



EMPLOYMENT TRIBUNALS

Claimant: Mr M Rina
Respondent: Moolands Ltd

Heard at: Ashford **On:** 12 March 2019

Before: EMPLOYMENT JUDGE CORRIGAN

Representation

Claimant: In Person
Respondent: Miss L Hatch, Counsel

RESERVED JUDGMENT

1. The Respondent agreed to repay the Claimant £50 that was deducted from his wages in respect of the valet clean.
2. Otherwise, the Claimant's complaint of unlawful deduction of wages in respect of overtime is not well-founded and is dismissed.
3. The Claimant's complaint of unlawful deduction of wages in respect of holiday is not well-founded and is dismissed. The Claimant was paid his outstanding accrued statutory leave upon termination of employment.

REASONS

1. The reasons are limited to the claims at paragraphs 2 and 3 above, the Respondent having agreed to reimburse the Claimant for the valet clean.

Overtime

2. The Claimant calculated that over his employment with the Respondent, from 30/10/17 to 30/4/18, he had worked 34 hours of overtime for which he had not

been paid. The Respondent accepts that some hours were not paid, it says on the basis they were not authorised for payment.

3. The Claimant's contract states that his normal hours are 7.30 to 17.30, five days a week. It also states that he would be required to work such additional hours in excess of these as were reasonably necessary for the proper performance of his duties and to meet the needs of the business.
4. The contract is then somewhat unclear as it states:

“[No extra payment will be made for any additional hours worked, unless expressly authorised by your line manager] OR [Any overtime worked by you at the request of the Company will be paid at [the rate of £(*amount*) per hour] OR [(*number*) times your normal hourly rate]” (p28 bundle).
5. The contract therefore provided two clear options for overtime to be paid (either option 1 where an additional payment would only be made for extra hours if the payment was authorised by the Line manager or option 2 whereby all extra hours requested would be paid) and these had not been eliminated to make clear which option would apply to the Claimant. The Claimant believes that all overtime requested by the Company was authorised and should be paid, which is the second option in the contract, as cited above. I heard from the Managing Director, Mr Cowland, that the Company in fact operates in accordance to option 1 – that additional hours are only paid for if the payment is expressly authorised. I accept his evidence that he explained this system in the Claimant's induction, though I find it has not been made clear in the contract.
6. Mr Cowland's evidence is supported by the fact that no clear rate has been entered for the payment of overtime under option 2. It is also supported by the Claimant's time sheets at pages 44-69 of the bundle. The Claimant presented time sheets with his overtime hours worked. Management then either ticked these to approve them or amended them by crossing them out or reducing the hours for a particular job. The amended total is what was paid. This is because the Respondent has to check each job and the payment to be received by the Respondent from the customer, to check it covered paying overtime (and how many hours) to the employee. Travel time between jobs also was not necessarily paid. Wherever possible payment was authorised, which is why the majority of overtime claimed was paid. The checks were done by two different members of management.
7. The time sheet copies are not very legible but it does appear likely that the hours crossed out total 34, matching the number of hours in the Claimant's claim. A number of these have been marked as being travel time not overtime. The management did not feedback the amendments at the time to the Claimant, but I accept these account for the 34 “missing” hours and that they were properly crossed out, as being hours that were not authorised for payment, in accordance with option 1 in the contract.

Holiday pay

8. The Claimant claimed that he had taken 8 days of holiday for which he was not paid in the leave year ending 31 March 2018. He particularly relied upon the fact that his payslips did not record any separate payments marked holiday pay, until his final pay slip and the payment in lieu when he left.
9. The Claimant was entitled to 20 days paid holiday per year, plus bank holidays, the statutory minimum. I calculate that, rounded up, his pro rata entitlement in the leave year ended 31 March 2018 was 12 days. He had taken 4 paid bank holidays but initially claimed he had not been paid for any other days. However in evidence he accepted he had taken three days' paid holiday 23-26 January reducing his claim to 5 days' not paid. He later accepted he had been paid one day of leave in March, leaving the dispute over 4 days.
10. The Respondent has provided a holiday record for the relevant leave year at page 42. This showed the Claimant had taken leave 2-5 January and 15 January (out of chronological order). This would give 4 further days of leave taken and paid. The Claimant disputes this record, but I find on balance that it does reflect the days taken by the Claimant. The Respondent produced a request form for 2-5 January signed by management as authorised. The Claimant disputes that this leave was actually taken, but his own time sheet states holiday on those days too, and his next leave request form, for 23-26 January, which he accepts he took, also says that he had 5.5 days remaining out of 8.5 (the Respondent having incorrectly believed his entitlement was 8.5 days not 8 in addition to bank holidays). This supports that 3 days had already been taken. I find on balance that he did take leave 2-5 January.
11. There is no request form for 15 January, but the Claimant's time sheets have a line through both the 15 and 16 January and he has not put a job number. When he has worked he has put the relevant job numbers. Moreover when he has not worked, for example at the weekends, he also put a line through the job number box, as he has for the 15 and 16 January. The Claimant disputes he took leave then, as he has written in the start and end time. However, he has also does that the week of 2-5 January, when I accept he was on leave. On balance, I find it more likely than not that he did take leave on 15 January. He therefore did take 8 days of paid leave.
12. The parties did not address the 2018 leave year but I have checked the Respondent's calculation and in respect of the April 2018 leave year, the Claimant worked for 30 days and was entitled to 2.3 day's accrued leave, based on his statutory entitlement. He was paid 1.67 days when he left. There would also have been one further bank holiday on Easter Monday. The Claimant's time sheet is too illegible to determine whether he had leave that day (p66). His evidence was that he did usually take paid bank holidays. On that basis it is likely he did receive his full entitlement in 2018, and I note neither side took issue with that leave year.

13. The Claimant also based his case for unpaid annual leave in 2017-2018 leave year on a number of days where pay was deducted. The Respondent says this is because the Claimant took further unpaid leave or sick leave. The Claimant accepts he took 5 further days' leave that was unpaid in February and March, and a day of sick leave in December.
14. The pay slips show a deduction for unpaid sick leave on 21 December 2017 (page 72); 2 days' unpaid leave in February 2018 payslip; and 4 days' unpaid leave in March 2018 payslip.
15. The Claimant's time sheet does record he was off sick on 21 December 2017 (page 51). He has recorded he was off for two days on 13 February and 16 February 2018 (page 59). There are lines through at least 4 days in March on the time sheets: 6,8,9 and 13 March.
16. I find therefore that the deductions shown on his pay slips relate to further unpaid leave taken by the Claimant.
17. It follows from the above that the Claimant's claims for unlawful deduction of wages in respect of overtime and holiday pay are not well-founded.

Employment Judge Corrigan
19 March 2019