



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Jackson

Respondent: ITC Compliance Ltd

Heard at: Bristol

On: 14 September 2018

Before: Employment Judge Street

Representation

Claimant: In person

Respondent: No appearance

JUDGMENT having been sent to the parties on 17 October 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Evidence

- 1.1. The Tribunal heard from Ms Jackson. The respondent had provided three witness statements and agreed the bundle but did not attend. That was due to an error in the email address in use by the Employment Tribunal. The Tribunal read the witness statements and the documents referred to in the bundle.

2. Issues

- 2.1. The claimant claims £791.64 to be due to her on termination of her contract of employment arising from unlawful deduction of wages
- 2.2. The issue before the Tribunal to decide are as follows.

Was the claimant, from October 2016 paid less in wages than she was entitled to be paid and if so, how much less?

3. Findings of Fact

- 3.1. The claimant started work with ITC on 1/10/15.
- 3.2. Her initial salary was agreed at £19,000.
- 3.3. There was a review in May 2016.
- 3.4. Her understanding of the discussion was that she would receive an increase of £500 per annum immediately, increasing by £1000 each October from October 2016.
- 3.5. Her pay was increased by £1000 with immediate effect.
- 3.6. That is recorded in an email from Matt Cocks issued to the finance manager Ben Chick on 23/05/16,

“With effect from 1st May her salary will increase by £1000 to £20,000 pa”.

- 3.7. That letter was not copied to her.
- 3.8. The change would have showed in payslips, on comparing earlier with later months. She did not check her payslips and did not realise the salary rise had been higher than she expected.
- 3.9. There was no pay review with effect from October 2015. Her pay continued to be based on £20,000, the figure reflected in the payslips.
- 3.10. There was a contractual change to her employment on 16/12/16, reducing her salary by £384.62 in return for an additional 5 days holiday for the 2017 calendar year That is a reduction by one week’s pay based on contractual salary of £20,000. It is formally recorded that that letter constitutes a change to her contract of employment. She signed in consent (17). That is pursuant to a system that the company has for the “purchase” of additional holiday.
- 3.11. That figure reflects the company’s reliance on a contract of £20000. Ms Jackson signed in acceptance of that without checking the figures.
- 3.12. A contract and written statement of terms and conditions was issued and signed by her on 27/04/17. That sets out that her salary is £20,000 per annum. The contract was issued in respect of other changes to terms and conditions, allowing flexi-time. She accepted the changes. She did not challenge the salary figure at the time.
- 3.13. She was paid an ex gratia payment of £600.85 in September in lieu of lower statutory sick pay entitlement, after raising a challenge earlier that month.
- 3.14. On 26/10/17, she raised the question of salary,

“At my last review we discussed pay and how this would increase each year by £1000. Naturally as this is my anniversary, I would like to ensure that this arrangement is still honoured and will be reflected in my pay.”

- 3.15. That did not lead to a salary review.
- 3.16. Ms Jackson gave in her notice in December 2017, and agreed a termination date of 31/01/18 with Jason Lewis, Director. She hoped to return, personal plans permitting (32).

- 3.17. On 24/01/18, Matt Cocks confirmed that her last pay increase had been in May 2016. He was recommending consideration of a pay review from October 2017. The correspondence suggests that that would accord with policy in that reviews were to be based on the anniversary of appointment.
- 3.18. Ms Jackson specifically raised with her manager Marc Hulin her expectations in respect of pay (34),

“Could I add to this that I was advised that my pay would increase by £1000 each year..... by now I would have expected my pay to have increased by £2000 from May 2016.

- 3.19. In January 2018 Jason Lewis told her that he had been authorised by Deb Smith to offer her a 3% pay rise back to October 2017.
- 3.20. That was not accepted and the pay rise was not paid.
- 3.21. In February 2018, Ms Jackson raised a formal grievance, which was not resolved to her satisfaction.
- 3.22. Her grievance on 8/02/18 was based on having been paid an increase of £500 per annum from May 2016, but she now acknowledges that it was in fact £1000 per annum, more than she said was agreed.
- 3.23. She now calculates that the sums due to her have been underpaid by £791.64.

4. **Law**

- 4.1. Entitlement to pay depends on the terms of the contract.
- 4.2. Key terms of the contract reflect what was agreed between the parties. Pay is an essential term of the contract. The contract will show what is properly payable for the work done.
- 4.3. A contract may be in writing or oral or a mixture of the two.
- 4.4. The written statement of particulars is strong evidence of the terms of the contract, although it may not be conclusive.

5. **Reasons**

- 5.1. The hearing proceeded in the absence of the respondent and in the absence of any explanation for that. I decided that the case could fairly proceed in their absence. The respondent's managers attended at the time originally notified, at 2.00 pm instead of 10.00 am, after judgment had been given. It was through no fault of the respondent that it was not represented at the actual hearing.
- 5.2. A corrected Judgment has been issued, the original containing unfortunate errors over dates.
- 5.3. Ms Jackson claims to have a contractual right to pay in excess of the sums shown in the contract most recently signed and in excess of the salary shown on other documents.
- 5.4. The contractual entitlement to pay depends on the terms of the contract, and that will reflect what was agreed between the parties.

- 5.5. Ms Jackson relies on a conversation on pay in May 2016, that she would be paid £500 per annum extra immediately with an annual increase of £1,000 per annum.
- 5.6. Her understanding of that conversation is immediately contradicted by the figure actually put in payment, which was for the extra £1000 per annum. That is the agreement recorded and that is the pay made and accepted without challenge.
- 5.7. There is ample documentary evidence showing that the figure understood by the company to be payable was £20,000 per annum. That was the figure used in payslips, in the agreement for the purchase of holiday and in the revised contract agreed in April 2017.
- 5.8. There is no documentary evidence for the version of the contract she puts forward. If pay is agreed with increases on a staged basis for a number of months in advance, it would be normal to see some evidence in writing.
- 5.9. Ms Jackson explains that the documents she relied on have gone missing from her own drawer and copies supplied have been incomplete. She refers to querying her pay in emails over a period.
- 5.10. Given the weight of the documents that exist, it is unlikely that the missing documents would have established a different contractual term.
- 5.11. It is altogether more likely that the agreement reached in May 2016 was as implemented by the company. It would be unusual to reach an agreement on the first pay review committing the company to regular pay increases on an indefinite basis in a fixed sum. The May 2016 agreement as understood by the company was recorded in an email at the time, so there is contemporary evidence for it.
- 5.12. What I find to be conclusive, however, is the April 2017 statement of terms and conditions. That followed a adjustment to her terms, when the company authorised flexible working, and was issued to confirm the current agreement.
- 5.13. Ms Jackson had worked on the basis of receiving a salary of £20,000 per annum since May 2016.
- 5.14. That figure is confirmed in the April 2017 statement. She raised no objection to it then and she countersigned it. It was clear what the salary term was. In my judgment that was a clear acceptance of that term of the contract.
- 5.15. She worked for the following six months on the basis of receiving a salary of £20,000 per annum, without challenge.
- 5.16. It is common ground that there was no later agreement to review that.
- 5.17. I am wholly satisfied that that is the contractual sum to which she was entitled.
- 5.18. She contends that she was promised more and called for a further increase from the start of her third year with the company.
- 5.19. Her evidence falls short of establishing a contractual entitlement to the sums claimed. The agreed pay figure is that in the April 2017 statement.
- 5.20. Her evidence points to an expectation of a further pay review but does not establish a contractual entitlement to pay in excess of what she was paid.
- 5.21. I do not accept a contractual agreement for the pay increase claimed.

- 5.22. The claimant was not from October 2016 paid less in wages than she was entitled to be paid.
- 5.23. The claim is dismissed.

Employment Judge Street
Dated 30 October 2018

REASONS SENT TO THE PARTIES ON

19 November 2018

FOR THE TRIBUNAL OFFICE