

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 26 February 2014
Judgment handed down on 10 April 2014

Before

THE HONOURABLE MR JUSTICE WILKIE
(SITTING ALONE)

MRS D GLASSON

APPELLANT

LONDON BOROUGH OF BEXLEY

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR J N LEONARD
(Representative)

For the Respondent

MR M DUGGAN
(of Counsel)
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SUMMARY

UNLAWFUL DEDUCTION FROM WAGES

CONTRACT OF EMPLOYMENT – Incorporation into contract

The Employment Tribunal, in a sufficiently reasoned decision, was entitled on the evidence to conclude that:

- (i) Payments made to the Appellant, between April 2007 and July 2011, for performing additional duties, were made under the Respondent's "honorary" scheme.
- (ii) They were discretionary payments, the power to pay which existed only for as long as those duties were additional duties.
- (iii) That power ceased when, upon a restructuring, the Appellant was assimilated into a new role, which included these duties within the job description for her new role.
- (iv) That new role was subject to a job evaluation arising from which the Appellant was entitled to be paid against the relevant pay grade.
- (v) Thereafter, a decision by the Respondent to cease paying the honorary payment did not amount to an unauthorised deduction from wages.

THE HONOURABLE MR JUSTICE WILKIE

Introduction

1. Mrs Glasson appeals against a decision of the Employment Tribunal held at Ashford on 14 January 2013 which dismissed her claims under section 11 and section 13 of the **Employment Rights Act 1996**. In particular, it decided that she did not have a contractual entitlement to “honorary” payments and so did not suffer an unauthorised deduction from wages when these payments were stopped on 31 October 2012.

2. In her particulars of complaint, her case was succinctly put in the following terms:

“in or about 2007, following discussions between the claimant and her manager, it was agreed between the parties that the respondent would pay to the claimant an additional sum to reflect increased duties and responsibilities. Pursuant to that agreement the claimants pay did increase in line with the indication made, ... the payment has continued from 2007 until 31st October 2011.

Alternatively, a term to like effect is to be implied in the employment contract based on the conduct of the parties in and subsequent to April 2007.”

Accordingly, she sought a determination of a reference, and a declaration, under sections 11(2) and 24 of the **ERA 1996** that the complaint of unlawful deduction was well founded and that the Respondent pay the sums unlawfully deducted.

3. The Respondent’s answer was similarly succinct. The Claimant was employed under the Council’s terms and conditions of employment which included reference to local agreements and the rules of the Council. Her grade for payment purposes was B9 and she was entitled to be paid by reference to specific salary scales. It had procedures for payment of additional allowances for “acting up” and payments known as honoraria. It said of those:

“These payments can be made where an employee undertakes the responsibilities of a higher grade post or undertakes more onerous duties. These are payments that are temporary in nature and maybe withdrawn at the discretion of the respondent. Such payments have never

been incorporated as a permanent feature of a contract of employment for any of the respondent's employees. Rather, posts that change or evolve in time maybe be subject to a re-evaluation under the respondent's agreed job evaluation scheme. If this evaluation results in a higher grade then a new statement of particulars would be issued."

4. It went on:

"The claimant was awarded an honorarium effective from 15th April 2007. This was awarded to reflect the fact that she had been asked to undertake other duties. This payment was made on a monthly basis and was always recorded as an honorarium on the claimant's pay slips."

5. The Respondent contended that this had never become a permanent payment, which would have been inconsistent with its pay and grading system. It further said that the Claimant's department was subject to a restructuring in the summer of 2011 which changed her job title and resulted in a revised job description. That new job was evaluated at the same grade B9. The honorarium continued to be paid, in error, after that change.

6. The Respondent said that, in about May 2012, it informed the Claimant that the honorarium would need to be addressed and would be withdrawn. The Claimant objected but the Deputy Director of her department, Mr Bryce-Smith, decided that the payment was a temporary payment, paid at the Respondent's discretion and was subject to withdrawal. He decided to stop it with effect from 31 October 2012.

7. On that basis it denied that it had made any unlawful deduction.

The appeal

8. The Appellant's grounds of appeal advance three grounds which have been pursued. The first asserts that the judgment and reasons of the Tribunal were not **Meek** compliant: the issues were not identified; there was no concise statement of the applicable law; nor any statement of

how the law was applied to the facts as found; unchallenged evidence from the Claimant was rejected without reasons being given; she was unable to ascertain from the judgment and reasons why the Tribunal rejected her claim.

9. Ground two asserts that the Tribunal made an error of law in concluding, on the facts as found, that the payment in issue was an “honarium”.

10. Ground three asserts that the Tribunal reached a number of perverse conclusions, seven of them are identified as follows:

(1) *A Council minute 7/90 was incorporated into staff contracts*” (para 7 of the reasons).

(2) *The Claimant received an honarium payment from effect from 1 April 2007* (para 8 of the reasons).

(3) *The payment was awarded to the Claimant on the grounds that she had been asked by her manager, Mr Murphy to undertake additional duties related to home energy conservation* (para 8 of the reasons).

(4) (a) *The Claimant’s role was the subject of a job evaluation and was evaluated at pay grade B9, and,*

(b) *this resulted in a change to the Claimant’s job title and a revised job description* (para 12 of the reasons).

(5) *Mr Murphy concluded that the payment was a temporary payment paid at the Respondent’s discretion and that it was now being paid in error* (para 14 of the reasons).

(6) (a) *There was no basis whatsoever for the Claimant to receive the payment after July 2011,*

(b) *Her duties were set out in the job description*

(c) *Those were the duties that the Claimant carried out*

(d) *There was no evidence of additional duties outside the scope of that job* (para 17 of the reasons).

(7)

(i) *In referring to issues raised by the Claimant the Employment Tribunal found no merit in any of the following:*

(a) *The Claimant was never told the payments were of a temporary nature*

(b) *She was not informed of any review process.*

(ii) *The Claimant knew the payment was an honorarium payment from the outset.*

(iii) *That it depended upon “exceptional circumstances”.*

(iv) *That the Claimant could not have had a legitimate expectation of the payment continuing after those circumstances ceased to exist.*

(v) *That there is a case for saying the Claimant should have queried the continued after her appointment to the new job in July 2011 (para 18 of the reasons)*

The Employment Tribunal decision

11. The Tribunal decision is succinct and structured. Paragraphs 1 and 2 summarise the respective contentions of the Claimant and Respondent in a way which mirrored their respective pleaded cases. Paragraph 3 briefly summarises the form of the evidence received. Paragraphs 5 – 14 set out its findings of fact:

- paragraph 5 briefly sets out her history with the Respondent, the positions she held, the dates she held them and the relevant pay grade (always B9);
- paragraph 6 refers to a decision of the Respondent’s sub committee in July 1990 authorising payments of an honoraria in particular circumstances;
- paragraph 7 reads as follows:

“The respondent’s conditions of service, which the Tribunal accepted applied to all members of staff, reads as follows:

‘Under paragraph 35B of the conditions of service an honorarium may be paid when an officer undertakes part of the duties of a higher graded post for a continuous period of at least 4 weeks. Exceptionally an honorarium may be paid where there is no entitlement to a higher salary but where an officer performs duties outside the scope of his/her post over an extended period (i.e. at least 4 weeks) or where the duties and responsibilities involved are “exceptionally onerous.”’

- paragraph 8 recites that the Claimant received an honorarium payment from 1 April 2007, it records that it was awarded on the recommendation of her line manager on the grounds that she had been asked to undertake additional duties relating to home energy conservation previously undertaken by the home energy manager, who had recently left the authority and whose post had yet to be filled, the post of energy manager was pay grade B11, higher than the Claimant's B9 grade;
- paragraph 9 records that the honorarium was awarded under the authority of a letter from human resources dated 17 April 2007, it sets out that letter in full, it said the honorarium was to reflect the work she was doing to cover the energy manager post, it would cease when the energy manger post was recruited.
- paragraph 10 records a finding that the Claimant, in fact, never undertook any of the duties of the energy manager and that an assistant energy manager was appointed in August 2007 which meant that the work that the honorarium was intended to cover was undertaken by the person occupying that post;
- paragraph 11 records a finding that the honorarium continued to be paid because the Claimant's manager, Mr Murphy, considered that additional duties within the Claimant's responsibility merited the continued payment of the honorarium;
- paragraph 12 records a finding that in July 2011 the Claimant's department was subject to review and restructuring which resulted in a change in her being assimilated into a different role with a revised job description; and job title- Residential Services Manager, She was appointed to that role in July 2011. That job was evaluated at pay grade B9 – the same as her previous post.
- paragraph 13 records a finding as a fact that, although she was appointed to the newly evaluated role, the honorarium payment continued to be paid.

- paragraph 14 records a finding that, in May 2012, Mr Murphy, reviewing budgets, noted the Claimant was still being paid the honorarium; he concluded it was being paid in error and should be withdrawn, he confirmed this to the Claimant who raised objections which the Deputy Director, Mr Bryce Smith, considered, he concluded that the payment was a temporary payment paid at the Respondent's discretion, now being paid in error, and authorised the payment to be stopped with effect from 31 October 2012.

12. Having made those findings of fact the Tribunal considered its decision in paragraphs 15 - 21.

13. At paragraph 15 it stated that an honorarium is generally regarded as an ex-gratia temporary payment with no recognised legal liability or obligation to make it. It is often paid in recognition of undertaking additional duties on a temporary basis. All the payments on the Claimant's pay slip were described as "honorarium".

14. Paragraph 16 reads as follows:

"I find that the claimant had an entitlement to the honorarium payments from April 2007 – July 2011. Although Mr Murphy had to some extent misrepresented the position regarding the claimant undertaking the energy manager's duties, he nevertheless continued to authorise the payments because of the claimant's additional duties."

15. In paragraph 17 the Tribunal concluded that, once she moved to the newly evaluated post in July 2011 there was no continuing basis for the honorarium payments. Her duties were set out in the new job description and they were the duties she carried out. There was no evidence of additional duties outside the scope of that job. Her contractual entitlement was to be paid at

pay grade B9, thus the continued payment of the honorarium payments was an error from July 2011 onwards.

16. In paragraph 18 the Tribunal considered various complaints made by the Claimant. First, she was never told the payments were a temporary nature. Second, she was not informed of any review process. Third, though aware of the re-evaluation in July 2011 she was not involved in that process. The Tribunal rejected each of these arguments. The Tribunal stated that she knew the payment was an honorarium from the outset. It depended upon the existence of exceptional circumstances and she could not have had any legitimate expectation of the payment continuing after those circumstances ceased.

17. The Tribunal goes on in paragraph 18 to conclude:

“Indeed there is a case for saying that the claimant should herself have queried the continued payment after her appointment to the new job in July 2011.”

18. In paragraph 19 the Tribunal concluded that there was no basis for any contractual entitlement to the honorarium payments after July 2011 and, at paragraph 21, concludes that the complaint of unauthorised deduction from wages was not well founded and was dismissed.

Ground 1 – The Meek point

19. The principles are well established as enunciated in **Meek v City of Birmingham District Council** [1987] IRLR 250 at paragraph 8:

“A decision of a tribunal must contain an outline of the story which has given rise to the complaint and a summary of the tribunal’s basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient accounts of the facts and of the reasoning to enable an appellate court to see whether any question of law arises.”

20. In my judgment, though the decision and the reasons for it are succinct, they pass the test which Meek describes. The issues and the respective positions of Claimant and Respondent were clearly and accurately identified in paragraphs 1 and 2. The findings of fact summarised above in paragraph 5-14 give an account of the circumstances in which the dispute arose. It also made findings of fact in respect of the core issues upon which the Respondent relied in its assertion that the payments were by way of an honorarium (paragraph 6 and 7), the circumstances and justification put forward to the Respondent's administration for the payment of the honorarium and upon which the honorarium was centrally approved and paid (paragraph 8 and 9). It made the findings of fact on the crucial issue whether the Claimant had ever "acted up" in the role of energy manager (paragraph 10). It made a finding of fact as to the basis upon which Mr Murphy continued to support the payment of the honorarium namely, the performance of additional duties within the Claimant's responsibility (paragraph 11). It made findings of fact on the restructuring and job evaluation which, according to the Respondent, removed the basis upon which the honorarium had been paid (paragraph 12). It made a finding of fact on the continuation of the payment beyond the date of the Claimant's assimilation into the role of Residential Services Manager (paragraph 13). It contained, in paragraph 14, findings of fact on the circumstances in which, and the time when, the honorarium ceased to be paid (paragraph 14).

21. It then applied its findings of fact to the legal issues which it had to address.

22. It described the nature of the honorarium, being an ex-gratia temporary payment, with no legal liability or obligation to pay attaching to it, in recognition of the recipient undertaking additional duties (paragraph 15).

23. It concluded that, though Mr Murphy had to some extent misrepresented the position as to the payment of the honorarium, the basis of his continued authorisation of the payments was a legitimate one - the Claimant's additional duties - and, on that basis, concluded that the Claimant had "an entitlement to the honorarium payments".

24. It concluded that, in July 2011, the move to a newly evaluated post with a new job description, the Claimant not undertaking any additional duties beyond the job description, removed the basis upon which the honorarium had previously been paid (paragraph 17).

25. It recorded the various arguments put forward by the Claimant to establish that, contrary to the Respondent's contention, the "honorarium" was not, in truth, an honorarium but a contractual payment, permanent in nature, giving rise to legal obligations and it explained why it rejected those arguments.

26. On the basis of that reasoning the Tribunal concluded that there was no contractual entitlement to the honorarium payments after July 2011, when the circumstances giving rise to the previous payments of the honorarium had ceased, (paragraph 19). Accordingly, having come to that conclusion it dismissed the claim in respect of unauthorised deduction from wages (paragraph 21).

27. In my judgment the decision satisfied the Meek requirements. It is clear why the Claimant lost and the reasoning is sufficiently transparent to identify, for appellate purposes, the issues to be addressed in considering whether, in so concluding, the Tribunal erred in law.

Ground 2 – Did the tribunal err in law in concluding that, on the facts found, there was no contractual entitlement to an honorarium?

28. The essence of the Tribunal’s reasoning was that the honorarium payment was a discretionary payment, provided for by paragraph 35B of the conditions of service. The authority to pay it was based on one of a number of conditions, described in that clause, being satisfied, including the performance of additional duties. Once that condition had ceased to apply after the restructuring, assimilation to a new role with a job description which included those duties and evaluation of that new role within the relevant pay grade, the authority for the continuation of that additional payment ceased and there could be no legitimate expectation that the payment should continue to be made.

29. This ground of appeal is based on the contention that the Tribunal, having found that the payment was for the performance of additional duties, within the Claimant’s responsibility, the only lawful conclusion open to the Tribunal was that the payment had, from the outset, been a contractual entitlement and not a discretionary “honorarium”. As a result, the Respondent was not entitled to withdraw its payment, and the Tribunal was in error in dismissing the Appellant’s claims.

30. It is said that the Tribunal erred in law in taking Minute 7/90 as being the legal basis for making the payments. It is said that that Minute could not properly constitute part of the contract of employment so as to give a legal basis for the payments as an honorarium. Thus, the payments for additional duties were simply that, payments for performing those duties to which the Claimant was contractually entitled for as long as she continued to perform them, whether or not they were “additional” or became subsumed within a different job description.

31. In my judgment that argument is not sustainable. The Tribunal focussed on paragraph 35B of the conditions of service, which were referred to in Minute 7/90. In my judgment the Tribunal was entitled to conclude, in paragraph 7, that the honorarium scheme being operated by the Respondent was incorporated into the conditions of service of all employees of the Council in the terms there summarised.

32. In my judgment the Tribunal was entitled to find, as a matter of law, on the facts found, that the honorarium scheme was a part of the contract of service giving the Respondent the power to make additional payments, on a temporary basis, when any one of a number of circumstances arose.

33. It is said that there is a contradiction in the Employment Tribunal's reasons between paragraph 15, which describes an honorarium as an ex-gratia temporary payment where there is no recognised legal liability to make it, paragraph 16, which contains the Tribunal's finding that the Claimant had "an entitlement to the honorarium payments" from April 2007 to July 2011, and paragraph 19 where the ET concluded that:

"I can find no basis for any contractual entitlement to the honorarium payments after July 2011."

34. It is true that the use of the word "entitlement" in paragraph 16 makes the reasoning more difficult to unpack than had there been a longer exposition. It is, in my judgment, clear, looking at these three paragraphs as a whole, that what is being described in paragraph 16 is the conclusion that the payments made to the Claimant between April 2007 and July 2011 were legitimately paid to her because she satisfied one of the conditions which, under the honorarium scheme, empowered her manager to make the additional payments and which was the reason she was paid it. She was "entitled" to receive such legitimate payments once the discretion was

exercised, though she had no absolute contractual right to have him exercise that power in her favour. By contrast, Mr Murphy had misrepresented to the administration the reason for which he was asking them to make an honorarium payment. He claimed she was to “act up” in respect of the energy manager position. In fact the Tribunal found that she never undertook any such activities. If that had been the reason the payments were made, they would have been illegitimate and she would have had no “entitlement” to receive them.

35. The payments made under the honorarium scheme could not continue under that scheme once the condition ceased to apply. After July 2011, the duties for which the payment was made were no longer “additional” duties. They were subsumed within the new role and new job description. The condition for the honorarium payment ceased. That job was evaluated and the Claimant was entitled to the rate for that job as evaluated and no more. Hence she was no longer entitled to receive those payments under her contract, including the honorarium scheme. This is the conclusion reached in paragraph 17.

36. In my judgment the reasoning of the Tribunal in these three paragraphs is, upon a careful reading, clear and does not contain an error of law. Furthermore, it was in accordance with the evidence which the Tribunal received.

37. The Claimant made a witness statement. In it she explained why it was that she had felt in 2007 that she should be paid more than she was receiving on her B9 grade. She described that, in terms of managerial responsibility, her responsibilities had increased four fold - managing 24 persons in 4 teams, as opposed to 6 persons in one team - and she had taken on increased responsibilities (paragraph 6 and 7). She said that in April/May 2007, Mr Murphy agreed that he would make an additional payment to reflect her increased role and responsibilities (paragraph 10) and would use the departure of the energy manager as a way of paying her some

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additional money. He would say that this was for her “acting up” in to the energy manager’s role, even though it was not what the money was being paid for (paragraph 10 and 11). Mrs Glasson was concerned about this and said in terms as follows:

“14. Kevin also indicated that this additional salary was intended to be a fix until my salary payment could be more permanently resolved ... periodically I raised the issue with Kevin Murphy but the basic message was that it has never been the right time to raise my salary to a higher level.”

38. Kevin Murphy, in his witness statement at paragraph 8, differed in one respect from what the Claimant said. He said that the honorarium was awarded to reflect the fact the Claimant had been asked by him to undertake other duties relating to home energy conservation, which had previously been undertaken by the energy manager. The Tribunal found as a fact against the Respondent on this disputed issue. However Mr Murphy, in his witness statement, went on to say:

“The honorarium continued to be paid as there were a number of important initiatives the claimant needed to be involved in including the loan scheme and the contact centre.”

Those two additional duties were specifically mentioned by the Claimant in contemporaneous documentation (an email of 18 July 2012) and in a document which she prepared for the Tribunal identifying the additional responsibilities which she had undertaken.

39. There was, therefore, a sufficient evidential basis for the findings of fact made by the Tribunal and for the Tribunal to conclude that the payments made in respect of the additional duties were understood by both sides as being a temporary fix and were understood by the Respondent as being made pursuant to the exercise of the power to make honorarium payments provided for by condition 35B of the conditions of service as described in Minute 7/90.

40. In my judgment, therefore, there was no error of law in the Tribunal's concluding, from the facts found, that the additional payments were pursuant to the honorarium scheme and did not constitute a permanent contractual entitlement for extra pay for undertaking those duties even when, upon restructuring and re-evaluation, they ceased to be "additional duties".

41. In paragraph 16 the Tribunal found that, Mr Murphy having exercised the power given under that scheme to make payments on account of additional duties, the Claimant was entitled to receive them between April 2007 and July 2011. There is no legal illogicality in a conclusion that a person has a contractual entitlement to have a scheme applied to her which, in itself, confers an employer a discretion to make a payment, though not imposing an obligation to make a payment. The law of contract deals with the operation of such a schemes as exemplified by **Clarke v Namura International Plc** [2000] IRLR 766. It imposes a contractual obligation on an employer not to exercise its discretion in a way which is irrational or perverse, or in a way in which no reasonable employer would exercise its discretion.

42. The appeal based on ground 2 is dismissed.

Ground 3 - Perversity

43. I am reminded of the proper approach to arguments based on perversity as described by the Court of Appeal in **Yeboah v Crofton** [2002] EWCA Civ 974, reported at [2001] IRLR 634, and in particular paragraph 93, where Lord Justice Mummery says:

"Such an appeal ought only to succeed where an overwhelming case is made out that the Employment Tribunal reached a decision which no reasonable Tribunal, on a proper appreciation of the evidence and the law, would have reached. Even in cases where the Appeal Tribunal has "grave doubts" about the decision of the Employment Tribunal, it must proceed with great care."

44. (1) *A Council minute 7/90 was incorporated into staff contracts*" (para 7 of the reasons).

Paragraph 7 of the decision does not contain such a finding. The Tribunal concluded that the conditions of service, within which paragraph 35B was included, applied to all members of staff. There is nothing perverse in that conclusion.

(2) The Claimant received an honorarium payment from effect from 1 April 2007 (para 8 of the reasons).

The finding of fact in paragraph 8 that the Claimant received an honorarium payment with effect from 1 April 2007 was not perverse but accurate. The payment was said to be by way of honorarium and each payment was described as an honorarium. The Tribunal did not, thereby, pre-empt its consideration of the question whether, whatever it was called it, was in fact and law a contractual payment rather than a discretionary payment. It addressed that issue at paragraphs 15, 16 and 17 of the decision. The correctness of the conclusion to which the Tribunal came, as a matter of law, in those paragraphs is dealt with above.

(3) The payment was awarded to the Claimant on the grounds that she had been asked by her manager, Mr Murphy to undertake additional duties related to home energy conservation (para 8 of the reasons).

The finding of fact in paragraph 8 - that it was awarded on the recommendation of Mr Murphy on the ground that she had been asked to undertake additional duties relating to home energy conservation previously undertaken by the energy manager - was, as a matter of fact, correct. It was common ground in the evidence that this was the reason that Mr Murphy put forward to human resources which resulted in their processing the honorarium payments in April 2007 and is reflected in the letter from HR to that effect. The Tribunal went on to make the findings in paragraphs 10 and 11 that, in fact, the Claimant never undertook any such duties and that the honorarium continued to be paid, authorised by Mr Murphy, on the basis that the additional duties, within the Claimant's responsibility, merited continued payment of the honorarium. It

also found as a fact that Mr Murphy had, to an extent, misrepresented the situation (para 16). Thus the finding of fact said to be perverse in paragraph 8 was accurately made, based on the evidence and was not perverse.

- (4) (a) *The Claimant's role was the subject of a job evaluation and was evaluated at pay grade B9, and,*
- (b) *this resulted in a change to the Claimant's job title and a revised job description* (para 12 of the reasons).

The statements of fact in paragraph 12 of the reasons were accurate and based on the evidence. The Claimant raised an issue with the Respondent as to how the job evaluation had been conducted. This is recorded by the Tribunal in paragraph 18 of the decision. However, the Claimant had never asserted that any problems with the job evaluation were part of her Tribunal claim. On the contrary, she asserted, in her email of 22/10/12, that she maintained that her job had not been properly evaluated, but that was a red herring when addressing the true nature of the disputed payment. Thus, there was nothing perverse in the Tribunal's recording of the facts in paragraph 12 of the reasons.

- (5) *Mr Murphy concluded that the payment was a temporary payment paid at the Respondent's discretion and that it was now being paid in error* (para 14 of the reasons).

The Tribunal's finding of fact in paragraph 14, in relation to the sequence of events in May 2012 and subsequent, which resulted in a decision made finally by Mr Bryce-Smith that the honorarium payments should cease, reflects the evidence given by Mr Murphy in paragraph 12 of his witness statement. The Claimant, at paragraph 29 of her witness statement, confirmed that Mr Murphy told her that the honorarium money was to be withdrawn. She records that as a result of a request from Mr Bryce-Smith. The question whether the initiative came from Mr Murphy or Mr Bryce-Smith was one upon which the evidence of the Claimant and Mr Murphy

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differed. The Tribunal, finding consistent with Mr Murphy's version, did so based on evidence. It is not, on any view, an issue of any significance. The important matter was that, ultimately, it was the decision of Mr Bryce-Smith to withdraw the honorarium following upon the Claimant raising objections and there being discussions about it, by email exchange and in meetings. The finding of fact is not perverse, and, even if it were wrong, it is not on a matter of any significance.

- (6) (a) *There was no basis whatsoever for the Claimant to receive the payment after July 2011,*
- (b) *Her duties were set out in the job description*
- (c) *Those were the duties that the Claimant carried out*
- (d) *There was no evidence of additional duties outside the scope of that job (para 17 of the reasons).*

Each of the statements set out in paragraph 17 was correct on the evidence before the Tribunal. The issue between the Claimant and the Respondent was that the "honorarium" payments had, from the outset, been contractual payments to which she was entitled for performing additional duties in the job she was then performing and that, as long as she continued to perform those duties, which she did, she was entitled to receive that payment, even after her job title and job description had changed. In that event she would, it was argued at the appeal, at least have been entitled to "payment protection" upon the re-evaluation of her duties arising from the restructuring, assimilation and re-evaluation exercise by virtue of contractual nature of the payments to which she had become entitled as a matter of contract. The Respondent's case was that the payment made, for additional duties performed, was an honorarium paid pursuant to the paragraph 35B scheme. It was discretionary and the power to pay it only continued for as long as those duties were performed as "additional" duties. Upon restructuring and assimilation into a different role and upon re-evaluation of that new job at the B9 grade, the honorarium scheme

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conditions no longer applied, so any entitlement or expectation to have a discretion exercised in her favour, under that scheme, ceased. As explained above, the issue whether her new job had been correctly evaluated at grade B9 to reflect her work was a different issue from the one the Tribunal was deciding and was accepted as such by the Claimant. The Claimant's case was never put on the basis that a fresh case for payment under the honorarium scheme had arisen in respect of her new role. Rather, her case was always about the status of the payments from April 2007. The findings in paragraph 17 were not perverse, given the Tribunal's conclusion that the payments made were under the honorarium scheme for the Claimant's additional duties from 2007 onwards.

(7) (i) *In referring to issues raised by the Claimant the Employment Tribunal found no merit in any of the following:*

(a) *The Claimant was never told the payments were of a temporary nature*

(b) *She was not informed of any review process.*

(ii) *The Claimant knew the payment was an honorarium payment from the outset.*

(iii) *That it depended upon "exceptional circumstances".*

(iv) *That the Claimant could not have had a legitimate expectation of the payment continuing after those circumstances ceased to exist.*

(v) *That there is a case for saying the Claimant should have queried the continued after her appointment to the new job in July 2011 (para 18 of the reasons)*

45. The Tribunal, on the evidence, was entitled to conclude that there was no merit in the suggestion:

a. that the Appellant was never told the payments were of a temporary nature or,

b. that it was subject to review or,

c. that she knew that it was an honorarium payment from the outset which,

d. depended on “exceptional circumstances” and,
e. that she had no legitimate expectation that it would continue after those circumstances ceased to exist.

- a. On her own evidence she knew from the outset that the payment was a “fix” until her salary payment could be more permanently resolved, but it was never the right time to do so. In March 2011 when the question of stopping the payment arose, her evidence was that Mr Murphy said she should have enjoyed it while it lasted and accept that it was going.
- b. She was aware of the process of restructuring and had discussed with Mr Bryce- Smith the fact that it may be that her increased responsibilities would be reflected in the grading to be applied at the end of that process. In addition, as the Tribunal found on the evidence, once that restructuring, assimilation and recasting of her job description had been completed, her entire role was governed by the new job description which had been evaluated at grade B9. Whilst the Appellant had criticisms of that outcome, her case was that the quality of the job evaluation was a red herring; the issue was the legal nature of the “honorarium” payments from 2007.
- c. and d. The findings of fact that the payments were made under the honorarium scheme, depended on exceptional circumstances - performing additional duties - and,
- e. she had no legitimate expectation that they would continue when those circumstances ceased, were, each of them, conclusions to which the Tribunal was entitled to come on the evidence.

46. I am persuaded, however, that the Tribunal overstated the position in finding that there is a case that she should have queried the continued payment after her appointment to the new
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job in 2011. The evidence shows that the continued payment after July 2011 was a matter of which both sides were well aware and there were discussions whether it should be allowed to continue.

47. The Appellant has not demonstrated that the findings of fact or conclusions which she criticises, were, individually or collectively, so contrary to the evidence that the Tribunal reached a decision which no reasonable Tribunal, on a proper appreciation of the evidence and the law, would have reached.

48. On the contrary, the Tribunal was entitled on the evidence, to make the findings of fact that it did and, on the basis of those findings of fact, come to the conclusions of law which it did.

Conclusion

49. The reasons of the Tribunal were succinct, clearly structured and met the requirements of **Meek**. The findings of fact and conclusions drawn from them were open to the Tribunal on the evidence before it. The Tribunal was correct in law, on the facts found by it, to conclude that the “honarium” payments were made pursuant to the honorarium scheme. That scheme empowered the Respondent to make the payments, as an exercise of discretion, in the event that the conditions existed for that discretion to be exercised. The Tribunal was correct to conclude that the conditions did arise in 2007, by reason of the additional duties within her area of responsibility being undertaken by the Claimant. It was entitled, on the evidence, to conclude that, after the restructuring, assimilation, and job evaluation undertaken in respect of her new role, the conditions giving rise to the exercise of the discretion under the honorarium scheme ceased in July 2011. Thereafter, there was no basis for those payments to continue to be made. The Tribunal was correct in law in concluding that, as there were no grounds for the continuation

of the payments after July 2011, their cessation, from the end of October 2012, did not result in a reduction in the wages “properly payable” to the Claimant.

50. Therefore, this appeal is dismissed.