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Supreme Court confirms that sleep ins are not working time

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Mrs Tomlinson-Blake was a care worker, required to work a sleep-in shift from 10pm to 7am. She could sleep, keeping a “listening ear” for the two vulnerable adults she supported. She would provide assistance during the night, although she was only awoken occasionally. For each shift, she was paid a flat rate of £22.35, plus one hour’s pay of £6.70.

The lower tribunals found for Tomlinson-Blake, finding she should receive the NMW for each hour of the shift. The Court of Appeal disagreed, as Tomlinson-Blake was only “available for work”. The NMW was only due when the employee was awake. Tomlinson-Blake appealed.

The Supreme Court, in dismissing Tomlinson-Blake’s appeal, considered the relevant legislation and the recommendations of the Low Pay Commission to the government. It ruled that when a worker is permitted to sleep during their shift and only required to respond to emergencies, only those hours the worker is awake and undertaking duties need be included in the NMW calculation.

Clearly, this long anticipated judgment will be of particular relief to employers in the care sector but is of wider interest to any employer with workers working in this way.

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