

IN THE CAMBRIDGE EMPLOYMENT TRIBUNAL

CASE NUMBER: 3320666/2021

B E T W E E N:

NARAYANAN KRISHNAN

Claimant

-and-

SAMSUNG CAMBRIDGE SOLUTION CENTRE LIMITED

Respondent

**RESPONDENT'S OPENING NOTE
(for final hearing 20.10.2022)**

1. This is the final hearing of the Claimant's claim for unlawful deduction from wages and the Respondent's counterclaim for breach of contract.
2. The Tribunal may balk at the size of the trial bundle. It should not be concerned. The Claimant, as a litigant in person, sought inclusion of a great number of documents which the Respondent did not consider to be relevant. In order to avoid protracted correspondence on the matter, and in the interests of proportionality, they have been included.
3. The factual and legal issues in this claim are narrow and the Respondent is confident that the claim can be heard and decided in a day.
4. The Claimant's claim is brought pursuant to s13 Employment Rights Act 1996 as follows: During the Claimant's employment, beginning on 27 January 2020, until his resignation on 5 May 2021, he worked 500 hours unpaid. He claims these hours should have been paid at 1.5x as they amounted to overtime and as such claims the total sum of 750 hours.

5. As to the Respondent's contractual counterclaim in the sum of £3,356.61. The sum claimed amounts to a clawback of visa and relocation fees for the Claimant and his family pursuant to contracts dated 31 January 2020 (50% of the £2,966.83 paid for relocation of the Claimant from London to Cambridge); 13 February 2020 (£4,748.20 for the Claimant's tier 2 visa); and 17 March 2020 (£5,125 for dependant visas for the Claimant's wife and two children). The Claimant accepts that these sums are due. Indeed, he repaid £8,000 prior to his employment ending (which he has not sought to recover). The outstanding sum is £3,356.61. It appears the Claimant's position is that the 750 hours he claims to have accrued above his normal working hours should be offset against the outstanding clawback sum.
6. The principal questions for the Tribunal are then: 1) were the 750 hours claimed '*wages properly payable*' pursuant to s27 Employment Rights Act 1996; and 2) if so, is the Claimant entitled to set off any sums properly payable against the clawback of £3,356.61. Plainly they were not properly payable and there can be no set off to the clawback sums. The Respondent notes the following:
 - a. The Claimant's contract of employment (clause 9 p93) did not specify the Claimant's working hours and expressly provided that the Claimant may be required to work outside of normal business hours: "*The Company's normal business hours are 09.00am to 5.30pm Monday to Thursday and 09.00am to 5.00pm on Fridays... Given the nature of your position your hours may vary and you will be expected to work such reasonable additional hours as may be necessary to enable you properly to discharge your duties.*"
 - b. The Claimant's contract of employment (clause 9 p93) expressly provided that the Claimant would not be paid for any additional hours as they had been taken into account when setting his salary: "*Your remuneration package is calculated on the basis that you will work as necessary during as well as outside of normal business hours in order properly to perform your duties. Accordingly, you will not be paid for any additional hours worked outside normal business hours...*"

- c. The Claimant's contract of employment (clause 9 p93) expressly provided that the Claimant "*may be entitled to time off in lieu at the discretion of [his] manager*". The Claimant never made any request for time off in lieu.
 - d. There was no contractual provision for overtime.
 - e. The Claimant was part of a skilled, autonomous, highly paid workforce. He and the other staff engineers were entitled to organise their working hours as they wished. This often meant they would take time out of their day (such as the Claimant attending to school runs in the middle of the day) and then continue working in the evening. Neither the Claimant nor his colleagues were dictated to as to the hours they worked.
 - f. The Claimant did not raise the issue of working an additional 500 hours at a meeting until 17 May 2021, following two meetings with HR in which the clawback repayments were discussed. He accepts that he raised his extra hours worked in an attempt to negotiate the clawback sums downwards.
 - g. The Respondent did not agree to reduce the Claimant's contractual clawback sums and as such the Claimant raised a grievance on 7 June 2021. During the course of this grievance, the Claimant accepted he was never asked expressly to work outside of his working hours and further agreed that his line manager removed tasks from him when he said he was under pressure.
7. In any event, the Claimant did not record (and cannot evidence) that he did work an additional 500 hours. As detailed at paragraphs 83 to 90 of Beth Summers' witness statement, even where the Claimant points to times he logged into and out of a system outside of business hours, this does not show what (if any) work was being done between those times. It is not proposed that this will be covered in any detail in evidence. The Respondent accepts that it is likely the Claimant worked outside of his prescribed hours, but maintains that this was reasonable and pursuant to the express terms of the Claimant's contract of employment.

8. Even on the Claimant's highest case, 500 hours over a 15 month period equates to approximately 8.33 hours a week, or 1.66 hours a day. Given the express terms of the Claimant's contract of employment detailed above, it is difficult to see how working 1.66 hours outside of normal business hours on any given day is unreasonable.

CAROLINE JENNINGS
No5 Chambers
19 October 2022