

Royal Mencap Society (Respondent) v Tomlinson-Blake (Appellant)

Case ID: UKSC 2018/0160

Case summary

Issue(s)

Whether home workers who are required to remain at home in their shift and/or residential care workers who 'sleep in' are entitled to the national minimum wage for time that is not spent actually performing some specific activity.

Facts

In the first appeal ("Mencap Appeal"), Royal Mencap Society ("Mencap") provides care and support for vulnerable adults under a contract with a local authority. Mrs Tomlinson-Blake is a highly qualified and extensively trained care support worker employed by Mencap since 2004. She provides care and support to two men, each in a private property. They both have autism and substantial learning difficulties.

Mrs Tomlinson-Blake's usual work pattern involved a day shift and a morning shift, for which she received appropriate salaried remuneration. She was also required to carry out a sleep-in shift from 10pm to 7am at a flat rate of £22.35, plus one hour's pay of £6.70 (£29.05 in total). No specific tasks were allocated in the sleep-in shift. However, she needed to keep a 'listening ear' out during the night in case her support was needed and expected to intervene where required or respond to requests for help. That need to intervene was found to be real and infrequent – six times over the preceding 16 months. Absent such interventions, she was entitled to sleep throughout. Where her sleep was disturbed and she needed to provide night-time support, the first hour was not additionally remunerated, while any further hours were paid for in full.

Her claim in the Employment Tribunal ("ET") was that she was entitled to have all the hours spent sleeping in counted as working time for minimum wage purposes. The ET and (on appeal by Mencap) the Employment Appeal Tribunal ("EAT") upheld her claim. The Court of Appeal allowed Mencap's further appeal on 13 July 2018, deciding that she was not entitled to national minimum wage payments for such shifts.

In the second appeal ("Shannon Appeal"), Clifton House is a registered residential care home in Surrey. It provides care for up to 16 elderly residents. Before Mr and Mrs Rampershad took over the care home in 2013, it was owned by a Mr Sparshott. In 1993, he offered Mr Shannon employment as an "on-call night care assistant" with accommodation in the studio within the care home ("the Studio"). He was required to be in the Studio from 10pm to 7am. He was able to sleep during those hours, but had to respond to any request for assistance by the night care worker on duty at the home.

In return, he received free accommodation and £50 per week (later £90 per week). The original arrangement was for him to take some time away on holiday. However, from 1996 onwards, he slept there every night. In practice, he was very rarely asked to assist the night care worker. He had day jobs as a driver from time to time.

His claim in the ET was that he was entitled to have all hours between 10pm and 7am counted as salaried hours work for minimum wage purposes for 365 days per year. The arrears due to him on that basis were calculated to amount to almost £240,000. The ET dismissed his claim for such minimum wage arrears. The EAT affirmed the ET's decision. The Court of Appeal dismissed his further appeal on 13 July 2018.

Judgment appealed

[\[2018\] EWCA Civ 1641](#)

Parties

Appellant(s)

Clare Tomlinson-Blake

Respondent(s)

Royal Mencap Society

Appeal

Justices

Lord Kerr, Lord Wilson, Lord Carnwath, Lady Arden, Lord Kitchin

Hearing start date

12 Feb 2020

Hearing finish date

13 Feb 2020

Watch hearing

12 Feb 2020 [Morning session](#) [Afternoon session](#)

13 Feb 2020 [Morning session](#)

Judgment details

Judgment date

19 March 2021

Neutral citation

[2021] UKSC 8