



EMPLOYMENT TRIBUNALS

Claimant: Mr J Cain

Respondent: Kingscote Haulage Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (CVP)

On: 23 September 2024

Before: Employment Judge S Moore (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr C McDevitt

JUDGMENT

- (1) The claim of breach of contract and/or unlawful deduction of wages succeeds in the sum of £55.84.**
- (2) The application for costs is dismissed.**

REASONS

Introduction

1. The Claimant was employed by the Respondent as a HGV driver between 19 December 2021 and 6 October 2023.

2. ACAS Conciliation took place between 16 and 18 October 2023.
3. The claim for unfair dismissal was struck out on 13 September 2024 on the grounds the Claimant didn't have 2 years' service at the date of dismissal. The remaining part of the claim was set down for a 2-hr hearing.
4. At the outset of the hearing the Claimant clarified that his remaining claim for payments was based on breach of contract in respect of three matters:
 - That he had been forced to work overtime;
 - That he had been paid less than his contracted hours; and that
 - Payments had been taken out of his pay in respect of Penalty Charge Notices (PCNs) without him having had the chance to appeal the notices.
5. Mr Cain gave evidence and so did Ms Sonia Connage, senior accountant, for the Respondent.

Findings

6. In respect of the claim that the Claimant was forced to work overtime, WR.4 of the Working Rule Agreement (WRA) for the Construction Industry of 1 September 2022, which was incorporated into the Claimant's contract of employment, provides: "The employer may require overtime to be worked and the operative may not unreasonably refuse to work overtime".
7. I am therefore not satisfied that requiring the Claimant to work overtime was a breach of contract as it was in accordance with the WRA. Further the Claimant accepted that he had been paid for all overtime he worked.
8. As regards his argument that he was forced to work unreasonable overtime with the threat of dismissal, I am not satisfied that the Claimant was required to work overtime which he could reasonably have refused. In any event, even if he was so required, since the Claimant suffered no financial loss as a result and there is no constructive dismissal claim before the Tribunal the point does not take the Claimant anywhere.
9. As regards the claim that the Claimant was paid less than his contracted hours, the evidence was that the Respondent had a meeting with all the drivers in early 2023 explaining that the company had severe cashflow problems. In order, to try and avoid making redundancies the drivers were asked to take (paid) holiday when there was not enough work for all the drivers to work 8-hour shifts instead of their normal 10-hour shifts. The workforce, including the Claimant agreed and began to work the reduced hours pattern from about April 2023. There is evidence of the Claimant working a reduced working day of 8 hours on 9 occasions between April 2023 and his dismissal. Furthermore, the Claimant volunteered to take annual leave on 4 occasions (when he was paid on the basis of a 10-hr working day).
10. Accordingly, I find that by his verbal agreement at the meeting in early 2023 and by his conduct in working the reduced hours pattern, the Claimant accepted the variation to his contract in respect of hours. In this respect I prefer Ms Connage's evidence to the Claimant's evidence and find that he did not protest about the reduced hours pattern until he was asked to attend a meeting about a disciplinary matter on 3 October 2024.

11. I am therefore not satisfied that the Claimant was paid less than his contracted hours and/or that the amount the Claimant was paid between April 2023 and his dismissal amounted to a breach of contract.
12. As regards the PCNs, the evidence was that the Claimant had incurred four PCNs dated 13 October 2022, 11 November 2022, 11 May 2023 and 21 July 2023, which had resulted in £80 being deducted from the Claimant's pay on 28 October 2022, 25 November 2022, 26 May 2023 and 28 July 2023.
13. I consider that this aspect of the Claimant's claim is best regarded as a claim for unlawful deduction of wages pursuant to s.13 Employment Rights Act 1996 (ERA).
14. Section 23(3)(a) ERA provides that where a series of deductions is made the time limit begins to run from the last deduction in the series. Accordingly, since the last deduction was made on 28 July 2023 the claim in respect of all the deductions has been made in time.
15. The Respondent sought to rely on clause 4.3 of the Claimant's contract which states "We shall be entitled to deduct from either your basic salary or other payments due to you any money which you may owe the company...", however I do not consider this provision is sufficient to authorize the deductions made. The clause is too vague and imprecise to cover the deductions of the kind in question. Further, the amount of the PCN is not, as a matter of law, money owed to Respondent by the Claimant since the Respondent is liable for the PCN as the registered keeper of the vehicle.
16. Accordingly, I find that the Respondent has made unauthorised deductions from the Claimant's wages in the total sum of £320.
17. However, a few days prior to the hearing the Respondent made an ex-gratia payment to the Claimant, without any admission of liability, in the sum of £264.16 which it is entitled to offset against the sum of £320, leaving a balanced owed to the Claimant of £55.84.
18. Finally, I record that the Respondent made an application for costs, which, on balance, I rejected. Although the Respondent had made an offer considerably in excess of the sum which the Claimant has been awarded (which the Claimant initially accepted before changing his mind) and also had given the Claimant two costs warnings, I take into account that the claim for unfair dismissal was not struck out until shortly before the hearing and that the Claimant is a litigant in person.

Employment Judge S Moore
Date: 23 September 2024

Sent to the parties on:
21 November 2024

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For the Tribunal:
T Cadman

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