



EMPLOYMENT TRIBUNALS

Claimant: Ms A Rodrigues

Respondent: Al Semat UK Limited

Heard at: London Central (by CVP)

On: 18 April & 11 July 2024

Before: Employment Judge Emery

REPRESENTATION:

Claimant: Mr Uduje (counsel)

Respondent: Ms Mackenzie (counsel) on 18 April & Ms Curtain (counsel) 11 July 2024

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unauthorised deductions from wages and breach of contract by failing to pay overtime is well-founded. The respondent failed to pay the claimant for overtime worked in the period 1 June 2021 to 31 August 2022.
2. The complaint of unauthorised deductions from wages in the period 2 – 8 September 2022 is well-founded. The claimant undertook work in this period for which she was not paid.
3. The respondent shall pay the claimant **£15,656.50**, calculated as follows:
 - a. **£15,033.70** in respect of unlawful deduction from wages / breach of contract 1 June 2021 – 31 August 2022
 - b. **£622.80** in respect of unlawful deduction from wages 2 – 8 September 2022

REASONS

1. Judgment and reasons were given at the hearing, there was a subsequent request for written reasons.

The Issues

2. The Issues, as agreed and recorded in some detail in the Case Management Order dated 26 May 2023 are:

1. Unauthorised deductions/Breach of contract: Overtime payments in lieu

- 1.1 Did the Claimant have any express entitlement under the terms of her contract of employment to receive any payment in respect of hours worked in addition to her normal contracted 40 hours per week?

- 1.2 Did the Claimant have any express entitlement under the terms of her contract of employment to receive time off in lieu in respect of hours worked in addition to her normal contracted 40 hours per week?

- 1.3 If so, were there any express and/or implied conditions of the Claimant receiving time off in lieu?

- 1.4 The Respondent will state:

- a) Did the Claimant provide the Respondent with timesheets recording the additional hours worked?

- b) Were those timesheets provided to the Respondent at the time?

- c) Did the Respondent provide specific approval at the time that the Claimant could receive time off in lieu in respect of those hours?

- 1.5 If so, did the Claimant fulfil those express and/or implied conditions to receive time off in lieu?

- 1.6 Was there any express or implied condition that, in circumstances where time off in lieu could not be taken, the Claimant would be entitled to receive payment in respect of the same?

- 1.7 The Claimant will state that the Respondent operated a well-known custom and practice that where its employees had been unable to

take any accrued time off in lieu whilst they remained employed that a payment would be made in respect of the time in lieu accrued upon termination?

- 1.8 In respect of these other employees:
 - a) Did other employees receive payment in respect of time off in lieu which had not been used?
 - b) Were those employees engaged on the same or a similar basis to the Claimant?
 - c) Were there any circumstances specific to those other individuals which did not apply to the Claimant?
- 1.9 Did the Claimant work 869 hours overtime as set out at Paragraph 10 of the Further and Better Particulars of Complaint?
- 1.10 Is it the case that it was not possible for the Claimant to take the time off in lieu during the course of her employment?
- 1.11 If so was the respondent in breach of the claimant's employment contract in respect of a failure to make a payment of accrued but untaken overtime upon termination?
- 1.12 Is the Claimant entitled to recover the sums claimed at paragraphs 16 of the Further and Better Particulars of Complaint?
2. Unauthorised deductions: 1 - 8 September 2022
 - 2.1 Did the respondent make an unlawful deduction from the claimant's wages in respect of the period between 1 8 September 2022 payable on 30 September 2022?
 - 2.2 Did the Claimant work for the Respondent between 1 to 8 September 2022?
 - 2.3 If so, how many hours did the Claimant work during this period?
 - 2.4 On what basis did the Claimant undertake work for the Respondent during this period? i.e. upon whose request did the Claimant undertake work during this period and was that person authorised to request the Claimant to undertake additional work?

- 2.5 In respect of the relevant period of the complaint, was the total amount of wages paid to the Claimant by the Respondent less than the amount that was “properly payable” on that occasion?
 - 2.6 The Claimant relies upon the assertions as set out paragraph 17-26 of the Further and Better Particulars of Complaint to evidence the alleged agreement with Mr Saad Bajallan of the Respondent that she would work, and be paid for, this period.
3. Is the Claimant entitled to the payment as set out at paragraph 26 of the Further and Better Particulars of Complaint?

Witnesses and evidence

3. I read witness statements and some of the documents for the first hour of the hearing. I heard evidence from the claimant. For the respondent I heard evidence from Mr Saad Bajallan, the claimant’s line manager whose main place of work is in the respondent’s office in Doha.
4. The judgment does not recite all the evidence I heard; it addresses evidence relevant to the issues in this case. It incorporates quotes from my notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions.
5. At the outset of the hearing, the claimant applied to add several new documents, which she argued related to her actual hours of work, her duties, evidence of her working during her holidays, and documents relating to requests by other employees for pay for accrued overtime worked throughout their employment on their leaving the company, which was eventually granted.

The facts

6. The respondent is a facilities management company, primarily managing the UK property and personal affairs of a wealthy middle-eastern family. The claimant was employed as a Family Business Coordinator, her employment starting on 1 June 2021.
7. The respondent characterises the claimant as an Office Manager/Administrator, primarily office based with a regular routine. Hers was the most senior role based in the UK, her manager Mr Bajallan and the respondent’s senior management and administration teams are based in Doha.
8. The respondent says that the claimant was employed to work 9.00am – 6.00pm Monday to Friday on a salary of £36,000. The respondent argues that the

claimant was not entitled to overtime pay, her contract states there is no entitlement; in any event it says that the claimant did not work regular overtime.

9. The claimant's contract states that her duties are set out in her job description "and/or" duties "as instructed" by her immediate manager (there is no job description in the bundle). The contract also specifies that the company can vary her "... duties, tasks and responsibilities at any time ... according to the needs" of the respondent, such variation to be confirmed in writing (clauses 2.1 - 2.3 page 92). Clause 5 specifies her hours of work of 40 hours over 5 shifts a week which may include weekends and bank holidays.
10. The claimant's contract specifies there is "no entitlement" to payment for additional hours worked, that time off in lieu "may be authorised" in exceptional circumstances where hours worked in excess of 40 hours a week are "deemed necessary, unavoidable, sustained and disruptive..." (93).
11. The claimant disagrees with the respondent's characterisation of her role as fixed hours in the office with little overtime. The claimant gave detailed evidence of the work she did. I accept her evidence, that her role "...is far wider, it is not an office worker, I was more a PA – working at their properties and in the office, 50/50".
12. The claimant described some of her role, which included managing "40 maintenance projects over 8 properties" involving visiting sites and "effectively managing" these projects. One email in March 2022 requires the claimant to provide a works timeframe with different options and costs for multiple repairs and renovations on 6 properties (111-112). Amongst other duties, the claimant undertook business bookkeeping, office work, HR, liaising with Doha, buying household and personal products for the wider family, booking their appointments and reservations, sourcing products, and dealing with their requests - "All requests were to me ... it's several families [in the UK] at a time. I was involved in their lives ...".
13. The claimant's evidence was that Mr Bajallan knew she was working a lot of additional hours, she referred to WhatsApp messages sent by her to Mr Bajallan. One set of messages in October 2021 record the claimant informing Mr Bajallan that she was working 4 hours extra daily and working 7 days a week "...I am only doing the necessary hours but ... requests don't stop."; she was told to "record all your extra hours and we will give you holiday once the family leaves (109-110).
14. Texts include several being sent by the claimant overnight – for example on 1 July 2022 because of a lack of water in one property the claimant liaised with the engineer who attended, sending texts and then the engineer's recommendations to Mr Bajallan between midnight and 3.00am.

15. The claimant said that her employer's stance on overtime was regularly made clear by Mr Bajallan - her role was to "make the family happy, go the extra mile", meaning she was expected to work as and when required.
16. The claimant accepted that she may have a theoretical entitlement to toil, but in practice this was not possible as her role was so intensive. Mr Bajallan does not appear to have followed up with the claimant on giving her holiday or toil in lieu of these hours.
17. The claimant's evidence was that she recorded her hours, as requested by Mr Bajallan, and sent this information to Doha. Mr Bajallan's evidence was that she did not record these hours or send this information to Doha.
18. On overtime, the claimant's case is as follows: there was no set system for employees to claim overtime, some employees filled in their own overtime sheets, the claimant used a template which had been provided by her predecessor. Employees would give their timesheets to the claimant, who would authorise this time by signing the sheet. The claimant then submitted the timesheets to the Doha office, usually monthly, along with other documents and items which were regularly shipped by courier. There was no one in London to authorise her timesheets, she sent hers along with the other employees' timesheets. A copy of the timesheets was kept in the London office.
19. The claimant's case is that employees were not paid their overtime when it was earned. The expectation was that that overtime would accrue and be paid in a lump sum at the end of employment.
20. The evidence shows that the practice of paying employees accrued overtime on their resignation occurred with several employees. One, Ms Muntianu, a Client Liaison Manager who was the claimant's predecessor in role resigned in June 2021. A Doha employee and the claimant discuss in texts Ms Muntianu's likely claim for pay in lieu of overtime and annual leave for 2019, 2020 and 2021. The claimant says, "when overtime is done [it] must be paid or contested ... and a payment plan put in place" (additional disclosed documents text 28 June 2021).
21. Ms Muntianu requested payment of 860.5 hours, this included overtime in 2019 of 265.5 hours; hours accumulated during family visits between December 2019 and January 2020; other significant overtime worked between April 2020 and May 2021; and 49.5 days annual leave accrued but untaken since 2019 (107). Mr Bajallan responded saying that the accounts team will respond "after checking

- your overtime and annual leave...". The respondent accepted the claim and reached agreement to pay it to Ms Muntianu in three monthly installments.
22. Ms Muntianu's employment contract has not been disclosed; it was not suggested by the respondent that she was on different contract terms to the claimant.
 23. It is noteworthy that the only other employees' contract disclosed, of Ms Kravtchuk a Housekeeper, is in identical terms to the claimant's contract (bar job title, salary and hours of work). It also specifies she has no entitlement to payment for overtime. There is a final page contract (the signature page) for another employee – Olha. This final page is identical in all material respects to the final page of Ms Kravtchuk and the claimant's contract. (80 – 102)
 24. I conclude, in the absence of any other contractual documentation, that the respondent had standard contractual terms which it provided to each of its employees, in particular all contracts given to all of its employees specified that there was no entitlement to overtime.
 25. The respondent was aware of overtime being generated by its employees; for example, on 31 August 2022 the respondent asked the claimant for details of employees "leave and lieu balances" (145). On 2 September 2022 the claimant provided overtime details for two employees. Ms Voloskova had accrued 749.50 hours in lieu and 15 days holiday in lieu; Ms Days had accrued 182 hours in lieu and 14 days accrued holiday.
 26. These figures appeared to be no surprise to the Doha office; in response to the claimant's email with Ms Days accrued hours the response is "Thanks". There is no recorded response to the claimant's email with Ms Voloskova's days in lieu. Both employees had filled in timesheets recording their overtime worked; the claimant had signed these off (173-182).
 27. Another employee, Olha, had 14 days holiday and 53 days in lieu when she resigned; the claimant provided these figures to Mr Bajallan and these days in lieu were paid to Olha without query (159). Mr Bajallan's evidence was that this was paid to Olha because the overtime had been regularly approved by the claimant, who had sent the overtime forms to Accounts. He said that Olha's timesheets were emailed by the claimant, not posted, he believes the emails are in the hearing bundle, he says he gave them to his solicitors. They are not in the hearing bundle.
 28. On 25 June 2022, the claimant resigned, her last date of employment was to be 31 August 2022. In her resignation letter she referred to concerns she had, including the hours she had to work, "24 hours dealing with family... even on my holidays".

29. On 15 July 2022 the claimant emailed Mr Bajallan asking “I need to know how my days in lieu can be added and paid as wages after my last working day.” (121). Mr Bajallan did not respond to this email – his evidence was “we did not know that she had worked additional hours, so there was no need to reply.”
30. By 31 August 2022, much work was still required of the claimant. For example, on 31 August 2022 the claimant was given a ‘handing over list’ of 19 tasks and issues she was required to complete.
31. On 2 September 2022 the claimant was messaged by Mr Bajallan to thank her for attending work, and to say that the respondent will pay “all your entitlements including holidays and extra time” that this would be paid “promptly” (148). The respondent characterised this as for the time from 1 September – the claimant disagreed, saying she believed this included all of her days in lieu entitlement.
32. There follows several text messages over the next week in which the claimant and Mr Bajallan are discussing work – for example payment of final wages and days in lieu for Olha.
33. On 7 September 2022 the claimant texted Mr Bajallan saying that she and a colleague were going into the office on 8 September 2022 to finalise outstanding work including questions from Finance; Mr Bajallan organised security to let her into the office (184-5).
34. On 18 September 2022 the claimant sent an email to Finance and others stating that she had 22 days holiday in lieu and 914 hours in lieu and asking for this payment in three installments. On 26 September, in response to a text to Mr Bajallan, she was told that the holidays of 22 days would be paid, but that “the hours in lieu have no record of approval.” She was subsequently told that her pay in September –would be 1 day’s pay and 22 days holiday pay – was her “final settlement. No more hours in lieu.” In response to the claimant’s query that “everyone gets paid their hours and not me....” She was told “we need approvals for overtime.”
35. The respondent has provided evidence to show that, after Ms Muntianu had worked overtime, she submitted timesheets to David Ball who at the time worked in the London office. One shows that Ms Muntianu worked overtime from 18 November 2019 to 14 December 2019. She submitted her ‘reason for overtime’ to Mr Ball on 18 December 2019, who signed off the timesheet (e.g. 222-223).
36. It appears that Mr Ball was no longer employed when the claimant was employed, but no arrangement was put in place for the claimant to receive similar signed

approval immediately following the period of overtime. I accept that the claimant was not told that she needed to receive sign-off after she had worked overtime – Mr Bajallan had told her she needed to record her hours, which she did, not that she also needed to receive signed approval.

37. The claimant's position was that she did not realise she needed signed authorisation – she submitted her timesheets and she and Mr Bajallan “exchanged messages and phone” about the hours she was working, that he knew about the overtime “... and I never thought he would not pay me.”
38. The respondent argues that some of the claimant's overtime requests are for her regular office hours (e.g. 4.00pm to 6.00pm). The claimant argues, and I accept, that she would often start work from 5.00am onwards, that she would then claim overtime from the end of the first 9 hours of work on that day. The claimant described often starting early “to assist the housekeeper, to buy food for the family...”.
39. The respondent disputes the claimant's overtime figures, saying that the claimant must have overinflated her hours. For example, on her overtime request at 199, the respondent's position is that the claimant has inflated her hours saying she worked 8.00am to 4.00pm on a Saturday. The claimant disagreed, saying that (for example) on Saturday 2 and Sunday 3 April 2022 she was likely dealing with problems in the properties.
40. The claimant says she also worked the Easter holidays – 16 and 17 April 2022; she had returned from leave; Doha was not on holiday, and she says a colleague was away and she was needed at work. Mr Bajallan's evidence was that the claimant was not in the office that weekend, he said “we have some news that she was in Maderia, she came back on 18 April 2022 ... This is what I heard.”
41. The respondent also says that the claimant often took toil, leaving work at 3.00 to pick up her daughter, that “security can confirm” the claimant was not in the office when she claims. He said that two statements – one from security – had been sent to his lawyers, he was surprised that these statements were not in evidence. No such evidence was produced.
42. Mr Bajallan argued that the claimant “rarely” worked overtime, “it happened a few times, but she used to compensate the next day...”. He says she had never claimed time or pay in lieu until her employment ended. He says he knows she was not in the office because he used to phone her at the office and was told that she was not in. His evidence was that her timesheets were “faked at the end of her employment.”

43. I accept the claimant's evidence on the hours that she worked. Other employees worked similar amounts of overtime including her immediate predecessor in role, the hours worked was particularly intense when members of the family were in residence. There is no evidence that the role changed when the claimant took over. In fact, in her resignation letter the claimant highlighted the excessive hours she was working and responsibilities she was undertaking.
44. I accept Mr Bajallan was on notice of the hours she was working by the conversations and messages between them. I accept that the claimant submitted timesheets to Doha. There was no evidence, other than what Mr Bajallan says he has heard, to suggest the claimant was not working these hours.

Closing arguments

45. Ms Mackenzie provided a written skeleton. Both Ms Mackenzie and Mr Uduje made oral arguments. I incorporate their arguments in my discussion and conclusions below.

The law

46. Employment Rights Act 1996

S13(3) - "where the total amount of any wages paid on any occasion by an employer ... 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 ... as a deduction made by the employer from the worker's wages."

47. Relevant case law

1. *Autozlenz v Belcher*: the question to be considered in any case where there is a dispute about terms is: **what was the true agreement between the parties?** This may not be reflected in the written agreement and the tribunal is entitled to consider whether the express contractual provisions reflected the **actual legal obligations of the parties**. The relative bargaining power of the parties is a relevant factor in deciding whether the terms of a written agreement represented what was agreed, and a tribunal can adopt a "purposive approach".

"Frequently, organisations which are offering work or requiring services to be provided by individuals are in a position to dictate the written terms which the other party has to accept. In practice, in this area of law, it may be more common for a court or tribunal to have to investigate allegations that the written contract does not represent the

actual terms agreed and the court or tribunal must be realistic and worldly wise when it does so."

2. *Uber BV v Aslam [2021] UKSC 5*: The *It is not always the case that the written contract will be the starting point of the tribunal's analysis*. The written contract should not be ignored, but there is no presumption that a contractual document contains all the parties' rights and obligations and no rule that a contractual document represents the parties' true agreement just because it is signed.
3. *Carmichael v National Power plc [2000] IRLR 43 HL* – a tribunal may consider the conduct of the parties after employment has started to interpret the terms of the employment contract: An employment tribunal can find "...that the parties did not intend the letters to be the sole record of their agreement but intended that it should be contained partly in the letters, partly in oral exchanges at the interviews or elsewhere, and partly left to evolve by conduct as time went on. This would not be untypical of agreements by which people are engaged to do work, whether as employees or not."
4. *Duke v Reliance Systems [1982] IRLR 347, EAT*: has the practice or policy in question been drawn to the attention of the employees by the employer or has been followed without exception for a substantial period?
5. *New Century Cleaning Co Ltd v Church [2000] IRLR 27, CA*: The tribunal must consider whether there is a sum which is legally due to the claimant. If yes, it is then that the tribunal must consider whether there has been a deduction from that sum.
6. *Agarwal v Cardiff University and anor [2018] EWCA Civ 1434*: The tribunal considering unlawful deduction claims have jurisdiction to resolve any issue necessary to decide whether a sum claimed is 'properly payable', including an issue as to construction of the worker's contract.
7. *Cleeve Link Ltd v Bryla [2014] IRLR 86 EAT*: the tribunal may need to consider (i) the construction of the individual contract also (ii) general contract law rules when determining whether an amount was properly payable.

Conclusion on the facts and the law

48. There is a clear difference between the respondent's contracts of employment it gave to all employees on 'overtime' and the respondent's clear practice of allowing employees to accrue significant amounts of overtime and allowing them to claim

this sum at the end of employment. I accept that the claimant's contract relating to overtime does not accord with the reality of the working environment.

49. In fact, the respondent's case has changed during the course of the case – from denying that the claimant worked any overtime and denying she had the contractual right to claim any overtime – to seemingly accepting that overtime could be claimed but arguing that the claimant had not followed process by seeking approval for her overtime and/or had never worked overtime.
50. I find that the contractual practice operated by the respondent throughout the claimant's employment was to approve overtime figures at the end of each employees' employment for overtime worked over that employee's contractual hours.
51. To claim overtime, there was no written process, but the claimant and her colleagues' practice was to fill in and sign overtime forms and for these to be sent to Doha.
52. Mr Bajallan accepted that overtime forms were submitted for other employees – hence they were paid overtime pay – but says the claimant did not submit her forms. As above, I do not accept this and one significant reason why is this: the respondent did not keep its own tally of overtime accruing by its employees, despite receiving the forms. Hence, the claimant was asked to provide this detail on 2 September for two employees and to work out the overtime for *Neha*; hence Ms Muntianu in June 2021 submitting her overtime tally despite having prior signed approval.
53. I conclude that the respondent did not keep track of these forms. They were sent to Doha and not checked. The respondent relied on the claimant also having a tally and asking her for the figures, rather than checking the forms and working this out for themselves. I conclude that the claimant sent her forms as she was instructed - "record your time" - but they were not checked.
54. Because the claimant did not have a manager's signature on the copy forms, she retained, she was unable to show that she had approval for this overtime.
55. The evidence clearly shows that Mr Bajallan was aware of the hours the claimant was working – the claimant regularly spelt this out to him, it was also clear by the work she was doing and the timing of her messages.
56. I do not accept the respondent has any evidence – as Mr Bajallan asserted – that the claimant took significant amounts of TOIL. While he may have suggested she take toil, I also accept that he was aware that in practice it was impossible for

her to do so. Mr Bajallan says he has evidence of the claimant taking toil, that he gave this evidence to his lawyers, however none was provided.

57. I also accept that the overtime documentation was sent to the respondent's accounts team by courier. Mr Bajallan insists the timesheets for all other employees were sent by email – but no evidence was provided, and I do not accept this evidence.
58. I therefore accept that
1. the respondent had a contractual practice of allowing employees to accrue overtime;
 2. the overtime would be evidenced by that employee filling in and giving their overtime timesheet to the claimant who would check and sign it off;
 3. the claimant filled in her own overtime timesheets, all were sent by courier, however they were not checked in Doha;
 4. on resignation, each employee would claim their accrued overtime/holidays, the claimant would be asked to doublecheck the figures and agreement would be reached on a repayment schedule;
 5. in breach of contract the respondent failed to accept the claimant had any entitlement to overtime, arguing variously that the claimant did not work overtime, or she did but took toil, or she did but did not follow the process to record and claim it.
59. I accept that the respondent was therefore in breach of the claimant's employment contract in respect of a failure to make a payment of accrued but untaken overtime upon termination. The failure to pay the claimant her overtime when it became due at the end of her employment also amounts to an unlawful deduction of wages.
60. The respondent does not accept that the claimant worked in the period 1 – 8 September 2022. She self-evidently did, following the respondent's request she finalise a significant number of jobs. Its question in the list of this issues has been answered by its own evidence. There can be no argument that the claimant agreed to work and there is an explicit agreement between her and Mr Bajallan that she would be paid for the time she worked. I find that had Mr Bajallan told the claimant she was not going to be paid for this work, she would not have done it.
61. The claimant was paid for 1 September 2022. She worked in addition 2 – 8 September 2022 but she has not been paid for these days.

REMEDY

- 62. In discussion the respondent accepted “in principle” the claimant’s overtime claim of 869 hours. The parties agreed that the correct hourly rate for the purposes of the overtime calculation is £17.30 per hour.
- 63. There is agreement between the parties that the calculation for overtime owed is 869 hours x £17.30 = **£15,033.70**.
- 64. The parties also agree in principle on the pay claimed for the period 2 – 8 September 2024 – 36 hours at £17.30 per hour = **£622.80**

TOTAL DUE TO THE CLAIMANT: £15,656.50

**Employment Judge Emery
13 September 2024**

Judgment sent to the parties on:

20 September 2024

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For the Tribunal:

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