EMPLOYMENT TRIBUNALS

Claimant: Adrian Weglarz

Respondent: The Best Solutions Hull Limited

Heard: by CVP on 6 and 7 August 2025 and, in chambers, on 22 September 2025

Before: Employment Judge Ayre

Representation

Claimant: William Slivinsky, paralegal
Respondent: Lachlan Wilson, counsel

Polish interpreter : Monika Dubiel

RESERVED JUDGMENT

1. The claim under the Working Time Regulations 1998 is dismissed on withdrawal.

2. The claim under sections 44(1)(b) and 45A of the Employment Rights Act 1996 are dismissed on withdrawal.

3. The claim for detriment under sections 44 and 48 of the Employment Rights Act 1996 is not well founded. It fails and is dismissed.

4. The claim for unauthorised deduction from wages is not well founded. It fails and is dismissed.

5. The claim that the respondent failed to provide the claimant with itemised pay statements is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant issued this claim on 29 June 2024 following a period of ACAS early conciliation that started on 10 May 2024 and ended on 29 May 2024. The respondent defends the claim.

2. The case was listed for a Preliminary Hearing on 22 January 2025. At that hearing:

    1. There was a discussion of the claims that the claimant is bringing, and a list of the issues that fell to be determined in the case was identified;

    2. The case was listed for final hearing; and

    3. Case Management Orders were made.

3. In a judgment sent to the parties on 24 January 2025 the claimant's complaints under section 11 of the Employment Rights Act 1996 (determination of particulars of employment), of unfair dismissal and of disability discrimination were dismissed on withdrawal.

4. On 28 February 2025 the claimant withdrew his complaint under the Working Time Regulations 1998 and his complaints under Section 44(1)(b) and 45A of the Employment Rights Act 1996. Those complaints are dismissed upon withdrawal.

The hearing

5. There was an agreed bundle of documents running to 511 pages (522 pages of a pdf).

6. At the start of the hearing the claimant's representative asked the Tribunal to make an order for specific disclosure of the original employment contract signed by the claimant, and a screen shot of the claimant's signature page. He told the Tribunal that he was concerned that the claimant's signature of the contract had been tampered with, and that the claimant had not signed for the drivers' handbook. The documents sought were, Mr Slivinsky said, relevant to the question of whether the respondent's behaviour had been unreasonable and/or scandalous.

7. In response to the application the respondent expressed concerns that serious allegations of fraud were being raised at a very late stage, despite the fact that the document in question had been disclosed some time previously.

8. Having heard and considered the submissions of both parties, I refused the application for specific disclosure for the following reasons:

    1. The application is made at a very late stage, when it appears that the claimant has been in possession of the documents for some time;

    2. The original documents are not relevant to the substantive issues that I have to determine;

    3. The Tribunal does not have jurisdiction to hear complaints of fraud;

4. If the claimant wishes to pursue an application for costs, consideration can be given to disclosure at that stage;

5. Taking account of the principle of proportionality, it is in my view in the interests of justice for the final hearing to proceed in the trial window allocated to it.

9. I heard evidence from the claimant and, on behalf of the respondent from:

1. Agnieszka Dziewirz, Managing Director;

2. Jakub Dziewirz, Operations Manager;

3. Olaf Dziewirz, Transport Manager; and

4. Natalia Korepta, Transport Planner.

10. Mr Slavinsky submitted written submissions, for which I am grateful. Mr Wilson made oral submissions on behalf of the respondent.

The issues

11. We spent some time at the start of the hearing clarifying the issues that will need to be decided in the case. There was a discussion about these at the Preliminary Hearing and the claimant had been ordered to provide further information. It was agreed at the start of the hearing that the issues are as follows:

<u>Health and safety information (Employment Rights Act 1996 section 44(1)(c)(i))</u>

1. Did the claimant bring to his employer's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety?

2. Were there at the place the claimant worked no health and safety representative or committee or, if there were, was it not reasonably practicable for the claimant to raise the matters through those means?

3. What did the claimant say or write? When? To whom? The claimant says he made disclosures on the following occasions:

    i. 23 January 2024 by WhatsApp, complaining of a lack of PPE and other equipment;

    ii. 25 January in person in the office to Mrs Dziewirz, complaining of lack of PPE and the number of hours worked;

    iii. 30 January by telephone to the planning team complaining of a lack of PPE;

    iv. 5th February in a report to Mrs Dziewirz about long working hours and having to take breaks while loading;

v. 11 February by WhatsApp, complaining about damages to a company vehicle;

vi. 13 February in person to Mrs Dziewirz in the office, about breach of the break rules.

Detriment (Employment Rights Act 1996 section 48)

4. Did the respondent do the following things:

   i. Plan the claimant's work in a manner that prevented him from exercising his rights in relation to the taking of statutory rest breaks;

   ii. Subject the claimant to excessive monitoring with the use of an in vehicle CCTV system; and

   iii. Did Ms Dziewirz make unpleasant telephone calls to the claimant during his working time and rest breaks, with excessive criticism?

Remedy for health and safety detriment

5. What financial losses has the detrimental treatment caused the claimant?

6. What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

7. Is it just and equitable to award the claimant other compensation?

8. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

9. Did the respondent or the claimant unreasonably fail to comply with it?

10. If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

Unauthorised deductions from wages (Employment Rights Act 1996, section 13)

11. Did the respondent make unauthorised deductions from the claimant's wages and, if so, how much was deducted?

12. The claimant says deductions in the sum of £1,842.71 were made. In summary, he says that his claim is for hours worked in excess of 45 hours a week.

Itemised pay statements (Employment Rights Act 1996, section 8)

13. Did the respondent fail to provide the claimant with itemised pay statements pursuant to section 8 of the Employment Rights Act 1996?

14. Should any compensation be ordered to be paid to the claimant in respect of any unnotified deductions?

Remedy

15. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

16. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

17. Would it be just and equitable to award four weeks' pay?

Findings of fact

12. The respondent is a family run transport haulage company that transports goods within the United Kingdom. At the time of these proceedings it employed 45 people, 39 drivers and 6 support staff. Agnieszka Dziewirz is the Managing Director of the company, but has limited involvement in the day to day operations of the business.

13. In December 2023 the claimant approached Olaf Dziewirz, the respondent's Transport Manager, and enquired about jobs with the respondent. At the time the respondent did not have any vacancies. Mr Dziewirz contacted the claimant in January as a vacancy had arisen, and it was agreed that the claimant would begin employment with the respondent.

14. On 21 January 2024 Jakub Dzierwirz met with the claimant and went through his induction process. The claimant then commenced employment on 22 January.

15. On 23 January 2024 Agnieszka Dziewirz sent an email to the claimant attaching a number of documents including a contract of employment, starter checklist, drivers' handbook, onboarding and training documentation. The claimant accepted, in his evidence to the Tribunal, that he had been sent a copy of his contract of employment by email on 23 January.

16. The email of 23 January also set out the procedure to be followed when reporting damage and taking photographs of any damage.

17. On 25 January 2024 the claimant was provided with hard copies of his contract of employment by Jakub Dziewirz, and signed the contract. The claimant suggested in his evidence to the Tribunal that the signature on the contract may not be his. All of the respondent's witnesses denied forging the claimant's signature on the contract. I find that the claimant did sign his contract of employment.

18. The claimant was employed by the respondent as an HGV driver for approximately 6 weeks. His employment started on 22 January 2024 and ended on 1 March 2024.

19. On 23 January 2024, the day after the claimant's employment started, he was provided with a written statement of employment particulars. The statement of

employment particulars is dated 22 January 2024 and contains the following relevant provisions:

"**4 PAY**

4.1 Your annual basic pay is £39,000 per year and this shall be payable weekly in arrears on or about the Friday of each week directly into your bank or building society account….

4.2 You will be paid for overtime (subject to prior approval or overtime hours) at the rate of £16 per hour on Saturdays. Sunday work will be paid at the rate of £17 per hour. Bank holidays will be paid at the following rate of £18 per hour. You may be entitled, under our discretion, to a subsistence allowance to be paid alongside your wage.

4.3 You may be required to undertake nights away from home in the vehicle from time to time. These will be paid at £25.00 per night out and will be payable weekly in arrears on or about the Friday of each week directly into your bank or building society account along with your weekly pay….

5 HOURS OF WORK AND RULES

5.1 Your usual days of work are between Mondays and Friday, in line with drivers' hours regulations…."

20. The contract also sets out details of the following: name and address of the employer, commencement of employment and continuous employment, job title, place of work, holidays, sickness absence, termination and notice period, where to find the disciplinary and grievance procedures, pensions, collective agreement, changes to terms of employment, confidential information, company property, third party rights, training, alcohol and drug testing.

21. The contract does not contain any provisions for the payment of overtime other than when overtime is worked at weekends or on bank holidays. The respondent's evidence, which I accept, is that the annual salary of £39,000 covers all hours worked by the claimant on weekdays (Monday to Friday inclusive) and that overtime is only paid for weekends and bank holidays.

22. The claimant signed the contract confirming his agreement to the terms of the contract on 25 January 2024.

Pay and payslips

23. The claimant was paid weekly in arrears. His gross weekly pay was £750 and in addition he was paid for 'nights out' if he was required to sleep overnight in the vehicle, and for weekend overtime and subsistence allowance. Payments were made on Friday of each week by bank transfer. Payslips were issued to the claimant by email in advance of the payments being made.

24. In evidence before the Tribunal were the following payslips, and emails from

Agnieska Dzierwirz sending each payslip to the claimant:

1. Payslip for week ending 28 January 2024 showing a net payment of £697.60 to the claimant, paid on 2 February 2024. The payslip contains details of gross weekly pay, subsistence allowance, and deductions for tax and national insurance contributions. It was sent to the claimant by email on or around 30 January 2024;

2. Payslip for week ending 4 February 2024 showing a net payment of £557.60 paid on 9 February 2024. The payslip sets out the gross weekly pay, the amount paid for subsistence allowance, and deductions for tax and national insurance contributions. The payslip was sent to the claimant by email on or around 7 February 2024;

3. Payslip for week ending 11 February 2024 showing a net payment of £874.38 paid on 16 February 2024. The payslip contains details of gross weekly pay, payments made for night outs, subsistence allowance, the number of hours overtime worked, the hourly rate of pay for that overtime and the total gross payment for overtime (14.75 hours' overtime at £17.00 an hour), together with deductions for tax and national insurance contributions. The payslip was sent to the claimant by email on or around 15 February 2024;

4. Payslip for week ending 18 February 2024 showing a net payment of £722.60 to the claimant paid on 23 February 2024. The payslip contains details of gross weekly pay, payments of subsistence allowance and for night outs, and deductions of tax and national insurance contributions. This payslip was sent to the claimant by email on or around 21 February 2024;

5. Payslip for week ending 25 February 2024 showing a net payment of £687.44 paid on 1 March 2024. The payslip contains details of gross weekly pay, payment of subsistence allowance and deductions of tax and national insurance contributions. This payslip was sent to the claimant by email on or around 28 February 2024; and

6. Payslip for week ending 3 March 2024 showing a payment of £702.60 net paid to the claimant on 8 March 2024. The payslip sets out gross weekly pay, gross holiday pay of £300 and deductions for tax and national insurance contributions. This payslip was sent to the claimant by email on or around 6 March 2024.

25. I have no hesitation in finding, on the evidence before me, that the claimant was supplied with payslips for each of the weeks that he worked for the respondent, and that those payslips set out clearly gross pay, overtime payments when worked, subsistence allowance, payments for nights out and holiday pay, and deductions for tax and national insurance contributions.

Working hours

26. The claimant accepted in his evidence to the Tribunal that during the course of his employment with the respondent he had asked to work overtime and weekends.

In fact he only worked one overtime shift, on Sunday 11 February 2024. He was paid for that overtime at the agreed contractual rate of £17 an hour.

27. All of the other hours worked by the claimant were on week days (i.e. between Monday and Friday each week.) The claimant had produced a table of hours worked, to which I was taken by Mr Slavinsky. The table was prepared for the purposes of calculating the value of the claim for unauthorised deduction from wages and was set out at page 93 of the bundle. The table showed that all of the hours worked by the claimant were worked between Monday to Friday, with the sole exception of 11 February.

28. There was a conflict of evidence between the parties as to whether the claimant complained about his working hours. The claimant said that he had complained about his working hours being too long. The respondent said he had not. On balance I prefer the respondent's evidence. The respondents' witnesses were consistent with each other, and their evidence was supported by the documentary evidence before me.

29. Driver's working hours are recorded on tachographs. Each driver is required to insert their tachograph into their vehicle and ensure that working time is accurately recorded. The tachograph records show the number of hours driven and the number of rest hours. The respondent has software which downloads the truck and driver tachographs, and keeps records of the claimant's working hours. The respondent analyses tachograph data to ensure that drivers have not infringed any of the rules which limit the number of hours that drivers are allowed to work.

30. Drivers are expected to ensure that they do not exceed the limits on driving and working hours, and that they take the necessary rest breaks. The claimant accepted that it was his responsibility to ensure he took his rest breaks. The claimant also accepted that if he worked too long or did not take breaks, his employer could be held responsible for breaching the rules on drivers' working time.

31. Drivers' routes are planned by the planning team which comprises Natalia Korepta and Olaf Dziewirz. Due to the nature of the work it is not always possible to accurately plan the work a week in advance, but drivers are normally informed of their 'job' for the next day by 4pm. The amount of time that can be taken to complete a 'job' or delivery can vary, according to matters such as traffic and loading times.

32. When planning a driver's route the planning team seeks to ensure that drivers do not exceed the maximum number of hours that they are allowed to drive, and that they have time to take their breaks. It is the driver's responsibility to take their breaks, and the respondent's software will automatically notify the respondent if the driver doesn't take the necessary breaks, or exceeds the permitted working hours.

33. The claimant alleged that the respondent deliberately planned his work in such a way as to prevent him from taking his breaks. There was no evidence whatsoever to support that assertion however, and the claimant was unable to identify, when asked in evidence, any reason why the respondent would do that.

34. The respondent's evidence was that it did take steps to ensure that not just the claimant but all of its drivers complied with the rules on working hours, including those relating to breaks. It supplies drivers with tachographs to record working hours and rest breaks, and has software which alerts it whenever a driver breached the rules. It also has a policy for dealing with breaches of the hours and rest break rules, including the issuing of infringement letters to drivers and, in more serious cases, the provision of additional training.

35. During the course of his employment with the respondent, the claimant infringed the rules on driving hours on two occasions. On 6 February 2024 he took ten minutes too little rest. On 12 February he exceeded his weekly working hours of 60 by 2 hours and 55 minutes.

36. When a driver commits a minor infringement of the rules on driving hours and rests, she or he is sent an infringement letter. 5 minor infringements are considered a serious infringement, and after 3 serious infringements the respondent considers additional training for the driver to correct his or her behaviour.

37. There was only one occasion, in six weeks of employment, on which the claimant was not able to take his full break, and on that occasion he was short by 10 minutes.

38. I prefer the respondent's evidence on this issue and find that the respondent did not plan the claimant's work in a manner that prevented him from exercising his rights to take statutory rest breaks.

<u>Alleged disclosures about health and safety issues</u>

39. Agnieszka Dziewirz' evidence, which I accept, was that she had never met the claimant in person and had only spoken to him on a few occasions during the course of her employment and once after his employment ended. I found Ms Dziewirz to be a credible witness whose evidence was consistent with the documentary evidence before me.

40. In contrast, the claimant was not consistent. In his claim to the Tribunal he alleged having made health and safety disclosures to Mrs Dziewirz in person. When questioned about this during his evidence he accepted that he had in fact never met Mrs Dziewirz in person, and he changed his evidence, stating that concerns had been raised by email. He could not recall whether or not he had signed his contract of employment, and suggested that the signature may not be his. An allegation of fraud is a very serious one to make. It was not supported by any evidence and was denied by all of the respondents' witnesses.

41. Ms Dziwewirz also gave evidence that during the course of his employment the claimant never directly raised any concerns with her about working time, health and safety, equipment or any other issues. Both Olaf Dziewirz and Jakub Dziewirz also gave evidence that the claimant had never raised any concerns with them regarding hours of work or health and safety.

42. The claimant alleges that he made a number of disclosures to Mrs Dziewirz about

health and safety issues:

1. On 25th January 2025 in person in the office, when he said that he complained to Mrs Dziewirz about a lack of PPE and the number of hours he was working;

2. On 5th February in a report about long working hours and having to take breaks whilst loading; and

3. On 13th February in person in the office, when he says that he complained about breach of the break rules.

43. In cross examination, the claimant accepted that he had, in fact, never spoken to Mrs Dziewirz in person, and said instead that he had contacted her by email. Mrs Dziewirz evidence, which I accept, was that she had never met the claimant in person whilst he was employed, and that he had never raised concerns with her about lack of PPE, working hours or breaks. She was not in the office on 25 January 2025 when the claimant alleges he complained to her about working hours and a lack of PPE, because she was on holiday that week, although carrying out some work remotely.

44. I find that the claimant did not raise any concerns about health and safety to Mrs Dziewirz in person, either on the 25th January, the 5th February or 13th February.

45. The claimant alleges that on 23 January 2024 he raised concerns by WhatsApp about a lack of PPE and other equipment. There was no evidence about this allegation in the claimant's witness statement. In the bundle were print outs of WhatsApp messages that the claimant had sent to the respondent. These show that on 23rd January the claimant sent a message to the respondent's WhatsApp group stating that "*the truck I'm driving doesn't have scissors for cutting seals*". In reply the respondent wrote that none of the trucks had scissors, that the client was supposed to have them, not the respondent, and that the respondent was not allowed to tear off seals on the container. The claimant replied "*Okay*".

46. There was no evidence before the Tribunal of the claimant raising any concerns about a lack of PPE on 23 January. Nor was there any evidence to suggest that the lack of scissors posed a risk or potential risk to health and safety.

47. The claimant also alleges that on 30 January 2024 he raised concerns by telephone to the planning team, complaining of a lack of PPE. The planning team comprises Olaf Dziewirz and Natalia Korepta. Mr Dziewirz' evidence, which I accept, was that the claimant was turned away from a customer's yard on 30 January because he did not have the correct uniform. The respondent sent a message to the claimant that day as follows:

"*Adrian, you need to be prepared for every eventuality every day. Sometimes during the day the delivery location changes, and the steelworks require boots that are over the ankle. It has also happened that a driver wasn't allowed in because he didn't have long sleeves, so always keep long pants, something with long sleeves, and over-the-ankle boots with you. Different establishments have different requirements, and we must be prepared for every eventuality."*

48. Shortly after receiving that message the claimant sent a message asking to sign up for weekend work, and the respondent replied that he had been signed up. I find, on the evidence before me, that the claimant did report to the respondent that he had been turned away from a customer's yard on 30 January 2024 and, in response, the respondent explained that he needed to have appropriate clothing and boots with him at all times.

49. The respondent's policy is that drivers are required to wear boots that cover their ankle when making deliveries. Drivers are expected to buy their own boots, and then claim the cost back from the respondent. It was the claimant's responsibility o ensure that he had appropriate boots with him on 30 January 2024.

50. The final alleged disclosure of health and safety concerns was on 11 February 2024 when the claimant said he complained about damage to a company vehicle. On 11 February 2024 the claimant reported that some covers were missing from the vehicle he was driving. The damage was minor and did not prevent the vehicle from being roadworthy. It was recorded with a view to a repair being carried out in the respondent's workshop on the next available occasion. It is normal practice within the respondent's business for minor damage or defects of this type to be recorded and then rectified at the next available opportunity, if the vehicle is still legal to drive. I find that the claimant did raise concerns about damage to a vehicle on 11 February. There was no evidence to suggest that the minor damage reported by the claimant posted a risk or a potential risk to health and safety.

51. On 24 January 2024 the claimant reported that a shipping container he collected was damaged. The claimant was advised to report the damage to the dock and carry out a vehicle re-check. The damage to the shipping container did not affect the roadworthiness of the vehicle that the claimant was driving.

Monitoring

52. The respondent has approximately 30 vehicles. Those vehicles are fitted with cameras which record the outside of the vehicle, but do not record the inside. There is no CCTV monitoring inside the respondent's vehicles. The vehicles are fitted with dashboard cameras, but these point outside of the vehicle. There are also cameras on the side of the vehicle which record the sides of the truck and the trailer. In addition, the respondent fits GPS into each of its vehicles. GPS tracks the movement of the vehicle but does not record either by video or audio.

53. It is normal practice for the respondent to monitor driver's movements using GPS, to enable it to update customers regarding deliveries. The claimant was monitored using GPS, in accordance with the respondent's normal practice, but he was not monitored in his vehicle using CCTV.

54. I accept the respondent's evidence that it did not carry out any filming of the claimant inside his vehicle. Two of the respondent's witnesses gave evidence to that effect. Their evidence was consistent with each other. It was also supported by an email from a company called CameraMatics which carried out an investigation into the camera configuration on board the vehicles that the claimant drove. The

investigation concluded that neither of the vehicles have driver monitoring cameras installed, that there is no audio recording capability in either vehicle and that both vehicles are equipped with forward facing cameras which do not capture the driver or any audio.

55. In support of his allegation that he was being excessively monitored the claimant produced a picture of a black box fixed on a windscreen. I find that this was a photograph of the dashboard camera, which pointed outside of the vehicle.

56. I see no reason why the respondent would admit monitoring the claimant and other employees by GPS, but not tell the truth to the Tribunal on the issue of CCTV. I find that the respondent did not monitor the claimant through the use of CCTV inside his vehicle.

Telephone calls

57. The claimant asserted that he received telephone calls during his working time and rest breaks of an unpleasant nature, with excessive criticism, in particular from a person called 'Aga', who the Tribunal finds to be Mrs Agnieska Dziewirz.

58. The claimant did not set out details of any of the alleged telephone calls in his witness statement, referring instead in general and nonspecific terms to being "*Berated, shouted at, and insulted by management*". In a document submitted to the Tribunal by Mr Slivinsky in advance of the hearing, and headed 'Particulars of the alleged detriments', Mr Slivinsky referred to a number of telephone calls from and to Mrs Dziewirz, accusing Mrs Dziewirz of shouting at the claimant and threatening him.

59. In his written submissions to this hearing, Mr Slivinsky wrote that the telephone calls "*mainly came from a witness acting as the Respondent's safety officer*" but did not name the individual concerned.

60. In her evidence to the Tribunal Mrs Dziewirz recalled speaking to the claimant on a few occasions. One was when she was in the office with the Transport Planner, Natalia Korepta, and overhead the claimant speaking disrespectfully to Ms Korepta. Ms Korepta had called the claimant to ask him for an estimated time of arrival. The claimant refused to provide the information and told Ms Korepta to check the GPS and stop bothering him. Mrs Dziewirz took over the call and told the claimant to be respectful to staff and fulfil his duties when asked.

61. The second time that Mrs Dziewirz spoke to the claimant was on 16 February when the claimant reported a missing mudguard on a trailer. Mrs Dziewirz checked the position and realised that the trailer in question was designed without mudguards. Mrs Dziewirz told the claimant this and advised him to continue using the trailer as it was designed to be used without mudguards.

62. On 23 February 2024 the claimant called Mrs Dziewirz and asked her how much notice he had to give in order to resign. After the call Mrs Dziewirz sent a text message to the claimant stating that any notice would have to be submitted in writing.

63. On 1 March 2024 the claimant called Mrs Dziewirz again and accused the company of spying on him using recording devices in the vehicle he was driving. He resigned the same day.

64. All of the telephone calls between Mrs Dziewirz and the claimant were appropriate and about work related matters. Some of them were initiated by the claimant. There was no evidence that the telephone calls were unpleasant or that they contained excessive criticism.

65. Neither party adduced any evidence on the question of whether the respondent had health and safety representatives or a health and safety committee to whom concerns about health and safety could be raised.

66. The respondent encourages drivers to raise issues relating to their work, and the claimant did so on several occasions, reporting that he had been turned away from a customer's site, and reporting minor damage to his vehicle and a lack of mudguards. At the start of his employment the claimant was specifically told how to raise concerns with the respondent.

The Law

Health and Safety Detriment

67. Section 44 of the Employment Rights Act 1996 contains the right not to be subject to any detriment on certain health and safety grounds. The relevant provisions are the following:

"*(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –*
….
(c) being an employee at a place where –
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety."

68. Section 48 (1) of the ERA gives workers the right to make a complaint to an Employment Tribunal that they have been subjected to a detriment contrary to section 44. Section 48(2) provides that in a detriment claim under section 44 "*it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*" As a result of this provision if the claimant establishes on the balance of probabilities that there was a relevant disclosure and a detriment, the burden of proof passes to the employer to show that the claimant was not subjected to the detriment on the ground that he made the protected disclosure. It does not however mean that a detriment claim will succeed 'by default' if there is no

evidence as to why the respondent subjected the claimant to the detriment (***Ibekwe v Sussex Partnership NHS Foundation Trust EAT 0072/14***).

69. The question for the Tribunal is what, consciously or unconsciously, was the reason for the detrimental treatment. In order for the claim to succeed the relevant disclosures must be the 'real reason' or the 'core reason' for the treatment (***Aspinall v MSI Mech Forge Ltd EAT 891/01***). In ***Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2010] ICR 372*** Elias LJ summarised the causation test in whistleblowing detriment claims as being 'did the protected disclosure materially (in the sense of more than trivially) influence the respondent's treatment of the claimant.

70. A 'detriment' can include putting the claimant at a disadvantage and should be assessed from the claimant's perspective (***Ministry of Defence v Jeremiah [1980] ICR 13*** and ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***).

71. The Tribunal can draw an inference in detriment claims. In ***International Petroleum Ltd and others v Osipov and others EAT 0058/17*** the EAT held that the correct approach when drawing inferences in a detriment claim is as follows:

1. It is for the claimant to show that the disclosure is a ground or reason (that is more than trivial) for the detriment;
2. The respondent must be prepared to show why the detrimental treatment was carried out. If it does not do so, inferences may be drawn against it;
3. Any inferences drawn must be justified by the Tribunal's findings of fact.

<u>Unauthorised deductions from wages</u>

72. Section 13 of the Employment Rights Act 1996 states that:

> "*(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…*
>
> *(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."*

73. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal.

Itemised pay statements

74. Section 8 of the Employment Rights Act 1996 provides that:

> "*(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*
>
> *(2) The statement shall contain particulars of –*
> *(a) the gross amount of the wages or salary,*
> *(b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*
> *(c) the net amount of wages or salary payable,*
> *(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and*
> *(e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as –*
> *(i) a single aggregate figure, or*
> *(ii) separate figures for different types of work or different rates of pay.*"

75. Section 11 gives workers the right to make complaints to Employment Tribunals if they are not provided with itemised pay statements or are provided with statements that do not comply with the legal requirements.

76. By virtue of section 12(3) of the Employment Rights Act 1996, where a Tribunal finds that an employer has failed to give a worker a pay statement in accordance with section 8, the Tribunal "*shall make a declaration to that effect*". Section 12(4) provides that:

> "*Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made (from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding*

Conclusions

77. The following conclusions are reached having considered carefully the evidence before the Tribunal, the relevant legal principles and the submissions of the parties.

Health and safety detriment

78. There is insufficient evidence before the Tribunal for me to conclude that the claimant made the health and safety disclosures that he relies on. The claimant's

evidence about the alleged disclosures was vague. His witness statement contained merely generalised allegations without any specifics of dates or times. Instead, I was referred to a document in the bundle prepared by Mr Slivinsky. In contrast, the respondent's witnesses were clear and consistent in their evidence, which was supported by the documentary evidence before me.

79. There was no evidence whatsoever from the claimant on the key questions of :

1. whether there was a health and safety representative or safety committee at his workplace;

2. whether, if there was a representative or committee, it was not reasonably practicable for him to raise matters through the representative or committee; and

3. why he says he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

80. It is for the claimant to establish, on the balance of probabilities, both that he made relevant disclosures falling within section 44(1)(c) of the Employment Rights Act 1996, and that he was subjected to a detriment or detriments on the ground that he made those disclosures. The claimant has not discharged the burden of proof in relation to either of those matters.

81. There is insufficient evidence before me to conclude that the claimant brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety, in circumstances were there was no health and safety representative or safety committee, or if there was such a representative or committee, it was not reasonably practicable for him to raise the matter by those means.

82. The detriment claim must fail on that ground alone.

83. In addition, however, I find that the claimant was not subjected to the detriments of which he complains, and specifically, that:

1. The respondent did not plan the claimant's work in a manner that prevented him from exercising his rights to take rest breaks. The claimant's rest breaks were monitored by the respondent and he took sufficient breaks on every day that he worked for the respondent with the exception of one day, when his break was just 10 minutes short;

2. The respondent did not subject the claimant to excessive monitoring with the use of an in-vehicle CCTV system. The evidence before the Tribunal points overwhelmingly to there being no such monitoring, that the only monitoring carried out was via GPS, and that the claimant was monitored via GPS in the same way as other drivers; and

3. The claimant did not receive phone calls during his working time and rest

breaks of an unpleasant nature with excessive criticism.

84. The claim for detriment under sections 44 and 48 of the Employment Rights Act 1996 is, therefore, not well founded. It fails and is dismissed.

Unauthorised deductions from wages

85. At the Preliminary Hearing in January 2025 Employment Judge Maidment made clear that it was for the claimant to calculate the alleged shortfall in wages and to demonstrate the basis of such calculation (paragraph 6 of the Record of the Preliminary Hearing). The claimant had prepared a calculation which was set out at page 93 of the bundle.

86. Mr Slivinsky told the Tribunal that the claim was for £1,842.71 in respect of 46 hours which the claimant says he worked but was not paid for. The claimant's claim for unauthorised deductions from wages is based upon an assertion that the £39,000 salary the claimant was paid covers only to 9 hours a day or 45 hours a week Monday to Friday, and that if the claimant worked more than that on Monday to Friday, he was entitled to be paid overtime for it.

87. The claimant's own calculation of hours worked suggests that he worked overtime of 46 hours for which he was not paid. All of the hours included in the claimant's calculation however were worked between Monday and Friday, with the only exception being Sunday 11 February 2024. The payslip provided for the week ending 11 February included an additional payment for that overtime.

88. The claimant's case is fundamentally flawed, because there was no evidence before us of any agreement to pay overtime for hours worked Monday to Friday. The claimant's own calculation of overtime shows that, with the exception of Sunday 11 February 2024, all of his 'overtime' was worked Monday to Friday. He was not entitled to any additional payment for that 'overtime' as payment for all hours worked Monday to Friday was covered by the annual salary of £39,000.

89. The claimant has received all of the sums to which he was entitled under his contract of employment, namely £750 gross a week for all hours worked Monday to Friday, and an overtime payment for overtime worked on Sunday 11 February.

90. I have nonetheless considered whether it can be said that the claimant was paid less than the National Minimum Wage for hours worked Monday to Friday.

91. On the claimant's own calculations, the maximum number of hours worked by the claimant each week, excluding the week ending 11 February for which he received an additional payment, was 62.52. The annual salary of £39,000 equates to a weekly gross pay of £750, which was the gross weekly pay set out in the claimant's payslips.

92. Gross pay of £750 divided by 62.52 (the maximum number of hours worked Monday to Friday) works out at £11.99 an hour. The National Minimum Wage at the time of the claimant's employment was £10.42 for workers aged 23 and over. The claimant was therefore paid in excess of the National Minimum Wage for all of the

hours that he worked.

93. I do not accept Mr Slavinisky's submission that the salary of £39,000 was based upon a maximum daily shift of 9 hours, or a maximum working week of 56 hours. The contract of employment makes clear that overtime is only paid at weekends and for bank holidays.

94. It cannot in my view be said that the total amount of wages paid to the claimant on any occasion by the respondent was less than the total amount of the wages properly payable to the claimant on that occasion. The claimant has not discharged the burden of establishing, on the balance of probabilities, that he is entitled to additional sums which the respondent failed to pay him.

95. The claim for unauthorised deductions from wages is not well founded. It fails and is dismissed.

Itemised pay statements

96. The claimant appeared to accept during his evidence that he had in fact been provided with payslips during the course of his employment with the respondent.

97. Notwithstanding the claimant's evidence to the Tribunal, Mr Slivinsky submitted that the payslips provided by the respondent breached section 8 of the Employment Rights Act 1996 because, with one exception, they did not refer to the number of hours worked by the claimant.

98. I have no hesitation in finding, on the evidence before me, that the claimant was provided with payslips in a timely manner in respect of all payments made to him during and on the termination of his employment.

99. Section 8(e) of the Employment Rights Act 1996 requires that hours worked need only be included in a payslip if "*the amount of wages or salary varies by reference to time worked*".

100. In the claimant's case, his basic salary of £39,000 a year, or £750 a week gross, did not change depending on the number of hours worked from Monday to Friday each week. His pay only changed if he worked overtime at the weekend or on a bank holiday.

101. The only time the claimant worked overtime at the weekend was on Sunday 11 February 2024. The payslip that was provided for the claimant that week included details of the number of hours overtime he had worked, the hourly overtime rate and the gross pay for the overtime hours. There was no need for the respondent to include details of hours worked in any other payslip because his pay for the other weeks he worked did not vary according to time worked.

102. The respondent has therefore fully complied with its obligation to provide the claimant with itemised pay statements. The claimant's complaint that the respondent failed to comply with section 8 of the Employment Rights Act 1996 is not

well founded. It fails and is dismissed.

Remedy

103. In light of my conclusions on the substantive issues in this claim, it has not been necessary to consider questions of remedy. I have not found in favour of the claimant and accordingly no award can be made under section 38 of the Employment Act 2022.

104. In any event, it is clear on the evidence before me that when these proceedings were begun, the respondent was not in breach of its obligation under section 1 of the Employment Rights Act 1996 to provide a written statement of initial employment particulars to the claimant.

Approved by

Employment Judge Ayre

Date: 23 September 2025

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