EMPLOYMENT TRIBUNALS

Claimant:	Mr A Harper and others
Respondent:	Alliance Healthcare Management Services Ltd
Heard at:	Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG
On:	20, 21 March, 25 April 2024
Before:	Employment Judge McTigue sitting alone
Appearances	
For the claimant:	Ms L Veale, Counsel
For the respondent:	Mr J Crozier, Counsel

RESERVED JUDGMENT FOLLOWING A PRELIMINARY HEARING

1. The complaints of unauthorised deductions from wages are not well-founded and are dismissed.

2. The complaints in respect of holiday pay are not well founded and are dismissed.

REASONS

Introduction

1. This is a multiple claim brought by a number of claimants against their current employer. The preliminary hearing was listed in order to determine a list of issues which had been agreed between the parties legal representatives. The claimants previously worked for Alloga, a distributor and supplier of pharmaceutical, surgical, medical, and healthcare products. They were then TUPE transferred across to the respondent some time ago. The claimants are advancing claims for:

    1.1. Unlawful Deductions from Wages (s.13 Employment Rights Act 1996)
    1.2. Holiday Pay (s.16 Working Time Regulations 1996)

2. The claimants' current position is that the following heads of claim are engaged:

    2.1. A failure to pay the claimants correctly for overtime work.
    2.2. A failure to pay the claimants correctly for bank holiday work.
    2.3 A failure to pay the claimants correctly for attending CPC training.
    2.4. A failure to pay the claimants correctly for holiday pay.

    An earlier claim that the respondent had failed to properly pay the claimants for contractual break times of 30 minutes per day was withdrawn by the claimants on 29 September 2023 following a deposit order being made in respect of that claim.

3. At this hearing, the claimants' representative has made submissions which only lightly touch on the agreed list of issues. The respondent asserts that this demonstrates that the claimants' case has altered and that an amendment application is required from the claimant. No amendment application has been received from the claimants. The claimants are professionally represented and so I conclude that their case remains as they have currently pleaded it. In addition, I also conclude that the agreed list of issues remains valid. I should also note that there has been a somewhat protracted process to clarify what the claimants' case is, and the relevant issues are. I address that now.

4. By an ET1 submitted on 19 December 2022 proceedings were brought by 57 individuals identified in the Schedule to that ET1. All claimants at that point in time were represented by Mr Baptise, a trade union representative of USDAW. Mr Baptiste only provided a brief narrative identifying the relevant sums alleged to have been payable but unpaid.

5. There was then a preliminary hearing before EJ Phillips on 14 April 2022. By now, the claimants were professionally represented by Thompsons. The claimants were ordered to provide further and better particulars of their claim. Those Further and Better Particulars of Claim were provided on 26 May 2022 and still lacked clarity on the exact manner the case was being pleaded.

6. Mr Gary Sharpe then brought separate proceedings on 30 May 2022. Mr Sharpe's claim was consolidated with these proceedings on 10 August 2023, albeit it should be noted he has no claim for bank holiday working or CPC.

7. The matter came before me for a second preliminary hearing on 10 August 2023. At that hearing I ordered that the claimants amend their Further and Better Particulars as, in my opinion, they lacked clarity on how the claims were advancing their case.

8. The claimants provided a second version of their Further and Better Particulars of Claim on 27 September 2023. In relation to the current claims, these were pleaded as follows:

    8.1. The Overtime Claim was said to be derived from pp.44-45 pf the 2017 Staff Handbook;

    8.2. The Bank Holiday Working Claim was said to be derived from page 9 of the 2017 Staff Handbook;

8.3. The CPC Training Claim was identified in the following terms, *"The Claimant's confirm that the basis for this position is that the requirement to undertake CPC training is a management instruction that the Claimants were required to comply with as part of their duties of employment. The Claimant's aver that time spent completing CPC training therefore constituted working time. The Claimant further aver that they are entitled to pay at the contractual hourly rate specified in their contracts of employment for working time."*

9. Following receipt of the second version of the Further and Better Particulars, an Amended Grounds of Resistance was produced by the Respondent. A list of issues was then agreed between the parties and provided to the tribunal.

Issues

10. On 11 December 2023 the tribunal received a list of issues which had been agreed between the parties. At this stage, the parties were represented by legal representatives. The agreed list of issues read as follows:

> *1. The following generic questions of contractual construction are agreed as those arising determination at the Preliminary Hearing to be held on 20 and 21 March 2024.*
>
> *2. Did the Claimants' contracts of employment entitle them to payments calculated as follows:*
>
> *Overtime*
>
> *3. Did the Alloga Staff Handbook 2017 entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work?*
>
> *4. If so, what were the Claimants' prescribed basic daily hours of work?*
>
> *Bank Holiday Working*
>
> *5. Did the Alloga Staff Handbook 2017 entitle the Claimants to be paid an enhanced rate of pay for working on bank holidays?*
>
> *6. If so, for the purposes of the Claimants' contracts, which days were treated as or deemed to be bank holidays for the purposes of paying the enhanced rate of pay?*
>
> *CPC Training*
>
> *7. Were the Claimants directed by management instruction to undertake training to maintain their personal Driver Certificate of Professional Competence qualification ('CPC')?*
>
> *8. If so, were the Claimants contractually entitled to be paid for any time spent undertaking training to maintain their CPC?*

9. If so, how much of the time they spent undertaking such training were the Claimants contractually entitled to be paid for?

Holiday Pay

10. For completeness, the parties note that the Claimants aver that they were incorrectly paid holiday pay based on the alleged unlawful deductions of wages in respect of overtime working, Bank holidays and CPC training. However, it is the parties' agreed position that
this head of claim does not give rise to any additional issues of contractual construction to be determined at the Preliminary Hearing.

11. I should record that I accept the respondent's summary of the relevant law at paragraph 5 of their written submissions where it stated:

> *(1) The pleadings are required to "set out the essence of [the parties] respective cases". Justice requires "each party to know in essence what the other is saying, so they can properly meet it…. That is why there is a system of claim and response, and why an employment tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings":* ***Chandhok v Tirkey [2015] ICR 527, EAT*** *per Langstaff P at [16]-[17].*
>
> *(2) An agreed LoI is also a document of fundamental import to the conduct of proceedings in identifying fully the issues in the case. In* ***Parekh v London Borough of Brent [2012] EWCA Civ 1630*** *at [31], the Court of Appeal held that "If the list of issues is agreed, then that will, as a general rule, limit the issues at the substantive hearing to those in the list".*
>
> *(3) The only permissible route to vary the parties' pleadings, or expand or alter an agreed LoI, is by application to amend: see* ***Chandhok*** *at [17].*

12. As I am not in receipt of an amendment application from the claimants, I shall determine the questions put forward by the list of issues. I have not been made aware of any reason why I should depart from the principles established in **Chandhok v Tirkey [2015] ICR 527, EAT** and **Parekh v London Borough of Brent [2012] EWCA Civ 1630**.

Procedure, documents and evidence heard

13. The tribunal heard evidence from the claimant. Ms Harper, a HR Director, gave evidence on behalf of the respondent. Both individuals had provided witness statements. There was a tribunal bundle of approximately 331 pages plus an additional bundle of approximately 14 pages. The claimants provided a bundle of authorities consisting of 52 pages. The respondent provided a written skeleton argument. Written submissions were received on behalf of the claimants and respondent, these were supplemented with oral submissions.

Fact-findings

Corporate Structure

14. In 1996, the respondent was called Alliance Unichem Plc. That same year United Drug plc and Alliance UniChem Plc set up a joint distribution venture called UniDrug Distribution Group ('UDG').

15. At some point between 1996 and 2014 Alliance UniChem Plc changed its name to Alliance Healthcare.

16. In 2014, Alliance Healthcare took full ownership of UDG. From that point onwards, United Drug plc was no longer involved in UDG.

17. In 2015, UDG was rebranded as Alloga UK, whilst remaining owned by Alliance Healthcare.

Contractual documentation

18. Claimants who joined the respondent prior to 1 April 2013 had a contract of employment in the terms set out at pages 278 to 279 of the bundle ("the Old Contract").

19. Claimants who joined the respondent on or after 1 April 2013 had a contract of employment in the terms set out at pages 276 to 277 of the bundle ("the New Contract").

20. Each Claimant's contract, whether an Old Contract or a New Contract, contains a clause that includes the following wording:

> *Your rate of pay and other terms and conditions of employment are determined by the collective agreement between Alloga UK and the Union of Shop, Distributive and Allied Workers (Usdaw)*

21. In relation to working hours and paid overtime, both the New and Old Contracts state at clause 6:

> *Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week.*

22. In relation to holiday entitlement and bank holidays, the New Contract provides at clause 9 as follows:

> *Your annual holiday entitlement is as per the collective agreement between Alloga UK & Usdaw, which will also incorporate the 5 bank holidays. The remaining 3 bank holidays – Christmas Day, Boxing Day & New Years Day will be fixed.*
>
> *The company holiday year runs from January to December. Should you start after January your entitlement will be pro-rated to reflect your start date. The annual entitlement will increase with length of service as detailed in the Company Handbook.*

23. In relation to holiday entitlement and bank holidays, the Old Contract provides at clause 9 as follows:

> *Your annual holiday entitlement is as per the collective agreement between Alloga UK & Usdaw, which is initially 5 weeks and 4 days holiday annually plus all statutory holidays which are fixed dates.*
>
> *The company holiday year runs from January to December. Should you start after January your entitlement will be pro-rated to reflect your start date. The annual entitlement will increase with length of service as detailed in the Company Handbook.*

24. In September 1996 Unichem entered into a collective agreement with the USDAW and the TGWU. TGWU subsequently became part of Unite (pages 288 to 309).

25. In 2012 UDG issued a Professional Drivers Handbook (pages 173 to 204)

26. On May 2013 UDG and USDAW/SATA entered into a second tier bargaining agreement in relation to Bank Holiday working (page 205).

27. In 2017 Alloga issued a staff handbook for its employees (pages 206 to 252). This handbook applied to its employees working in its warehouses and not its drivers. Mr Harper accepted that point in cross examination.

28. In 2018 Alloga issued a Professional Drivers Handbook (pages 254 to 275).

<u>CPC Training</u>

29. All HGV Drivers are required to undertake periodic Certificate of Professional Competence ("CPC" training). CPC is mandatory for all HGV drivers whether employed by the respondent or not. If an HGV driver fails to undertake CPC training, they cannot legally drive a HGV. CPC training is a UK legal requirement and not solely a requirement of the respondent. The CPC is a licence held personally by the driver.

30. A CPC licence is subject to a periodic refresher training. The refresher training requirement is 35 hours of training every five years.

31. HGV drivers joining the respondent will already have a CPC licence. The respondent has offered refresher CPC training to its drivers since 2009 on numerous occasions annually. HGV drivers employed by the respondent are informed by text message of the times such training is provided. Drivers employed by the respondent are not required to attend any particular training session as accepted by Mr Harper in cross examination.

32. HGV drivers who attend CPC refresher training offered by the respondent receive free refresher training and a goodwill payment equivalent to half-pay for attendance (i.e. four hours regular pay). HGV drivers who attend CPC refresher training at a provider other than the respondent are normally required to pay a training fee to the course provider.

<u>Mr Harper and the collective grievance</u>

33. Mr Harper has been employed by the respondent since 1 July 2014. His contract of employment is in the form of one of the New Contracts.

34. On 25 May 2022 Mr Harper raised a collective grievance in relation to a number of matters including overtime pay, bank holiday working and payment for CPC training. A copy of his grievance appears in the bundle at page 282. The respondent responded in writing to Mr Harper's grievance on 16 June 2022 (page 283).

35. Mr Harper appealed the decision of the grievance outcome on 5 July 2022 (page 285) and a grievance appeal meeting was held with him on 21 July 2022. The appeal was heard by Ms Pheasant. Ms Marshall was also in attendance. Following that meeting, Mr Harper was informed that his grievance appeal would not be upheld and the decision was communicated to him in writing on 25 July 2022 (page 310).

Law

Collective Agreements / Employee Handbooks

36. Section179(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

> *A collective agreement shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—*
> *(a) is in writing, and*
> *(b) contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable contract.*

37. However, individual provisions of a collective agreement may be (or become) legally enforceable as terms of individual employees' terms and conditions. This may be achieved by express reference (e.g. **National Coal Board v Galley [1958] 1 WLR 16, CA**), or, where appropriate, implication, subject to the terms being 'apt' for incorporation as individual terms of a contract of employment: **Alexander v Standard Telephones and Cables Ltd (No 2) [1991] IRLR 286, QBD; Malone v British Airways [2011] ICR 125, CA George v Ministry of Justice [2013] EWCA Civ 324.**

38. The same approach generally applies to employee handbooks. Such documents are not ordinarily contractual in nature, unless the language and provisions are 'apt' to be incorporated into individual contracts of employment: **Keeley v Fosroc Ltd [2006] IRLR 961, CA; Sparks v Department for Transport [2016] IRLR 519, CA.**

39. It is not necessary for a whole document to be incorporated into the contract for some of the contents of the document to be found to be contractual terms :**Keeley v Fosrec International Ltd [2006] IRLR 961, CA.** Instead, it might be that only some of the policies, or parts of policies, from a staff handbook might be found to be contractually incorporated. This was the case in **Bateman v Asda Stores Ltd [2010] IRLR 370,** EAT, where it was found that the inclusion of the following words was sufficient to incorporate terms into the contract:

"The letter you received offering you your job (and any subsequent contract change letters), together with the following sections in this handbook, form your main terms and conditions of employment".

40. In **Hussain v Surrey and Sussex Healthcare NHS Trust [2011] EWHC 1670,** Smith J said that there is no single test about whether terms are contractually incorporated, but that there were some indications which might show an agreement was to have a contractual effect, such as:

    40.1. the importance of the provision to the contractual working relationship;
    40.2. the level of detail prescribed by the provision;
    40.3. the certainty of what the provision requires;
    40.4. the context of the provision; and
    40.5. whether the provision is workable.

Contractual Construction

41. The objective of contractual construction "is to ascertain the objective meaning of the language which the parties have chosen to express their agreement": **Wood v Capita [2017] AC 1173, SC** per Lord Hodge at [10].

42. The objective meaning is "the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract": **Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, HL** per Lord Hoffmann at 192.

43. That exercise involves the tribunal identifying what the parties meant "through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision": **Arnold v Britton [2015] AC 1619**, SC per Lord Neuberger at [17].

44. The Supreme Court in Arnold further identified (at [15]) the following relevant considerations:

> *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in* ***Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101****, para 14. And it does so by focussing on the meaning of the relevant words… in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.*

45. Contractual construction has often been said to require an "iterative" approach, i.e. a "process by which each suggested interpretation is checked against the

provisions of the contract and its commercial consequences are investigated": **Wood v Capita [2017] AC 1173**, SC at [12].

Working Time

46. Working time, and other associated concept relevant to this case, are defined in the Working Time Regulations 1998, Reg 2 as follows:

> *"working time", in relation to a worker, means–*
> *(a) any period during which he is working, at his employer's disposal and carrying out his activity or duties,*
> *(b) any period during which he is receiving relevant training, and*
> *(c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement;*
> *and "work" shall be construed accordingly;*
>
> *"relevant training" means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training–*
> *(a) the immediate provider of which is an educational institution or a person*
> *whose main business is the provision of training, and*
> *(b) which is provided on a course run by that institution or person;*
>
> *"rest period", in relation to a worker, means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations;*

47. The test for working time requires each of the following elements to be satisfied: (i) that the worker must be working, (ii) that the worker is at their employer's disposal, and (iii) that the worker is carrying out his activities or duties: see **Edwards v Encirc Ltd [2015] IRLR 528, EAT** at [21].

48. In **Bx v Unitatea Administrativ Teritriala D [2022] ICR 315 (CJEU)**, the European Court held at [40] that:

> *…a decisive factor for finding that the elements that characterise the concept of "working time" for the purposes of Directive 2003/88 are present is the fact that the worker is required to be physically present at the place determined by the employer and to remain available to the employer in order to be able, if necessary, to provide his or her services immediately (see, to that effect,* ***DJ v Radiotelevizija Slovenija*** *, para 33).*

49. With regard to the position of pay, the Working Time Directive 2003/88/EC and Working Time Regulations 1998 do not regulate pay (save in respect of holidays), as confirmed by **DJ v Radiotelevizija Slovenija [2021] ICR 1109, CJEU** at [57]:

> "It is important to recall that, save in the special case covered by article 7(1) of Directive 2003/88 concerning annual paid holidays, that [the WTD] is limited to regulating certain aspects of the organisation of working time in order to protect the safety and health of workers, with the result that, in principle, it does not apply to the remuneration of workers (**Sindicatul Familia Constanța v Direcția Generală de Asistență Socială și Protecția Copilului Constanța [2019] ICR 211** at [35])."

Legal Submissions

50. Both representatives provided written submissions which I incorporate by reference.

Conclusions

51. In order to reach my conclusions I return to the agreed list of issues. Issues 1 and 2 are narrative and so I start with issue 3.

Did the Alloga Staff Handbook 2017 entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work?

52. In relation to this issue, the claimants in their written submissions state:

> *Although the agreed list of issues indicates that the Tribunal should determine the above question, the Claimants submit that the relevant contractual question to progress this claim is whether the Claimants had a contractual entitlement to overtime pay upon exceeding their prescribed basic daily hours of work. That involves examining the contract of employment and which terms governing overtime pay are incorporated into it. The Claimant's position is that an entitlement to overtime pay on a daily (as opposed to weekly) basis is found in the collective agreement, which in turn relies on the provisions in the Drivers Handbooks. The 2017 Staff Handbook is a useful aid to interpretation of the overtime provisions for drivers (in that it evidences this entitlement, as indicated in the Claimants' further and better particulars of claim) but does not appear to be the source of the overtime provisions incorporated into the Claimants' contracts.*

That however is not the issue which has been agreed for determination by the Tribunal. The parties, through their legal representatives, agreed a different issue for determination and it would be remiss of this Tribunal to depart from an agreed list of issues in these circumstances.

53. In relation to overtime, both the New and Old Contracts state at clause 6, "Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week."

54. The Alloga Staff Handbook 2017 provides at page 44 that:

> "*Remuneration for overtime will be calculated on a daily basis*" (page 249 of the bundle).

However, all of the claimants are employed by the respondent as drivers. The consequence of this is that the overtime provisions of the Alloga Staff Handbook 2017 do not apply to drivers. That is clear from page 44 of that document which states:

> "*All drivers should refer to the Alloga Drivers' Handbook for details of Overtime Payments*."

55. That position is also consistent with clause 4(c) of the collective agreement that Unichem entered into with the USDAW and the TGWU in September 1996 (page 293). It is also consistent with the evidence Mr Harper gave under cross examination where he accepted that that the Alloga Staff Handbook 2017 applied to individuals working in the Respondent's warehouses. Mr Harper also accepted that the relevant provisions for calculating overtime payments for drivers were to be found in the Drivers' Handbook. The Tribunal had in its possession 2 Professional Drivers' Handbooks, one issued by UDG in 2012 and one issued by Alloga in 2018. Neither handbook states that drivers' working hours are to be assessed by a daily basis and that overtime would be payable if daily working hours are exceeded. Both measure drivers' working time in weeks.

56. In addition, the Old and New Contracts refer to drivers' working time being measured and paid in weeks at clause 6 of both documents. Returning to clause 6 of both, it reads:

> *"6. Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week."* (page 276 and page 278)

57. Drivers are therefore contracted to work a core 48 hours per week (or are guaranteed payment for 48 hours where drivers do not in fact work 48 hours in a week), with overtime up to 60 hours per week. The measure in each instance is in hours per week, and not per day.

58. For these reasons, the Tribunal decides that the Alloga Staff Handbook 2017 does not entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work. The contractual documentation denotes that overtime for drivers employed by the respondent is only payable when they work in excess of 48 hours per week. It is therefore apparent that the claimants' claims in respect of this issue are not well founded and they are dismissed.

59. Due to the manner in which the list of issues has been decided, there is no need for the Tribunal to address issue 4.

<u>5. Did the Alloga Staff Handbook 2017 entitle the Claimants to be paid an enhanced rate of pay for working on bank holidays?</u>

60. The claimants provided a second version of their Further and Better Particulars of Claim on 27 September 2023. In that document, the Bank Holiday Working Claim was said to be derived from page 9 of the Alloga Staff Handbook 2017.

61. It is clear to the Tribunal that the Alloga Staff Handbook 2017 does not entitle the claimants to be paid an enhanced rate of pay for working on bank holidays. Under cross examination, Mr Harper gave evidence that that the Alloga Staff Handbook 2017 applied to individuals working in the Respondent's warehouses. It is not applicable to the claimants, who are all drivers, and so the claimants can derive no entitlement to be paid an enhanced rate of pay for working on bank holidays from that document.

62. The claimants have not provided any alternative argument as to why an enhanced rate of pay for working on bank holidays should be payable to the

claimants save for attempting to argue, during submissions, that the second tier bargaining agreement in relation to Bank Holiday working entered into between UDG and USDAW/SATA in May 2013 is invalid (page 205). Not only is that something which has not been pleaded previously but it is also something which was not listed for determination at this hearing. In any event, this is a point on which the claimants have provided insufficient evidence.

63. The Tribunal decides that the Alloga Staff Handbook 2017 does not entitle the Claimants to be paid an enhanced rate of pay for working on bank holidays. It is apparent to the Tribunal that the claimants' claims in respect of this issue are not well founded and they are dismissed.

64. Due to the manner in which the list of issues has been decided, there is no need for the Tribunal to address issue 6.

<u>7. Were the Claimants directed by management instruction to undertake training to maintain their personal Driver Certificate of Professional Competence qualification ('CPC')?</u>

65. The Tribunal accept that the respondent has offered refresher CPC training to its drivers since 2009 on numerous occasions annually. Mr Harper gave evidence on that point which the Tribunal accepts. He stated that there would be in excess of 10 CPC refresher sessions per annum and that he is informed by a text message from the respondent of the times when such training is provided. Mr Harper also accepted under cross-examination that he was not required to attend any particular training session.

66. The claimants seek to rely on the Working Time Directive 2003/88/EC / Working Time Regulations 1998 to advance this part of their claim arguing that CPC training is working time. The test for working time requires each of the following elements to be satisfied: (i) that the worker must be working, (ii) that the worker is at their employer's disposal, and (iii) that the worker is carrying out his activities or duties: see **Edwards v Encirc Ltd [2015] IRLR 528, EAT** at [21].

67. It is clear to the Tribunal that the claimant's argument on this point is not sustainable. For the claimants' argument to succeed they must show they were at their employer's disposal when undertaking CPC training. In **Edwards v Encirc Ltd [2015] IRLR 528, EAT** at [61] it was stated that:

> *"At the employer's disposal" must mean something broader than under the employer's specific direction and control. Following the case-law, it is apparent that, if the employer has already required the employee to be in a specific place and to hold him/herself ready to work to the employer's benefit, that can be sufficient."*

68. Drivers attending CPC training were not at their employer's disposal. Returning to the list of issues, they were also not directed by management instruction to undertake training to maintain their CPC. The Tribunal reach this conclusion as it is apparent that the claimants were not required or instructed to attend any particular CPC training session. Mr Harper gave evidence that whilst the details of training sessions were communicated by text message, whether a driver attended any given training session was a matter for them.

69. It is also apparent that drivers were not ever required to attend the CPC refresher training held by the respondent. Mr Harper accepted that a driver could take up refresher training elsewhere to maintain their CPC licence. Indeed Ms Marshall gave evidence, which the Tribunal accepts, that this did happen from time to time. Mr Harper also accepted that a driver may chose not to attend CPC training. This might for example occur because they had recently joined the company and they had already completed their refresher training at their previous employer. The Tribunal accept that it is therefore a matter for each individual claimant as to whether they attend the respondent's training or not.

70. For these reasons, the Tribunal decides that the claimants were not directed by management instruction to undertake training to maintain their CPC. It is apparent to the Tribunal that the claimants' claims in respect of this issue are not well founded and they are dismissed.

71. Due to the manner in which the list of issues has been decided, there is no need for the Tribunal to address the remaining issues.

Decision

72. The claimants' claims are not well founded and they are dismissed. In light of this decision, no further preliminary hearing or final hearing need be listed.

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Employment Judge McTigue

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Date: 29 April 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

....30 April 2024.....

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FOR EMPLOYMENT TRIBUNALS

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