



THE EMPLOYMENT TRIBUNALS

Between:

Claimant: Mr C Parrack

Respondent: Department for Work and Pensions

Hearing at London South on 10 August 2018 before Employment Judge Baron

Appearances

For Claimant: The Claimant was present in person

For Respondent: Rachel Owusu-Agyei - Counsel

JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claim is dismissed.

REASONS

- 1 I gave reasons for the judgment at the hearing, but am setting them out in writing as the Claimant is a litigant in person.
- 2 The claim as presented to the Tribunal was that there had been unlawful deductions from the Claimant's salary. The total claimed was £56,821. However that was based upon an annual deduction of £3,800 until the date when the Claimant expected to retire, together with pension entitlement on that sum. The issue revolves around a Recruitment and Retention Allowance ('RRA') of £3,800 in respect of a role ('the role') in a unit to which I will refer for simplicity as the NTFIU. It appears from the details of the claim that the alleged deductions commenced in April 2018.
- 3 The facts are relatively simple. The role was occupied by a Mr Gunby who was due to retire on 31 March 2018. He was being paid the RRA in addition to his salary. In December 2017 Andy MacDonald undertook an 'expressions of interest' exercise to ascertain if anyone would be interested in taking over the role from Mr Gunby. The Claimant was the only person who did express such interest, and on 28 December 2017 Mr MacDonald sent an email to the Claimant saying that he was the only applicant and that if would take over the role if he wished to do so. The Claimant replied on the same day saying that he did wish to have the role.
- 4 As a consequence the Claimant started to run down his then current workload, and also began the handover process with Mr Gunby. The role in the NTFIU required the incumbent to have a higher level of security

clearance than the Claimant then held. That process was commenced, and it was ongoing as at 8 March 2018.

- 5 In February 2018 Mr Gunby told the Claimant that he had been receiving the RRA in addition to his normal salary. This was the first occasion that that matter had been mentioned to the Claimant. The Claimant then raised the matter with Mr MacDonald who told him that he would not receive the RRA in the role. There were further discussions, but on 9 March 2018, or shortly before that date, the Claimant informed Mr MacDonald through the Claimant's immediate line manager that he was not prepared to take the role unless he was treated on a par with Mr Gunby.
- 6 I am aware that the Claimant then raised a grievance, and also an appeal. The issues raised are not of relevance to the legal claim before the Tribunal.
- 7 As I have said above, the claim is one of unlawful deductions from wages. The relevant provision is section 13 of the Employment Rights Act 1996:
13 Right not to suffer unauthorised deductions
 - (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
 - (2)
 - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
 - (4) – 7
- 8 That provision therefore requires the Tribunal to ascertain what was 'properly payable' to the Claimant on any occasion. That means that there must be a legal entitlement to the payment. On the facts as found above the Claimant has not shown that at any time the RRA was properly payable to him. The issue before the Tribunal is not whether as a matter of internal policies or fairness the role should have attracted payment of the RRA. The fact is that it did not have that entitlement, and as a consequence the Claimant did not take the role.

Employment Judge Baron

Dated 10 August 2018