



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MS K MCGARRIGLE

AND

Respondent
NATIONAL TENNIS
ASSOCIATION CIC

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 24TH APRIL 2026

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR E NIEBURG

JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claims for unlawful deduction from wages is well founded and upheld;
- ii) The respondent is ordered to pay the claimant the sum of £684.00.

Reasons

Claims

1. By this claim the claimant brings a sole claim of unlawful deduction from wages.

2. The claimant was employed from 1st May 2024 to 8th February 2025 in two roles; tennis coach for 15 hours per week at £18 per hour; and Social Media Officer for 5 hours per week at £13.50 per hour (total 20 hours). From 6th January 2025 those hours were reduced to 14 hours per week (9 tennis coaching/ 5 social media officer).
3. The claimant asserts that she has worked 97 hours beyond those contracted hours and is entitled to be paid for them as overtime; giving a total of £1728.00.
4. The claimant has produced a Schedule of the hours worked, and all are claimed at £18 per hour. She has confirmed that all the hours claimed were tennis coaching hours.
5. There are therefore a number of issues to be resolved:
 - i) What hours did the claimant work;
 - ii) Did she have any contractual right to overtime;
 - iii) If so did that apply to all of the hours claimed or a smaller number?

Hours Worked

6. The claimant asserts that her calculation of the hours worked are supported by two primary documents; the first is a document created by her former manager Mr Paxton in March 2025 after she had left; and the second her own records. These support the figure of ninety seven hours overtime. She submits that insofar as the respondent's records show different figures, then firstly the respondent's figures are wrong, essentially in that they only record her own planned coaching hours, and do not reflect extra hours actually worked and/or extra hours agreed between her and her manager which are not shown.
7. Secondly she contends that the respondent's figures under record her hours as they take the total number of hours worked, including during weeks in which she had less than fifteen hours tennis coaching. She contends that it is not open to them to do the calculation in this way as during those weeks she was willing and able to work fifteen hours in that week. They therefore have no right, whether contractual or otherwise, to offset hours when they were unable to provide her with work, against overtime hours for which she is entitled to be paid.
8. The respondent contends that its own records show a total of 576 paid hours for the whole period, with only 530 hours being worked; and that far from being owed pay that the claimant has in fact been overpaid for forty six hours. For completeness sake the respondent's records show a total of thirty extra hours being worked in weeks in which the total exceeds fifteen hours; and seventy six hours paid for hours not worked in weeks in which she performed fewer than fifteen hours.

9. In respect of the contention that the claimed hours are agreed by her manager, the respondent contends that Mr Nieburg spoke to Mr Paxton and that, as reflected in an email of 15th March 2024, that whilst it is accepted that the claimant did work some extra hours that amount claimed is not agreed; and that in any event as the claimant was employed on a “set hours” basis that extra hours worked would not trigger any right to paid overtime in any event.
10. Mr Paxton has not been called to give evidence by either party, but in an undated document sent to Mr Nieburg accepts that £684 (£18 x 38 hours) is owed to the claimant as:

“ This is money owed to Katie as there were 38 shifts missing on Bright HR for cover for Jodie etc, missed shifts (my fault) sickness etc. 38 hours x £18 is £684. This needs to be paid to her. This is from May 24 to February 25. My fault cannot be anybody else.”

11. My conclusions are that:

- i) Given that the claimant has produced her own records which I have no reason to suppose are inaccurate, particularly given that Mr Paxton accepts that not all her hours were recorded on Bright HR, that the total number of hours worked is as recorded by the claimant.
- ii) However for the reasons given below it does not follow automatically that she is entitled to be paid for all or any of those hours;
- iii) That issue which will be determined by my conclusions as to the express/implied contractual terms.

Contract

12. The parties also fundamentally disagree as to the correct interpretation of the contract. The relevant contractual provisions are:

Hours of Work

Your normal hours of work for tennis coaching delivery will start at 15 hours per week and are variable and are those required to carry out your duties to the satisfaction of the company and as necessitated by the needs of the business. Brakes are unpaid and in line with working time regulations.

Your normal hours of work for administrative duties will start at 5 hours per week and are variable and are those required to carry out your duties to the satisfaction of the company and as necessitated by the needs of the business. Brakes unpaid and in line with working time regulations.

Actual days start finish times for tennis coaching delivery will be variable and in accordance with the rota which will be available one month in advance although there may be times where you will be given shorter notice of your hours of work.

The companies coaching programme is delivered during 47 weeks of the year during the five weeks with no scheduled coaching you will receive remuneration of your normal core hours of work company will advise you of the programme breaks at the start of each year a during these programme breaks you are required to take your allocated holiday entitlement

13. The respondent asserts that: –

- i) The contract makes no provision for paid overtime and it follows that there is no contractual right to any;
- ii) If and to the extent that the claimant asserts that the right to paid overtime should be implied; there is no basis to imply any such right as the contract expressly provides that the hours are variable and those required to carry out the claimant's duties and as necessitated by the needs of the business;
- iii) It is entitled to rely on the total hours worked, including in any week during which she worked less than 15 hours in determining whether any further pay is owed and/or set off any overpaid hours .

14. The claimant essentially asserts that:

- i) The contract provides explicitly for her to carry out and be paid for fifteen hours tennis coaching per week;
- ii) It follows by necessary implication that if she is required to provide tennis coaching for more than those hours that she is entitled to be paid for those hours at the agreed contractual rate;
- iii) It is not open the respondent to take into account or set off sums paid for hours that were not worked as she was ready and willing to fulfil her contractual duties at all times.

15. In my judgement the respondent is clearly correct that the contract does not provide any express right to paid overtime. It follows that if the claimant is entitled to paid overtime a term to that effect will need to be implied into the contract. The law as to the implication of such a term in this context is that:

- i) The courts will not imply a term simply because it is considered reasonable one and/or because the agreement would be unreasonable or unfair without it. A term can only be implied if the court can presume that it would have been the intention of the parties to include it in the agreement at the time the contract was made. In order to make such a presumption, the court must be satisfied that:

- ii) The term is necessary in order to give the contract business efficacy;
 - iii) The term is so obvious that the parties must have intended it;
 - iv) It is the normal custom and practice to include such a term in contracts of that particular kind, or
 - v) An intention to include the term is demonstrated by the way in which the contract has been performed.
16. In my judgement neither iv) nor v) apply in this case in any event. In determining whether ii) or iii) do, in my judgement different considerations apply to different types of work. The respondent is correct in my judgement to assert that in respect of her own rota'd hours there is an express requirement to perform such hours as are necessary, and there is expressly no right to paid overtime in the event that performing those hours takes more than fifteen hours in any given week. In those circumstances I cannot see any basis for implying a term which directly contradicts the express terms of the contract.
17. However in relation to hours that are not performed as part of the claimants ordinary coaching duties and core hours in my judgement different considerations apply. The document produced by Mr Paxton demonstrates that the total of thirty eight hours he accepts are owed include:
- i) Cover Jodie etc;
 - ii) Missed shifts;
 - iii) Sickness
18. Shifts missed on the HR system - The claimant is clearly entitled to be paid for shifts which have been missed as part of her ordinary right to be paid.
19. Additional shifts - In my judgement applying test ii) (business efficacy) is a possible route to implying a term in respect of the additional shifts, but the more obvious is iii) (an obvious term / officious bystander). In my judgement if the parties had been asked at the outset whether in circumstances in which the claimant had been asked to cover other shifts outside her core hours whether she should be paid for those hours; in my judgement it is self-evident that the answer would obviously be "yes
20. Sickness - It is not entirely clear whether the reference to sickness is that of the claimant herself, or cover for sickness absence of other employees. The implication appears to me to be the latter as if the claimant had not been paid for sickness absence that would appear to fall under the respondent's sick pay provisions and not to be recorded as hours worked for which, in Mr Paxton's view, she should be paid in addition to those recorded on the HR system. It follows that in my judgement they should be treated as additional shifts. .

21. In my judgement the best evidence I have is the evidence from Mr Paxton that these are hours that have been performed by the claimant, some of which are her core hours which are not recorded on the respondent's HR records, and some are additional hours falling outside her core duties.

22. Conclusions :-

- i) In my judgement for the reasons given above a term should be implied in the claimant's contract that she is entitled to be paid at the appropriate rate for hours worked in addition to her core hours; and that the best evidence of those hours are those accepted by Mr Paxton.
- ii) She is clearly entitled to be paid for core hours which are not recorded on the HR system.
- iii) However, there is no other evidence, in my judgement, which would allow me to conclude that the balance of the hours claimed by the claimant attract any extra pay and/or are not covered by the express provisions of the contract.
- iv) In respect of the respondent's set off argument, in my judgement the claimant is correct that she is entitled to be paid for hours she either worked or was available to work up to fifteen per week and that setting off hours paid but not performed was not open to the respondent.

23. It follows that judgement will be entered for the claimant for £684.

Approved by
Employment Judge Cadney
Date: 15 May 2026

Judgment & Reasons sent to the parties on
16 June 2026

Jade Lobb
For the Tribunal Office