your Specific Terms) are the intended average working hours per week for your role and thus your weekly working hours may fluctuate from week to week above and below your intended normal weekly working hours to meet business needs.
>
> 16. Your start times of work will be notified to you reasonably in advance to meet business needs from time to time.
>
> 17. You may be required to change your normal times, numbers of shifts or days of work either permanently or temporarily. Wherever possible we will give you reasonable notice of any such changes and will take account of personal circumstances raised by you."

Overtime and Night work (Drivers)

18. Overtime is a requirement of your role should you be instructed to carry it out but is not guaranteed by the Company.

19. You may be required to work an additional shift(s) or half shift(s) to those set out in clause 12 in each working week. You are required to work such hours on any such shift as necessary for the proper performance of your duties. For the avoidance of doubt, an additional round(s) carried out within a shift following completion of the round(s) allocated to you at the beginning of the shift does not constitute an additional shift or half shift attracting overtime pay.

20. If you are a part-time employee in order to qualify for any overtime pay rates you must have worked the normal full time hours for your job role.

21. Where applicable under this Agreement overtime worked by you on an additional shift(s) or half shift(s) where approved by the Company will receive:

a. a fixed payment of 1.25 your normal daily rate for any full additional shift worked and

b. a fixed payment of 1.25 of half your normal daily rate for any half of an additional shift worked.

A half shift is a minimum of 4 1/2 hours worked including paid break time ("Driver Half Shift").

The normal daily rate shall be calculated using your gross basic annual salary (as set out in your Specific Terms) only.

22. Should you carry out night work (as defined within this clause) during any shift you will be paid an allowance of £21.14 for each such shift worked. Night work is regarded as at least one Driver Half Shift worked between the hours of 10pm and 6am ("Night Work Hours"). For the avoidance of doubt, where you complete some work during Night Work Hours but the time worked specifically during the Night Work Hours is less than one Driver Half Shift, no allowance shall be payable. Any such night shift allowance shall not count towards the calculation of your pensionable pay and nor shall it be taken into consideration in the calculation of any bonus or any other payment or benefit that you may be entitled to under the terms of your employment with the Company. We reserve the right in our absolute discretion to amend, vary, withdraw or replace the night shift allowance at any time without prior notice.

Breaks and Working Time (Drivers)

23. You are entitled to a paid break in line with current legislation. You must also ensure that you take such other breaks as may be required by law (including without limitation breaks required under The Road Transport (Working Time) Regulations 2005 and the EU Drivers Regulations)."

7. The contract provides that the Claimant's usual payday is the 27th day of the month (or the next working day).

8. An addendum to this contract was signed on the day the Claimant joined the Respondent on 18 February 2019. A copy is provided at p.55 of the bundle. It is a one-page document outlining additional contractual provisions that apply only to drivers operating from the Respondent's Reading

premises (such as the Claimant). The Claimant asserts that he was not aware of what he was signing and that it was included in a large collection of documents he was asked to fill out at his induction so gave it little attention. However, the addendum was only one-page long and specifically refers to the terms of employment concerning working hours and remuneration. The Claimant did not ask for time to consider it before signing or request further information about it or decide to reconsider his position in light of it – indeed he still works for the Respondent. He doesn't claim to have signed the addendum under duress. He asserts that the terms he signed differed from those of the position he applied for, which may well be the case. Nevertheless, the signed addendum is the best record of the parties' agreement at that point in time and I accept that it forms part of the contract. It begins as follows: "*These details are provided in addition to your full terms and conditions of employment. If there is any conflict between the terms of this addendum and the Contract of Employment then this addendum will prevail*".

9. The addendum then provides as follows.

"This addendum aims to clarify Brakes position with regard to Reading drivers working hours and provide clarity on the expectations behind the drivers contracted hours versus planned hours.

In February 2013 there was a review of drivers working hours at Reading. It became apparent that several routes were planned in excess of 9 hours. By way of acknowledging this Reading drivers received an exclusive 4.4% salary adjustment. This represented payment for an additional 2 hours per week. This then allowed routes to be planned to 47 hours per week, albeit the contract remains stating 45. By signing this addendum you are agreeing to a planned 47 hour working week whilst understanding that your contract states 45 hours. Below are specific points to note:

Working Hours

- Drivers will be scheduled to work 5 out of any 7 days allowing the business to cover the changing demands of our customers.
- The Company will endeavor to give one weeks notice of shift patterns, however all shift patterns may be subject to short notice changes in line with business levels. In some instances changes may be made with less than 24 hours notification.
- Reading drivers received an exclusive 4.4% salary adjustment effective 1st April 2013 by way of acknowledging that their working week would be planned to 47 hours, albeit the contracts remained stating 45 hours.

Overtime Payments

- Overtime will only be paid to drivers when they work an additional full or half shift (6th shift)
- A half shift means a minimum of 4 1/2 hours worked
- In the case of part time drivers they also need to have worked normal full time hours to qualify for pay overtime rates
- Where the above criteria is met drivers will receive
    - A fixed payment of 1.25 x normal daily rate for any additional shift worked

And

- A fixed payment of 1.25 x half normal daily rate for any half of an additional shift worked Night shift allowance is not included in this calculation, and is not included in any calculation when calculating overtime rates".

10. As a document that purports to "clarify" the Respondent's "position", the addendum is rendered surprisingly unclear by its repeated references back to a 45-hour working week. On analysis, properly interpreted, it is clear to me that it amended the terms of the Claimant's employment (as for all Reading-based drivers). It states at the outset that its terms will supersede those of the original contract in case of conflict. It increased the Claimant's working hours to 47, in exchange for a 4.4 percent salary uplift. The provisions relating to overtime appear to reflect the original terms of employment, albeit the addendum emphasises that "overtime" will only be paid for additional shifts worked. There is no mention of breaks in the addendum, so the terms of the underlying contract providing for a paid break remain applicable.

11. The addendum confirmed that the original contract expected the Claimant to work 9-hour shifts on average. As several delivery routes out of Reading were expected to take longer than 9 hours, presumably so much so that shifts would not end up averaging out at 9 hours, the contract was amended to take account of this. The average shift length would therefore logically increase to 9.4 hours (dividing the additional 2 hours' work per week equally across the 5 shifts), although this is not made explicit in the addendum. It is unimportant to this claim to establish whether that is so, or whether the average length of each shift was expected to remain at 9 hours, excluding certain longer shifts. For the purposes of this claim, I will proceed on the basis that the contract, as amended, provided for 9.4-hour average shift duration.

The Claimant's Working Hours

12. Despite the "normal" contractual shift for the Claimant representing 9.4 hours on average, he had in fact worked on average 10+ hours per shift over the relevant period.

13. Some weeks the Claimant worked additional shifts and received overtime pay for those in accordance with his contract. This was not in dispute. On occasion, the Claimant would also accept additional rounds during a shift to assist the Respondent in handling unanticipated difficulties in completing its delivery schedule. I was informed at the hearing that on those occasions the Respondent would typically provide an additional *ad hoc* payment in recognition of the extra work completed. For instance, the Claimant recalls receiving an additional £50 payment for an extra 2 hour's work. The Respondent accepted that such payments are regularly made but asserted that they are discretionary and non-contractual. The Claimant was dissatisfied with the lack of transparency around these additional payments but that was not the subject of the claim. For the purposes of this claim, it is of some relevance that *ad hoc* payments are made from time-to-time. Aside from that, I will not address them further.

14. In order to support his claim, the Claimant prepared a very useful spreadsheet of the hours he worked per month in 2021 and 2022, and the number of shifts he undertook in each month (p.145 of the bundle). He obtained this information from his tachograph record, provided to him by the Respondent. The Claimant explained at the hearing that this is a better record of his working time than driving time records as it shows when he first enters his cab on each day and runs throughout the day including during breaks and waiting time (for instance related to initial loading operations). Driving time recordings only capture time spent driving.

15. This tachograph information allowed the Claimant to calculate that the average length of his shifts was 10 hours and 12 minutes in 2021 and 10 hours and 2 minutes in 2022. The average shift length over the entire 2-year period was 12 hours and 7 minutes. For the purposes of calculating average shift duration, he included additional shifts for which he was paid overtime, highlighting this in the spreadsheet, but did not specify the actual length of each such additional shift. At the hearing, on specific questioning from the Tribunal, the Respondent agreed the contents of the spreadsheet and raised no issues about its accuracy. I therefore accept this as an accurate reflection of the Claimant's working time throughout the relevant period. In any event, I placed significant weight on the Claimant's evidence, which gave a consistent account of his working experience. He has consistently alleged that he works 50+ hour weeks, including in the context of an internal grievance he raised about his working time, records of which are included within the bundle. The main specific example highlighted by the Respondent (in the context of the grievance) of a period when the Claimant worked less than his contracted hours was recorded at p.100 of the bundle. The Claimant's response was that he had exceptionally been given time off in lieu during that period, which explains the reduced working hours (p.102).

Issues

16. The Claimant's working hours having been agreed, the only issues for me to decide were whether he was entitled to be paid for the hours he worked in excess of his contractual commitment of 47 hours per week (excluding additional shifts), and, if so, how much he was owed. In other words, whether wages were properly payable to the Claimant for this work in accordance with s.13(3) of the Employment Rights Act 1996. It is appropriate to focus on the average shift length of 9.4 hours, rather than average weekly hours worked, as the claim has been presented in this way, it better accounts for occasions when additional shifts were worked, or when leave was taken, and no issue was raised in this regard by the parties.

Conclusions

17. There being no dispute of fact, this claim turns on the correct interpretation of the employment contract between the parties. The Respondent submitted that the Claimant's only contractual entitlement was to his regular salary plus overtime, which was only payable in specific circumstances. It is not for the Tribunal to take its own view of what would be reasonable in the circumstances. I should make my decision on the basis of the parties' agreement. I accept the latter point and will focus on the proper interpretation

of the contract's terms in relation to wages.

18. I have quoted the relevant parts of the contract above. The contract provided for the Claimant to work 47-hour weeks on average, which in effect amounted to five shifts of an average duration of 9.4 hours.

19. The contract provides for flexibility in the Claimant's working pattern from shift-to-shift and week-to-week. In essence, the Claimant must complete the deliveries allocated to him in each shift, regardless of how long that individual shift might take (clause 13). This caters for the vagaries of any given day or delivery schedule, such as traffic conditions. It is common sense that the Claimant will not simply park his lorry wherever it may be when his 9.4 hours are up. The clear counterpart to this flexibility is that it will not be abused. For as many occasions when the Claimant works in excess of his average shift length, there will be others when he will work a shorter shift. Matters will therefore "balance out", with the contract focusing on "averages", both in relation to individual shifts and weekly working hours (clauses 14-15). This principle is at the core of the parties' agreement. It appears to be a well-considered and balanced approach, taking account of the needs of the Respondent's business, whilst respecting the working time committed to it by the Claimant. This balance is particularly important in this case as the Claimant has very little agency over his work. He has little discretion as to how or when he completes his duties or prioritises work, little control over how long his working day may be (assuming reasonable diligence and efficiency), he relies entirely on the Respondent to provide a reasonable schedule of deliveries. Risks of too onerous a workload on, or unanticipated delays during, any given shift are shared between the parties: the Claimant will complete his duties on each occasion but will be compensated for the additional time spent on his shift by a shorter day or days subsequently. The Claimant accepted this position and openly admitted that if his concern revolved around a few minutes' worth of additional work here and there that was unaccounted for, he would not have pursued a claim. He was content to be flexible in accordance with his contract but submitted that the appropriate balance had not been respected for a considerable period of time. In essence, the Respondent was content to require him to work over his contractual hours but seldom respected the corollary to that agreement, which was to reduce his hours subsequently to compensate.

20. The overtime provisions in the contract sit alongside this core principle. "Overtime" is not defined in the contract but is clearly directed exclusively at additional shifts undertaken in any given week (addressed in clause 19 and referred to in the contract addendum as a "*6th shift*"). Clause 19 specifies that pay rates for conducting an additional shift are 1.25 times normal pay. It clarifies that this pay rate is only applicable to "additional" shifts worked, not to occasions when any "normal" weekly shift might be extended. This is stated to be "*for the avoidance of doubt*", which accurately reflects the parties' core agreement that "normal" shifts that last longer than 9.4 hours are catered for by way of reduced hours on a different occasion ("averaging out"). On analysis, to consider time worked on any shift in excess of 9.4 hours as "overtime" would be wholly inconsistent with the "averaging out" principle at the heart of the agreement. Such additional time worked is not "overtime" but is better described as work brought forward from a future occasion. In a sense, the additional hours are "banked" to be offset against future shifts.

21. The Claimant's position in respect of overtime contrasts notably with the overtime provisions applicable to other employees that are not drivers, such as warehouse workers, addressed at clauses 28-30 of the Respondent's "*Standard Terms*" of employment. As the considerations that affect drivers' shift length do not apply to site-based employees, the averaging out principle does not apply to them. In relation to these employees, "overtime" is considered to be any time spent at work in excess of their normal weekly hours (clause 29). This is an understandable and important distinction with the Claimant's contract.

22. The addendum to the Claimant's contract did not alter the overtime provisions. Its stated purpose was to clarify "*expectations behind the drivers contracted hours versus planned hours*". Essentially, to extend the working week to 47 hours, in exchange for a proportionate increase in pay. The references to overtime were consistent with the original contract, re-affirming that "overtime" will only be paid for working additional shifts. As explained above, it would be inconsistent with the "averaging out" principle to stipulate otherwise and the addendum did not. Additional hours worked in a shift are not considered "overtime" for the purposes of the contract.

23. In light of this, it is clear to me that the contract is silent on what happens if the Claimant's average working week ends up being longer than 47 hours (excluding additional shifts), or his average shift ends up being in excess of 9.4 hours, and the Respondent fails to shorten subsequent shifts in return. The Respondent's view is that the situation is addressed by the fact the Claimant is paid a salary, not an hourly rate, and that "normal" shifts lasting longer than 9.4 hours expressly do not attract overtime payments. However, neither position provides an adequate response.

24. Firstly, the Claimant's salary is based on a 47-hour working week. The contract is clear that the Claimant is not expected to work longer than that on a regular basis. It is a specific term of his contract and is not merely a guideline. The Claimant has agreed to work 47 hours a week on average, excluding additional shifts. The contract does not allow the Respondent to unilaterally increase the Claimant's working hours. This is a straightforward reading of the contract and is reflected by the fact the addendum was felt necessary once the Respondent realised it was in fact requiring drivers based at Reading to work 47-hour weeks as opposed to a contractual commitment of 45. To accept otherwise would be inherently peculiar and is not supported by either parties' conduct. The Claimant has shown his dissatisfaction with his excess hours by raising his internal grievance initially, and subsequently pursuing it to a claim before this Tribunal. Aside from deciding on the contract addendum, the Respondent accepts that it sometimes makes *ad hoc* additional payments when employees extend their shifts to assist the Respondent to fulfil its contracts. Since 1 January 2023, the Respondent has reduced the Claimant's workload to bring it in line with his contract. On one occasion the Claimant had been granted time off in lieu. All of these factors demonstrate both parties understand their contract and that the Claimant was only expected to work an average of 47 hours per week. Although the Claimant accepted that his hours would fluctuate above and below this level, they would average out at 47 hours over time. If the Respondent could increase the Claimant's hours as it suggests, in theory this could result in the

Claimant (and other employees) being ordered to undertake shift lengths of potentially unlimited duration whilst being paid only for 47 hours. Plainly, that is impossible in practice and, thankfully, it does not happen in reality.

25. Secondly, as explained above, the overtime provisions in the Claimant's contract are only applicable to "additional" shifts worked. Due to the "averaging out" principle at the heart of the parties' agreement, they do not concern "normal" shifts. Additional time worked on a "normal" shift is not "overtime" for the purposes of the contract. The overtime provisions are ultimately of limited relevance to the issue raised in this claim.

26. I am conscious that additional contract terms should only be implied rarely, when it is necessary to do so. I am satisfied that this is one of those few such cases. The agreed primary "remedy" for excessive shifts is for subsequent shifts to be reduced in length. Whenever the Claimant works longer-than-average shifts, subsequent shifts will be shorter-than-average to ensure the Claimant's 47-hour working week is respected on average. No timeframe over which the average working time will be assessed is specified in the contract. It isn't necessary in this case to give one. It is sufficient to find that, had the parties considered this on entering into contract, they would plainly have agreed that a reference period must be "reasonable". I am satisfied that neither party would have considered two years of consistently longer-than-average shifts without corresponding shorter-than-average shifts "reasonable".

27. What is to happen then in this situation, when – for whatever reason(s) – the Respondent fails to respect its primary obligation to ensure the Claimant's working time averages out at 47 hours per week? I find that, had the parties considered this situation at the point of signing their contract, both would accept that the Claimant would be paid for that additional work instead. An example the parties would likely have considered would be an extended period of exceptionally high trading, coupled perhaps with temporary driver shortages. It might not be possible to keep within the average working week over that period, nor to allow for significantly reduced shifts within a reasonable period thereafter. In such exceptional situations, the Claimant would be paid a salary uplift instead of reduced hours. That is ultimately the term that I believe must be implied into the contract in this case. If the Respondent fails to ensure the Claimants working hours average out over a reasonable period, the Claimant will instead be paid for the hours he has worked above his contractual commitment of 47 hours. If the claim were analysed as one of breach of contract, the same outcome would be achieved: the Respondent having breached its obligation, damages for the breach would be aimed at compensating the Claimant for the extra hours he worked.

28. Overtime rates are addressed specifically in the contract, and they refer to a very specific type of work being additional shifts undertaken. The contract expressly provides that overtime rates do not apply in any other situation, notably when "normal" shifts are extended. There is no good reason to find that the implied term would displace these specific overtime provisions. To the contrary, when the contract addendum was signed it was agreed that an extension to the Claimant's "normal" hours of hours would simply result in a proportionate salary increase. Accordingly, I find that the additional work undertaken by the Claimant is properly payable only at his basic pay rate.

29. I have considered whether this implied term unduly alters the balance of the agreement, and whether it would be workable in practice. I am satisfied on both counts. I have explained the foundation to the contractual agreement above, and my finding is entirely consistent with it. As to whether the implied term is workable, I accept that there may be "borderline" cases where the Respondent might validly submit that the Claimant or another employee has been required, exceptionally, to work longer shifts over several weeks, resulting in a short-term average working week well in excess of 47 hours, but a lighter workload has been planned to compensate for that such that no additional wages are properly payable. Dependent on the exact circumstances, that may well be a valid argument in a future case. Nothing suggests this is a situation that would not be amenable to agreement between the parties or to resolution by the Tribunal should that not prove possible. In fact, the implied term would make resolution of any such dispute potentially more straightforward. Be that as it may, the Respondent did not submit that it intended to compensate the Claimant by reducing his hours in future. It would likely be impracticable to do so after such a lengthy period of "excess" work. Further consideration of any "borderline" cases would be best left to any claim that does raise the point. I am satisfied that there is nothing "borderline" about this claim. The Claimant has been required to work, on average, over half an hour per shift in addition to his contractual commitment over at least two full years. His contract provides that, without reduced hours on other occasions to compensate him fully for that extra work, he should be paid at his basic rate for that work. The Respondent does not propose to reduce his hours in future, and that would likely be impracticable at this point in any event. Accordingly, wages were properly payable for that work instead, have not been paid, and the claim to have suffered an unauthorised deduction of wages by reference to s.13(3) of the Employment Rights Act 1996 is well-founded.

30. The Tribunal is only authorised to consider deductions made from wages received in the two years leading up to the date of presentation of the claim, in accordance with s.23(4A) of the Employment Rights Act 1996. The claim having been presented on 14 February 2023, and the Claimant's usual pay date falling on the 27th day of each month, the Tribunal only has jurisdiction to consider deductions made from February 2021 onwards. Accordingly, I make no findings as to any deductions that may have been made in January 2021.

Remedy

31. Having determined that the claim was well-founded, I had to decide the amount of the deductions that had been made. After a helpful discussion with the parties at the hearing, the parties agreed to calculate the deductions as follows. I am entirely satisfied that this is a sensible and proportionate approach to take, bearing in mind the sums in dispute and the limited hearing time available. I am very grateful for their cooperation and assistance in agreeing the sum due.

32. Firstly, to establish the difference between the contractual average shift length and actual average shift length. For the purposes of this calculation, the parties agreed to use the average shift length calculated over the entire 2-year period in dispute of 10 hours and 7 minutes per shift. This equated to the Claimant having worked, on average, 43 minutes over his contractual

commitment of 9.4 hours per shift (or 0.72 hours).

33. Secondly, to calculate how many shifts were worked in any given period of stable pay (to apply the proper rate of pay for each period, allowing for various salary increases that were applied over time). Several periods were identified: February to May 2021, June to December 2021, January to September 2022, and October to December 2022.

34. The parties agreed that in each period, the following number of shifts were worked: 65, 113, 148 and 60 respectively.

35. Thirdly, with the Claimant's agreement, the Respondent then used a payroll software to work out what the hourly rate should be for each period. That rate was then multiplied by 0.72 (the average hours worked in excess of the Claimant's contractual commitment) to give a figure for the unpaid wages due to the Claimant for each shift worked.

36. Finally, this "per shift" shortfall was then multiplied by the number of shifts worked in the applicable period. The totals were added together to provide an overall sum for wages owing to the Claimant.

37. For the first period, the rate was calculated as £13.74 per hour, resulting in £9.89 per shift owing. £9.89 x 65 shifts in that period equated to £642.85.

38. For the second period, the hourly rate was £15.55, resulting in an £11.20 shortfall per shift. Over 130 shifts, this gave a total of £1,456 owing.

39. For the third period, pay was due at £17.10 per hour resulting in a £12.31 shortfall per shift. Over 148 shifts, this equated to a total shortfall of £1,821.88.

40. £17.79 per hour was the applicable rate in the final period, equating to a shortfall of £12.81 per shift. Over 60 shifts, the shortfall amounted to £768.60.

41. Additioning these figures resulted in a total of £4,689.33 owing to the Claimant, which is what I ordered the Respondent to pay.

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Employment Judge Hunt
Date: 14 January 2024…….

Judgment sent to the parties on
22 January 2024
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For the Tribunal office