



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Ferns
Respondent: Nicholas James Care Homes Ltd

Heard at: Ashford, Kent

On: 17 April 2018

Before: Employment Judge Wallis

Representation

Claimant: Mr P Piddock, McKenzie friend
Respondent: Mr S Joshi, solicitor

JUDGMENT having been sent to the parties on 17 May 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. In respect of the Wages Act claims, the CO of the Respondents by a letter dated 15 October 2008 (page 116 of the bundle) said:-

To All Care Staff

Please note that as from 1 October 2008 the following service related allowance will apply to your wages.

- Over Ten years service – 20 pence per hour
- Over five year and up to ten years – 15 pence per hour
- Over three to five years – 10 pence per hour

Signed”.

2. The Claimant was paid this amount until 2009. In 2009 the Claimant had a payslip showing additional payment for NVQ qualification, again it ceased in 2009. The Claimant's evidence is that she asked informally from time to time about this payment and I accept this evidence.
3. Then the Claimant went to the CAB and wrote with others a letter dated 12 December 2016 (page 130 of the bundle) to Mr Rajakanthan, Director, in these terms:

"We the undersigned have been concerned for some time now that long term service and NVQ2 remains outstanding in our hourly rate of pay. It was not put in place from 2009. We have tried to address these issues informally with you over the last few years but have been told each time that things would be resolved but to date nothing has been. We have very much enjoyed our work with the company and have always gone the extra mile during our long service. However, we are entitled to be treated fairly and despite several attempts to resolve these issues informally we now feel that we have no other option but to try and enforce our legal right through more formal channels.

We look forward to hearing from you."

4. This letter is signed by the Claimant and others. There was no reply to this letter.
5. There was more obstruction of the Claimant as she thought. However, an important point of the chronology is that the Claimant signed a new contract 10 November 2014 (page 46 of the bundle). It set out terms and conditions including wages. There is no mention of allowances for length of service or NVQ. Given that the Claimant signed this contract it superseded any previous agreements or variations to the old contractual pay. Therefore, the claim cannot succeed.

Acting Regional Employment Judge Davies
(in the absence of Employment Judge Wallis)

Date: 22nd March 2019

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