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EMPLOYMENT TRIBUNALS

Claimant: Miss L Wilson

Respondents: (1) London Borough of Newham
(2) The Governing Body of Elmhurst Primary School

Heard at: East London Hearing Centre

On: 21 April 2017

Before: Employment Judge R Barrowclough

Representation

Claimant: Ms Sue Sleeman (Counsel)
Respondent: Mr D Mohar (Solicitor)

JUDGMENT

The judgment of the Tribunal is that the Claimant's claim that £1,800 was unlawfully deducted from her wages fails and is dismissed.

REASONS

1 This is a claim for allegedly unlawful deductions from wages, pursuant to s.13 Employment Rights Act 1996, the factual background to which is not in dispute.

2 The Claimant, Miss Lily Wilson, was employed as a trainee teacher at Elmhurst Primary School ("the school") on a fixed term contract from 1st September 2015 until 31st August 2016. In the letter dated 19th August 2015 offering the Claimant that post (a copy of which the Claimant returned duly signed, thereby signifying her agreement thereto), it was clearly stated that the Claimant would remain in the service of the school for a period of at least 2 years if she were offered a permanent post by the school no later than 2 working days after the summer half term break (which deadline fell in this case on 8th June 2016). If such an offer were made, the letter of 19th August 2015 continued, and the Claimant left the school before completing that 2 year period of service, she would be liable to repay £1800 to the school as a contribution towards their additional costs incurred during her training period; and that sum would be deducted from the Claimant's last two monthly salary payments.

3 It is also agreed that the Claimant ceased employment (by either Respondent) on 31st August 2016, and that £900 was deducted from each of her last two salary payments on 31st July and 31st August, together totalling £1800. The sole issue for determination by the Tribunal is whether or not the Claimant was in fact offered a permanent post at the school by the Head of School at a meeting on about 11th May 2016, as the Respondent asserts and the Claimant denies. If such an offer was made, then the deductions were lawful; if no such offer was made, then they were not.

4 At the commencement of the hearing, the school was joined to the proceedings as Second Respondent to this claim in an unopposed application. That was because some dispute, or at least uncertainty, had arisen as to the true identity of the Claimant's employer, the First Respondent asserting in its ET3 that it was in fact the school rather than themselves, despite earlier indications to the contrary. Mr Moher, the solicitor who represented both Respondents at the full merits hearing, confirmed at my request at its outset that in the event of the Claimant's claim succeeding, one or other Respondent would pay the Claimant the agreed sum claimed; and there was therefore no need to determine the identity of the employer.

5 The Claimant was represented by Ms Sue Sleeman of Counsel and gave evidence in support of her claim. Mr Moher called as witnesses Ms Nia Silverwood, the school's Assistant Head Teacher, and Ms Sukwinder Samra, the Head of School. Apart from statements from the individual witnesses, the only other documentation before the Tribunal was an agreed bundle of documents (Ex R-1).

6 The relevant evidence can be summarised as follows. As Ms Silverwood explains at paragraphs 4 and 5 of her statement, the Claimant was employed as a "Schools Direct" trainee at the school for the 2015/2016 academic year. That scheme involves individual teachers being trained for the most part 'on the job' – in class with a mentor, rather than, for example, on a PGCE university course with short placements at different schools. Schools Direct trainees are employed and paid a salary by the school where they are teaching; and are trained specifically for that school and its needs. It is for that reason that there is an expectation that successful trainees will remain at their particular schools for at least two years, together with the salary claw-back if they decide to leave before two years having been offered permanent employment.

7 The Claimant says that she became disenchanted with the school because, shortly after starting work there in September 2015, she learnt that her father was very ill with cancer; and that when she informed her then line manager, Michelle Zylstra, of the situation she was told that she was not entitled to compassionate leave or time off to help and be with him, and that she should not request leave, since any such requests were likely to be refused. At some point thereafter, she started looking for alternative employment in other schools.

8 Ms Silverwood was informed by the Claimant's mentor, Mr Jonny Walker, shortly before the Easter holiday break (25th March to 8th April 2016) that the Claimant was considering leaving the school. Ms Silverwood was already quite heavily involved in supporting the Claimant and helping her develop her lesson planning and teaching, as her diary entries confirm; and accordingly she arranged a meeting with the Claimant to discuss what she had been told by Mr Walker, which meeting probably took place in April

shortly after the start of the summer term. At that meeting Ms Silverwood says that the Claimant raised her unhappiness about the manner in which the issue concerning her father's illness had been dealt with, and also that she was not in favour of the level of planning for subject areas that the school would put in place for her Newly Qualified Teacher ("NQT") year. The Claimant confirmed that she was thinking of leaving the school and Ms Silverwood says that she tried to dissuade her.

9 For her part the Claimant accepts that Ms Silverwood did provide her with support during her training, and that they did have at least one meeting or discussion when her future plans and the possibility of her leaving the school was discussed. The Claimant accepts that Ms Silverwood then told her that she was liked at the school, and that she believed that the Claimant was a good teacher who might become a very good teacher; and that they discussed the pros and cons of possible alternatives. The Claimant however, asserts that Ms Silverwood said nothing more than that: that she did not raise the possibility or option of the Claimant remaining at the school, which they did not discuss; that Ms Silverwood never expressed a direct wish or desire for her to stay at the school, or even say that the school would be sorry to lose her. Ms Silverwood disagrees with that and says that she made very clear to the Claimant that the school wanted her to stay.

10 Ms Silverwood says that following that meeting she attended a leadership meeting at the school with both Mr Walker and Ms Samra, when she told them the gist of her discussions with the Claimant, and that it was then decided that Ms Samra would go to see the Claimant and offer her a permanent contract at the school following the conclusion of her trainee appointment.

11 Ms Samra's evidence was that she set up a meeting with the Claimant during the week of 9th May – she believes the actual date was May 11th – specifically in order to offer the Claimant a permanent post at the school because she had been informed that the Claimant was thinking of leaving, and because she believed that a formal intervention and an offer of employment from her were required in order to get the Claimant to reconsider her future. Ms Samra said that at that meeting she did indeed offer the Claimant a permanent post at the school, telling her that she hoped she would accept it and stay on. Ms Samra said that she did not then mention the salary claw-back, since she wished to strike a positive rather than negative note, and that she praised the Claimant's teaching abilities, telling her that the feedback received had all been positive. The school had 'a couple' of staff vacancies in September 2016, and in any event the school would not take on a trainee unless they were sure that there would be a place for him or her as a permanent employee at the end of the training contract. There was no written confirmation or formal written offer of the post to the Claimant following that meeting because, Ms Samra said, there was a general understanding that trainees would have a place and be kept on in the following year unless they were told otherwise. Ms Samra said that at the conclusion of the meeting she asked the Claimant to think seriously about staying on at the school, and not to leave for another school; and that the Claimant responded by saying that she would consider the school's offer.

12 The Claimant's account of that meeting is very different. She told me that the purpose of the meeting, which she accepted took place in April or May 2016, was to discuss how her training year had gone, and also to explore with her her treatment by Ms Zylstra in relation to her father's illness in September the previous year. The Claimant's evidence was that Ms Samra had said that she hoped that the Claimant would be able to

put that incident behind her, and that she believed the Claimant had the potential to be a good teacher. No permanent position or post at the school was offered or mentioned, and nothing was said about the Claimant's future, either at the school or elsewhere.

13 Following that meeting between the Claimant and Ms Samra, there was at least one further meeting between the Claimant and Ms Silverwood and Mr Walker. That took place on 17th May, when the Claimant was asked whether she had then decided what she was proposing to do in the next academic year, and replied that she had yet to make up her mind. However a few days later she requested leave in order to attend interviews, and subsequently asked Ms Silverwood to act as one of her referees (which the latter agreed to do). Ms Silverwood told the Claimant that she had to submit a formal letter of resignation to the school, since she (Ms Silverwood) was unaware of the terms of the Claimant's contract; and that was duly provided by the Claimant on 27th May. Finally, the Claimant says that she subsequently underwent an uncomfortable interview with Mr Ahmed, the school's headteacher (from whom I did not hear); that she left her employment with the school on 31st August 2016; and that she has since been teaching at a school in Waltham Forest.

14 I have come to the clear conclusion that it was much more likely that the Claimant was in fact offered a permanent post at the school by Ms Samra at their meeting on about 11th May than that no such offer was then made for essentially the following reasons.

15 I find the Claimant's account that at her meeting with Ms Silverwood in April 2016, when it was known that she was thinking of leaving, that the latter said literally nothing about even the possibility of the Claimant remaining at the school to be incredible. Since it is agreed that Ms Silverwood then praised the Claimant's abilities as a teacher (subsequently echoed by Ms Samra at the later meeting in May), and since the time when the Claimant had to make a decision, one way or the other, about her teaching future was at hand, it simply does not make sense that nothing at all would have been said about the possibility, at the very least, of her remaining at the school. To not even raise the topic, then or thereafter, as the Claimant suggests occurred, would mean that the school was effectively writing off the not insignificant time, money and effort that they had invested in the Claimant as a Schools Direct trainee. Why would they want to do that, if they thought she was a good - potentially a very good - teacher? Inevitably, my findings on this issue are damaging to the Claimant's overall credibility as a witness of truth.

16 Secondly, the accepted chronology of a meeting of the leadership team following Ms Silverwood's meeting with the Claimant in April, the subsequent meeting between the Claimant and Ms Samra, and the later meeting between the Claimant, Ms Silverwood and Mr Walker and what it is agreed was then said, is consistent with and supportive of the Respondents' account and version, rather than of the Claimant's evidence that nothing was said to her by Ms Silverwood, Ms Samra or anyone else about the possibility of her staying on.

17 I find the Claimant's account of the matters that she says was discussed at her meeting with Ms Samra to be unconvincing. If it was a review of how her training year had gone, then it seems odd that it should take place in early May, some significant time before the end of the summer term (and of the Claimant's contract). If the other issue then discussed related to Ms Zylstra and the Claimant's father, then one has to ask why it only

occurred then, at least six months after the issue arose, and why the Head of School was involved, since those matters had already been fully canvassed and discussed with Ms Silverwood, the Claimant's line manager and herself an Assistant Headteacher. I accept Ms Samra's evidence that she and the Claimant had not previously formally met each other, and since the Claimant's account is that at that stage she was still undecided about her future, it seems extremely unlikely that nothing at all was then said about her future plans as a teacher, as the Claimant alleges. I am not concerned by the accepted absence of any written offer/confirmation following their meeting, or the lack of detail about the Claimant's intended role. I accept Ms Samra's evidence that it was a matter of course for Schools Direct trainees to be offered permanent posts, unless they had proved to be less than satisfactory, and that accordingly no formal offer was deemed necessary. Additionally, that meeting had concluded, I find, on the basis that the Claimant would consider the school's offer and would respond in due course - so there was nothing definitive to put into writing at that stage. Finally, the evidence I heard from both Ms Silverwood and Ms Samra suggests that the role of NQT's at the school (which I remind myself is a primary school) was generic rather than specific, and that individual assignments were sorted out nearer the relevant time. It is unfortunate that the notes of the relevant leadership meeting in April/May, which I was told would have been minuted, were not produced; but that fact does not undermine or call into question my overall conclusions.

18 For all these reasons, I prefer the Respondents' evidence to that of the Claimant, I accept that it is likely that the Claimant was in fact offered a permanent post at the school by Ms Samra at their meeting in May 2016, and it follows that the Claimant has failed to establish on a balance of probabilities that the agreed deductions from her salary were unlawful.

Employment Judge R Barrowclough

16 May 2017