



EMPLOYMENT TRIBUNALS

Claimant: Miss A Swain

Respondent: The Coach House

Heard at: Nottingham **On:** 1 May 2026

Before: Employment Judge McTigue

Representation

Claimant: In person

Respondent: Mr Aitken, Owner of the Respondent

JUDGMENT having been sent to the parties on 6 June 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The Claimant worked for the Respondent as a Duty Manager from 25 December 2023 until 13 October 2025. The Respondent is a Bed and Breakfast business. She approached ACAS for the purposes of early conciliation on 19 September 2025 and the early conciliation certificate was issued on 24 October 2025. She lodged her claim with the Tribunal on 7 November 2025.

Procedure, documents and evidence heard

2. The Claimant submitted a witness statement together with evidence to the Tribunal. She gave evidence under oath and was cross-examined by the Respondent's representative. Mr Aitken gave evidence on behalf of the Respondent. He also gave evidence under oath and was cross-examined by the Claimant.
3. At the start of the hearing, the Claimant clarified that her claim was for:
 - 3.1. The Respondent's alleged failure to keep adequate records under Regulation 9 of the Working Time Regulations 1999 ("WTR 1999").
 - 3.2. The Respondent's failure to provide adequate daily rest under Regulation 10 of the WTR 1999. The Claimant's case was that the Respondent failed

to provide her with a daily rest period of not less than 11 consecutive hours.

- 3.3. Unauthorised deductions from her wages. In respect of this complaint, the Claimant's case was that she was entitled to be paid the national minimum wage for the time when she was on call for the Respondent. She stated that she was on call between 10am and 3pm and between 6pm and 7pm on her "on call days". To resolve that issue involved a consideration of whether the Claimant was working whilst on call within the meaning of the National Minimum Wage Regulations 2015 and if so, whether she should have received pay under the National Minimum Wage Act 1998.
4. In respect of the Claimant's claim that the Respondent failed to keep adequate records under Regulation 9 of the WTR 1999, I explained that this Tribunal lacks the power to deal with that type of complaint. Consequently, that complaint was dismissed for want of jurisdiction.

Issues

5. The remaining issues that fell to be determined by the Tribunal were as follows:

Failure to provide adequate daily rest under Regulation 10 of the WTR 1999

1.1. Did the Respondent fail to provide the Claimant with a daily rest period of not less than 11 consecutive hours in breach of its obligations under Regulation 10 of the WTR 1999?

1.2. If so, what remedy should the Tribunal award?

Unauthorised deduction from Wages

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

Findings of Fact

6. The Claimant commenced employment for the Respondent as a Duty Manager on 25 December 2023. The Respondent is a Bed and Breakfast business.
7. The Claimant's contract stated that she was required to work 30 hours a week plus nighttime on call duty work. The Claimant was on call for, on average, 2 nights a week. I reach that finding as I accepted Mr Aitken's evidence on that point. The Claimant provided insufficient evidence on this point in her witness statement, and her oral evidence was also insufficient on this point.
8. On the two evenings a week when the Claimant was on call, she was on call between the hours of 6pm and 7am. There was no obligation on the Claimant to stay at, or near, her place of work when she was on call. There was also no

restriction on the activities the Claimant could undertake when she was on call.

9. The Respondent did not expect the Claimant to be awake between the hours of 6pm and 7am. Indeed, the Claimant was allowed to be at home and sleep when on call.
10. The Claimant was provided with a mobile telephone by the Respondent so that she could respond to any calls from Bed and Breakfast guests that might arise whilst on call. During the entirety of her period of employment with the Respondent, the Claimant was in fact only ever required to respond to one telephone call. She was paid by the Respondent for the time she spent dealing with that phone call.
11. There was no requirement for the Claimant to be on call between 10am and 3pm. The Claimant led insufficient evidence to demonstrate that was the case. In particular, I conclude that the text messages provided by the Claimant, and attached to her witness statement as "AS3" do not demonstrate that they relate to on call day work.

Law

National Minimum Wage Regulations 2015 ("NMWR 2015")

12. Regulation 21 of the NMWR 2015 provides the definition of salaried hours work.
13. The hours of work that are relevant for the purposes of the National Minimum Wage for a time worker are those hours when the worker is actually working. Specific rules cover hours spent whilst on call.
14. In addition to any time spent actually working, salaried hours workers will be treated as working when they are "available at or near a place of work for the purposes of working, unless the worker is at home" - Regulations 27(1)(b) NMWR 2015.
15. In **Royal Mencap Society v Tomlinson-Blake [2021] UKSC 8** Lady Arden, giving the leading judgment, held that the two concepts of "working" and being "available for work" must be kept distinct (at para. 57). Although decided in the context of Regulation 32 of the NMWR 2015, the same must apply to Regulation 27.
16. In addition, Regulation 27(2) provides:

“(2) In paragraph (1)(b), hours when a worker is available only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping.”

Deductions from Wages

17. Section 13 Employment Rights Act 1996 (ERA 1996) provides:

“(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.”

17. Section 27(1) ERA 1996 defines “wages” as “any sums payable to the worker in connection with his employment”. This includes “any fee, bonus, commission, holiday pay or other emolument referable to the employment” — section 27(1)(a). These may be payable under the contract “or otherwise”.

Conclusions

18. In relation to the complaint that the Respondent failed to provide the Claimant with a daily rest period of not less than 11 consecutive hours in breach of its

obligations under Regulation 10 of the WTR 1999, the Claimant failed to provide sufficient evidence in respect of this issue in her witness statement. When asked about this point the Claimant merely said that there might be the odd occasion when she was called at 2am in morning by the Respondent and would then need to be back in work at 7am. The Claimant's evidence lacked precision or detail on this point. I did not accept her evidence on that point. Mr Aitken gave evidence, which I accepted, that there was only one occasion when the Claimant had to attend to a call whilst on duty. The Claimant provided insufficient evidence to support that complaint and so I concluded it was not well founded. That claim was dismissed.

19. I next considered the unlawful deductions from wages complaint. The key issue here was whether the Claimant was working whilst on call. If she was, then she was entitled to be paid. The Claimant contended that she was working whilst on call, that she ought to have received the National Minimum Wage for those hours, that she did not and that consequently she has been underpaid.
20. I considered whether the Claimant was working whilst on call. As previously discussed, I did not find any evidence that the Claimant was on call between 10am and 3pm. That left me to consider whether the Claimant was working whilst on call between the hours of 6pm and 7am.
21. The Claimant was a salaried hours worker for purposes of the NMWR 2015. In addition to any time spent actually working, salaried hours workers will be treated as working when they are available at or near a place of work for the purpose of doing work and are required to be available for such work, unless they are at home. Time on call will count as work where, looking at the reality of the arrangements, the worker is required to be working rather than merely waiting.
22. It was clear to me that the Claimant was on call for 2 nights a week on average. Between the relevant hours, i.e. 6pm to 7am, there was no requirement for her to remain at her place of work. The Claimant also provided insufficient evidence that there was a requirement for her to be available near her place of work during those hours.
23. In addition, the Respondent placed no restrictions on what the Claimant could do between the hours of 6pm to 7am. The Claimant gave evidence that she could not drink alcohol or go to the cinema when she was on call. After hearing the evidence, I concluded that they were restrictions the Claimant imposed upon herself voluntarily. There was no evidence that the Respondent prohibited her from drinking or going to the cinema during her on call hours. Indeed, there was no evidence that the Respondent placed any restrictions upon her during the hours of 6pm to 7am. I also accepted Mr Aitken's evidence that no restrictions were placed on the Claimant between the hours of 6pm and 7am.

24. In addition, for a significant portion of the time period between 6pm and 7am the Claimant would have been either at home and/or asleep. Given the decision in **Royal Mencap Society v Tomlinson-Blake [2021] UKSC 8** there is no basis for the Claimant to be paid for such hours.
25. In reality, the only obligation on the Claimant whilst she was on call was to answer calls from guest staying at the Bed and Breakfast via a mobile phone. That happened on only one occasion during the Claimant's period of employment. I also note that she was paid for that occasion. Apart from that obligation, which arose very infrequently, there were no restrictions placed on what the Claimant could do whilst on call.
26. In conclusion, as there were no restrictions placed upon the Claimant whilst she was on call I am unable to conclude that she was working for the purposes of the NMWR 2015. It therefore follows that she was not entitled to any remuneration whilst on call. Her complaint of unlawful deductions from wages was not well founded and was dismissed.

Approved by:

Employment Judge McTigue

Dated: 09 June 2026

Sent to the parties on

...20 June 2026.....

For the Employment Tribunal

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