



EMPLOYMENT TRIBUNALS

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL BY CVP

BETWEEN

Claire Watts
Claimant

and

Index Care Ltd
Respondent

Hearing date: 5 December 2024

Before: Employment Judge Martin

RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant's claim is dismissed

RESERVED REASONS

1. These reasons are reserved as I became unwell during the hearing. There has been a delay in sending this judgment and reasons for reasons I have written to the parties about. I apologise for the delays. These findings of fact are limited to those facts that are necessary for me to determine this claim. Other factual matters whilst read and considered do not form part of these reasons.
2. I had before me an agreed bundle of documents pages, a witness statement for the Claimant and a witness statement from Henry Phillips (Managing Director) for the Respondent.
3. On 22 May 2024 the Claimant presented a claim for breach of contract. It is her case that she worked hours that were not paid for. The Respondent resisted this claim in its response. The Respondent's case is that the

Claimant was not authorised to work hours over and above her contractual hours. The Claimant was employed as a Public Relations and Communications Manager on 10 October 2016.

4. This situation is complicated by the Claimant being in receipt of Carers Allowance which she would lose if she earned over a certain amount per week. The nature of the work was that there were times when more hours per week were needed to complete the work. The agreement was that the 7 hours per week would be the rate at which the Claimant was paid each month thus keeping her within the stipulations of her Carers Allowance payments. The hours she worked however, were not a constant 7.5 hours per week but would be increased during busy times, and that she would have time of in lieu especially during school holidays so she could fulfil her caring responsibilities. The expectation when the Claimant was employed, was that over a year the hours would average out to 7.5 hours per week.
5. To determine this case the first step is to consider what the terms of the contract between the parties was. I then need to consider the evidence in relation to the hours worked to determine whether the additional hours worked were authorised and therefore should be paid for.

The Contract

6. The bundle contained two versions of a s1 written statement of terms and conditions. One version is type written and the other is a form filled in by hand. The latter version is signed by both parties, the other is not. I take the latter version to be the prevailing contract. Within this contract is a clause that provides for seven hours work per week at £14 per hour. It goes on to state that additional hours when authorised and necessitated by the needs of the business may be allowed. This is the key clause in the contract for the purposes of this claim.

The Claimant's case

7. Put simply, the Claimant's case is that she worked over and above the 7 hours per week even when averaged out over the year and she should be paid for those additional hours.
8. She did tell the Respondent on occasion that she was working additional hours for example on 11 November 2016 she said she was working on three major projects and worked 31 hours. In response Mr Phillips wrote saying he expected her to balance her hours over the year. There was a period when the Claimant was on 'sabbatical' which was intended as a device to off set hours worked.

The Respondent's case

9. Mr Philips gave evidence that the Claimant was a senior employee, and he expected her to manage her hours and for her to ensure that over the year the 7.5 hours per week was averaged. He said that there was no agreement

that the Claimant would be paid over and above the annual hours based on 7.5 hours per week. He also questioned the time the Claimant spent on various tasks such as preparing minutes. This however, is not something I need to consider.

10. In about June 2017 the Claimant embarked on a major project namely the company website and Mr Phillips accepted that this would mean additional work. Mr Phillips anticipated that after this project there would be a quiet period to allow the Claimant to take paid time off work to rebalance the hours. This would mean that the Claimant could keep her Carers Allowance.
11. There followed arrangements whereby the Claimant was granted additional paid hours whilst remaining under obligation to only work the contracted monthly hours. There were 9 extra hours per month which were intended to offset any accrued backlog of hours and bring these to net zero.
12. It is Mr Phillips' case that in March 2023 the Claimant demanded payment for all outstanding hours (819 hours) despite the previous agreement being that the Claimant would take time off work to rebalance her hours. The Claimant suggested that she took sabbatical leave later saying that she was forced to take this. Mr Phillips position is that this is the first time he became aware that the Claimant had worked hours that had not been rebalanced.
13. On 12 March 2023, the Claimant suggested to Mr Phillips by email (and subsequently in a phone call) for her partner to issue false invoices to cover the payments of the additional hours. The Claimant then produced time sheets which Mr Phillips queries and says are inaccurate and inconsistent. (This will only be relevant for remedy in the event that the Claimant succeeded).

My conclusions

14. The terms of the written contract are clear. The Claimant was employed to work 7.5 hours per week. Any additional hours had to be authorised and depended on business need. However, the working arrangements have complicated matters. I focussed first on the written terms of the contract which provide for any hours over 7.5 hours a week to be authorised. I considered when that authorisation should happen. I find that the authorisation should happen before the additional hours are worked so that the employer has the option to agree or not agree to additional hours being worked and the employee knows in advance whether he or she would be paid for any additional hours worked.
15. I also looked to see if during the contract there anything was available to indicate that there was a variation to the written contract that meant that the Respondent was contractually bound to pay the Claimant for any additional hours she says that she worked.
16. To be a binding contract there must be an offer, consideration, acceptance and an intention to create legal relations. This applies to amendments of contracts as well. It is trite law that past consideration is not consideration

for the purposes of formation of a contract. In other words, work done before an agreement is not sufficient consideration for a contract that obliges the employer to make payment. It is only if these factors are present that there is a legally binding contract that can be enforced. Clearly all these elements are there in relation to the written statement of terms and conditions of employment and that is a contract which binds the parties.

17. The situation is different when it comes to what happened during the employment relationship. It was agreed between the parties that the Claimant would work extra hours at some times and take time off to balance those hours at other times. As set out above there are communications from the Claimant informing the Respondent of extra hours she has worked. The Respondent did not tell her not to work these extra hours (I note that they were notified after the hours had been worked) and I accept its evidence that it expected her to manage her hours so that over the year it balanced out to 7.5 hours per week.
18. The Claimant is claiming for 819 hours equating to £11,466. This is an astonishing amount when her contract specifies 7.5 hours per week. Whilst I accept that the Claimant did notify the Respondent of some of the additional hours she worked and that she had kept a log of the hours she said she worked, I do not accept that there was an agreement with the Respondent that she would be paid in money for the additional hours. As already said, that agreement would have had to be made before the hours were worked. There is no evidence that this happened.
19. If I accepted the Claimant's case it would mean that the Claimant could choose how many hours to work, and the Respondent would be obliged to pay regardless of what the number of hours were. This does not make business sense as the Respondent would not be able to manage its budgets and finances. I also bear in mind the background to the working arrangements namely the Claimant needing to keep within certain earnings so as not to lose her Carers Allowance.
20. The Respondent tried to resolve issues with the Claimant by her not working (but being paid her monthly salary) for an extended period of time. I considered whether this amounted to acceptance by the Respondent of the money the Claimant says she is owed. I find that it does not. I accept Mr Phillips' evidence that he did not authorise the additional hours as additional hours to be paid, and that the sabbatical was something simply to try to resolve the matter even though there was no contractual entitlement.

Reliability of the evidence

21. I heard from two witnesses, the Claimant and Mr Phillips. Of the two I found Mr Phillips' evidence to be the most convincing. I find that there are two instances where the Claimant has not been completely truthful. Both are set out in Mr Phillips' witness statement.
22. The first relates to the Claimant's conversation with DWP as set out in paragraphs 52-54 of Mr Phillips' statement and evidenced at pages 85-6 of the bundle.

23. The second relates to the Claimant's suggestion that to keep her Carers Allowance her husband could issue a false invoice for work not done by him, equivalent to what she said she was owed as set out in paragraph 17 of Mr Phillips' witness statement and evidenced at page 170 of the bundle. This is on any reading a clear attempt to circumvent the law relating to Carers Allowances.
24. These matters affect my assessment of the reliability and credibility of the Claimant's evidence.
25. In all the circumstances the Claimant's claim is dismissed.

Employment Judge Martin
Date: 27 March 2025

JUDGMENT Sent to Parties
31 March 2025

FOR EMPLOYMENT TRIBUNALS Office

P Wing