



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Ugradar
Respondent: Lancashire Care NHS Foundation Trust

Heard at: Manchester
On: 3 and 4 July 2018, in chambers 13 August 2018
Before: Employment Judge Ross

REPRESENTATION:

Claimant: Mr D Campion, Counsel
Respondent: Mr Lewinski, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for a contractual redundancy payment is well-founded and succeeds. I order the respondent to pay the claimant the sum of £25,000 in 14 days of the date of this judgement, the contractual redundancy payment being subject to the limit identified in Article 10 of the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994.
2. In the context of a successful contractual redundancy claim as set out above, the claimant is not entitled to an additional statutory redundancy payment, for the reasons set out below.

REASONS

3. The claimant was employed by the respondent from January 2005 until she was dismissed for redundancy on 29 August 2017. At the time of her dismissal she was employed as a Locality Lead at Band 8A in the Respondent's Adult Mental Health Network based in Blackburn, Lancashire, where the claimant resides. There was no dispute the real reason for the claimant's dismissal was redundancy.

4. The claimant held a contract of employment with the respondent which incorporated the NHS terms and conditions of service ("Agenda for Change"). This included a contractual entitlement to an enhanced contractual redundancy payment (see page 477 to 483). Claimant did not receive a redundancy payment because the respondent stated she had unreasonably refused an offer of suitable alternative employment. The claimant appealed but her appeal was unsuccessful.

5. She therefore brought a claim to this tribunal for:

1. A contractual redundancy payment. There was no dispute between the parties that the contractual entitlement to an enhanced contractual redundancy payment formed part of the claimant's terms and conditions of employment and accordingly a claim for breach of contract was possible. Both parties agreed that such a claim was subject to the statutory cap of £25,000 set out in Article 10 of the Employment Tribunal's Extension of Jurisdiction (E and W) Order 1994.
2. The claimant's representative also argued that the claimant was in addition entitled to a statutory redundancy payment in accordance with Section 135 ERA 1996.

The issues for the tribunal were as follows:

1. Is the claimant entitled to both a contractual redundancy payment and a statutory redundancy payment?
2. Which order should the tribunal deal with the entitlement to payment?
3. In both the contractual and statutory claims an offer of "suitable alternative employment" was to be determined by references to Section 138 and 141 of the Employment Rights Act 1996. It is for the employer to show an alternative job which was offered was suitable and that the employees' refusal of it was unreasonable.
4. In relation to the contractual payment only there was a further requirement: "in considering whether a post is suitable alternative employment regard should be had to the personal circumstances of the employee. Employees will however be expected to show some flexibility."
See page 481.

6. The tribunal heard from the claimant. For the respondent the tribunal heard from Lisa Moorhouse, Head of Operations for the Mental Health Network, Joanne Sephton, the Business Development and Transformation Lead within the Trust, Damian Gallagher, Director of Human Resources and Organisational Development at the Trust, and Bill Gregory the Chief Finance Officer at the Trust.

Facts:

7. The tribunal found the following facts.

8. There was no dispute that there was a substantial reorganisation at the Trust during 2017.

9. On 1 February 2017 the claimant received a generic letter inviting her apply for "Tier 2" roles available in the restructure.

10. The claimant's role which was deleted in the restructure was entitled "Locality Lead for the Minds Matter services for a locality area". It was a Band 8A in the respondent's pay structure. In that role the department was noted as "Adult Mental Health Network Mindsmatter".

11. The job summary states that the claimant had to "*lead and be accountable for day to day operation management and the clinical delivery of the Minds Matter service within a designated geographical area within the adult mental health network*".

12. The job description at page 288 requires; "*good clinical skills and be competent in performance management, managing budgets, governance, audits, service design and improvement.*"

13. It also states the claimant was expected to undertake clinical work. The claimant was responsible for a team, responsible for ensuring that "*effective operation clinical supervision arrangements were in place*".

14. I find that the claimant is an individual who is passionate about helping others through psychological therapy. I find she initially worked as a senior psychological wellbeing practitioner conducting clinical matters working within the Improving Access to Psychological Therapies ("IAPT") service. The claimant had an initially been a band 6. She acted up into the position of team leader for several months and was promoted to the locality manager (Band 8A) when the opportunity arose.

15. I entirely accept the claimant's evidence that she enjoyed a management role within a clinical setting. I accept her evidence that she retained direct patient contact with patients for example in dealing with clinical supervision or patient complaints. The claimant's employment history is at page 131-132.

16. Ms Moorhouse agreed that the claimant had spent her NHS career empowering access to psychological therapy. She agreed that the claimant had started as a volunteer and had graduated to becoming a mental health worker and she also agreed that to varying degrees in her role as a band 8A team manager the claimant could use clinical skills and had access to patients although as a team manager she would have had reduced clinical access and she would have been overseeing other practitioners in her role of managing the service.

17. Ms Moorhouse agreed that as team manager the claimant had both clinical and management duties with the emphasis towards management. She not know whether the claimant had her own caseload but I find the claimant did.

18. Ms Moorhouse agreed that if there was pressure in the service for example a practitioner was off sick then the claimant as manager may have to step in and see patients.

19. There is no dispute the claimant had qualifications as set out at page 131 in primary care mental health and psychological intervention.

20. There is no dispute that Minds Matter service purpose was to promote access to psychological therapies for young people aged 16+ and adults in relation to stress, depression, etc. Ms Moorhouse agreed that the claimant's clinical experience and knowledge as a practitioner would assist her in managing the therapists for which she was responsible. She agreed that during the 12 years the claimant had worked in psychological therapy, she had had patient contact throughout that time.

21. The role which was most similar to the claimant's deleted post was the role of Service Manager (band 8A). The claimant applied for that position (p143) but unfortunately she was unsuccessful at interview.

22. The claimant was then invited to and attended 3 individual consultation meetings because her role was at risk of redundancy. These occurred on 10 April (180-182), 5 May (197-198), and 25 May 2017. (204).

23. Earlier in the year the claimant had received advice from her trade union representative Ryan Whitehead to "apply for everything even if you don't really want it" see page 126.

24. By letter incorrectly dated 22 May 2017 (I accept the evidence of Ms Moorhouse that the letter should have been dated 25 May 2017) the claimant was warned that she was at risk of redundancy and that she had been placed on the Trust's redeployment register and to date the Trust had been unable to find suitable alternative employment for her. Her attention was drawn to redundancy payment provisions in her contract and the claimant was informed that contractual entitlement to redundancy was likely to be £43, 949.04. Her anticipated last day of work was noted as 16 August 2017.(See p199-204)

25. By letter of 21 June 2017 the claimant was informed that the Trust maintained a "zero redundancy stance" and that every effort would be made to identify suitable alternative employment for her. In that letter 4 alternative roles were suggested to the claimant:

1. Band 8A Investigation Lead
2. Band 7 Team leader, Fylde
3. Band 7 TAS
4. Band 8A TAS.

26. I accept the evidence of Ms Moorhouse that the band 7 "TAS" role was a Senior Transformation Manager role. It is this role the respondent maintains was suitable alternative employment.

27. I find the other band 8A position "TAS" role was a project manager role. (There is no dispute that the second band 7 role, team leader, Fylde was withdrawn from the pool.)

28. By email of 27 June(p207) the claimant asked where the geographical base for each role was. She was informed that the Band 8A Investigation Lead role was "agile working" but the band 7 role (Senior Transformation Manager) and the other band 8A role were based at Leyland House in Leyland, Lancashire. See page 252.

29. I find the job description for the claimant's deleted role is at page 288 - 294 and the person specification for that role is at page 295-299.

30. The job description for the Senior Transformation Manager Band 7 is at page 239-244. The person specification for the Senior Transformation Manager is at p 245-249. It is this role which the respondent maintained was suitable alternative employment for the claimant.

31. The claimant did not consider that any of the roles suggested by the respondent were suitable and submitted her appeal forms in respect of each role in June 2017. See page 257-p.270 in relation to the Investigations and Learning Specialist role, band 8A, page 271-277 in relation to the Project Manager role, Band 8A and most importantly the Senior Transformation Manager role, Band 7 at pages 278-285.

32. I find that the Senior Transformation Manager role was not located in one specific place. I find although the role had a base which was stated to be in Leyland, Lancashire, the nature of the role was to go in and work on different projects for various periods of time within the geographical area of the Trust.

33. The importance to the claimant of her clinical/therapy skills and expertise is set out in her detailed objection to the Senior Transformation Manager role at page 339 to 346. The specific concerns in relation to loss of clinical therapy are at page 345:

" my background of psychological wellbeing practitioner was integral in the successful operation running of the IAPT/Minds Matter service. This senior transformation manager post makes no reference in the PS/JD to requiring a specialist IAPT practitioner or post holder being able to practise therapeutic skills. Not being able to use my therapeutic skills would obstruct my professional development and would compromise future asperation opportunities in my field. This post is not a reasonable SAE for me because I would be de-skilled and not in a position to maintain my therapeutic skills in brief psychological therapies as described in my current JD."

Ms Moorhouse agreed when questioned that she was probably was aware of the claimant's objection given she had access to this form.

34. It was Ms Moorhouse's evidence that although the Senior Transformation Manager role was not a role in the area of psychological interventional therapy nevertheless it was a suitable role for the claimant. The role involved being involved in a variety of different projects. The job summary states :*"the Senior Transformation Manager will be assigned to a range of network, corporate and Trust wide projects typically lasting 1-3 months as well as maintaining ongoing day to day work schemes"*.

35. It identifies a constantly shifting workload including “strategy, development, identifying new business opportunities, market analysis and business change”. Ms Moorhouse considered that given the claimant’s great success in ensuring the turnaround of performance in her own Minds Matter team she did have the relevant leadership experience and skills for many of the requirements of the job.

36. Ms Moorhouse relied on her document at p333-337 as to why the claimant was suitable in terms of the person specification for the Senior Transformation Manager role. She considered the role was suitable alternative work.

37. The claimant disagreed.

38. She updated her appeal forms in July 2017 and submitted further reasons as to why the post was not suitable see page 339-346. A meeting took place on 2 August 2017 conducted by Mr Gallagher. See notes page 411-413. In accordance with Trust policy the appeal hearing took place “on the papers”. By letter dated 9 August 2017 the claimant was informed the Trust considered the role of Senior Transformation Manager band 7 was suitable alternative employment because the claimant:

- possessed the essential qualifications for this role and having been working at a level where equivalent experience has been gained
- The panel felt working with in a senior management role in the NHS as a locality lead would have exposed her to a detailed understanding and working knowledge of the NHS healthcare services
- Her current job description includes change management and process improvement and a high level of operational management tasks which were considered to be transferrable skills and knowledge for the role offered
- Her current job description includes implementing change management processes that engage staff and key stakeholders evidencing project management abilities
- Communication was considered a very large part of her current role including communicating clearly the vision and developments to team members and other health and social care professionals using verbal written and electronic systems and to deliver presentations to internal and external groups and that these skills and experiences will be transferrable to this role
- The base of the post would incur excess mileage for approximately 15 miles per day which the panel considered reasonable in a managerial role and the Trust would pay excess mileage for a period of 4 years. The post would also be pay protected for 2 years.

39. There was no dispute the claimant did not have any specific qualifications in project/transformation management.

40. The claimant was offered a trial period in the role. On 11 August 2017 the claimant informed her union representative that she had just come back from leave to the letter of 9 August and asked for more time to consider the situation- see page 241.

41. On 16 August 2017 the claimant met Louise Giles and Natalie Hilton (neither of whom gave evidence at the tribunal). I find she met them to understand more about the job and what it entailed. See page 420. Ms Giles contacted the claimant’s union representative informing him that “whilst Sophia is very clinically focussed and

obviously is a very caring and passionate individual, this role is not a suitable alternative". See page 418.

42. The tribunal finds that the claimant was told by Natalie Hilton that the location of the transformation manager job was based at Leyland House, Leyland and that she would need to travel between Leyland House and any of the TAS temporary projects on which she worked.

43. The claimant responded to the offer of a work trial. She explained that she still did not think she was a suitable candidate but "with great strain and duress" she would engage with the process and trial the job for 4 weeks. The claimant was sent a letter formally offering the trial dated 21 August 2017 (see page 423-424). The trial period took place between 22 and 29 August 2017. It was not a success.

44. I accept the claimant's evidence that she had flexibility in her existing role which allowed her to leave her work place at 3pm on 2 days a week to collect her son from school and to work from home. I accept her evidence that during the trial period she was allowed to leave at 3pm to collect her son but she was told that this was a temporary situation and the needs of others must also be considered.

45. Although I accept the evidence of Ms Moorhouse at the Tribunal hearing that flexibility is often offered at the Trust in terms of childcare and working arrangements I find the claimant was told at the time that this was a consideration requiring a further conversation. I find Ms Sephton who managed the trial said to Tribunal that nearly all the team members worked flexibly but a formal arrangement had to go via HR. I find that at the time of the trial no firm guarantee was given to the claimant. I find she was unsure whether her flexible arrangement for childcare would be permitted to continue on a permanent basis because she had received no formal confirmation in relation to it.

46. Ms Sephton like Ms Moorhouse accepted that the claimant did not have formal qualifications in project management but both women felt the claimant's skills were transferrable.

47. There are notes of a review of the trial are at page 449 – 451. These were never sent to the claimant and Ms Sephton believes she completed the notes during September 2017.

48. I accept the claimant's evidence that she did attend a workshop with district nurses for the Southport and Formby community service transformation by way of work shadowing during the trial period. I rely on the claimant's evidence to find that she was distressed after attending the meeting because she felt unsuited to working as a transformation manager in such a role. Ms Sephton had no recollection of the claimant contacting her about that or becoming distressed.

49. I find on 29 August 2017 after completing a week of the trial the claimant resigned. In her resignation email at page 432 she explained that she came into the psychological therapy service in 2005 and had worked for the IAPT Minds Matter Service ever since. She gave detailed clinical reasons as to why she accepted the locality lead position for Minds Matter explaining that she came into the NHS to work directly with patients and to be a clinician and to support clinical staff.

50. On 4 September Ms Hilton was asked whether the conclusion was that the role was unsuitable for the claimant. Ms Hilton replied “I think she was here for such a short time it was difficult to fully assess.” P436.

51. On 7 September 2017 the claimant was informed that no mutual agreement had been reached that the role was unsuitable because the claimant had terminated the trial early. The Trust maintained that the position was a suitable alternative employment and accordingly there was a decision to withhold her contractual redundancy payment. P443-4.

52. The claimant was offered an appeal against this decision. The claimant’s appeal form is at page 445 -446. The appeal was unsuccessful- see letter dated 1 November 2017 at page 455-456. The reason given for the decision was:“the fact you withdrew from the 4 week work trial after only 1 week as you felt the role was not suitable alternative employment.”

53. The tribunal finds that the claimant had become increasingly distressed during her work trial period and visited her general practitioner suffering from stress and terminated the trial early because she felt the role was unsuitable and she was becoming increasingly stressed and unwell in pursuing the trial.

54. The tribunal finds that the claimant wanted to resume working in the field of psychological therapy. The Tribunal relies on the claimant’s evidence to find she was unfit during the period November 2017 – March 2018 when she did other temporary work. The tribunal finds when the claimant’s health improved she found work with the Trust as a psychological therapy bank worker. The tribunal finds that the claimant was successful from June 2018 in obtaining a permanent psychological therapy role at band 5 with the Trust. At the time of the tribunal hearing the claimant was due to attend an interview for a team leader in psychological therapy at band 7 very similar role to the locality lead position the claimant had been doing at the time she was made redundant.

Applying the law to the facts.

55. The tribunal turns to consider the first issue which is whether the claimant is entitled to both a contractual redundancy payment and a statutory redundancy payment. Before doing so the Tribunal turns to the second issue which is which order should the Tribunal deal with the entitlement? Should the Tribunal deal first with the claim for an enhanced redundancy payment (a contractual payment) or the statutory payment?

56. The tribunal turns to page 477 which contains the redundancy payment provisions contained within the claimant’s contract of employment. It specifically states: “NHS contractual redundancy is an enhancement to an employee’s statutory redundancy entitlement, the statutory payment being offset against any contractual payment”.

57. The tribunal finds it is implicit that in order to offset the statutory payment against the contractual payment it is necessary first to calculate the contractual

entitlement. Accordingly, the tribunal will deal first with the claimant's claim for a contractual redundancy payment

58. The Tribunal turns to the relevant contractual provisions. They are at p477-83.

59. At paragraph 16.20, p481 in the exclusions section it states that an employee who: "unreasonably refuses to accept or apply for suitable alternative employment with the same or another NHS employer is not entitled to redundancy payment".

60. The rationale behind this is explained at paragraph 16.21 :
"employers should avoid the loss of staff through redundancy wherever possible to retain valuable skills and experience where appropriate within the local health economy".

61. At paragraph 16.22 the provision confirms that suitable alternative employment is the same as defined by reference to Sections 138 and 141 of the Employment Rights Act 1998. It goes on to state: "in considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will however be expected to show some flexibility."

62. The tribunal reminds itself that first question is: can the employer show the alternative job which was offered was suitable? Suitability is a question of fact to be assessed objectively. There is no dispute that the proposed role of Senior Transformation Manager was at a lower rate of pay. The claimant had been employed as a locality manager at band 8A whereas the alternative role was at band 7. Mr Gallagher informed the tribunal that the claimant's gross salary at the relevant time £43,469. Mr Gallagher informed the Tribunal that the top of band 7 was £41,787. It was not disputed that the claimant would have two years' pay protection.

63. However, Mr Gallagher agreed that after the pay protection expired the claimant would have lost about £1,700 per year if she had accepted the alternative role. Mr Gallagher also accepted that lower pay band would have a negative effect on the claimant's pension. Accordingly, I find one of the reasons the job was not suitable alternative employment was because after the pay protection expired the claimant would be losing £1,700 per year and there would have been a negative impact on her pension.

64. I turn to the issue of status. I find that the band 7 post meant there was a loss of status and leadership responsibilities. Mr Gallagher agreed that was potentially the case. I rely on the claimant's evidence that it was important to her to be a manager of a specific team where she had line management responsibility for a team within the service. See also her job description at page 291. By contrast although the Senior Transformation Manager was a managerial role where the claimant would have been assigned a range of Trust projects typically lasting 1-3 months, she would therefore not have ongoing responsibility for specific clinical teams in a specific area of mental health.

65. The key reason why I find the offer of alternative work was not suitable for the claimant was because it was not in a clinical setting or therapeutic environment. The claimant's entire career had been based upon psychological therapies, contact with clinicians in this field, responsibility for them and managing the services together with

patient contact. I find working in the clinical arena of adult mental health was very important to her.

66. By contrast as a Transformation Manager the claimant would be responsible for a range of projects. The job summary identified a “constantly shifting workload”. There is no reference in the job content or job description to any opportunity for holding a clinical caseload or for having direct contact with patients or managing a team of clinicians. Although at the Tribunal the respondent’s witnesses said this may have been possible, I find no one suggested that to the claimant at the time.

67. There is no dispute that the claimant was a highly able individual and the respondent’s witnesses believed (particularly Ms Moorhouse) that the skillset the claimant had developed in managing and operating her team in her role as locality manager was transferrable but there is no doubt that the environment in terms of the nature of the job, was very different.

68. There is no dispute the Transformation Manager role consisted of short and long-term projects where the claimant would be required to deliver changes to particular areas of the NHS. I find that despite the fact that the claimant may have had the skills to carry out aspects of the job description and person specification (and see Ms Moorhouse’s analysis of the role) this is not sufficient to make the job suitable.

69. I find it was unsuitable because after two years the claimant would be at a lower rate of pay, disadvantaged in her pension, in a job with lower status with no direct responsibility for a team and most crucially outside of her area of clinical expertise where she wished to manage a team and have direct contact with patients. Accordingly, I find the job was not suitable for the claimant.

70. In case I am wrong about that I have gone on to consider whether the respondent has shown that the claimant’s refusal of the role was unreasonable. I remind myself that it is not for me to consider whether a reasonable employee would have accepted the employer’s offer but whether this particular employee taking into account her personal circumstances was being reasonable in refusing the offer.

71. In particular did she have sound and justifiable reasons for turning down the offer? I must judge this from the claimant’s point of view on the basis of the facts as they appeared or ought to have appeared to her at the time the offer was refused- see *Executers of J F Everest against Cox 1980 ICR415*, *Bird versus Stoke On Trent Primary Care Trust 2011 WL274774*.

72. I find the claimant has a genuine passion for the clinical area in which she works. The respondent was made well aware of this. Indeed, in her notes reviewing the unsuccessful trial period Ms Sephton comments on the claimant being “fixated” on the issue. She confirms in her statement that the claimant mentioned it repeatedly.

73. The commitment to a career within the area of psychological therapy is illustrated by the fact that the claimant now works for the respondent as a clinician following the redundancy and indeed has applied for a management position within the clinical arena similar to the one she held at the time her employment was ended although at a lower grade.

74. Taking into account the importance the claimant attached to working within a psychological therapeutic setting I find it was not unreasonable for her to refuse the position of Senior Transformation Manager. In reaching that decision I have also taken into account there were other concerns legitimately held by the claimant at the relevant time.

75. The claimant in her existing role was permitted to finish work two days a week at 3pm. She collected her child from school and made up the time working from home. I find that when she took part in the trial she was told that she could temporarily finish at 3pm to pick up her child but there had to be fairness within the team and the matter would be reviewed. Accordingly, at the time the alternative role was offered to the claimant she had no certainty that flexible working would continue.

76. I find that there was a lack of clarity as to the base of the claimant's new role. I find that at the time the claimant was told the base of the Senior Transformation Manager was at Leyland House, Leyland and that she would work on a number of temporary projects and that was the nature of the role. She would need to travel to those temporary projects within the Trust's area throughout Lancashire to the project's location.

77. The claimant lives in Blackburn Lancashire. She explained that her deleted post had involved a 15-minute commute to work in the same town. (page 345). Although the claimant owns and drives a car, the new role would involve additional commuting time and there would be further travel beyond that in relation to the different projects.

78. Although at the tribunal Ms Moorhouse explained that might have been possible for the claimant to work from a site in Blackburn as a base she confirmed that she did not offer that option to the claimant at the time and was not aware that anyone else did.

79. She also confirmed that although the respondent tended to adopt a flexible policy with regard to childcare she did not know whether or not anyone had informed the claimant she could work flexibly at the time. Ms Sephton was also positive at the employment tribunal in relation to the opportunities to work flexibly but once again did not state that at the time the claimant was specifically told she could work flexibly in the way that she had done in her previous post.

80. I therefore find that even if the offer of the Transformation Manager job had been suitable given her childcare responsibilities and her passion for working in the therapeutic environment in relation to psychological health the claimant's refusal of the offer was not unreasonable.

81. I turn to consider the issue of the trial period. I find that the claimant started the trial period with reluctance. This is illustrated by her email to the respondent at page 419 on 17 August 2017. However, she did attempt the trial completing one week of it. She found it confirmed her concerns that Senior Transformation Manager was a very different role: it did not involve her in running an operational service in adult mental health, she was not responsible for the management of clinicians or patients within that service. Page 432. Accordingly, I am satisfied that failure to complete the trial period did not render the claimant's refusal of the offer unreasonable.

82. I turn now to the final issue which is the additional wording within the terms for eligibility for a contractual redundancy payment which states: “regard should be had to the personal circumstances of the employee. Employees will however be expected to show some flexibility”.

83. I am not satisfied that the respondent did have regard to the personal circumstances of the employee. The claimant repeatedly brought to the attention of the respondent that she particularly wished to work in the field of psychological therapy/wellbeing services for example see page 345. She also identified problem with the post being based in Leyland, Lancashire and the need for flexibility in working given her caring responsibilities also page 345.

84. I turn to consider the phrase: “employees will however be expected to show some flexibility” meant. When I asked Mr Gallagher what this meant he stated that might include matters such as additional travel.

85. I am satisfied that the claimant did show some flexibility in relation to alternative employment. She applied for a number of different roles and in relation to the Senior Transformation Manager role she did attempt the trial period although had to end it early when she became increasingly distressed and unwell. Therefore, I find that the claimant fulfilled the requirement to “be expected to show some flexibility” when she applied for the Senior Transformation Manager role and other roles and she attempted the trial for the role.

86. Accordingly, I find that the claimant’s claim for a contractual redundancy payment succeeds. However the value of the claim is limited to £25,000 because it is subject to the cap set out in the Employment Tribunals (England and Wales) Extension of Jurisdiction Order.

87. For the sake of completeness, I turn to the claimant for a statutory redundancy payment. The claimant’s representative sought to argue the claimant was entitled to a statutory payment in addition to the contractual payment.

88. The definition for a contractual payment and statutory payment is almost identical except the contractual payment arguably having a more onerous further provision.

89. Having determined that the claimant is entitled to a contractual redundancy payment which includes a statutory redundancy payment, given the wording of the contractual scheme, I find the claimant is not additionally entitled to a statutory redundancy payment.

90. The introduction to the contractual redundancy payment scheme specifically states

“NHS contractual redundancy is an enhancement to an employee’s statutory redundancy entitlement; the statutory payment being offset against any contractual payment”.

91. I find the statutory entitlement is subsumed into the contractual entitlement and that full entitlement is curtailed by the cap as described above.

Employment Judge Ross

Date 31 August 2018

JUDGMENT SENT TO THE PARTIES ON

5 September 2018

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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