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EMPLOYMENT TRIBUNALS

Claimant: Mr F Fonche

Respondent: Sir Charles KAO University Technical College

Heard at: East London Hearing Centre

On: 13 September 2018

Before: Employment Judge Brown

Representation

Claimant: In person
Respondent: Did not attend, written representation

JUDGMENT

The judgment of the Tribunal is that the Claimant's claim for unlawful deductions from wages fails.

REASONS

1 The Claimant brings a claim for unlawful deduction from wages against the Respondent, his former employer. He contends that the Respondent made unlawful deductions from his wages from December 2015 until the Claimant's resignation on 25 June 2017, by not paying him as he should have been paid for carrying out the Head of Maths Department role during that period.

2 The Respondent did not attend the Tribunal. It sent written submissions and a written statement. I read the Claimant's witness statement and those of his supporting witnesses and the Claimant gave evidence to the Tribunal.

3 By *s13 Employment Rights Act 1996*, "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."

4 By s13(3) *ERA 1996*, “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... 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.”

5 In *New Century Cleaning Co Ltd v Church* [2000] IRLR 27, the Court of Appeal held that, for wages to be “properly payable,” the worker must have a legal entitlement to them.

6 The Claimant told me that he was verbally appointed as Head of Maths by the Deputy Head of College in December 2015. He very honestly told me, however, that despite the Claimant seeking to agree additional remuneration as Head of the Maths Department, his employer never agreed to pay him as the Head of Maths Department. The Claimant very honestly agreed that the only contract which had ever been signed between the Claimant and the Respondent was a contract signed on 8 October 2015, for the Claimant to work as 0.8 Full-Time Equivalent Maths teacher at a salary of £35,000 per year. He said that he had always been paid his £35,000 FTE salary.

7 I asked the Claimant what sum he considered that he should have been paid as Head of the Maths Department. The Claimant said that, from looking at job adverts on the internet, he considered that the minimum pay for a Head of Department would be £50,000 FTE per annum.

8 In its written submissions, the Respondent contended that, while the Claimant may have taken on additional tasks, so too did other teachers, but there was never any agreement that he would be paid for doing so.

9 The Claimant did not point to standard, or national, terms and conditions, on which he relied, in saying that he had a contractual right to be paid more for the additional work which he undertook.

10 Accordingly, I accepted the Claimant’s very honest evidence that the only concluded agreement ever entered into between the Respondent and the Claimant was for the Claimant to be paid £35,000 per year for his work. Applying *New Century Cleaning Co Ltd v Church* [2000] IRLR 27, for wages to be properly payable the worker must have a legal entitlement to them. In this case, the only wages which were properly payable to the Claimant were his agreed wages of £35,000 FTE per year. Therefore, the Claimant’s claim that he suffered unlawful deductions from wages when he was not paid a salary greater than £35,000 a year must fail. He never had any legal entitlement to wages greater than £35,000 per year. His claim for unlawful deductions from wages is therefore dismissed.

Employment Judge Brown

3 October 2018