EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr Michael McAndrew	AND	Nestor Primecare Services Ltd trading as Allied Healthcare

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter **ON** 21 September 2018

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr Scott of the Respondent

JUDGMENT

The judgment of the tribunal is the claimant's claim is dismissed

REASONS

1. In this case the claimant Mr Michael McAndrew brings a monetary claim for unlawful deduction from wages against his ex-employer Nestor Primecare Services Ltd trading as Allied Healthcare. The respondent denies the claims.
2. I have heard from the claimant. I have heard from Mr Scott the respondent's Relations Manager for the respondent.
3. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent is a provider of health and social care services with 83 branches across England, Scotland and Wales. The claimant was employed by the respondent as a carer from 5 February 2018 on a zero hours basis until 23 April 2018.
5. The claimant was paid on an average of 15 hours worked over 24 hour period which was to take into account any work undertaken during unmeasured periods. This always met a minimum of £117 per shift in order to match or exceed the national minimum wage, and increased to £117.45 after 1 April 2018 when the national minimum wage increased.

6. The claimant's complaint is that when he was required to sleep in the pay which he received for each 24 hour period did not meet the national minimum wage for 24 hours. The respondent's position is that he was not paid for the time when he was required to be on the respondent's premises but sleeping in, and not working, and was paid at least national minimum wage for hours where he was woken and required to work. The claimant was paid for an agreed average of 15 hours during that time, and this always at least met the national minimum wage.
7. At the time the claimant issued these proceedings the Court of Appeal had not reached judgment in its decision in the Tomlinson-Blake case (Royal Mencap Society v Tomlinson-Blake and another [2018] EWCA Civ 1641). The claimant has today accepted that he was paid at least national minimum wage if one adopts that principle, namely that the respondent was not required to pay him the national minimum wage for hours where he was sleeping in as required, but not required to work. Accordingly the claimant now accepts, on the basis of that decision, that he has no claim.
8. Accordingly there was no unlawful deduction from wages, and no failure by the respondent to meet the national minimum wage, and the claimant's claim is dismissed.

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Employment Judge N J Roper
Dated 21 September 2018