EMPLOYMENT TRIBUNALS

Claimant: **Miss S Dolan**

Respondent: **North East Lincolnshire Council**

Heard at: **Nottingham via Cloud Video Platform (CVP)**

On: **07 July 2025**

Before: **Judge M.A Siddique**

Representation
Claimant: In person
Respondent: Ms Sparks (Solicitor)

RESERVED JUDGMENT

1. The complaint of unauthorised deductions from pay, between 04/09/2019 to date, contrary to Part II Employment Rights Act 1996 is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant is Miss Sandra Dolan and the Respondent is her employer North East Lincolnshire Council. The Claimant brings a claim for unlawful deduction of wages which she claims began in September 2019 and is still ongoing.

2. Early Conciliation through ACAS was notified on 08/11/2024 and a certificate was issued on 20/12/2024. A claim was brought before the Tribunal on 13/03/2025.

Claims and Issues

3. The Respondent, in their response to the claim, noted a lack of clarity in respect of whether the Claimant was also seeking to raise a disability discrimination claim. In response to correspondence from the Tribunal seeking clarity the Claimant confirmed, by email dated 02/05/2025, that she was only seeking to pursue a claim for unlawful deduction from wages.

4. The issues were discussed at the start of the hearing and were confirmed to be the unauthorised deduction of wages claim, deducted between 2019 and to date. If liability was established it was agreed that the Tribunal would also go on to determine the appropriate remedy.

5. The key issues in dispute were whether:

   (i) the Claimant's contract was varied in September 2019 to increase her weekly hours of work from 27 hours per week to 30 hours per week.

   (ii) If so, were her wages from September 2019 subject to an unlawful deduction of wages

   (iii) If her wages were subject to an unlawful deduction how far back can the Tribunal consider her claim

   (iv) in terms of remedy how much is the amount of unpaid wages how many weeks a year are payable (she works term-time), what is her hourly rate

Procedure, documents and evidence heard

6. The hearing was via CVP. The Claimant did have some technical difficulties at the start as her webcam did not work. However, she switched to using her phone and we did not experience any further technical difficulties.

7. The Claimant confirmed that she a paper and electronic copy of the bundle. She clarified that the documents she ought to rely on were included within the bundle. She also sought to rely on her emailed statement and an emailed statement of her witness Miss Debbie Powles. The Tribunal had not received a copy of Miss Powles statement. However, before the start of evidence Miss Sparks for the Respondent, who had received a copy, forwarded a copy to the Tribunal.

8. The Respondent raised a preliminary issue for the Tribunal to consider the validity of the witness statements provided by the Claimant as they were unsigned, undated and unsupported by a statement of truth.

9. The Claimant said she had not thought about the need for the statement to be signed and was available to give evidence in person.

10. Taking into account the overriding objective, to deal with cases fairly and justly, including the need to avoid unnecessary formality and seeking flexibility in proceedings, as well as Rule 41, I decided it was in the interests of fairness to allow the statements into evidence as the Claimant, a litigant in person, was unaware of the need for a statement of truth or how to better structure a statement. Importantly both the Claimant and her witness were available to give their evidence on oath and affirmation and would therefore be aware of and understand the importance of giving their evidence truthfully.

11. In the course of the hearing I heard evidence from the Claimant on affirmation and her witness Debbie Powles on oath. They both adopted their statements and were cross-examined.

12. The Respondent also called their two witnesses, Peach Reynolds, employed as a People Advisor for the Respondent, and Philip Rogers, the Education Transport Manager, who gave their evidence on affirmation and oath respectively. They were also cross-examined.

13. In submissions the Respondent argued that the claim should be dismissed. It was submitted that the Claimant's contract, in terms of contractual hours, has varied over the years and these variations have been documented. The last variation was on 01/12/2015 when her contract was varied to 27hours per week and has remained at that level. There is no written record of her hours being varied to 30 hours per week and it is not reflected in the wage slips or the payroll. The one document which makes reference to 30 hours, was due to an administrative error (page 109). It was filled out in haste without being double-checked. Whilst the claimant may have a genuine belief that her contractual hours were 30 hours this is not supported by the evidence. Her witness does not advance her case. Relying on s.23(4A) of the Employment Rights Act 1996 (ERA), it was further argued that even if the Tribunal finds that there was an unlawful deduction of wages the Tribunal cannot consider deductions more then 2 years before the date of the claim.

14. The Claimant argued that if the Respondent was able to confirm Enoch's, work record why could they not confirm the records of her colleagues from 2019 or her records or timesheets from 2019. She believed those documents, if before the Tribunal, would support her case. In answer to my question about the Respondent's argument that, even if she proves her case the Tribunal can only make an award going back 2 years for the date of the claim, she indicated that she read somewhere that in certain circumstances you could go back further. However, she was unable to specify any law in support of her understanding.

15. In reaching my decision, I had regard to the written evidence provided in the final hearing bundle, the witness statements and the evidence and submissions I heard during the hearing.

The Relevant law

Unlawful Deduction from wages

16. The right not to suffer an unlawful deduction of wages is set out in Section 13 of the Employment Rights Act 1996 (ERA):

"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.

….

17. In respect of how far back the Tribunal can consider any deductions, this is set out in s.23(4A) of the Employment Rights Act 1996 (ERA) and confirms that the Tribunal cannot consider a deduction relating to a period more than two years prior to the date of the claim.

"S.23…(4A)An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint."

Findings of fact

18. I find the Claimant was employed by the Respondent from 9/04/1992 as a Passenger Support Assistant. The role of a Passenger Support Assistant entails ensuring the safe and dignified transportation of passengers, often with mobility difficulties or specific needs. This includes assisting with boarding and alighting, managing special seating or wheelchair restraints, and providing general support during the journey.

19. I find that there were both casual and permanent staff who worked as Passenger Support Assistants for the Respondent. Those who were working casually would have to provide time sheets for the hours worked so they would be paid. Those who were permanent staff members, such as the Claimant, were paid their contractual hours without having to provide daily or weekly time sheets. However, if any run in a particular day or week was quicker the Respondent did not seek to recover the hours back. However, if a run took longer than the hourly contract an employee could complete a timesheet so a line manager could assess if overtime was due. I took into account the evidence of Debbie Powles that a timesheet has to be completed every September to work out how long the run takes and she last completed a timesheet in September 2024. However, in cross-examination she accepted that she has been employed as a casual since approximately July 2023 and was a casual when she completed her timesheet in September 2024. She also confirmed that she did not see the Claimant's time sheet in 2019. This evidence tended to confirm the Respondent's position that timesheets, at least in recent years, are a requirement for casual staff.

20. Due to the nature of the Claimant's role, it was common for her contractual hours to fluctuate depending on the "transport run" to which she was allocated. This led to a number of changes to her hours over the years of employment. The Claimant confirmed in evidence that she did not dispute that her hours varied over the years.

21. I find the Claimant's contractual hours from 2008 were as follows:
    a. From 1st October 2008, the Claimant's working hours were confirmed to be 34.33 hour per week, an increase from 29.17.

    b. From 1st December 2010, the Claimant's hours of work were changed to 32.5 hours per week.

    c. From 1st September 2011, the Claimant's working hours were changed to 30 hours per week.

    d. From 1st September 2013, the Claimant's working hours were changed to 18.42 hours per week.

    e. On 1st February 2014, the Claimant's hours were changed to 21.12 hours per week.

    f. On 1st September 2015, the Claimant's hours were changed to 23.08 hours per week.

    g. On 1st December 2015, the Claimant's hours of work changed from 23.08 hour per week to 27 hours per week.

22. I find that these hours are supported by contemporaneous documentary evidence which confirmed the change in contractual terms (Pages 57-69) and there is no real dispute of these changes by the Claimant who instead is focused on her claimed change of contractual hours from September 2019.

23. The Respondent has sough to rely on a contract offered to the Claimant in September 2018 as evidence of the Claimant's contractual hours being 27 hours per week (page 76). However, it is clear that the Claimant objected to the new contract (page 74) and whilst there was a meeting to try and resolve the Claimant's concern I am not satisfied that the Claimant agreed to the terms of the contract after her original written objections.

24. However, even ignoring this new contract I am satisfied that her weekly contractual hours remained 27 hours after 01/12/2015. As this was confirmed in writing in the contractual changes from 01/12/2015 and not objected to and there are various documents which confirm that the 27 hours remained in place, including correspondence sent to the Claimant on 09/04/2018 and 25/06/2018 (page 70-71). When asked in evidence about

the document at pages 68-69, which recorded the increase in hours from 23.08 to 27, she could not remember it but said it could be true. The Claimant has also been unable to provide any documentary evidence that her contractual hours increased to 30 hours per week. Given that previous contractual changes were confirmed in writing I would have expected documentary evidence confirming her contractual hours had changed to 30 hours per week.

25. The Claimant's case is that she started a new run in September 2019 to Lincoln which led to her contractual hours increasing to 30 hours a week. Her claim is therefore that she has been underpaid by 3 hours per week since September 2019. The Respondent accepts that the Claimant has only been paid for 27 hours per week since September 2019 however they say this is because contractually she was only entitled to pay for 27 hours per week.

26. The Claimant's case is based on the following:
    (i) The Claimant's personal recollection and understanding of her contractual hours
    (ii) Her belief that when she started her new run in September 2019 alongside other employees, out of three runs, her run took the longest and her two colleagues were on runs of 32 hours and 30 hours, so she would not have accepted a contract for 27 hours.
    (iii) That when she reduced her hours to morning only, due to a recent illness, the man who did her afternoon runs, Enoch, was paid for 15 hours per week which was consistent with her contract amounting to 30 hours per week
    (iv) Finally, she relied on a document titled "Wellbeing and absence Management: Case management Referral Form" (page 109). This document completed by Phil Rogers and dated 16/09/2024 indicated that she was employed on a 30 hours per week contract

27. As to (i) the Claimant's evidence was that she started working 30 hours a week from September 2019. When first asked what were her hours immediately before September 2019, she stated her hours were 34.33 hours from 2017. She relied on a document at page 58, which was dated 15/10/2008, which she said was her contract from July 2017. I do not accept that the Claimant has an accurate recollection of the various changes in her hours over the course of her 32 years service. Firstly, the document at page 58 relates to her hours in 2008 and not her contracted hours in 2017. Secondly there is documentary evidence, from 09/04/2018 (page 70), confirming that her contractual hours were for 27 hours, which is inconsistent with her claim that immediately before September 2019 she was contracted to work 34.33 hours. Thirdly when asked why, if her hours changed from 27 hours to 30 hours, in September 2019 she did not question the lack of increase in her wages, she answered to say she did not expect an increase as she already believed she was being paid for 30 hours a week. Which is inconsistent with her earlier answer that she believed that prior to September 2019 she believed she was being paid for 34.33 hours

per week. Given the passage of time and the numerous variations in her weekly hours, which included increases and decreases I find that, quite understandably, the Claimant does not have an accurate recollection of her contractual hours in 2019.

28. As found above, I am not satisfied that the Claimant has an accurate recollection of her contractual hours immediately before or after September 2019 I therefore give greater weight to any documentary evidence about the contractual hours.

29. As to (ii) whilst the Claimant has mentioned two colleagues who she said started the run at the same time as her in September 2019. She has not named them and not provided any evidence from them to support her case. The Respondent's witness, Phil Rogers, in his statement confirms that he has been unable to locate timesheets from September 2019. In the circumstances there is no reliable evidence that colleagues in September 2019, starting the same run, were given over 30 hours per week contractually. In the circumstances I do not find this supports the claim.

30. In respect of (iii), again, Enoch was not asked to give evidence by the Claimant and her understanding of his weekly hours was based on a conversation she had with him and she did not see any evidence of his weekly hours. In evidence, Phil Rogers, confirmed that Enoch was a casual worker, who was paid a fixed rate and in fact had not worked a full week and was not paid for 15 hours a week. I placed weight on Mr Rogers evidence as he had access to the pay records for Enoch and gave his evidence on oath and was able to give specific figures as to the hours worked and the daily rate paid. I therefore find this evidence did not support the Claimant's case that she was contracted to work 30 hours per week.

31. In respect of (iv) I have considered carefully the contents of this document, its purpose, and the thought processes when completing it. I find that whilst the document does say that the Claimant was contracted to 30 hours per week, this did not reflect the true position and was an administrative error by Philip Rogers when completing this form without proper care and attention to detail. I find this document did not accurately reflect the Claimant's contract and nor was it intended to vary the Claimant's contract and I find that it did not do so. The reasons for finding this are that it is clear that the purpose of this document was to manage the claimant's well-being and absence, and was not meant to be focused on the Claimant's contract or to change any terms of contract. Consequently, Mr Rogers' focus was more on the workplace adjustments in the later part of the form than the overview section. It is clear that Mr Rogers was careless when completing this form as he made another error in the same part of the form where he incorrectly stated that the Claimant was off work between 13/5/2025-31/05/2024 whereas it should have said 13/05/2024-31/05/2024. An error which the Claimant pointed out to Mr Rogers when cross-examining him. I find this reference to 30 hours per week was an error and did not reflect the Claimant's contractual terms.

32. Considering the evidence as a whole I find that the Claimant's contractual hours remained 27 hours per week from 01/12/2015, save for the short period when she recently reduced her hours due to sickness. This is also supported by the Respondent's human resources computer system "iTrent" an extract of which shows that her contractual hours were 27 hours per week since 01/12/2015, save for a brief period, in November 2024 when the Claimant reduced her hours due to sickness before returning to her full hours of 27 hours per week (page 132). Whilst the Claimant has a genuine belief that her contractual hours increased to 30 hours per week in September 2019, I am satisfied that this belief is likely to be mistaken and she has remained on a 27 hour per week contract throughout the period in dispute.

Conclusions

33. The Claimant's case is that there has been an ongoing unauthorised deduction from her wages since September 2019 amounting to 3 hours pay per week, the difference between her claimed contractual hours of 30 hours per week pay and the amount actually paid of 27 hours per week.

34. However, for the reasons given above, I have found that the Claimant is mistaken in her belief of her contractual hours, and that her contractual hours, during the period in dispute, have remained essentially unchanged at 27 hours per week, save for the brief period when she reduced her hours due to sickness in 2024. Consequently, the Claimant was contractually entitled to 27 hours per week pay and, as agreed by the parties, she was in fact paid for 27 hours per week.

35. In conclusion there has been no unlawful deduction from wages as she was paid the contractual hours due.

36. For the reasons given above the claim for unauthorised deduction from wages is not well-founded and is dismissed.

Approved by:

Employment Judge Siddique

24/07/2025

JUDGMENT SENT TO THE PARTIES ON

.....29 July 2025.....

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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/