



EMPLOYMENT TRIBUNALS

Claimant: Mr Alex Haws
Respondent: JE Engineering Ltd
On: 2 February 2024
Before: Employment Judge Ahmed (sitting alone)
At: Leicester (CVP hybrid)

Representation

Claimant: In person
Respondent: Ms Rachna Kaur, HR Adviser, Recruitment Bunker

JUDGMENT

JUDGMENT having been sent to the parties on 6 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

1. This was a claim for an unlawful deduction of wages. Mr Haws was employed by the Respondent as a Lead Powertrain Test and Calibration Engineer from 6 June 2022 to 27 April 2023.
2. The Claimant began ACAS Early Conciliation on 8 June 2023 and the ACAS Early Conciliation Certificate was issued on 20 July 2023. He presented his claim to the Employment Tribunal on 1 August 2023. His claim has been presented in time.
3. There is no significant dispute as to the relevant facts. The Respondent is a well-established Engineering Company supplying parts to the motor trade, also operating under the name of JE Motorworks. It has a number of Directors which includes Mr Jonathan Douglas who, according to the Claimant, is the Managing Director and owns 25% of the shareholding in the business. Although that is not confirmed in any of the documents the Respondent's representative has said nothing to contradict that fact. The emails from Mr Douglas in the bundle for today's hearing

prepared by the Respondent and the information at Companies House confirms that he is a Director.

4. Mr Haws resigned from his employment on 27 March 2023 to go and work for someone else. During the course of his employment he had an agreement that any overtime worked by him would be exchanged as annual leave. There is no dispute about that. When the Claimant decided to resign, and extra annual leave was of no use to him, he asked Mr Wilson if he could utilise his accrued hours and any further hours to be paid to him in his final salary. He says that was agreed orally and as part of the agreement he extended his notice period to enable a smoother transition for his replacement. He says that he asked Mr Wilson repeatedly to confirm the agreement in writing but Mr Wilson kept stringing him along and failed to do so.

5. There is no dispute that the Claimant worked 135 hours overtime and the value of this in monetary terms is £2,596.05. The issue is therefore not of quantum but of liability only.

6. At this hearing the Claimant represented himself and also gave oral evidence. He has produced a witness statement in support.

7. The Respondents were represented by Miss Kaur who is an HR Advisor with a business called Recruitment Bunker. They appear to be an outsourcing HR business.

8. The Respondent called Mr Gary Wilson who is an Operations Director to give evidence on its behalf. Mr Wilson gave evidence by a video link.

9. Mr Douglas was not called to give evidence by the Respondent. For reasons which will become clear Mr Douglas was clearly a highly material witness. Ms Kaur has not provided any satisfactory explanation for his absence or the absence of a witness statement from him.

10. In his witness statement Mr Wilson says that at no point did he discuss overtime hours being paid to the Claimant and his understanding was that it was not company policy to do so.

11. The Respondent provided a bundle of documents which includes various e-mail exchanges between Mr Douglas as well as internal e-mail exchanges between Ms Kaur and others including Mr Wilson. These were referred to in the course of evidence.

12. In an e-mail of 24 April 2023, Ms Kaur who represents the Respondent today, wrote to Mr Douglas and Mr Wilson (copying Mr Ian McDermott who is the Group Director but has no material involvement in this case) in which she said the following:

“Please find attached the timesheets information that Alex [the Claimant] has collated and summarised.

I have cross referenced timesheets that Alex has submitted and whilst there are a few discrepancies - they are seconds/minutes not hours, so I think we need to not waste any more time on the detail and get to a point of final hours of overtime worked and deduct what he has taken in lieu.

.....

Unfortunately this has been a messy exercise and Alex hasn't helped by not filling in the correct timesheets nor has he listened to his contractual agreement below where it no way states in the section that he is entitled to any overtime, he shouldn't have been doing any unless pre-approved and on that basis I would say it doesn't need to be paid to him - however I can only advise and guide you, however he has also not been taking lunch breaks or has taken extra-long lunch breaks. One employee has taken a considerable amount of wasted time on this exercise and the cost of that time should be considered.

"Hours of Work

Monday to Friday, 40 hours a week, full time

You are entitled to a daily 30 minute unpaid meal break which is normally taken on or around the middle of the day

From time to time you may be asked to work additional hours which will be mandatory but not guaranteed to meet the needs of the business.

We are in a place now where the payroll summary is ready to be issued for approval – **we now require your instruction from yourselves as Directors on the agreement of if Alex gets paid the Overtime that you agree on or not.**" (emphasis in the original)

13. On 24 April 20 23 Mr Douglas replied to Ms Kaur as follows:

"All is reasonably clear, except for one question: in July 2022 Alex had three days off due to sickness.... as this was during the probationary period we are not clear whether or not the sick days were paid normally or SSP or not paid. Can you please confirm."

14. Having received no reply on 25 April 2023 Mr Douglas wrote to Ms Kaur and one of her HR colleagues as follows:

"I need an answer on this please"

15. In the absence of any reply to the chaser email Mr Douglas sent an e-mail to Ms Kaur, copying Mr Wilson, to say:

"In the absence of further advice I hereby authorise that in Alex Haws next pay event he should be paid an additional 135 hours pay representing the total of overtime worked and so far unpaid, during his employment here at JE engineering limited."

16. Despite this clear instruction the Respondent has not paid the Claimant anything in respect of the claimed overtime.

THE LAW

17. Section 13(1) and (3) of the Employment Rights Act 1996 states:

"(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.

(3) 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 on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

CONCLUSIONS

18. The first port of call is of course the written agreement between the parties namely the contract of employment. Unfortunately this was not included in the bundle and Ms Kaur had to arrange to be produced to the tribunal during the course of the hearing. Having had the opportunity to consider it the only relevant provision is the one quoted by Ms Kaur in her email of 24 April 2023. There is no provision as to pre-approval of overtime.

19. I therefore make the initial observation that contrary to what Ms Kaur had said in her e-mail to Mr Douglas of 24 April the contract of employment does *not* say that the Claimant is not entitled to be paid for overtime unless it is pre-approved. The contract is simply silent on the subject. I have not been taken to any other provision of the contract which deals with the payment for overtime.

20. Ms Kaur agrees with me that it is a fair interpretation of the relevant clause that if an employee asked to work additional hours they are entitled, in the absence of anything to the contrary, to be paid for those hours.

21. The Respondent's argument for not paying the Claimant on the grounds that there was no agreement to do so is clearly unsustainable in the light of Mr Douglas' e-mail of 25th April where he authorises that Mr Haws should be paid for the 135 hours he has undertaken. It is clear that Mr Douglas does not see any reason for not paying the Claimant and Mr Wilson does not disagree with him in the sense that he does not say anything to the contrary.

22. In the end this case simply boils down to this: whether I accept the evidence of the Claimant that there was an agreement for him to be paid overtime or Mr Wilson's evidence that there was no such agreement.

23. I did not find Mr Wilson's evidence to be reliable. I accept the Claimant's evidence that he came to an agreement with Mr Wilson to undertake overtime which would be paid otherwise there was no earthly reason for him to work the extra hours given that he was leaving and time off in lieu was of no value to him. Why should Mr Haws go to the length of working further hours if he knew he was not going to get paid? I accept the Claimant's evidence that there was an oral agreement for Mr Haws to be paid and Mr Wilson was asked to put the discussions in writing but failed to do so. I do not find that the Claimant is inventing or fabricating such a suggestion and if he was I would have expected that to be put to Mr Haws, which it was not.

24. Mr Wilson was also a party to the crucial email from Ms Kaur of 24 April in which she was asking for authority to pay the Claimant from the Directors. At no point did Mr Wilson say that there was no agreement to do so when one would expect him to say that if his evidence was correct. Mr Wilson had no explanation for this in his oral evidence.

25. Ms Kaur submits that in fact neither Mr Douglas nor Mr Wilson had the authority to authorise payments because there was an internal rule against this in the business and as such the decision was outside their authority.

26. There are several problems with that argument. The first is what is known as 'the indoor management rule'. It is also goes by the grand title of 'The Rule in Turquand's Case' (see *British Bank v Turquand* [1856] 6 E&B 327). In simple terms the rule says that an agent has authority to bind a principal in dealings with a third party if that agent holds out themselves as having authority to deal with the affairs of the principal, provided that the third party is not put on inquiry that the apparent authority may not exist.

27. In this case Mr Wilson or Mr Douglas as Directors clearly had ostensible or apparent authority to bind the Respondent as the principal and they were acting as agents for the Respondent. There was nothing to put the Claimant on inquiry that neither of them had authority to commit to an agreement to pay overtime. If they acted outside their authority, which incidentally I do not accept, the Respondent is bound by the indoor management rule.

28. The second difficulty with Ms Kaur's argument is that both Mr Douglas and Mr Wilson were parties to the e-mail exchange of 25 April 2023 and at no point did either of them (nor indeed Ms Kaur for that matter) say there was no authority for the payment of 135 hours. If such an internal rule existed there is no explanation for the failure to mention this by any of those involved. The only logical conclusion is that there was no such rule.

29. I do not therefore consider that there is any merit in that argument whatsoever.

30. Accordingly I find that the Claimant's claim for an unlawful deduction of wages is well-founded and the sum of £2596.05 was 'properly payable' within the meaning of section 13(3) of the 1996 Act.

31. Given that the Claimant's tax and National Insurance position may now be different as some time has elapsed since the unlawful deduction I shall order that the sum must be made gross and the Claimant shall be responsible for any tax and national insurance liability thereon.

32. There was also a claim for unpaid expenses but that has been withdrawn by the Claimant.

Employment Judge Ahmed

Date: 19 March 2024

JUDGMENT SENT TO THE PARTIES ON
28th March 2024

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FOR THE TRIBUNAL OFFICE

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