



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Greatorex

**Respondent:** Lancashire County Council

**Heard at:** Manchester

**On:** 14 December 2018

**Before:** Employment Judge Slater

## REPRESENTATION:

**Claimant:** In person (assisted by Miss H Greatorex, claimant's sister)

**Respondent:** Mr D Tinkler of Counsel

**JUDGMENT** having been sent to the parties on 11 January 2019 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

### Issues

1. This was a judgment on an application to strike out part of the claim on the grounds that it had no reasonable prospect of success.
2. The claimant claimed she was entitled to pay at Grade 6 in the period August 2011 to January 2018. She clarified her complaint as being put on two bases. The first was that it was not clear the original contract was terminated and the new contract was not accepted. The second, alternative, basis for the claim was

*"If contract document at p148, accept says Grade 5 but letter with it p145 states, 'If your pay and grade as a result of any query or appeal .... we will update your statement of particulars as necessary'".*

*a) Must form part of a contract.*

*b) Must properly be read "change as a result of any query or appeal conducted properly".*

The claimant argued that this came into operation as follows:

*“The requirement to pay at Grade 6 came into operation when the appeal concluded as had it been conducted properly would have been awarded Grade 6.*

*“Does not require assessment of appropriate grade as in the Hull v Schofield but determination as question of fact whether it always was 6 or, if individual appeal initially determined at Grade 6, only being changed to 5 when management said SW had to all be on same grade”.*

3. The first argument, that is that the original contract was not terminated and the new contract was not accepted, was not the subject of this strike out application.
4. The respondent made an application to strike out the claim insofar as it relied on the second argument, relying on the case of *Kingston-upon-Hull City Council v Mr Schofield, Mr Morris and Mrs Webster UKEAT/0616/11*.

### **The Facts**

5. The claimant was a Grade 6 until a job evaluation in 2010 resulted in a regrading to a lower grade, Grade 5. Pay protection meant that her pay was protected at Grade 6 level until August 2011.

6. I have been shown a letter and a contract dated August 2010 with new terms which include payment at Grade 5. What is not clear from the material before me is whether the respondent terminated the old contract and offered re-engagement on these new terms. The second argument, which is the subject of this strike out application, is predicated on the basis that the August 2010 contract did come into effect. The letter accompanying the contract dated 10 August 2010 states:

“The implementation of the new terms and conditions does not affect your right to raise a query about or appeal against your job evaluation outcome. If your pay and grade change as a result of any query or appeal you have made or plan to make then we will update your statement of particulars as necessary.”

7. In 2017, there was a management led review which resulted in the re-grading of the claimant's post to Grade 6. The claimant received pay at Grade 6 level from January 2018. She argues, in the alternative to her claim that she was entitled to be paid at Grade 6 throughout, that she was entitled to backpay dating back to the formal registration of the application in September 2017. That argument will proceed to a final hearing and is not the subject of a strike out application.

### **The Relevant Law**

8. A section 13 unlawful deduction from wages claim requires the Tribunal to determine what wages were properly payable. The claimant must establish that the respondent has not paid her wages to which she has a legal entitlement. The claim must be for a specific sum of money or a sum capable of quantification. A Tribunal may have to determine issues of fact to determine what is properly payable.

9. In the *Kingston* case, the claimants in that case argued that they should have been re-graded at a higher grade if an evaluation exercise had been carried out

properly. They argued that a proper evaluation would have re-graded them as a Grade 8 or a Grade 7. An Employment Judge refused to strike out the claim and the Employment Appeal Tribunal allowed the appeal against the refusal to strike out. The Honourable Mrs Justice Slade in the Employment Appeal Tribunal gave her conclusions as follows (paragraph 42):

*“The claimants’ claims were for damages not for sums which were ascertained or ascertainable. The EJ erred in holding that the claims were for sums which were ascertainable by resolution of an issue of fact. The EJ envisaged that the assessment of whether the claimants’ jobs had been evaluated properly by the respondent would require the ET putting ‘itself in the place of the employer’. The exercise of job evaluation or assessing whether or not the job evaluation had been carried out properly was not the determination of an issue of fact nor was it one which the ET has jurisdiction to undertake in determining a claim under ERA section 13.”*

## Conclusions

10. I conclude that the argument which is the subject of the strike out application is, in effect, an argument that the claimant was entitled to be paid at Grade 6 because a properly conducted query or appeal against the evaluation would have resulted in such an outcome. The claimant seeks to distinguish *Kingston* on the basis that it is clear what the outcome would have been since, the claimant argues, her job never changed; it was the same when she was paid as a Grade 5 as it was when she had been paid as a Grade 6. The claimant argues that this means the Tribunal does not need to exercise judgment; just determine facts. I do not consider a distinction can properly be drawn. Although the facts in *Kingston* are somewhat different, I consider the principles underlying the decision, which binds me, to lead inevitably to the conclusion that this is not a claim which can properly be brought under section 13 of the Employment Rights Act 1996. It would not require only a determination of fact resulting in an arithmetical calculation of a shortfall in wages. It would require, rather, an evaluation of whether the process by which the claimant's appeal was unsuccessful was properly carried out, and, if it was not, what the outcome would have been. This is not something which the Tribunal would have jurisdiction to undertake.

11. I, therefore, strike out this part of the claim on the grounds that it has no reasonable prospect of success.

Employment Judge Slater

Date: 5 February 2019

REASONS SENT TO THE PARTIES ON

7 February 2019

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FOR THE TRIBUNAL OFFICE

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