



EMPLOYMENT TRIBUNALS

Claimant: Mr. A. Kersse
Respondent: Epsom and St. Helier University Hospitals NHS Trust
Heard at: London South Employment Tribunal
On: 15th September 2025
Before: Employment Judge Sudra (sitting alone)
Appearances:
Claimant: Mr. J. Reid (lay representative)
Respondent: Mr. S. John of Counsel

(References in the form [XX] are to page numbers in the Hearing bundle. References in the form [XX,para.X] are to the paragraph of the named witness' witness statement)

RESERVED JUDGMENT

The Claimant's complaint of unauthorised deductions from wages is not well founded and is dismissed.

REASONS

1. The Claimant began Acas early conciliation on 28th February 2024 ('Day A') and was issued with an Acas early conciliation certificate on 4th March 2024 ('Day B').

On 28th March 2024 the Claimant presented his ET1 claim form. The Respondent defended the claim by way of an ET3 and Grounds of Resistance on 1st May 2024.

The Issues

2. The Claimant's claim is for:

- (i) Unauthorised deductions from wages (s.13 ERA).

Preliminary Matters

- 3. At the outset of the Hearing I discussed the claims and issues with both the Claimant and Respondent.
- 4. The Claimant confirmed that he had not provided a witness statement and that he was relying on the contents of his ET1 claim form. Therefore, the Claimant swore on oath that the contents of his ET1 were true to the best of his knowledge and belief.

Procedure and Documents

5. I had before me:

- (a) An agreed Hearing bundle consisting of 146 pages;
- (b) a supplementary bundle of 17 pages; and
- (c) an opening note from the Respondent.

6. I also had written witness statements from:

For the Respondent

- (i) Donna Harris; and
- (ii) Bonnie Cateson (née Green).

7. I notified the parties at the outset of the Hearing that I would only read documents that I was specifically referred to in evidence or submissions and would only read documents referred to in witness statements insofar as they were relevant.

Relevant Findings of Fact

8. The findings of fact were reached by me, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account my assessment of the witness evidence.
9. Only findings of fact relevant to the issues, and those necessary for me to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to every document I read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

Employment

10. The Claimant began employment with the Respondent as a shuttlebus driver on 29th May 2021. The Claimant's employment was via a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') from his previous employer 'RATP' to the Respondent.
11. The Respondent is a NHS Trust mainly operating from Epsom and St. Helier hospitals and employing circa. 7,000 members of staff. Upon his commencement of employment with the Respondent, the Claimant was paid for 63.4 hours per week at a rate of £12.27 per hour. The Claimant's case is that he was paid by RAPT for 63.4 hours consisting of 42 worked hours and 21.4 hours for unworked hours ('downtime'). The Claimant was line-managed

by Bonnie Cateson (Transport and Logistics Additional Services/Project Manager).

12. The Claimant emailed Mrs. Cateson (née Green) on 16th January 2023 and requested a meeting with her to discuss an annual pay award which he alleged he had not been paid.
13. In May 2023, the Respondent implemented a new pay model to align pay rates for staff on grades A to G. However, as the Claimant was already receiving more pay than his peers (due to the fact he was being paid for 63.4 hours per week whilst actually only working 42 hours per week) the new pay model did not apply to the Claimant. The new rate of pay for affected staff was £13.75p whilst the Claimant's pay for hours actually worked equated to receipt of £18.52p per hour.
14. In or around April/May 2023 the Claimant met with Donna Harris (Senior People Business Partner) and Mrs. Cateson to discuss his hourly rate of pay. The Claimant was accompanied by his trade union representative, John Reid. At the meeting the Claimant was asked to provide evidence of his contractual right to be paid for downtime as his entitlement to downtime would affect whether or not the new rate of pay applied to him as well as to his peers who were not paid for downtime and therefore, received less pay than the Claimant.
15. The Claimant stated that he had been paid for 63.4 hours by the Respondent since his TUPE transfer. This was correct but the Respondent had paid him as they had due to an administrative oversight. The Respondent did not, and indeed do not, seek recoupment from the Claimant for the monies overpaid to him.
16. On 6th June 2023 the Respondent sent staff affected by the new pay model a letter confirming the arrangements. The Claimant was *inadvertently* sent this letter which stated that the new hourly rate of pay had increased from £12.27p to £13.75p. Mrs. Harris realised the Claimant should not have been sent this

letter and emailed him that very day to apologise and explain the error. Mrs. Harris also stated that she wanted to meet with the Claimant in the coming weeks to discuss the downtime issue.

17. Mrs. Harris and Mrs. Cateson met with the Claimant, who was accompanied by Mr. Reid, on 6th July 2023. Mrs. Harris asked the Claimant, again, for evidence of his alleged contractual right to be paid for downtime as if he could not provide this, he would not be entitled to the pay increase his peers had had (there were other staff who did not receive the pay ward either as they were similarly not entitled to it. Mrs. Harris canvassed the option of the Claimant receiving the increased hourly rate but made clear that he would only be paid for hours actually worked. The Claimant did not take accept this option.
18. The Claimant did not, and to date has not, provided evidence of his contractual right to be paid for downtime. The Claimant's contract of employment with RAPT states (so far as material),

'Hours of Work and Start Times

Your basic working week is 37.5 hours and you must be prepared to start your duties at any time of day. In addition you are required to work all additional hours of overtime that the Company requests, within the constraints of the EU Drivers hours regulations or Domestic Driving Rules as applicable. Your working hours will need to be flexible given the nature of the work involved.

Basic Weekly Pay

Bus £337.50 (Subject to availability to work for the minimum hours)
Coach £300.00 (Subject to availability to work for the minimum hours)

The current pay rates are as shown on the pay schedule which may vary from time to time.

...

'Overtime (non contractual)

Overtime must be agreed to by your section Manager before it is worked. Unauthorised overtime will not be paid.'

19. In late 2023, in response to complaints from staff and trade unions in respect of the Respondent's travel services and timetabling, the Respondent sought to reduce the hours and shifts of the five drivers on the 'H1 service' of which the Claimant was a driver. It was decided (after consultation) that each week, four drivers would work a 37.5 hour shift and one driver would work a 50 hour shift. The Claimant and another colleague put themselves forward for the 50 hour shift so the Claimant's work pattern was: Two weeks working a 37.5 hour shift and two weeks working a 50 hour shift effective from 4th December 2023. All drivers were given six months' pay protection until 30th June 2024.
20. On 13th October 2023, Mrs. Cateson wrote to the Claimant stating that the Respondent had been unable to ascertain any document showing that the Claimant had a contractual right to be paid for 63.4 hours (42 hours worked hours and 21.4 hours unworked hours) but that they did discover that his pre-TUPE employment contract stated that he would be paid for 37.5 hours. That contract had no mention of downtime.

Relevant Law

21. S.13 Employment Rights Act 1996 ("ERA") provides (so far as material):

'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.*
- (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.'*

...

22. The question of what is properly payable requires a Tribunal to determine whether there is some legal entitlement to the amount claimed and this may mean construing a contract. A Tribunal must apply the general rules of contract. In Cleeve Link Ltd v. Bryla [2014] IRLR 86, the ET had to consider whether a clause permitting an employer to recoup certain recruitment and travel costs was unenforceable as a penalty or whether the clause was a genuine pre-estimate of loss upon a breach of contract in deciding what was properly payable.

Conclusions and Analysis

23. Both the Claimant and the Respondent witnesses' evidence was credible but where there was a dispute, I preferred the Respondent's evidence as it was corroborated by the documents.

24. I did not have before me any document which established that the Claimant had a contractual entitlement to be paid for 63.4 hours per week including 21.4 hours of downtime. The only document I had before me, in respect of the Claimant's contractual rights, is referred to at paragraph 18 (supra).

25. The burden of proof is on a Claimant to prove a contractual entitlement. As there is no proof, at all, of the Claimant's contractual entitlement to be paid for 63.4 hours per week and to be paid for unworked hours (downtime) his claim is not made out.

26. For these reasons, the Claimant's claim is dismissed.

Employment Judge Sudra

Date: 15th September 2025

