# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Forde

**Respondent:** Oasis Fashions Ltd

**HELD AT:** Manchester **ON:** 29 and 30 November and 1 Dec 2017

**BEFORE:** Employment Judge Ross

**REPRESENTATION:**

**Claimant: Mr Arthur, solicitor**
**Respondent:Ms Quigley,counsel**

# RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was unfairly dismissed by the respondent but by reason of the principle in Polkey v A E Dayton Services Limited any compensatory award is reduced by 100% because it is inevitable that the claimant would have been dismissed in any event.

2. The basic award and compensatory award is reduced by 100% for contributory fault.

3. The claimant's claim for wrongful dismissal is not well-founded and fails.

4. The respondent's claim for breach of contract succeeds but there is no award of damages.

# REASONS

1. The claimant was employed by the respondent from October 2008 until her employment was terminated for gross misconduct on 8 February 2017. Dismissal was confirmed in writing by letter of 14 February 2017. The conduct for which the

claimant was dismissed was for processing overtime payments for herself without authorisation from a senior manager.

2. The claimant appealed but her appeal was unsuccessful.

3. The claimant brought a claim to this Tribunal for unfair dismissal and wrongful dismissal (breach of contract). The respondent brought a counterclaim for the overtime payments.

4. There was no dispute at the Tribunal that the claimant had worked the hours for which she had claimed overtime and had worked on each occasion two hours unpaid before claiming overtime.

5. I heard from Ms Powell, the investigatory officer, Mrs Tucker, the dismissing officer, Mrs Gilbert (formerly Hume) the appeal officer for the respondent. For the claimant, I heard from Mrs Fletcher, formerly an area manager with the respondent, Ms Bremer from the payroll department and the claimant. A witness statement for Ms Snellgrove, another employee of the respondent but she was unable to attend so I attached limited weight to her statement.

6. The issues for the Tribunal were as follows:

Unfair Dismissal

(1) What was the reason for dismissal? The respondent relied on conduct. The claimant said that reason was a sham and the real reason was that the claimant had objected to a proposed change in her contract which would increase her hours of work without an increase in pay.

(2) If the Tribunal finds the respondent has shown the reason for dismissal is conduct the Tribunal must go on to consider whether dismissal was fair or unfair within the meaning of section 98(4) Employment Rights Act 1996. In answering this question the Tribunal must not substitute its own view for that of the employer. It is whether a reasonable employer of this size and undertaking could have dismissed this claimant. In answering this question the tribunal must have regard to the principle in **British Home Stores v Burchell**, namely did the respondent have a genuine belief based on reasonable grounds following a reasonable investigation of the conduct? Was the dismissal procedurally fair and was the dismissal within the band of reasonable responses of a reasonable employer?

(3) If the claimant succeeds the Tribunal will consider the principle in **Polkey v AE Dayton Services Limited**, contributory fault and any uplift for breach of the ACAS Code of practice.

7. At the time of her dismissal the claimant was a store manager responsible for all the staff in her store. Accordingly, a finding of dishonesty against her is a serious matter and the principles of **Salford Royal NHS Foundation Trust v Roldan 2010 ICR1457** are relevant. The Tribunal also reminded itself in relation to the investigation that it is not for the Tribunal to substitute its own view but to consider

whether a reasonable employer of this size and undertaking could have undertaken such an investigation (**Sainsbury's Supermarket v Hitt 2003 ICR 111**).

8. The Tribunal turns to the first question: has the respondent shown the reason for dismissal was conduct?

9. There is no dispute that on 12 January 2017 there was a conversation between the claimant and Lesley Powell when Lesley Powell visited the claimant at work on a routine visit. According to Ms Powell this is the first time she realised that the claimant, a store manager, had been paying herself overtime. The claimant disputes this version of events. She agrees there was a discussion about overtime where Ms Powell said "when did I authorise this?" and the claimant told her that they had had numerous conversations about it. There is no dispute that Ms Powell was well aware the claimant had been working a lot of extra hours.

10. Ms Powell conducted an investigatory meeting with the claimant and escalated the matter. I find that by the time the claimant was issued with an invitation to a disciplinary hearing (two letters both dated 26 January 2017 at pages 121 and 123) there was an issue as to whether the claimant had processed overtime payments for herself without the authorisation of a senior manager. There was no dispute that the overtime had been paid: the issue was whether or not it had been authorised.

11. Is this a matter of conduct? There was no up-to-date contract of employment for the claimant in the bundle, and the version in the bundle was incomplete and unsigned. However there was no dispute that the following section applied to the claimant as stated in relation to the claimant's original position as Branch Manager:

> "Overtime payments will not be made except in the following circumstances: for periods of more than half an hour for store staff and for more than two hours in any one day for Branch management. Such overtime must be agreed in advance with the line manager."

12. The company handbook states at paragraph 49:

> "In line with the needs of the business there may be times when you will be requested and expected to work some additional hours. If this is required you will receive overtime at your normal rate of pay (single rate up to 39 hours and time and a half beyond that level). Any overtime should be authorised in advance by a senior member of management. However, every effort should be made to minimise the use of overtime. It should be noted that in line with the guiding principles for people, payment will not be made for periods of overtime of less than half an hour in any one day for retail staff or for less than two hours in any one day for Branch Managers."

13. There is an additional section dealing with time off in lieu:

> "Any time of in lieu for additional hours worked is at the discretion of your manager. Lieu time would be accrued in the same way as overtime and must be authorised by your manager before it is taken. It should be taken at a mutually agreed time within three months of being earned."

14. It is not disputed that there was no document for a store manager to complete to seek authority for paid overtime or lieu time from her line manager. There was no check in the "remote pay" wages system to ensure a store manager paying herself overtime had obtained advance authority from her line manager. Ms Bremer, the witness from payroll confirmed that the payroll department simply acted on the information sent through by the Store Manager and actioned the overtime whether it was for staff or the Store Manager herself. Although Ms Bremer said overtime should be authorised, the payroll department did not require an email or a form of written authorisation from the store manager's line manager to process the overtime payment.

15. The claimant alleged the reason of conduct relied on by the respondent was a sham. The claimant said that the real reason for dismissal was that she objected to a forthcoming change in her contract which would result in increased hours for the same pay. There is a coincidence of timing in terms of the consultation with the claimant about a proposed change in her contract in the sense a meeting about that matter was postponed and the time used instead for an investigatory meeting into the claimant's conduct.

16. The evidence was that although the claimant objected to a proposed change in her contract and those of other employees to increase the number of hours from 37 to 39 hours, without pay, subsequently the objections received were taken into account and although the number of hours in the contract was increased to 39 hours so was the pay. In addition, the Tribunal accepts the evidence of Lesley Powell that the claimant and another employee, Shelley Snellgrove, were put forward by her as representatives in the consultation about these changes in the absence of others who were willing to take on the role. If the respondent was hostile to the claimant I find it unlikely they would have allowed her to be a representative.

17. Given the respondent later accepted the objection raised by the claimant and increased the pay of the affected managers commensurate with the increase in hours I find it implausible that this was the real reason for dismissal.

18. I am therefore satisfied the respondent has shown for a store manager to pay herself overtime without seeking prior authorisation from her line manager is in breach of the respondent's procedure described in the contract and the company handbook. I find that given the claimant was a store manager in a position of trust and responsible for other staff, the respondent has shown this is potentially a matter of conduct.

19. I turn to the test under **British Home Stores v Burchell**: did the dismissing officer, Mrs Tucker, have a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct at the relevant time?

20. Mrs Tucker was an excellent witness. She was clear, direct and made concessions where necessary.

21. In considering whether she had reasonable grounds for her belief that the claimant failed to obtain authorisation from her manager, I turn to the information before her at the relevant time. Mrs Tucker confirmed that she had the notes of the investigatory meeting between Lesley Powell and the claimant (pages 98-113), the

invitation to a disciplinary hearing (pages 123-124), a summary of overtime payments made to the claimant (pages 261-264), some emails produced by the claimant (pages 66-71) and a document produced by the claimant page 59. She also had an extensive bundle of "white sheets". The "white sheets" produced for the Tribunal were extremely difficult to read. However I heard evidence, and it was not disputed, that the "white sheets" showed the amount of paid overtime, as well as some other payments, for each employee, including the store manager, for each store. There is no dispute the white sheets are documents sent to the area manager on a regular basis.

22. This case concerns a factual dispute between Ms Powell and Ms Forde. Ms Forde says the overtime was authorised. Ms Powell says it was not. However, Mrs Tucker did not have a statement from Ms Lesley Powell. Instead she had notes of a meeting where Ms Powell questioned the claimant.

23. Mrs Tucker also said that she "spoke to Lesley the night before the disciplinary hearing and had taken notes of that conversation". However she had not retained the notes and neither had she shared them with the claimant. She also said that she spoke again to Ms Powell in the adjournment, during the disciplinary hearing, but once again there are no notes of that conversation, no statement and the information was not shared with the claimant so she was unable to comment upon it.

24. I remind myself it is not for me to substitute my own view. However, I have taken into account that the respondent is a large organisation employing 1,700 members of staff and 220 managers and I have taken into account that the claimant held a managerial position where she was responsible for 30 staff and that a finding of dishonesty was potentially extremely serious for her career. In these circumstances I am not satisfied that based on the information before her, the dismissing officer had a belief based on reasonable grounds following a reasonable investigation of the claimant's dishonesty because of the way the investigation and hearing was conducted.

Reasonable Grounds

25. There was no specific evidence from Lesley Powell before the dismissing officer which says Ms Powell did not authorise any paid overtime at any time. It is all implicit.

26. By contrast the claimant expressly in answer to the question: "You're saying sought and received authorisation for all overtime?" relied "In my eyes, yes". The next question is "How?" and the claimant replies "We've had conversations".

27. The claimant also told Ms Powell at page 114 in the investigatory meeting: "Throughout the year had conversations. You've joked when PL came through Gaynor will be overtime". Therefore the dismissing officer had evidence that the claimant said the payments were authorised but statement from Ms Powell with her account.

28. I turn to the investigation. It is not for me to substitute my own view. The question is whether a reasonable employer of this size and undertaking could have reasonably conducted such an investigation.

29. The respondent is a large retail organisation with substantial resources. It was faced with a factual dispute between the claimant, a store manager, and her manager, an area manager. Despite this at the dismissal stage a statement was not obtained from the area manager. Instead the dismissing manager had a conversation with the area manager the night before the dismissal. She took some notes but it is unclear what they said as they are no longer available. They were not shared with the claimant so she could comment.

30. I turn to the appeal officer Mrs Gilbert (formerly Hume). I find the appeal officer to be a clear and convincing witness who gave cogent evidence.

Reasonable grounds – appeal stage

31. There were additional documents before the appeal officer.

32. There is a diary note (page 242) where Lesley Powell says, "To my knowledge I have never been made aware or asked GF to authorise payment of overtime" (diary entry 13 January).

33. There is no dispute that the appeal officer did interview Ms Powell about some points after the appeal hearing on 9 March 2017 (pages 217A-H). There is no dispute that these notes were never shared with the claimant.

34. I find based on the diary entry and the interview after the appeal hearing that the appeals office had reasonable grounds for her belief that the claimant had not sought authorisation for paid overtime. The crucial issue was whether or not the claimant had obtained authorisation for the overtime she had put through. The appeal officer was satisfied based on the information supplied by Ms Powell in the diary entry and what Ms Powell told her after the appeal hearing that she had not authorised the payment. She preferred Ms Powell's evidence to that of the claimant

35. However given the substantial size of the respondent's organisation and the resources available to it and the serious consequences for the claimant and her career in this matter, the investigation remains outside the investigation required of a reasonable employer of this type. The only statement taken from Ms Powell was in answer to questions from the appeal officer after the conclusion of the appeal hearing. The claimant was not given a copy of those notes nor a chance to comment on them.

36. If a defect can be corrected at the appeal stage that may render a potentially unfair dismissal fair. I am not satisfied that the defect was fully corrected. The claimant did not have an opportunity to comment on the information from Mrs Powell. Having obtained the information from the other party to a factual dispute at a very late stage after viewing all the other documentation and having heard from the claimant the appeal officer is unlikely to consider the information in the same way to it as if viewed at the start.

37. Therefore I find that the **Burchell** test was not satisfied at the dismissal stage because the respondent did not have reasonable grounds for a belief the claimant had not obtained prior authorisation for paid overtime and had not conducted a reasonable investigation. I find by the appeal stage the respondent had reasonable grounds for the belief but the investigation remained outside standard required of a reasonable employer of this size and undertaking.

38. For the sake of completeness, I have turned to the two other questions: was the dismissal procedurally fair? I find that a reasonable employer of this size and undertaking once it realised at the investigatory stage that there was a factual dispute between the claimant and her direct line manager, the area manager, Ms Powell should have referred the matter to HR so that someone else could have investigated and obtained a statement from her. That statement should have been sent to the claimant. I therefore find there were procedural errors identified above at the dismissal stage in failing to obtain a statement from the area manager.

39. I find at the appeal stage a reasonable employer of this large size and would have sent a copy of Ms Powell's statement to the claimant together with the further investigation completed by the appeal officer. The appeal officer said she had completed some investigation by asking questions of the payroll department.

40. Accordingly I find these procedural errors fell below the standard of a reasonable employer of this size and undertaking and I find the dismissal to be procedurally unfair.

41. I turn to the band of reasonable responses.

42. It is not necessary for me to determine this issue because I have already found that the dismissal was unfair. However, in case I am wrong in my finding above I have determined this issue. I find a reasonable employer of this size and undertaking could dismiss the claimant for a failure to have overtime authorised by the claimant's line manager. The respondent's policy required overtime to be authorised in advance. The claimant did not dispute that was the policy. A failure to do so where the employee knows of the policy is a matter of trust, integrity and honesty. The claimant was in a position of trust and responsibility as manager of one of the respondent's flagship stores. Dismissal was within the band of reasonable responses of a reasonable employer.

**The principle of Polkey v AE Dayton Services Ltd**

43. However, I must now turn to the question of **Polkey v A E Dayton Services Limited [1988] ICR 142**. In **Software 2000 Limited v Andrews & others [2007] ICR 825**, the President of the EAT at the time reminded Tribunals of certain principles including if the employer contends the employee would or might have ceased to have been employed in any event had fair procedures been adopted, the Tribunal must have regard to all evidence including any evidence from the employee.

44. He stated there will be circumstances where the nature of the evidence for this purpose is so unreliable that the Tribunal may reasonably take the view that the exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on the evidence can properly be made.

Whether that is the position is a matter of impression and judgment for the Tribunal. However, he also stated that the Tribunal must recognise it should have regard to any material and reliable evidence that might assist it in fixing just and equitable compensation even if there are limits to the extent to which it can confidently predict what might have been, and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

45. I find even if the dismissal had been fairly conducted it is inevitable the claimant would have been dismissed in any event. In her tribunal statement Ms Powell stated "if Gaynor had ever asked me if she could work paid overtime I would have said no". In her diary note she states; "To my knowledge I have never been made aware or asked GF to authorise payment of overtime" (diary entry 13 January). At the Tribunal Ms Powell confirmed this note was accurate.

46. At the Tribunal hearing the claimant struggled to answer straightforward questions with a clear answer. She was not an impressive witness. I find even if the respondent had obtained a witness statement from Ms Powell, and this had been available to the dismissing officer, the appeal officer and the claimant together with the payroll investigation conducted by the appeal officer, it was inevitable the respondent would have preferred Ms Powell's version of events to the claimant's.

47. In reaching this decision I have taken into account the claimant admitted at the Tribunal that there had been occasions when she had processed overtime payments for herself without prior authorisation. The appeal officer gave evidence of the sensitivity of cash in the retail environment and the risk it poses for impropriety. The claimant agreed with that. Both the dismissing officer and the appeal officer attached a great deal of weight to the honesty of the employee in relation to following a process of obtaining authorisation because they needed to be able to trust the Store Manager. Accordingly I am satisfied that even if the disciplinary and appeal hearing had been properly conducted, the outcome would have been exactly the same namely the respondent would have found the claimant processed overtime payments without authorisation and for that conduct she would have been dismissed. I find there would have been a slight delay of approximately two weeks to enable a new investigatory officer to be appointed and to take a statement from Ms Powell.

**Contributory Fault**

48. I turn to contributory fault. I considered whether there was culpable or blameworthy conduct pursuant to section 123(6) of the Employment Rights Act 1996.

49. The claimant admitted in the Tribunal that she had on occasion put forward overtime payments without authorisation from her manager. I find this was in breach of the claimant's contract of employment and in breach of the company handbook. The claimant was a manager responsible for 30 other staff. She was working in a retail environment where cash is sensitive and it is important that the senior managers can trust their managers. I find this action amounts to culpable or blameworthy conduct.

50. The claimant appeared to suggest because the respondent was partly responsible because they could have seen that she was paying herself overtime if Ms Powell had checked the white sheets carefully. She also seemed to suggest the respondent was responsible because it had not introduced a financial check to ensure a manager could not pay herself overtime.

51. I find these suggestions are beside the point. The point is that the claimant was in a position of trust and by paying herself overtime without authorisation when she knew she should obtain advance authorisation amounts to culpable conduct. The claimant agreed in evidence that claiming paid overtime without prior authorisation was a matter of dishonesty. She did not dispute at Tribunal that the respondent's system required prior authorisation. She agreed she was aware of that rule. It caused or contributed to the claimant's dismissal because it was the reason why she was ultimately dismissed. I find it is just and equitable to reduce any compensatory award by 100%.

52. I turn to consider a reduction to the basic award under section 122(2) ERA 1996. I rely on the claimant's evidence before this Tribunal that she had on occasion processed overtime payments without permission as conduct such that it makes a reduction to the basic award by 100% just and equitable. I rely on my reasoning above.

**ACAS Code of Practice for Disciplinary and Grievance Procedures 2015.**

53. The claimant sought an uplift in compensation on the basis there was a breach of the ACAS Code of practice, in particular on the basis that the investigation was flawed because Ms Powell conducted the investigatory meeting. I reminded myself of the contents of the ACAS Code of Practice. The requirements for a respondent conducting a disciplinary hearing are basic requirements. I am not satisfied there was a breach of this Code. Therefore, I make no award of uplift of any compensation.

**Wrongful Dismissal**

54. I turn to breach of contract. Is the respondent entitled to dismiss the claimant without payment of her notice pay? The question is whether the claimant committed a repudiatory breach of contract so serious that it entitled the respondent to dismiss without notice.

55. I find that she did.

56. Although the respondent did not have written safeguards in place, and although Ms Powell may have been criticised by the business for failing to notice that the claimant was paying herself overtime as recorded in the "white sheets", that is not the issue. The issue is whether the claimant obtained prior authorisation for paying herself overtime. There is evidence within the investigatory meeting and disciplinary hearing to suggest that she did not and in Tribunal she admitted that there were occasions where she did not seek authorisation.

57. The fact that she may have sought authorisation on some occasions but not others is not relevant. The claimant was in breach of her contract of employment

and the company handbook by not seeking authorisation. She was in a senior position and a position of trust.

58. In cross examination, the claimant agreed that claiming overtime (even when it was worked) without seeking authorisation was a matter of dishonesty. Accordingly, I find to pay herself overtime without authorisation from her manager amounts to a repudiatory breach of contract sufficiently serious to permit the respondent to dismiss her. Therefore, the claimant's claim for wrongful dismissal fails.

**The respondent's counterclaim.**

59. Finally, I turn to the respondent's claim for breach of contract. The first question is: has the claimant breached her contract of employment? The second issue is: if she did, what are the damages to which the respondent is entitled. I find that the claimant's contract of employment states:

> "Overtime payments will not be made except in the following circumstances: for periods of more than half an hour in any one day for store staff and for more than two hours in any one day for Branch management. Such overtime must be agreed in advance with the line manager." (Page 44)

60. I find that the company handbook states in relation to pay:

> "In line with the needs of the business there may be times when you will be requested and expected to work some additional hours. If this is required you will receive overtime at your normal rate of pay (single rate up to 39 hours and time and a half beyond that level). Any overtime should be authorised in advance by a senior member of management. However every effort should be made to minimise the use of overtime.
>
> It should be noted that in line with the guiding principles for people payment will not be made for periods of overtime of less than half an hour in any one day for retail staff or for less than two hours in any one day for Branch Managers.
>
> Payment of overtime will be made during the next monthly payroll providing overtime has been authorised and submitted to Payroll by the monthly cut off date." (Page 49)

61. I therefore find that there was a term in the claimant's contract which required overtime to be authorised in advance by a senior member of management. When giving evidence the claimant admitted that she did not always get authorised for overtime. She said, "Did I ring her [LP] every single day and ask if I could pay myself an extra four hours? No I didn't". She then stated, "I do accept I did not always get prior authorisation before submitting to payroll". Accordingly, I find that the claimant was in breach of her contract of employment because on some occasions she did process an overtime payment without prior authorisation from Lesley Powell, her manager.

62. I turn to the next issue which is for damages. In a breach of contract claim the purpose of damages is to put the innocent party into the position that party would have been in if both parties to the contract performed their obligations according to that contract.

63. I heard evidence in this case that the system for processing overtime was that the Store Manager should obtain permission from her line manager. The claimant's former manager, Mrs Fletcher, confirmed the system she adopted was that the claimant spoke to her if she needed to work paid overtime. Mrs Fletcher then agreed it and put a note in her diary or emailed confirmation to the claimant. The authorisation was obtained in advance. The claimant then put her overtime through on the remote pay system which was used for the claimant and the staff who worked under her. The overtime was then processed by Payroll. I accept entirely the evidence of the Payroll Manager, Sally Bremer, that Payroll simply processed the remote pay information. Mrs Bremer said the system was for a Store Manager to obtain authorisation from a senior manager but Payroll did not require sight of that authorisation before processing the amounts on the remote pay system.

64. I find the evidence of Felicity Fletcher, whom I found to be a clear and compelling witness, persuasive. She said she used the “white sheets” which were produced after the payroll had been produced as a check in relation to maternity pay, sick pay and overtime. These sheets which are produced each month show, by individual employee, the amount of sick pay, overtime or maternity pay a specific employee has received.

65. The evidence showed that although Ms Powell said to the claimant in the investigatory meeting, “…surprise you that not one other manager paid overtime?” (see page 110), by the time of the Tribunal hearing Ms Powell had conceded that this statement was incorrect. She said it was supposed to say “unauthorised overtime”. In any event she did not dispute, as set out in the table at page 406, that she had authorised paid overtime, on an occasional basis, to other managers.

66. Although the dismissing manager and the appeal manager said they did not particularly use the “white sheets” as they used other management information to look at the profitability of the store, I am persuaded by the evidence of Mrs Fletcher that if she had authorised paid overtime, she checked on the “white sheets”. If overtime was shown on the “white sheets” and she had not authorised it she explained that would be a red flag for her to raise it with the store manager.

67. Although the “white sheets” cannot be evidence of authorisation of paid overtime to the claimant because they are produced after the overtime has been paid and a store manager must obtain authorisation for paid overtime before working it, I find that the “white sheets” could be evidence consistent with the suggestion that a manager has authorised overtime, especially in circumstances where there is no dispute Ms Powell was aware the claimant worked many additional hours.

68. If the “white sheets” are checked and consistently show overtime and a manager does not challenge the employee, that is consistent with a suggestion that the manager is aware of the overtime and has authorised the overtime.

69. I find that the claimant told Ms Powell at page 114 in the investigatory meeting:

> "Throughout the year had conversations. You've joked when PL came through Gaynor will be overtime."

70. I find that given she had authorised other Store Managers to work overtime on occasion, and given that comment at the investigatory hearing, it is likely that on some occasions the claimant did obtain authorisation for paid overtime from Lesley Powell. There is no information before the Tribunal to enable me to quantify on which occasions the claimant worked overtime with authorisation and on which occasions she had no authorisation. Furthermore, there is no dispute that the claimant did not pay herself overtime for the first two hours of any overtime period and that she actually worked the periods of overtime she paid herself.

71. The test for damages is to put the respondent in the position it would have been in if the breach had not occurred. It is not possible to quantify the position the respondent would have been in had the breach not occurred. If the claimant had always sought prior authorisation for the overtime, it is speculative what would have happened. Ms Powell might have granted the request on a time off in lieu ("TOIL") basis. She might have simply refused the request. Or she might on some occasions have granted the request for paid overtime as she occasionally did for other managers as page 406 shows.

72. Accordingly, although I find that the claimant did on occasion breach her contract of employment, I decline to award any damages to the respondent as firstly it is not possible to assess the loss to the respondent, if any, because of the reasons above. I have also taken into account that there is no dispute the claimant always worked the first 2 hours of overtime without pay and there is no dispute she did work the overtime she received above those first 2 hours and therefore the respondent had the benefit of her labour.

Employment Judge Ross

Date 8 December 2017

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
14 December 2017

FOR THE TRIBUNAL OFFICE