



EMPLOYMENT TRIBUNALS

Claimant: Miss. N Nahar

Respondent: Chief Constable of Nottinghamshire Police

Heard at: Midlands East Region via Cloud Video Platform

On: 25th April 2024 &
2nd May 2024

Before: Employment Judge Heap (sitting alone)

Representation
Claimant: In person
Respondent: Mr. J Allsop – Counsel (with Ms. H Chambers – Solicitor – also present)

RESERVED JUDGMENT

The complaints of unauthorised deductions from wages both fail and are dismissed.

REASONS

BACKGROUND & THE ISSUES

1. By way of a Claim Form presented on 31st January 2023 after a period of early conciliation via Acas which took place between 23rd November 2022 and 4th January 2023 the Claimant advanced a complaint of unauthorised deductions from wages in respect of what she says are underpaid overtime payments. I say more about the specifics of that below.
2. The claim had been the subject of two Preliminary hearings before reaching this hearing. The first of those took place on 10th July 2023 before Employment Judge Brewer. He understood from what appears to have been said by the Claimant's then solicitor (with whom she later parted ways) that the claim had been presented out of time and he listed a substantive Preliminary hearing to determine that and whether time should be extended.

3. That hearing took place before Employment Judge Smith on 10th January 2024. He determined after discussion with the parties (including the Claimant who was by then acting as a litigant in person) that the claim had actually been presented in time and so he converted the hearing to one for case management.
4. Employment Judge Smith identified the issues in the claim as being as follows:
 - 4.1. A complaint of unauthorised deductions from wages in respect of 360.03 hours of overtime which she says that she had worked; and
 - 4.2. The balance of a deduction made from her wages in recovery of a sum erroneously paid at an enhanced rate of overtime which Employment Judge Smith identified as being an overall deduction in the sum of £1,296.62 but there having been a repayment of £527.98 it was said that the claim was for the balance of £767.64.
5. Despite the issues having been identified by Employment Judge Smith as above after discussion with the Claimant, her witness statement for the purposes of the full merits hearing before me set out that she was seeking to advance a litany of other complaints including race, age and sex discrimination and complaints which the Tribunal had no jurisdiction to consider such as for personal injury and breaches of GDPR.
6. That had arisen from unsuccessful attempts that the Claimant had made to amend the claim and which was determined by Employment Judge Adkinson the day prior to the first day of this hearing. Employment Judge Adkinson refused the amendment application with full reasons which there is no need to repeat here. Employment Judge Adkinson revisited the application following consideration of additional submissions which the Claimant had made but his decision remained the same. It was made clear to the Claimant that it was not open to her to seek to revisit the application again at this hearing, although regrettably that remained a focus of much of her written closing submissions.
7. Employment Judge Adkinson had also dealt with issues which the Claimant had raised in connection with the content of the hearing bundle. He had refused an application that she had made very late in the day to add further documents to the hearing bundle and in doing so rejected the Claimant's assertion that she had not known that she could add to the bundle and also referenced the fact that the additional items did not appear to be relevant. Employment Judge Adkinson did reference that if there were relevant documents then those could be discussed at this hearing.
8. However, other than general references to complaints about the bundle and non-inclusion of her evidence the Claimant did not renew any application to adduce other documentation. I should observe that there were extensive references in her closing submissions to documentation that it was said had been withheld from the bundle by the Respondent which proved that the Claimant had logged the vast majority of overtime hours claimed on the DMS system or otherwise proved entitlement to the additional sums, but no application was made to adduce that and I have not seen it. In all events, I agree with the view taken by Employment Judge Adkinson that the Claimant

had had ample opportunity to add any further documents that she wished to rely on to the hearing bundle and that she would have been fully aware that she could do so.

THE HEARING

9. The hearing was listed for one day of Tribunal time. Unfortunately, by the time that the Claimant had given her evidence and cross examined one of the Respondent's witnesses, Danny Baker, it was 4.45 p.m. and it was clear that there would not be time for the remaining witness to give her evidence and for submissions to take place and so a further day of hearing time took place on 2nd May 2024 with Judgment thereafter being reserved.
10. I apologise to the parties for the delay in this Judgment being finalised and sent to them which arose from an oversight on my part. The patience of both parties in awaiting the Judgment has been most appreciated.

WITNESSES

11. I heard from the Claimant on her own account. She had also presented three other witness statements from a Jackie Haughton, Kim Brailsford and Tracy Crump. None of them attended the hearing to give evidence and the Claimant told me that because she was acting as a litigant in person she did not know that they would need to attend. I have not felt the need to place any reliance on those additional statements because two of them were character references which had no relevance to the issues that it was necessary to determine and the third equally did not assist me with any factual evidence going to whether there had been any unauthorised deductions from the Claimant's wages.
12. On behalf of the Respondent I heard from Danny Baker, the Respondent's Head of Finance, and Lindsey Stillings, People Business Support Partner in the Respondent's Human Resources ("HR") Department.
13. Of the evidence that I heard I preferred that of the Respondent's witnesses whose evidence was straightforward and consistent. That was not always the case with the Claimant who on occasions did not answer the question put to her but rather something different and at times also went off on a tangent.
14. In addition to the witness evidence that I have heard I have also had regard to the hearing bundle which I was provided with which ran to some 368 pages, albeit only a few documents were in fact referred to, and the written and oral submissions of both parties.
15. The parties can be assured that even where I have not made express reference to something said or seen during the course of the hearing within these Reasons I have nevertheless considered carefully all that they have told me and all of the evidence that I have seen and heard.

THE LAW

16. Section 13 Employment Right Act 1996 provides for the protection of wages of

a worker as follows:

“13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

17. It follows from that that if there is a deduction made from the wages of a worker from that which are properly payable to them, that will be an unauthorised deduction from wages unless the provisions of Section 13 Employment Rights Act are satisfied by the employer or, otherwise, if the deduction is an excepted deduction within the meaning of Section 14 Employment Rights Act 1996.

FINDINGS OF FACT

18. I ask the parties to note that I have confined my findings of fact to those which it is necessary to make in order for me to deal with the issues in the claim.

Commencement of employment with the Respondent

19. The Claimant commenced employment with the Respondent as a civilian member of staff as Payroll Lead from 7th July 2021 until her employment terminated with effect from 7th August 2022. The Claimant worked under the line management of Sue Butler who in turn reported into Danny Baker, the Respondent's Head of Finance.

The Claimant's contract of employment

20. Prior to the commencement of her employment the Claimant was provided with a written statement of employment particulars. That document set out the main terms of the Claimant's employment with the Respondent and dealt with an entitlement to make deductions from wages in the following terms:

"12 DEDUCTIONS

If, at any time, monies are owed to the Chief Constable of Nottinghamshire Police for any reason, whether pursuant to the Terms of the Written Statement of Particular, overpayment of salary, benefits or otherwise any payment in excess of your contractual entitlement, you are required to repay any such monies.

Unless an agreement is reached to repay the monies by any other acceptable method you hereby authorise the Chief Constable of Nottinghamshire Police at any time during the employment and upon its termination (howsoever arising), to deduct from your basic salary or other remuneration and/or any other sums owed to you under this Agreement, any sums owed by you to the Chief Constable including, for the avoidance of any doubt any overpayments of salary, allowances, repayment of holiday pay or loans (and interest where appropriate) advanced by Nottinghamshire Police or Welfare Club to you subject to the Chief Constable giving you prior notice of any such deductions and opportunity to object to them.

In respect to annual leave taken over and above that permitted by your contract, we may deduct from your salary, or any sums owed to you, any money owed to the Force by you in respect to leave taken over and above that permitted by your contract, a sum of money equating to the amount of money that you would have foregone if the leave had been taken as unpaid leave".

Overtime August 2021 to August 2022

21. It is common ground that between August 2021 and August 2022 it was a busy time for the payroll team, the Claimant included. That was because there was at least one major project (the parties appear to be at odds as to whether it was one or two projects but that is immaterial) that was going to generate a lot of extra work. Accordingly, Mr. Baker authorised at the request of the Claimant and Sue Butler for members of the team to undertake overtime without having to obtain prior approval as would usually be the case. There was no minimum or maximum hours of overtime permitted and staff were effectively trusted to undertake what was required although working overtime was not compulsory.

Recording of working hours

22. It is common ground that the Respondent operated a Duty Management System which is referred to as "DMS" on which staff are expected to record their working hours, including overtime, so that hours can be properly recorded and wages calculated accordingly. That requirement is applied at every level of the Respondent organisation up to and including the Chief Constable.
23. It is clear from the relevant policy which appears at page 351 of the hearing bundle and of which the Claimant was aware that that needed to be done and that overtime could not be authorised unless hours had been correctly logged onto DMS.
24. The Claimant's evidence was that she had recorded the vast majority of the hours that she says were not paid to her – and as I understand it from what she said at the Preliminary hearing before Employment Judge Smith some 330.03 hours – on DMS but also that at times she had not because she had been too busy to do so. I did not accept that there was insufficient time for the Claimant to record her working hours on DMS because the evidence of Ms. Stillings was that that would only have taken a matter of minutes. The Claimant was aware of the requirement to record hours on DMS, I do not accept that she had any lack of knowledge about those requirements or how to use the system and that irrespective of workload she would have had time to properly record her hours on the system because it only took a few moments to do so. Working in the finance department the Claimant could and would have been well aware of the importance of there being an accurate record of hours worked so that wages could be correctly calculated. There is no written record of any hours of overtime worked by the Claimant such as her own log or within a notebook or the like during the relevant period whether that is hours that she says were recorded on DMS or not.
25. I also do not accept the Claimant's position that there was any technical issue with the DMS system or that it was not accurate. Other than her say so there was no evidence of any wider issue that affected others and the Claimant's position before these proceedings, as I shall come to below, was on the whole that she had not logged the hours on DMS that she was now claiming entitlement to.

26. I also do not accept the Claimant's evidence and position that it was somehow the responsibility of her line managers to ensure that she correctly recorded her overtime and hours of work. The overtime policy makes it plain that that is the responsibility of the individual member of staff (see page 359 of the hearing bundle) which also makes logical sense for an individual to log their own hours and not be responsible for someone else's. That is not least given the Claimant's evidence that she was doing work from home, during annual leave and at weekends and at times that her line manager was not in the office. I also accept the evidence of Mr. Baker that he and the Claimant's line manager had had cause to remind her previously that it was her responsibility to make sure that she correctly logged her hours on DMS.
27. I also found the Claimant's evidence that she was not fully aware of the need to record her working hours because she was not sure that she had had full sight of the relevant policy unconvincing. The Claimant's role was as Payroll Lead and it is inconceivable that she did not know how or that she was required to properly log her working hours on DMS. That was not least because she was responsible for authorising overtime for subordinate members of her team.
28. I have been unable to understand from the Claimant's own evidence or her cross examination of the Respondent's witnesses where there is evidence of her having logged any of the hours that she is claiming on DMS or where there were errors on the system which in all events should have been something promptly raised with her line manager to rectify. Where the Claimant complains of overtime not being authorised by her line manager, I accept the evidence of Mr. Baker that he had spoken to Ms. Butler about that and she had told him that this was because bookings on DMS were incomplete, that the Claimant had been asked to rectify that and that she had failed to do so.
29. As I shall come to in my conclusions, the only evidence that the Claimant appeared to rely on to document additional hours worked was a spreadsheet apparently obtained during a Subject Access Request which she said had been withheld from the bundle. That was the subject of Employment Judge Adkinson's refusal to admit late evidence the day before this hearing.

Investigation by Mr. Baker

30. The Claimant raised with Mr. Baker in or around July 2022 that there were periods of overtime that she had worked during the period August 2021 to August 2022 which had not been recorded on DMS. Mr. Baker asked the Claimant to provide him with details of the hours that she was referring to and that he would then review those. It was generous of him to agree to that given that firstly the Claimant accepted, at that point at least, that the hours had not been logged on DMS which was a specific requirement and secondly any overtime needed to have been claimed within a six month period (see page 359 of the hearing bundle) and part of the period that the Claimant was referring to was well outside that. Although the Claimant during cross examination disagreed with the rationale behind that six month time limit, that was nevertheless the policy in question.

Email to Mr. Baker

31. On 3rd August 2022 the Claimant emailed Mr. Baker following their discussions about overtime payments. It is worth setting out the relevant parts of that email in full because much of it conflicts with the position that the Claimant now takes that the vast majority of overtime was recorded on DMS and that it was only a small proportion of hours that were not.
32. The relevant parts of the email said this:

"Hi Danny,

Please accept my sincere apologies for the delay in sending my overtime review, unfortunately it has taken several days to piece together based on reviewing emails sent on particular days and personal messages to advise I was working as unfortunately I did not keep a daily log of working times. On some days I have logged on but not off, on others I have logged on and off however DMS has not recorded these times, on occasion I logged off but continued to work having remembered something outstanding, on some occasions my hours have not been logged due o (sic) working after 12 and on others I have worked during annual leave, as discussed I was not advised of some of the complexities with DMS until of late i.e. working whilst on annual leave, working after midnight nor authorisation of flexi accrual.

I have sent the attached to Andrea Hill in the hope these can be corrected in time, I appreciate the review has taken me longer than agreed however due to lots of changes by RMU on my record with corrections of hours paid at time and a half (please see extract file for hours paid to date), it has taken me considerable time to complete the attached. I also believe this review has only been completed for myself and not others that have been paid at this rate. I believe this is a work in progress for others however may result in overpayments of considerable amounts and not the minutes as originally advised.

Having reviewed the overtime on DMS and dates and times I have identified as missing thus far I do not believe the attached list is an accurate reflection of the overtime I have worked to date. I have collated the attached based on the reports yourself and RMU have sent me and emails sent on particular dates however please be advised this has not been an extensive review and have not had capacity to review times nor emails for everyday only oddments. I believe in Sept/beginning of October I worked extensive hours due to payroll aggregation and in February and March Sue and I were constantly working very late hours and every weekend being that we were the only two from the team working on PPR. There were occasions were Mark came into speak with me about go live and how things were going, occasions where Maria and I were in the office together late and many occasions Sue and I were in the office together late. I would rarely log off and continue work at home during these periods as it was easier to work in the office, I'm therefore

bewildered by the end times logged especially during PPR. Unfortunately I'm unable to fathom how these hours can be obtained and due to access to all system being withdrawn from 7th August I did not want to delay sending the attached.

I have dedicated a lot of time and service to the payroll department with BAU, team management, aggregation and implementation and have not had capacity to log working times nor keep my DMS up to date; please accept my sincere apologies for this however deemed the above as priority. I can confirm the attached review his incomplete however the most I have been able to complete with time available. I do hope there are other ways to obtain my working hours as I do not believe the attached brings the matter to a close and would like additional review to be paid accurately for the time worked.

.....
I thank you in advance for all support to helping me to resolve this matter and apologies for all the inconveniences I have caused by not logging my times”.

- 33. The Claimant attached to that email a spreadsheet which she had compiled and which it was intended that Mr. Baker would review. I make no finding that there was an earlier version of the spreadsheet sent to the Claimant by Mr. Baker as she contended because that was not in the hearing bundle before me.
- 34. The Claimant chased up a response on 17th August 2022 apologising for not having monitored her hours correctly (see page 80 of the hearing bundle). Mr. Baker replied to the Claimant on 24th August 2022 indicating that it would require some time to deal with because it was incomplete and would require further analysis which would involve discussions with Ms. Butler and to link into the DMS system (see page 77 of the hearing bundle). There were further communications between the Claimant and Mr. Baker the following day. That included Mr. Baker reminding the Claimant that it was a requirement for all staff to complete the DMS and referencing the fact that overtime had not been recorded there or in a form such as a notebook or excel spreadsheet. The Claimant chased the matter up again with Mr. Baker on 30th August 2022.
- 35. As indicated in the email from Mr. Baker referred to above it was clear to him that it was going to take time to unpick the information that the Claimant had provided. Frustrated by the delays, the Claimant involved the Respondent's Head of Finance, Mark Kimberley, who raised matters with Mr. Baker. Mr. Baker emailed Mr. Kimberley on 29th September 2022 indicating that there had been a delay because of other work commitments but that we would try and find time to deal with the matter. His email also said this:

“My main concern if that the data provided by Neel is very hard to follow and whilst I don't disagree that she may have some overtime owing (mainly due to

her not recording this correctly in DMS) whether we offer a payment to resolve, let me know your thoughts on this but I will still see what I can glean from the data as to how many hours we are talking about here”.

36. Mr. Kimberley replied to say that he would support Mr. Baker in whatever he thought to be appropriate (see page 88 of the hearing bundle).

Ex gratia payment

37. Once Mr. Baker had reviewed the information provided by the Claimant he emailed her on 14th October 2022 indicating that the Respondent would make what I accept was an ex gratia payment to her. Mr. Baker’s email said this:

“Following on from the exchange of emails regarding payment of overtime that was never logged in the DMS system between yourself and I and then Mark this has been discussed with Mark and I and the final proposal for you is as follows:

Overtime 100hrs x £17.2905 = £1,729.05 gross

Annual leave 17.97hrs x £17.2905 = £310.71 gross

Total £2,039.76 gross

I will inform Payroll to process this in October”.

38. It is not in dispute that that payment was made. The Claimant says that the sum should have been paid at a higher rate but I accept the evidence of the Respondent that it was paid at the rate that it was – referred to as a blended rate - because the failure of the Claimant to log the overtime on DMS meant that the Respondent was not able to understand which period(s) her claim related to so that an average of two rates over two different periods was used.
39. I accept that this was an ex gratia payment to the Claimant designed to try and resolve the matter and was based on effectively a guestimate of overtime which the Claimant had failed to properly log onto DMS. I accept the evidence of Mr. Baker that he thought that that amount was a reasonable sum taking into account what overtime had already been paid to the Claimant and I also accept his evidence over that of the Claimant that at no time did he suggest or agree averaging out of the overtime of the payroll team to ascertain an amount of overtime that would be suitable to pay to the Claimant. Whilst that suggestion had featured in the Claimant’s particulars of claim, it was absent from an otherwise lengthy and detailed witness statement.

Involvement of the Claimant’s Trade Union

40. The Claimant was dissatisfied with the response from Mr. Baker and at that stage involved her Trade Union Branch Secretary to whom she wrote a lengthy email on 27th October 2022 asking for assistance. It is not necessary to set out the content of that email in full, but the following points are worthy of note:

- (a) That she had openly accepted not recording hours and days on DMS and had had no option but to trawl through emails to obtain approximate finish times over days and weekends but that was not an accurate reflection of her overtime worked. The Claimant's position is that that was inaccurate and that there were a number of emails which had been omitted from the hearing bundle that would have demonstrated that. Absent that evidence, which it was for the Claimant to adduce in accordance with Orders made, I do not accept that and I am satisfied that she was saying quite clearly at that time that the hours were ones which were not logged on DMS;
 - (b) That there had been a significant workload and that logging working time had not been the Claimant's priority as she was passionate about her contribution to the team;
 - (c) That there was overtime recorded in the system that were awaiting authorisation and should be paid and the only hours that could/should be disputed were the ones that she had not recorded;
 - (d) That the offer of 100 hours was unfair and that there had been no comparison of hours with the rest of the team as she said that Mr. Baker had originally suggested;
 - (e) That there had been an unlawful deduction from wages in August 2022 regarding an overpayment and that no other "seniors" had had the deduction made; and
 - (f) That as a minimum she would be owed 325.12 hours of overtime.
41. The Claimant also raised the matter with Lindsay Stillings, People Services Business Partner, on 29th November 2022 who liaised with Mr. Baker about the alleged underpayment. It is not necessary for the purposes of determining the claim before me to address in any great detail what steps Ms. Stillings took in that regard.
42. In the meantime, Mr. Baker had responded to the Claimant's trade union representative to set out that there was no evidence in DMS of the overtime that she had said that she had worked. He made it plain that any overtime logged in DMS would have been paid and that whilst he did not dispute the level of effort put in by the Claimant given the overtime was not logged, which was a requirement for every employee, they had considered the 100 hours to be a "fair and reasonable" amount (see page 95 of the hearing bundle).
43. Mr. Berry replied to indicate that he would feed back to the Claimant but that his view was that in the circumstances the payment of 100 hours was reasonable. The Claimant disagreed with that assessment.
44. The Claimant's spreadsheet appears at page 125 to 131 of the hearing bundle but there is nothing to substantiate the hours claimed. The Claimant's word alone that she has correctly calculated those hours is insufficient to establish any entitlement to additional pay. Items such as text messages between the Claimant and her family/friends (see for example page 187 of the hearing

bundle) stating that she was working on a certain date are insufficient to establish any proper entitlement to additional pay (the messages, just as one example, do not record all dates where additional work is claimed nor for how long any work was done) and, in all events, it does not negate the need for the Claimant to have recorded her hours within the DMS system.

45. The Respondent's records based on the Claimant's figures and a reconciliation of what monies had been paid to her (including the 100 hours ex gratia payment) show that in all events the sums paid to the Claimant exceed the overtime to which she claims entitlement (see page 186 of the hearing bundle).

Payment at the incorrect rate

46. It is common ground that for work done in or around July 2022 the senior members of staff within the payroll team, the Claimant included, were paid overtime at an incorrect rate. That was a payment made at a higher rate than it should have been and was at time and a half rather than what the Respondent refers to as plain time. Mr. Baker was advised by Sue Butler that the sums involved were only very small and on that basis he agreed that they would not be recovered by the Respondent. The payment made to the Claimant on 26th August 2022 did, however, deduct the sum of £1,296.62 which was for the overpayment of overtime which had been paid at time and a half.
47. I accept the evidence of Mr. Baker that the repayment was in fact triggered by action that the Claimant herself took by getting in touch with RMU and nothing that he or the Respondent did. That explains the Claimant's position that she was the only member of the team who had any recovery made and it accords with what she wrote in her covering email to Mr. Baker of 3rd August 2023 with regard to corrections by the RMU. That evidence was also consistent with what Mr. Baker told Ms. Stillings at a meeting to discuss the Claimant's concerns on 5th January 2023 (see page 111 of the hearing bundle).
48. After it was raised with him by Ms. Stillings Mr. Baker agreed that the sum deducted would be repaid to the Claimant and I accept his evidence that that took place by way of a reimbursement payment of £527.98 gross made in the Claimant's salary in February 2023. It is not in dispute that that payment was received.
49. However, the Claimant raises that she should have received a reimbursement of the whole £1,296.62 that was previously deducted. She therefore claims the balance of £768.64. At first blush that appeared to be a persuasive argument. However, I accept the evidence of the Respondent that at the same time that the Claimant was paid her August salary she received payment for the overtime that she had logged on DMS in July 2022 at the plain rate that she should have been paid at.
50. I therefore accept that whilst the whole of the overpaid overtime payment was deducted on 26th August 2022, the Claimant received at the same time the correct payment of overtime that she should have received had she been paid

at the correct rate initially. Those were payments of £635.07; £200.16 and £2.20. When Mr. Baker became aware that the Claimant was dissatisfied about the deduction (despite having instigated it herself) he authorised the adjustment be made resulting in the payment of £527.98 referred to above. That in fact resulted in the Claimant receiving slightly more than the sum which had been deducted on 26th August 2022 when taking into account the adjusted payment and the retroactive payments of overtime at the plain rate.

51. I should observe that the Claimant contends that the retroactive payments referred to by Mr. Baker was for something else, namely hours of work during that period including overtime. I prefer the evidence of Mr. Baker on that point and there was no documentary evidence to support the Claimant's position in that regard. Again, that documentary evidence was something that she said had been omitted from the hearing bundle.

CONCLUSIONS

52. Insofar as I have not already done so I now deal with my conclusions based on the facts as I have found them to be.
53. I remind myself that to determine whether there has been an unauthorised deduction it is firstly necessary to work out what was properly payable to the Claimant. The Claimant has not been able to take me to anything which proves that she was owed the additional hours of overtime claimed other than her spreadsheet which has no supporting documentary evidence to show the dates and times worked. In any event, the Respondent had no obligation to make payment to the Claimant for hours that she had not correctly logged onto the DMS system in full so that there was a clear record of hours worked.
54. The only document that apparently evidenced additional overtime worked was one that the Claimant said had been omitted from the bundle. I can obviously make no findings about the content of that because I have not seen it but a great deal of the cross examination of Mr. Baker consisted of seeking to extrapolate evidence of weekly overtime from what might be expected over the course of a year. That was not a helpful course and it did not enable me to make any findings of fact about what hours the Claimant actually worked. Equally, the Claimant's suggestion that Mr. Baker could somehow have known how much overtime she was working from seeing her in the office did nothing to substantiate an entitlement to overtime which had not been recorded on the DMS system.
55. The Claimant appears to suggest that it is an attack on her integrity that the Respondent does not accept that she undertook the additional hours that she claims. That is not to the point, however, because the Respondent has an expectation that all staff will record their hours on DMS and had the Claimant done that then there would not have been any issue. In all events, the Respondent went over and above what was required of them in making the 100 hours ex gratia payment to the Claimant which along with the sums already paid to her amounted to a payment greater than that which she says that she was entitled to by way of overtime.

- 56. As a result of all of that, it follows that the Claimant cannot evidence that there was any additional overtime properly payable to her – and that is what is required – which was not paid to her. This part of the claim of unauthorised deductions from wages therefore for those reasons fails and is dismissed.
- 57. Insofar as the Claimant contends that there was an unauthorised deduction from her wages in respect of payment at a lesser rate of the 100 hours (because the Respondent used a blended rate as described above) that would fail on the basis that the payment was an ex gratia one that the Respondent was not obliged to make and thus that too was not a sum that was “properly payable” to the Claimant.
- 58. Turning then to the second part of the claim which was in respect of the re-claiming of payments which had been paid in error at an enhanced rate. I accept the Claimant’s position that the deduction was not recovered in accordance with the deductions clause of her contract of employment to which I have referred above. However, I take into account that it was a payment for overtime at an enhanced and incorrect rate. That amounted to an overpayment and it was therefore an excepted deduction under Section 14(1)(a) Employment Rights Act 1996.
- 59. However, even if I had found that the Respondent had made an unauthorised deduction from the Claimant’s wages in respect of this payment then I would not have made any Order for further payment to be made because the retroactive payments plus the additional reconciliation payment in February 2023 was more than the deduction that had been made on 26th August 2022.
- 60. For all of those reasons the complaints of unauthorised deductions from wages fail and are dismissed.

Employment Judge Heap

Date: 23rd July 2024

JUDGMENT SENT TO THE PARTIES ON

....23 July 2024.....

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FOR THE TRIBUNAL OFFICE

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>