



EMPLOYMENT TRIBUNALS

Claimants: Andrew Parry

Darren Richardson

Respondent: Muller Uk & Ireland Group LLP

Midlands West Employment Tribunal

On: 13th January 2025

By Cloud Video Platform

Before: Employment Judge Gidney

Appearances

For 1st Claimant: Mr Parry (in person)

For 2nd Claimant: Mr Richardson (in person)

For the Respondent: Mr Feeny (Counsel)

JUDGMENT

The Judgment of the Tribunal is that:

1. The 1st Claimant's claim of unlawful deductions from wages, pursuant to s13 Employment Rights Act 1996 ('ERA') is dismissed.
2. The 2nd Claimant's claim of unlawful deductions from wages, pursuant to s13 ERA is dismissed.

REASONS

[1] Introduction

1. For the purposes of this Judgment, I shall refer to the 1st Claimant, Mr Andrew Parry as 'Parry' and to the 2nd Claimant, Mr Darren Richardson as 'Richardson'.
2. Parry commenced employment with the Respondent in the role of HGV Driver on 14th July 2014. His employment is continuing. Parry notified ACAS of a dispute with the Respondent on 19th December 2022 and obtained an Early Conciliation certificate from ACAS on 30th January 2023. On 9th February 2023 he presented an ET1 Claim Form containing a single complaint of an unlawful deduction of wages.
3. Richardson commenced employment with the Respondent in the role of HGV Driver on 14th May 2008. His employment is continuing. Richardson notified ACAS of a dispute with the Respondent on 27th September 2022 and obtained an Early Conciliation certificate from ACAS on 8th November 2023. On 29th November 2022 he presented an ET1 Claim Form containing a single complaint of an unlawful deduction of wages.
4. On 21st July 2023 Regional Employment Judge Jones ordered that the Claimants' Claims be consolidated and heard together.

[2] The List of Issues

5. Given the nature of the claims, neither case had been subject to Case Management and no formal List of Issues had been prepared in advance. After discussion between the parties the List of Issues for each Claimant were identified as follows:

Unauthorised deductions from Pay – Parry & Richardson

- 5.1. What sums were properly payable to Parry and Richardson by the Respondent?
- 5.2. Did the Respondent make unauthorised deductions from their wages?
- 5.3. If so how much was deducted?
- 5.4. Was any deduction required or authorised by statute?
- 5.5. Was any deduction required or authorised by a written term of the contract?
- 5.6. Did the Claimants have a copy of the contract or written notice of the contract term before the deduction was made?
- 5.7. Did the Claimants agree in writing to the deduction before it was made?
- 5.8. How much are the Claimants owed?

[3] The Evidence

6. I was provided with the following documents:
 - 6.1. A bundle of documents for Parry (23 pages);
 - 6.2. A bundle of documents for Richardson (22 pages);
 - 6.3. A joint bundle, to be relied on by both Claimants (73 pages);
 - 6.4. An updated Schedule of Loss, for both Claimants (24 pages);
 - 6.5. An additional bundle specific for Parry (42 pages);
 - 6.6. An additional bundle specific for Richardson (56 pages);
 - 6.7. The Tribunal's Digital Case Files for both Claims.

7. I was provided with the following witness statements:
 - 7.1. A joint witness statement, to be relied on by both Claimants (14 pages);
 - 7.2. A 'follow-up' joint witness statement, to be relied on by both Claimants (2 pages); and,
 - 7.3. A statement from Garry Frame, for the Respondent (9 pages).

8. All witnesses gave oral evidence and were cross examined on that evidence.

[4] Findings of Fact

9. We have not recited every fact in this case or sought to resolve every dispute between the parties. We have limited our analysis to the facts that were relevant to the Issues that we were tasked to resolve. We made the following findings of fact on the basis of the material before us, taking into account contemporaneous documents, where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities, taking into account its assessment of the credibility of the witnesses and the consistency of their evidence with the surrounding facts. Findings of fact related to a specific issue that we have been tasked to resolve are set out in our Conclusions section below.
10. Parry commenced his employment with the Respondent in the role of LGV Driver, pursuant to a statement of Terms and Conditions which recorded his start date as 8th July 2014 **[AP48]**¹. Richardson's Statement of Terms and Conditions had a start date of 8th June 2009 and referred to him as a LGV2 Night Driver **[DR63]**². Both men were engaged in the transport of milk from farms to the Respondent's processing facilities. Both Claimants had been Robert Wiseman drivers before joining the Respondent.
11. On 6th July 2022 the Respondent wrote to Parry **[AP55]** and to Richardson **[DR81]** in identical terms to update them on revised driver terms and conditions that had been agreed with the recognised trade union. The letter contained the following:
- The hourly pay rates are £14.00 for LGV C&E and £13.00 for LG VC.
 - Weekly overtime premium rate 1.125 after 47.5 basic weekly hours this is based on a guaranteed 9.5 hour day.
 - The company will review locally at an individual level to ensure that no driver receives less than a 3.6% uplift.

¹ Refers to page 48 in Andrew Parry's Hearing bundle.

² Refers to page 64 in Darren Richardson's Hearing bundle.

12. The Claimant's submitted a grievance relating to their pay on 25th May 2023. They asserted that the 3.6% should have been added to their basic rates of pay (and thus continue year on year) but instead was paid as a supplement which remained in place until the basic rate of pay, with its annual pay increases, surpassed the sums otherwise paid by the supplement. The Grievance outcome, dated 12th June 2023 to both Claimants ([AP165] and [DR155]) made the following points:
- 12.1. The new rate of £14.00 represented a 34.2% increase on the old rate of £10.43 per hour;
 - 12.2. The job titles were simplified within the tanker operation;
 - 12.3. The agreed terms for the 2022 pay award was not less than 3.6%.
 - 12.4. The business was absolutely committed to reviewing locally at an individual level to ensure that no driver received less than a 3.6% uplift for 2022 award. Only 12 drivers (including the Claimants), out of circa 1,400 were identified as drivers whose income might fall under the 3.6% guarantee and would thus need an additional payment to bring their earnings up to the 3.6% figure.
 - 12.5. The 3.6% pay protection uplift applied only to the 2/20/22 pay award.
 - 12.6. The Claimants expectation of the continuation year on year of the individual pay protection paid to then as part of the 2020 pay award is simply not viable.
 - 12.7. This is because the variable nature of the Claimants' weekly pay and all the drivers weekly pay is based on variable shift patterns and hours worked each week, overtime rates and premiums. As such earnings will vary from week to week and year on year going forward not only for the Claimants but for all the Respondent's drivers.
 - 12.8. To continue this arrangement beyond what we agreed was for the 2022 pay award only would create a difference in pay going forward between you and your peers who carry out similar work on the same shift plans and working hours.

13. The Claimants accepted that in April 2023 they received the 3.6% increase. Their claim therefore relates to the period ending March 2023. The Respondent set out its position in advance of this hearing by letter dated 24th May 2024, sent to both Claimants **[AP169]** and **[DR158]**. The position statement said:

'The company had decided to make a back payment of the supplement from April 2023 to date and continue to pay the weekly supplement to you in an attempt to bring this matter to a close.'

14. The matter first came to trial before Employment Judge Algarzy KC on 8th December 2023. The proceedings were stayed pending settlement discussions; however, those discussions came to nothing and the matter was relisted before me, today.
15. Both Claimants said in evidence that they were employed as HGV drivers, driving either 32 or 44 ton milk tankers, transporting milk from farms to the Respondent's processing facility, primarily as a night shift worker. They told me that the Respondent introduced harmonised terms (having acquired similar milk delivery businesses) in a pay deal that was approved on 17th December 2021. As far as the Claimant's could see, it included a 3.6% uplift. They point out that there was no indication that the pay protection was for 2022 only.
16. Garry Frame, giving evidence on behalf of the Respondents told the Tribunal the following matters:
- 16.1. After the April 2021 pay award both Claimants were on £10.70 base rate for Monday to Friday, with enhancements paid for bank holidays, Sundays, overtime, unsocial hours with an additional route knowledge payment;
- 16.2. Negotiations for April 2022 continued during the August 2021 to December 2021 period and covered issues such as 7 different driver

rates of pay with 11 job titles being reduced to 2 titles and 2 rates of pay and the simplification of holidays;

- 16.3. The Respondent was combining a number of different legacy pay and conditions terms and considering a pay rise at the same time.
Approximately 1,400 drivers were included in the review and given the variable nature of the earnings, no two drivers were earning exactly the same amount every week;
- 16.4. Given the removal of a number of different legacy terms and conditions a promise was paid that for 2022, no driver would receive less than a 3.6% pay rise.
- 16.5. To allow for IT/Payroll systems to be updated during the December 2021 to July 2022 period, a supplement of £90 was included in the first payslip under the new terms.
- 16.6. The necessary payment to ensure at least a 3.6% increase was notified to the affected employees on 21st November 2022 and paid on 1st December 2022 with a weekly supplement paid up to 6th April 2023 pay run.
- 16.7. Any expectation of the continuation year on year of the individual pay protection paid as part of the 2022 pay award is simply not viable.

17. Darren Richardson confirmed the following matters during his cross examination:

- 17.1. That the Respondent had legacy drivers on multiple different sets of terms and conditions;
- 17.2. A £14 per hour rate was implemented on 31st July 2022, which amounted to a 30% increase on the old £10.70 per hour rate;
- 17.3. The communication on 17th December 2021 summarised the harmonised driver terms and pledged that upon their introduction, no driver would receive less than 3.6% increase on their pay;
- 17.4. A £90 supplement was made to all drivers to compensate for a delay in updating the payroll systems.

- 17.5. Mr Richardson's payslip dated 1st December 2022 showed the basic pay rise to £14 per hour **[DR111]**;
- 17.6. A weekly supplement of £13.81 started on 1st December 2022 **[DR111]** and continued until 6th April 2023 **[DR129]**;
- 17.7. Mr Richardson was also paid a 21 week back pay supplement amounting to £278.25 on 5th May 2023 **[DR133]**.
- 17.8. From 7th September 2023 **[DR 149]** (after a further driver wide pay award) Mr Richardson's pay (and every other drivers' pay) increased to £15.05 per hour.
18. It was put to Mr Richardson in cross examination that the 3.6% pledge was a pay protection promise, for that year, to ensure no driver received less than they should in the implementation of the new harmonised terms. He replied, *'I only read it as a basic pay uplift. I say how I see it, no lie, open and honest, that's what I'm saying'*.
19. Finally, it was put to Mr Richardson that if his interpretation was correct, it would undermine the harmonisation of terms process for the legacy drivers which were intended to ensure all drivers were paid at the same rate. Mr Richardson replied, *'No. I voted 'no' to the terms conditions as I was protected. I wasn't thinking about the others I thought I'd be getting more than the other drivers'*.
20. Alan Parry confirmed the following matters during his cross examination:
- 20.1. His payslip dated 14th July 2022 was his last on legacy terms of £10.70 per hour **[AP108]**.
- 20.2. His payslip dated 21st July 2022 showed the new harmonised £14.00 per hour rate **[AP 109]**;
- 20.3. Mr Parry had a supplement of £9.29 **[AP142]** which continued until 30th March 2023;
- 20.4. Mr Parry was also paid a 21 week back pay supplement amounting to £185.73 on 1st December 2022 **[AP126]**.

20.5. From 14th September 2023 **[AP163]** (after a further driver wide pay award) Mr Richardson's pay (and every other drivers' pay) increased to £15.05 per hour.

21. The Respondent asserts that in the first year of harmonisation, the new terms and conditions would not have provided Mr Richardson or Mr Parry with a 3.6% pay rise, so a one-off supplement was required that year to bring them to 3.6%. Thereafter they would continue with the other drivers, now on harmonised terms:

22. We now turn to the relevant law:

[5] The Relevant Law

23. 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 the amount of the deficiency shall be treated as a deduction made by the employer from the worker's wages.

24. Section 13(1)(a)-(b) **ERA** states as follows:

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.

25. For the purposes of claims under s13 and s23 **ERA**, 'wages' are defined by s27 **ERA** in the following terms:

'In this Part 'wages', in relation to a worker, means any sums payable to the worker in connection with his employment, including— (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise ...'

26. Whether there has been a deduction for the purposes of s13(3) **ERA** depends upon whether the sums claimed were properly payable. To establish that wages are properly payable a Claimant must establish a legal entitlement to the payment in question (**New Century Cleaning Co Ltd v Church** [2000] IRLR 27, CA). Whilst a legal entitlement need not necessarily be contractual, a legal entitlement will be contractual in the vast majority of cases.
27. In **Coors Brewers Ltd v Adcock and ors** [2007] ICR 983 CA, Wall LJ said the following, which is of general application: *'Part II of the Employment Rights Act 1996, as I read it, is essentially designed for straightforward claims where the employee can point to a quantified loss. It was designed to be a swift and summary procedure'*. However, in **Lucy and ors v British Airways** UAEAT/0033/08 the EAT explained that just because quantification is difficult or disputed, that does not necessarily mean that the wages claimed are not capable of quantification. In **Agarwal v Cardiff University** [2019] ICR 433, the Court of Appeal confirmed, resolving a conflict in prior EAT authorities, that the ET does have the jurisdiction to construe the terms of a worker's contract, if necessary, in order to determine a statutory wages claim.
28. On the issue of construction of contracts, the Supreme Court in **Arnold v. Britton** [2015] AC 1619 at [16]-[18] stated that where the meaning of the words used in a written agreement is completely clear, particularly in a formally drafted legal document, there is no scope for purposive interpretation in pursuit of some commercial common sense result to which the parties might have agreed, but to which ex hypothesi they do not appear to have agreed by their words. Lord Neuberger PSC said that the Court was not justified in embarking on an exercise searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning of the words the parties have used.

29. Lord Clarke said in **Rainy Sky SA v. Kookmin Bank** [2011] 1 WLR 2900 at [23], that when the parties have used unambiguous language, the Court must apply it, even if this leads to the 'most improbable commercial result'. The correct approach is to consider first the words of the contract to arrive at an initial view of what the text required and whether it was ambiguous, before going on to consider whether there was any justification for departing from that construction on the basis of contextual considerations and commercial sense (**National Bank of Kazakhstan v Bank of New York Mellon** [2018] EWCA Civ 1390 at [39]-[72]. Hamblen LJ).

[6] The Tribunal's Conclusions

30. We turn now to our conclusions on each of the Issues that exist between the parties.
31. The first issue to be determined is the key issue in this case. It is:

What sums were properly payable to Parry and Richardson by the Respondent?

32. If the sums paid to the Claimants are the sums that are properly payable to them, then the Claims must be dismissed without the need to consider the remaining issues. Only in the event that the Respondent are found to have paid less to the Claimants than the amount that was properly payable, would it be necessary to determine whether that underpayment was authorised.
33. In the circumstances I turn to consider the sums properly payable to the Claimants. The Claimants accepted the negotiated terms and conditions as set out in the letter written to both Claimants on 6th July 2022 **[AP55]** & **[DR81]** which offered:

- The hourly pay rates are £14.00 for LGV C&E and £13.00 for LG VC.
 - Weekly overtime premium rate 1.125 after 47.5 basic weekly hours this is based on a guaranteed 9.5 hour day.
 - The company will review locally at an individual level to ensure that no driver receives less than a 3.6% uplift.
34. Did this negotiated proposal mean that the Claimants were to receive a basic pay increase to £14.00 per hour, have the overtimes rates etc, and then have a 3.6% pay rise, added to their basic pay, from which all future pay rises would be based, as the Claimant's contend?
35. Or does it mean that after the harmonisation process has been completed (by way of the £14.00 basic rate of pay with overtime rates etc, if any driver ended up with less than a 3.6% pay increase on their pre-harmonised rate of pay, they would receive a one-off supplement to bring them up to a 3.6% pay rise on their pre-harmonised rates of pay, and thereafter, receive future pay rises in the normal way?
36. Guided by the authority (referred to above) the correct approach is to consider first the words of the contract to arrive at an initial view of what the text required and whether it was ambiguous, before going on to consider whether there was any justification for departing from that construction on the basis of contextual considerations and commercial sense.
37. In my judgment the negotiated agreement is clear and cannot fairly be described as ambiguous. The Respondent had created harmonised terms which it anticipated would give every driver a 3.6% pay rise, but if any did not, they would get it by way of supplement. Thereafter all future pay rises could be applied equally across all of the drivers. To construe the agreement in the way contended by the Claimants would mean that they and a very few other drivers would permanently being paid more than the majority of the remaining drivers. In other words, the changes would create rather than remove a

differential in pay. In my judgment (given the evidence of Richardson during his cross examination) the Claimants were aware that their interpretation would mean that they would receive more than the other drivers, but they did not care. They choose to read the agreement in a self-serving way, to their own benefit, but that is not, in my judgment, how the agreement can be construed.

38. In all of the circumstances it is my judgement that the Claimants were both paid the sums that were properly payable to them. In the circumstances there were no deductions from their pay and their claims under s13 **Employment Rights Act 1996** must be dismissed. It is not necessary to determine whether any deductions were authorised or not, as no deductions have been made.

[7] Concluding Summary

39. In drawing all of the above together, it the Judgment of the Tribunal that:

39.1. **The 1st Claimant's claim of unlawful deductions from wages, pursuant to s13 Employment Rights Act 1996 ('ERA') is dismissed.**

39.2. **The 2nd Claimant's claim of unlawful deductions from wages, pursuant to s13 ERA is dismissed.**

Approved by Employment Judge Gidney

Approved on 28th January 2025