



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Mrs K A GODDARD
Claimant

V

Central and North West London NHS
Foundation Trust
Respondent

HELD AT: London Central ON: 28/8/2019
Employment Judge: Mr J S Burns

Appearances

For Claimant: In person

For Respondent: Ms R Kennedy (Counsel)

JUDGMENT

The claim for unauthorised deduction from wages is dismissed.

REASONS

1. The Claimant and Mr O Powell had both produced witness statements. There was a bundle of 973 pages. I discussed the matter with the Claimant and Ms Kennedy to identify what was in dispute factually and what the real issues were, having regard to the Case Management Summary dated 18/7/2019. Ms Kennedy was content to deal with the matter by way of legal submissions only and did not wish to cross-examine the Claimant. The Claimant stated that she did not wish to cross-examine Mr O Powell, so in the event I did not receive live evidence.

Facts found

2. The Claimant started work for the Defendant on 1/12/2014. She was issued a written contract (page 35 of the bundle) which provided that her grade and spine point was Band 6 point 3 and her annual salary £28755 per year.
3. Clause 5 of the contract provided that once an initial period of assessment had been completed, then every 12 months staff would progress to the next point on their pay band and to subsequent points every 12 months thereafter.
4. This occurred for the Claimant, - she progressed every 12 months within Band 6 and has now reached the pay point within Band 6 at which she is entitled to and is being paid £34403 per year.

5. The contract contains in section 9(b) the following: *“Should your contract need to be changed on an individual basis, variations will be discussed with you and confirmed in writing”*.
6. The Claimant’s contract has never been individually varied and she has been paid in accordance with the (annually progressed) pay point within band 6.
7. However, the Claimant felt from early on in her employment that her banding should at Band 7. She started raising this matter formally from about April 2017. Eventually, after various delays and grievances, a body within the Respondent called the Job Evaluation Panel (JEP) decided on 17 March 2018 that the Claimant’s job (as described in a final job description signed by the Claimant and her line manager in January 2018), should be assessed as at Band 7.
8. However, the JEP did not make any finding or recommendation that the Claimants pay should be increased. The job-evaluation scheme operated by the panel decides what band particular jobs should be allocated to, and not the pay point within particular bands. The pay points within bands are determined by “years of experience”.
9. The Claimant is already (in 2018/2019) on the top pay-point (28) for Band 6 (see page 600) and this is the same level of pay as pay point 28 within Band 7.
10. There is no obvious policy or contractual mechanism whereby a rebanding of an existing role (as opposed to an individual promotion) will automatically result in a pay-increase.
11. There is no express provision in the Claimant’s employment contract that pay will be increased or back-dated if the job is re-banded.
12. No individual contractual variation in writing as contemplated by section 9(b) has been agreed to provide for any extra pay as a consequence of the re-banding of the Claimant’s role to Band 7 in March 2018. The reasons for this include (i) that the Claimant is already receiving pay commensurate with a pay point within Band 7, and (ii) that the Claimant’s area of work (ICT) has since June 2018 been subject to a restructuring exercise with a view to possible compulsory redundancies being made and the Respondent does not wish to change existing contracts until the process is complete.

The Law pertaining to unauthorised deductions from wages (section 13 Employment Rights Act 1996)

13. In Group 4 Nightspeed Ltd v Gilbert 1997 IRLR 398 it was held that as a matter of law it is only where an employer fails to pay a sum due by way of remuneration at the appropriate time – ie at the contractual time for payment, that a claim for unlawful deduction arises.
14. In Delayney v Staples 1992 ICR 483 it was held that *“if a payment is not referable to an obligation on an employee under a subsisting contract of*

employment to render his services it does not in my judgment fall within the ordinary meaning of “wages” “

15. In order for a payment to fall within the definition of “wages properly payable” there must be some contractual or other legal entitlement to the sum in question. (New Century Cleaning Co Ltd v Church 2000 IRLR 27 CA)
16. A wages claim requires a legal obligation to pay a specific sum of money on the occasion in question. A requirement to consider whether a payment should be made is not enough. In order to be justiciable, the claim for unauthorised deductions needs to be the equivalent of an action for an agreed sum. On payday the worker has to be entitled to a particular amount as wages (paragraph 30 of Coors Brewers v Adcock 2007 IRLR 440). The employee must be owed a specific sum of money which he asserts has not been paid (paragraph 46, 52). Where the Claimant requires the Tribunal to quantify the breach, that is a claim for damages for breach of contract. Wages claims are for straightforward claims where the employee can point to a quantified loss (paragraphs 55 and 56).

Conclusion

17. The Claimants claim on a proper analysis is as follows: Her job should have always been banded 7 so she should have been recruited at Band 7 in the first place. Had that occurred she would have been paid and then progressed on the Band 7 pay points every 12 months since 2014 and would have earned more money over the years and would be on a higher pay point within Band 7 now. She has produced a calculation in her final Schedule of Loss which claims a total of £33927 being what she says is the difference between her actual earnings over the years and what she would have been paid had she been assigned to the correct pay points.
18. The main premise of this argument is that there has been a breach of some duty on the part of the Respondent to correctly assign the job banding in the first place and/or to review it promptly and correctly from time to time and/or to adjust contractual pay in a particular way when and if the job was re-banded. None of these obligations are spelt out in the contract and so the argument would have to proceed on the basis that there has been a breach by the Respondent of implied terms of contract.
19. As the Claimant is still employed she cannot and has not brought a contractual claim in the ET.
20. The claim is complicated and the Claimant asks me to make a calculation of sums due following an assessment of various issues. There is no clear-cut agreed sum which the Claimant can point to as due under a contract.
21. There are a number of assumptions and issues built into her argument the determination of which would not only be very difficult but also inappropriate in a claim for unauthorised deduction from wages.

22. While the Claimant feels that her job has remained the same throughout and should have been banded 7 from the outset, this is not accepted by the Respondent.
23. Even if the Claimant is correct, it does not follow necessarily that the Claimant now has a contractual or other entitlement to what her pay should have been if the historic mistake (as she sees it) had not been made.
24. If the job had originally been advertised at Band 7 perhaps the Claimant would not have got the job in the first place, for example because some other higher-qualified person might have applied for and been awarded it, instead of the Claimant.
25. Clearly the job should have been band 7 by January 2018 but, on the documents which I have been shown, that does not itself translate into a defined contractual entitlement to a pay-increase retrospectively or otherwise.
26. The NHS Agenda for Change extracts that I have been shown provide guidance and policy on how pay rises should be decided but until a particular individual contract has been varied to reflect a specific pay-rise decision, I do not find that the policies have contractual force, at least in the current case in which the Claimant has a written formal contract which deals with pay expressly. She has been paid in accordance with that contract.
27. If the Claimant remains an employee of the Respondent and she wishes to pursue the matter she will have to do so in the County Court. Alternatively, if she loses her employment with the Respondent, she would then be able to bring a contractual claim in relation to these issues in the ET. However, before doing either, she should take professional legal advice as to the merits of any such course of action.

Employment Judge Burns

28/8/2019 London Central
Date and place of Order

For Secretary of the Tribunals

Date sent to the Parties
28/08/2019