

Employee inadvertently works for free

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The Employment Appeal Tribunal has found that an employee who was not paid on termination of his employment for extra hours worked under a flexi-hours scheme did not suffer an unlawful deduction from wages.

Mr Paterson worked for Vision Events. He participated in a

flexi-hours scheme which allowed him to take time off in lieu if he worked more than his contractual 45 hour week. In 2012, he was made redundant and sought payment from Vision for approximately 5 months worth of accrued hours of flexi time. Vision offered to pay 50% of the hours, which Mr Paterson refused. He subsequently brought an unlawful deduction from wages claim. The EAT found that:

1. in the absence of an express term in Mr Paterson's contract for payment out of accrued flexi-hours, they were forfeited on termination of employment;
2. it was not necessary to imply a term in the contract because the term was not essential to make the contract workable;
3. it was not in the contemplation of the parties that the additional hours would be paid if the employee had not been able to take them off in lieu, therefore a term should not be implied simply to make the contract fair; and
4. the fact that Vision offered to pay 50% of the hours did not mean that such a term should be implied in the contract.

This decision is likely to be appealed, as it seems obvious that a reasonable person watching the parties make the contract would have considered it to be the parties' intention that an employee be paid for working the additional hours if, through no fault of his own, he was unable to take time off in lieu.

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