



EMPLOYMENT TRIBUNALS

Claimants: Mr Amand Deep and Mrs Rajbir Deep

Respondents: Circle Express Limited

Heard at: Watford Employment Tribunal

On: 15th January 2025 and 3rd June 2025

Before: Employment Judge Shrimplin

Representation

Claimants: in person

Respondent: Mr Guv Sandhu (HR Director of the respondent)

RESERVED JUDGMENT

1. The claimants were employed by Circle Express Limited.
2. The claim by Mr Deep for unlawful deductions of wages under s13 Employment Rights Act 1996 is well founded and is successful. I find that the total deducted between November 2023 and May 2024 was £4,433.40 gross (ie subject to tax and national insurance) and make that award.
3. The claim by Mrs Deep for unlawful deductions of wages under s13 Employment Rights Act 1996 is well founded and is successful. I find that the total deducted between November 2023 and May 2024 was £8,839.73 gross (ie subject to tax and national insurance) and make that award.

REASONS

Preliminary matters

4. The claims against this respondent are multiple claims and have been dealt with together. On 15th January 2025, I heard evidence from Mr Deep and Mr Sandhu in respect of Mr Deep's claim. On 3rd June 2025 I heard evidence from Mrs Deep and Mr Sandhu in respect of Mrs Deep's claim and submissions from each party. As there was insufficient time, I reserved my judgment. Mr Deep attended both hearings in person and Mrs Deep attended the January hearing via common video platform and in person in June. An interpreter attended both hearings in person. Mr Sandhu attended both hearings via common video platform.
5. The witness statements and documents for both hearings were not well

prepared. There was no hearing bundle for the hearing in January 2025. While there was a hearing bundle provided by the respondent for June hearing, I believe it is incomplete in that I identified gaps in the relevant material. I was also provided with a considerable amount of material by the claimants which was not in that bundle but which they said they had provided to the respondent for inclusion. I have considered all of the material provided to me and have included page numbers from the June 2025 bundle where available.

6. In the documents and during the hearing, Mr and Mrs Deep stated that since they made claims to this Tribunal their working pattern had been changed by the respondent on numerous occasions. An email dated 30th April 2025 indicated that Mr Deep had resigned because of this. I also note that some of the claims are for periods after the submission of the claim on 15th May 2024.
7. I wish to make clear that the events following submission of the claim are not part of the claims made in the ET1 and the Tribunal has no jurisdiction to decide upon them. I have not considered them. If any complaint is made about the respondent's conduct by Mr and Mrs Deep after 15th May 2024, such as failure to consult or constructive dismissal or further losses from their wages due to contract changes, that complaint should be the subject of a further claim.

Background

8. Mrs Deep was employed on 17th March 2020 as a C2 driver, by the respondent, based at Heathrow. The offer of employment states she was to be paid £29,000 per year plus a £2,000 shift allowance, working from 9pm to 9am on a 4 on/4 off shift pattern. She was entitled to 20 days' annual leave (on a calendar year basis) plus statutory public holidays. (p100). Leave was not calculated by reference to shift patterns.
9. Mr Deep was employed on 21st March 2020, by the respondent, also based at Heathrow. The offer of employment stated he was a Class 1 driver. Having heard the evidence, it was agreed by the parties that Mr Deep was a Class 2 driver until around November 2023, and this was therefore an error in the offer letter. His annual salary was £31,000 plus a £2,000 shift allowance plus £1,000 ADR (an allowance relating to the transport of dangerous goods). He was to work from 9pm to 9am on a 4 on/4 off shift pattern. He was entitled to 20 days annual holiday, also on a calendar year basis and not calculated by reference to shift patterns. The offer letter states that statutory public holidays were included in that entitlement. However, in the light of the equivalent clause in Mrs Deep's contract and noting Regulation 13A Working Time Regulations (which provides for minimum annual leave periods), I find that the total annual leave entitlement was 20 days, plus statutory bank holidays.
10. At the start of the financial year beginning April 2022, both claimants were being paid £36,000 per year.
11. The Claimants worked on a specific contract for Kuehne and Nagel between March 2020 and around June 2023, when they were assigned to other work. The respondent used a system called Morepay on which shift patterns were set up to record days worked, rostered and non-rostered days (ie days on/off

shift), leave and sickness. This system was used to calculate average pay over the relevant periods.

12. In around June 2023, due to the loss of the contract with Kuehne and Nagel, the financial position of the respondent changed and it was in difficulty.
13. In October 2023, the respondent's HR team noticed differences between the pattern the claimants worked and their contracts. No further action was taken.
14. Believing that their jobs may be at risk due to the respondent's financial difficulty, in November 2023, both claimants qualified as class C1 drivers at their own expense.
15. In December 2023, redundancy was contemplated by the respondent generally and both claimants were informed that they were at risk. In the same month, there was further investigation into the claimants' working patterns and annual leave taken.
16. As a result of those investigations, in January 2024 the respondent deducted £1,479.45 from Mr Deep's wages representing repayment of wages for 7.5 days unpaid leave which the respondent believed Mr Deep had been overpaid as holiday pay. In February 2024, the respondent deducted £1,370.19 in respect of a further 7.5 days unpaid leave and £109.26 as an "other leave adj". These deductions total £2958.90 representing a total of 15 days wages. The daily rate applied was just over £197.26
17. In January 2024, the respondent deducted £1,084.93 from Mrs Deep's wages representing repayment of wages for 5.5 days unpaid leave which the respondent believed Mrs Deep had been overpaid as holiday pay. In February 2024, the respondent deducted £1,004.81 in respect of a further 5.5 days unpaid leave and £80.12 as an "other leave adj". These deductions total of £2,169.86 representing a total of 11 days wages. The daily rate applied was also just over £197.26.
18. The substantial reduction in wages for both claimants for those months had a significant effect on the claimants' household income.
19. On 5th February 2024, the respondent wrote to the claimants with changes to their contracts, to be effective from 1st January 2024, which the respondent considered reflected their actual working pattern.
20. As a result, both claimants raised grievances which, following investigations (the details of which I was not provided), were dealt with in May 2024 in an outcome letter, and which were not upheld (save for one small amendment to days worked by Mr Deep). They both appealed against the decision, but I was not provided with any response from those appeals, save limited email chains which tried to establish dates for discussion.
21. After a period of conciliation through ACAS, the claimants filed their claim (ET1) on 15th May 2024. The respondent filed its response (ET3) on 15th September 2024.

Relevant Law

22. I was not addressed by the parties on the law. The general prohibition on

deductions is set out in section 13(1) Employment Rights Act 1996 (ERA) which is headed "Right not to suffer unauthorised deductions". In summary, the section provides that (1) "An employer shall not make a deduction from wages of a worker employed by him", (2) deductions authorised by statute (such as tax and national insurance), by the contract, or with the worker's agreement are excluded and (3) wages that are properly payable but not paid are to be treated as a deduction.

23. The text of the section is as follows:-

(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.

24. Section 23 of the Employment Rights Act 1996 allows a complaint to be made

to an Employment Tribunal that an employer has made an unlawful deduction from wages. This means that a claim cannot be made for a deduction after the claim form has been presented to the Tribunal unless an application to amend the claim form (by the addition of a claim in respect of events occurring after the claim form was presented) is made and granted by an Employment Judge.

25. Under section 207(A) and schedule A2 of the Trade Unions and Labour Relations (Consolidation) Act 1992, a Tribunal may increase the amount awarded by up to 25% as follows:-

(1) This section applies to proceedings before an employment Tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment Tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment Tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employee has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.

26. Section 24 of the Employment Rights Act 1996 states that where a Tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker the amount of any deduction made in contravention of section 13. The award will be calculated gross and will be subject to tax and national insurance under s62 Income Tax (Earnings and Pensions) Act 2003.

27. In addition, the Tribunal may also award a further sum to compensate the worker for any financial loss, such as interest or overdraft charges, incurred as a result of the unlawful reduction of wages. The Employment Tribunal has no

power to award damages for injury to feelings where unlawful deductions are made.

28. Determining what wages are “properly payable” is a question of fact for the Tribunal. It will depend on the terms of the contract of employment, including any variations to it, either by specific agreement or implied agreement, and any discretionary payments. The Tribunal must resolve any disputes as to the terms and conditions of the contract.
29. The Working Time Regulations 1998 (WTR) provide workers with a number of rights including maximum weekly working hours, rest during the working day, week and year and paid holiday entitlement. There are two elements to paid holiday entitlement: a right to four weeks’ leave under regulation 13 and, separately under regulation 13A, a right to an additional 1.6 weeks’ leave which includes any statutory public holidays.
30. No list of issues was agreed by the parties for this case. The issue to be determined for each claimant was whether the total amount of any wages paid on any occasion by the respondent was less than the total amount of the wages properly payable by them to the claimant on that occasion.
31. The complaints, set out in the ET1, were of unlawful deductions from the wages of each claimant between November 2023 to the hearing of the case arising from :
 - 31.1. deductions made in respect of accrued annual leave from 2022
 - 31.2. recoupment of money paid during 2023
 - 31.3. salary increases from November 2023 as a result of qualifying as a Class 1 driver and
 - 31.4. changes to the contracts in February 2024
32. The burden is on the claimant to establish the claim and they must do so on the balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proved by direct evidence from the testimony of a witness or from documents or by reasonable inference drawn from those facts. The burden is on the respondent to prove that any deduction was lawful.

Evidence and Findings of fact

Evidence - Annual leave carried over from 2022

33. The parties agreed that at the end of 2022, Mr Deep had 2 days of annual leave which had not been used, and Mrs Deep had 8 days of annual leave which had not been used.
34. The contracts of employment for the claimants in 2020 stated “*All holidays should be taken in the holiday year of entitlement and will not normally be carried forward unless expressly authorised by the Company*”. Payment for any unused holiday entitlement would be made on termination of the employment.

35. Mr and Mrs Deep stated that, during the pandemic, their manager had agreed that they could carry over their leave to the next leave year and that they had not been told of a change to that policy or a withdrawal of it. They did not make a formal request to carry over their unused leave and did not have anything in writing to confirm that they could carry over any unused leave.
36. The respondent referred to the annual leave policy in the contracts noted above and a new policy, circulated to employees in October 2024, which does not allow carry over of leave at all. Mr Sandhu stated there was no record of any request being made to any manager at the respondent firm for carrying over leave.
37. In 2023, there were 9 bank holidays due to the additional day for His Majesty's Coronation on May 8th.

Findings of fact

38. I find as a fact that Mr and Mrs Deep had spoken to their manager about their leave during the pandemic and that they had each been given express permission to carry over their unused leave from 2022, in accordance with their contract at the time, which then became part of their annual entitlement for 2023.
39. I find that, at the start of 2023, Mr Deep's annual leave entitlement was 31 days, comprising 20 days annual entitlement, 9 statutory public holidays and 2 days carried over from 2022.
40. I find that, at the start of 2023, Mrs Deep's annual leave entitlement was 37 days, comprising 20 days annual entitlement, 9 statutory public holidays and 8 days carried over from 2022.

Evidence - Payment as class 1 driver

41. Under this heading, Mr Deep claimed £200 for his work as a C1 driver in November 2023 and Mrs Deep claimed £600 in total for her work as a C1 driver between November 2023 to January 2024, inclusive.
42. As noted above, Mr and Mrs Deep were both employed as Class 2 drivers. From April 2022, both of their salaries were paid at £3,000 per month ie at £36,000 per year. Mr Deep gave evidence that a Class 1 Driver should be paid £36,000 plus a night shift allowance of £2,000, which equates to a monthly addition of £166.67 (ie £2,000 divided by 12).
43. The claimants gave evidence that they had been informed that they might be made redundant. Mr Sandhu suggested to them that they were only put on notice that they might be made redundant. From the claimants' point of view the difference was small. The claimants thought they were at risk and so qualified as Class 1 drivers on their own initiative and expense as the respondent required Class 1 drivers and that work was better paid.
44. The claimants stated they had qualified in November 2023 but were unable to confirm the date, nor were they able to say when they first undertook that type of work, although they believed that they started in November 2023. I noted an email from Mr Deep on 6th January 2024 (to Mr Singh and Mr Sandhu) in which he said he and his wife had both undertaken that work from October 2023.

45. I have considered the calendars for both claimants. Mr Deep worked on 4, 6, 7, 11, 18, 19, 22, 25, 29 and 30 November 2023. Mrs Deep worked on 1, 2, 3, 5, 10, 16, 17, 24 and 26 November 2023.
46. Mr Sandhu for the respondent said that both claimants had received this pay from 1st December 2023 which was when they commenced this work. Mr Deep's February 2024 payslip showed £333.34 "back pay", representing two months' pay at the higher rate. Mrs Deep's payslips for January and February 2024 did not include any items of "back pay".

Findings of fact

47. I find it is not possible to identify when the claimants qualified as Class 1 drivers in November 2023 and therefore, I find that neither of the claimants were undertaking Class 1 work in November 2023 and that Class 1 pay was not owed to them for that month.
48. I find that both claimants undertook class 1 work from 1st December 2023 and were therefore entitled to additional pay of £166.67 per month. Neither claimant received that additional pay in December 2023 or January 2024.
49. I find that Mr Deep was paid these sums in February 2024.
50. I find that Mrs Deep has not been paid those sums.

Evidence - Respondent's recovery of money paid in 2023 from January and February 2024 pay

51. As set out above, both claimants were originally employed on 4 on/4 off contracts. This meant for 4 days they worked the shifts allocated and for 4 days they were not rostered, though they could work additional days if they were offered to them and accepted. Leave had to be booked in advance, including for Bank Holidays, using the Morepay system and had to be approved by managers in advance. Leave could be refused by a manager, and the individual would then have to work.
52. At some stage before 2023, the claimants' working patterns changed. Mr and Mrs Deep each gave evidence that this was agreed by the local managers who were content with the changes, provided that a full 7 days in a week were covered. There was no change in their pay as a result.
53. For the hearing in June 2025, the respondent produced calendars for each of the claimants from January 2023 to January 2024 inclusive. These brought together the records from the tachograph (**taco**) system, the annual leave system and the rostering system. Mr Sandhu explained that, in this system, if a "0" is entered on a non-rostered day (ie a day not working), then it is recognised as annual leave and paid accordingly but not deducted from the annual leave entitlement.
54. In the hearing material, Mr Sandhu summarised the analysis of the combined calendars which I have set out for both claimants together as follows: -

	Mr. Deep	Mrs. Deep
Rostered days on for work with 4 on 4 off shift pattern	184	181
Total days actually worked	146	128
Holidays paid out of entitlement	22	22
Additional days paid but not actually worked	16 (184 - 146 - 22)	31 (184 - 128 - 22)
Holidays paid on rostered days off	14	11
Total days overpaid in 2023	30 (14 were taken back)	42 (11 were taken back)
Days taken back	14	11
Additional days overpaid	16	31

55. The claimants did not raise any issues with the leave set out in the calendars specifically but said that they had applied for leave as told to by their manager. The manager had approved the leave requested and they had never been told of any issues with the system or with payment. They had often applied for leave and been refused and had still attended for work. They had also often attended on non-rostered days and covered for colleagues who did not turn up or were ill. Mrs Deep said that she had also done non Class 1 work and that that work was not registered using a tacho card. Mr Sandhu stated that all work was completed with a tacho card in compliance with relevant legislation.
56. The respondent said no local arrangements were made or allowed. No witness statements were provided by the managers, and I noted that email chains seeking their views were incomplete and their responses had not been provided in the bundles.
57. In the October emails, I noted comments by the HR team as follows:-
- The claimants' shift patterns had been changed locally but "not in the system" (p4).
 - That they had spoken to the claimants' line managers
 - managers should not be "playing around with their shifts"
 - any contract changes would have to be dealt with by HR
 - The current pattern would not be "doable" as there was no rota. (p6)
 - It was not possible to accurately put this pattern in the system
 - they had problems in the past but "we thought had sufficiently "educated" the managers not to do this" (p17)
58. The effect of entering a 0 on a non-rostered day was that the system calculated that as a day's leave without deducting it from the annual leave allowance or making a specific payment for it which was recoded on the payslip. Consequently, it was also included when calculating average holiday and sick pay. It was effectively treated as a day worked. (p16)

59. I note the following points in relation to Mr Deep's work: -
- The rostered pattern was for 4 on/4 off
 - In both April and October there was 1 instance of leave on a non-rostered day
 - In both August and November there were 6 instances of leave on non-rostered days
 - Mr Deep frequently worked on rostered days off
 - His pay slips show he was paid the same amount (excluding overtime) every month until January 2024 when sums were deducted by the respondent
 - The pay slips identify 22 days' leave which was paid.
 - The working patterns in the calendars and the other records are broadly consistent with a 4 on/3 off or a 5 on/3 off work pattern for Mr Deep between January to the end of April 2023. Thereafter, the work pattern is sporadic.
60. I note the following points in relation to Mrs Deep's work :-
- The rostered pattern was for 4 on/4 off
 - In both January and September there was 1 instance of leave on a non-rostered day
 - The leave record shows there were only 8 days in August of leave on a non-rostered day (not 9 as noted as in the table).
 - The correct total for the number of days' leave paid on rostered days off is therefore 10 (not 11 as set out in the table)
 - Mrs Deep frequently worked on rostered days off
 - The pay slips show she was paid the same amount (excluding overtime) every month until January 2024 when sums were deducted by the respondent
 - The pay slips identify 17 days' leave which was paid for (including 3 days paid in January 2024) and she was not paid for 5 days' leave taken in February and March 2023.
 - The working patterns in the calendars and the other records are broadly consistent with a 3 on/4 off or 3 on/5 off work pattern for Mrs Deep between January to the end of April 2023. Thereafter, the work pattern is sporadic.
61. The emails confirm that no action was taken in October 2023. Mr Sandhu joined the respondent company in November 2023 and on 23rd November said that Morepay was to be updated.
62. The issue of the claimants' leave was raised again at the beginning of December 2023 (p11) when it was thought that, if Mr Deep were taking the annual leave he had booked, he would be over his leave entitlement. HR advised that 15 days should be deducted from Mr Deep and 11 days from Mrs Deep at the end of January because they had been overpaid. The claimants were told that they had to work on their registered days (p8).
63. On 17th January, the claimants' line manager queried how the claimants had been able to book leave and that he thought it "inhuman" to pay the employee £41 for a month when the error had occurred over a year.

64. On 18th January 2024, although unable to explain why the system allowed employees to book days off on their non-rostered days (p43), HR advised the sums were to be deducted all in the same month.
65. On 23rd January 2024, Mr Sandhu commented to the claimants' line manager "we all know holiday usage not monitored effectively. Both employer and employee have responsibility to make sure that the correct holiday is taken" (p42). In an email in response, the claimants' manager stated he did not understand how the issue had arisen, that the issue had been neglected over the last year and probably before that, and said he had spoken to Mr Deep that night for an hour about it (p41).
66. The respondent deducted 15 days leave from Mr Deep's January and February pay on the basis that Mr Deep had taken 22 days annual leave entitlement and had been paid for an additional 15 days' leave taken on non-rostered days by entering a 0 in the system. Following discussions, the respondent agreed that Mr Deep had worked on 29th November and that that had been incorrectly deducted and would be added to his 2024 annual leave entitlement. The table produced for the hearing reflects 14 days leave on non-rostered days.
67. The respondent deducted 11 days leave from Mrs Deep's January and February pay on the basis that Mrs Deep had taken 22 days annual leave entitlement and an additional 11 days leave for leave taken on non-rostered days for which she had been paid. This in fact totals 33 days, leaving 13 days to recoup, although 11 were taken.
68. The fact that both claimants were from the same family meant this would have a significant effect on their family. Following a further request from their manager, the deductions were made over two months. Nevertheless, this had a substantial effect on the claimants and their family.

Findings of Fact

69. I find that before January 2023, the claimants were told by their local managers that they could work a joint pattern to enable them to care for their family. There was no salary amendment as a result, nor a change to their shift pattern. HR was not informed about these changes and so they were not reflected in new contracts or in the Morepay system.
70. I find that the claimants were told by their local managers that they should enter bank holidays and accrued leave (ie non annual leave entitlement) into the system as a 0 and that all the leave taken was approved by the claimants' managers.
71. I find that both claimants undertook work which was not recorded on their taco cards and that the "additional days overpaid", ie rostered days when the taco card did not record the claimants working, noted in the table above are not correct. However, because the deductions from wages were not based on that element, I make no finding on the number of days worked by each claimant.
72. I find that Mr Deep had taken 22 days paid annual leave during 2023 and Mrs Deep had taken 22 days annual leave from her entitlement but had not been paid for 5 of those days.
73. I find that Mr Deep was paid for 14 days leave on a non-rostered day and

Mrs Deep was paid for 10 days leave on a non-rostered day

74. I find that the deduction made against Mr Deep by the respondent of 7.5 days' pay in each of January and February 2024 did not take into account his annual leave entitlement, the leave carried over from 2022 nor the 9 statutory public holidays which gave Mr Deep a total of 31 days annual leave for 2023. I find that the maximum the respondent could have deducted was 5 days.
75. I find that the deduction made against Mrs Deep by the respondent of 5.5 days' pay in each of January and February 2024 did not take into account her annual leave entitlement (some of which she had not been paid for), the leave carried over from 2022 nor the 9 statutory public holidays which gave Mrs Deep a total of 37 days annual leave for 2023. I find that Mrs Deep still had 5 days of annual leave entitlement to be taken at the end of 2023 and 5 days annual leave for which she had not been paid.

Evidence - change of contract on 5th February 2024

76. At the hearing in January 2025, the claimants each claimed losses of £10,364.64 during the whole of 2024 due to changes to their contracts.
77. Following their investigations, the respondent issued a letter to Mrs Deep on 5th Feb 2024 which changed her contract to the following summarised terms, which the respondent considered to be her current working pattern:-
- 77.1. To work a 3 on 4 off shift pattern – part time 3 days a week (75%)
- 77.2. To work 2 shifts on Thursday and Friday between 4pm and 4 am, and on Sunday between 6pm and 6am with effect from 1st January 2024. A total of 33 hours per week (with a 1 hour unpaid lunch break).
- 77.3. An increased salary of £38,000 per year from 1/2/24 as a C1 driver.
- 77.4. A reduced salary of £28,500 (or 75%) to reflect 33 hours was the equivalent of 3 days per week, effective from 1/1/24.
- 77.5. Reduced leave to 20 days a year, including statutory bank holidays, to reflect the reduced hours.
- 77.6. A complete prohibition on carrying over unused leave.
78. Mr Deep received a similar letter, changing the contract to the following summarised terms:-
- 78.1. To work a 4 on 3 off shift pattern – full time
- 78.2. 4 shifts on Monday, Tuesday and Wednesday between 4pm and 4 am, and on Saturday between 8am to 8pm with effect from 1st January 2024 (44 hours per week, with a 1 hour unpaid lunch break).
- 78.3. His salary was to increase to £38,000 from 1st December 2023 (to be implemented in February payroll).
- 78.4. His leave was reduced to 26.5 days a year, including statutory bank holidays.
- 78.5. There was a complete prohibition on carrying over unused leave.
79. For both claimants, the terms of the letters are reflected in a detailed contract (p113) which is signed by Mr Sandhu and dated 11th July 2024,

which is the date that contract states it was to become effective. Neither claimant completed the acceptance slip on the letter or signed the 11th July 2024 versions of the contract.

80. Since the issue of those letters and the new contracts, the Deep's have continued to work for the respondent. They did not provide a written acceptance of the changes, they brought these claims after the conclusion of their grievance procedure, and they have continued to request reinstatement to their former terms and conditions.
81. The impact of those changes for Mr Deep was to increase the number of days worked over the period of a year. A 4 on 4 off (8 day) shift pattern results in a total of 182.5 rostered and non-rostered days in a year. The average days per month are 15.21. The average pay for a full time Class 1 driver for this shift pattern is £208.22 per day or £3167.03 per month.
82. A 4 on/3 off shift pattern results in 208.6 rostered days and 156.42 non rostered days. This is an average of 17.38 days a month and an average monthly pay £3166.72 (at £182.17 per day). However, at a daily rate of £208.22, the monthly average pay would be £3,618.86 (ie 17.38 x £208.22) which is a difference of £451.83.
83. The impact of those changes for Mrs Deep was to decrease the number of days worked and the daily rate paid. A 3 on/4 off shift pattern results in 156.42 rostered days and 208.6 non-rostered days. This is an average of 13.04 days a month and an average monthly pay of £2,375.89 (at £182.20 per day). This is a reduction of £791.14 per month compared to the 4 on/4 off average monthly pay of £3167.03. I also note that at a daily rate of £208.22, the monthly average pay for a 3on/4 off pattern would be £2,715.19 (ie 13.04 x £208.22) which is a difference of £339.30 to what was paid.

Findings of Fact

84. I find that neither Mr nor Mrs Deep agreed to the changes to their terms and conditions in February 2024 and that they have not done so since then.
85. I find that the contracts do not reflect the Working Time Regulations. I find that Mr Deep's annual leave entitlement should be 20 days, plus statutory public holidays.
86. I find that Mrs Deep's annual leave entitlement should be 15 days plus statutory public holidays, reflecting her part time working hours at 75%.
87. I find the difference in monthly pay due to the contract changes for Mr Deep is £451.83 per month.
88. I find the difference in monthly pay due to the contract changes for Mrs Deep is £791.14 per month

Conclusions and decisions

89. When considering what wages were "properly payable" between November 2023 and 15th May 2024 (the date of submission of the claim), I have taken into account the findings of fact noted above which I summarise here as follows:-

- Before January 2023, the claimants were told by their local managers that they could work a joint pattern to enable them to care for their family at the same salary £36,000.
- The claimants' managers approved 14 days paid leave on non-rostered days for Mr Deep and 10 days paid leave on non-rostered days for Mrs Deep.
- Mr Deep's 2023 annual leave entitlement was 31 days.
- Mrs Deep's 2023 annual leave entitlement was 37 days
- Neither of the claimants undertook Class 1 work in November 2023
- Both claimants undertook class 1 work from 1st December 2023 and were therefore entitled to additional pay.
- The maximum that could be deducted in respect of "unpaid leave" was 5 days for Mr Deep
- The respondent was not entitled to deduct any sums for "unpaid leave" for Mrs Deep who had 10 days annual leave entitlement at the end of 2023 after all leave had been taken.
- That the changes to the contract in February 2024 represented a reduction in wages for the work they had been doing during 2023.

Conclusions for Mrs Deep

90. I conclude that Mrs Deep's claim for unlawful deductions of wages is well founded and is successful as set out below, noting the amounts awarded: -

- For November 2023, there was no unlawful deduction.
- For December 2023, there was an unlawful deduction in respect of the failure to pay the Class 1 driver supplement to Mrs Deep. I award Mrs Deep £166.67.
- For January 2024, there was an unlawful deduction in respect of the failure to pay the Class 1 driver supplement to Mrs Deep. I award Mrs Deep £166.67. There was an unlawful deduction for unpaid leave of 5.5 totalling £1,004.81
- For February 2024, there was an unlawful deduction for unpaid leave of 5.5 days totalling £1,004.81 and I award Mrs Deep that amount.
- For February 2024, there was an unlawful deduction in respect of leave which had not been taken of 10 days at £197.26 per day totalling £1,972.60. There was also an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £791.14.
- For March 2024, there was an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £791.14.
- For April 2024, there was an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £791.14.
- Up to the 15th May 2024 (the date the claim was submitted), there was an unlawful deduction in respect of the changes to the conditions of the

contract in the sum of £382.81 (ie15/31ths).

Mr Deep

91. I conclude that Mrs Deep's claim for unlawful deductions of wages is well founded and is successful as set out below, noting the amounts awarded:-

- For November 2023, there was no unlawful deduction.
- For December 2023, there was an unlawful deduction in respect of the failure to pay the Class 1 driver supplement to Mr Deep. This sum was paid in February 2024 and therefore I make no award.
- For January 2024, there was an unlawful deduction in respect of the failure to pay the Class 1 driver supplement to Mr Deep. This sum was paid in February 2024 and therefore I make no award. There was an unlawful deduction for unpaid leave of 5 days at £197.26 totalling £986.30.
- For February 2024, there was an unlawful deduction for unpaid leave of 5.5 days at £197.26 totalling £986.30. There was also an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £451.83
- For March 2024, there was an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £451.83.
- For April 2024, there was an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £451.83.
- Up to the 15th May 2024 (the date the claim was submitted), there was an unlawful deduction in respect of the changes to the conditions of the contract in the sum of £218.63 (ie15/31ths).

92. I note and apply the ACAS uplift as I consider the respondent's failed to consult with the claimants on deduction of their pay and properly deal with the grievance process and subsequent appeal. I apply a 25% uplift to each award

93. I summarise the awards as follows:

Month	Mrs Deep	Mr Deep
November 2023	0	0
December 2023	166.67	0
January 2024	166.67	0
	1,004.81	986.30
February 2024	1,004.81	986.30
	1,972.60	0
	791.14	451.83
March 2024	791.14	451.83
April 2024	791.14	451.83
Up to 15 th May 2024	382.81	218.63
Total	7,071.79	3,546.72
ACAS uplift 25%	1,767.95	886.68
Total Award	8,839.73	4,433.40

**Case No: 3305164/2024
3305165/2024**

Approved by
Employment Judge Shrimplin

Date: 26th July 2025

Sent to the parties on:
28 July 2025

For the Tribunal Office.

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/