Case No: 2302323/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr. K. Mahmood

Respondent: NSL UK Limited

Heard at: London South, Croydon
On: 9 January 2019 and the 21 March 2019 (in chambers)

Before: Employment Judge Sage (sitting alone)
Representation

Claimant: In person

Respondent: Mr. Roberts of Counsel

RESERVED JUDGMENT

The Claimant's claim for unauthorised deduction from wages is well founded.

The Respondent is ordered to pay to the Claimant the sum of £1540, awarded gross but to be paid net of all deductions.

REASONS

1. By a claim form presented on the 23 June 2018, the Claimant pursued a claim for unauthorized deduction from wages relating to non-payment of a Sunday allowance, failure to pay an NVQ allowance and holiday pay.

2. The Respondent denied that they had made an unauthorised deduction from wages. They also stated that some of claims were out of time and if any deductions were made, they did not form part of a series of deductions, there the claims are time barred. They called for the claims to be struck out on the grounds that they were scandalous, vexatious and/or had not reasonable prospect of success.

Witnesses
The Claimant and Mr Aladesuru
For the Respondent we heard from Mr Shaw.

The Issues

The issues agreed at the start of the hearing were as follows:

3. Are the claims particularized on the ET1?
4. Are the claims in time?
5. What payments was the Claimant entitled to receive under his contract? The ET1 specifically refers to his Sunday working allowance and his NVQ allowance and non payment of his holiday bonus of 5 days per year
6. Did the Respondent make a deduction from wages properly due to the Claimant, did the Claimant present his claim within 3 months of the last of a series of deductions?
7. Was there a variation in contractual terms?
8. Did the Claimant accept any change in contractual terms by his conduct?

Findings of Fact

9. The Claimant commenced employment on the 22 January 2001 with APCOA, he has remained in employment through three successive TUPE transfers. The most recent transfer was from Mouchel Limited to the Respondent Company on the 16 September 2016.

Documents produced in relation to the relevant transfer to the Respondent on the 16 September 2016

10. The Tribunal heard that the Respondent received the Employee Liability Information "ELI" from Mouchel and this was referred to in the bundle by Mr Shaw as the document at pages 59-61 (paragraphs 6, 7, 13, 16 of his statement). Although there was a detailed excel spreadsheet in the bundle referring to the Claimant's terms and conditions of employment at page 86-88, this document was undated and was not on headed paper. It was also noted that Mr Shaw did not refer to this document in his evidence in chief. The only reference to this document was in the Respondent's submissions, where it was described as "the more extensive ELI" (paragraph 6, 18, 36). Mr Shaw was asked in cross examination how the document at pages 86-8 had been produced and he was unable to provide any details of when the document was produced or for what purpose. The Tribunal find as a fact that the document at pages 86-88 was not the ELI information provided by the Transferor as part of the relevant transfer, it was the document at pages 59-61.

11. Unfortunately, the Tribunal did not hear from the person who conducted the information and consultation process for the Respondent at the time of the transfer. The Claimant's evidence that when his contract transferred to the Respondent, he was not provided with any documentation relating to his contractual terms and there were no records kept of any discussions that took place with the transferor or the Respondent.

12. The Claimant's evidence in relation to the conduct of the transfer from Mouchel to the Respondent was that Mr Dredge the Account Manager for the contract, gave him a copy of the form that appeared in the bundle at pages 62-3. This document was produced by Mouchel and was headed 'Data Verification Form'. The Claimant told the Tribunal that he was asked to verify the details on the form in respect of his allowances and basic pay, he confirmed that the form was given to him by Mr Dredge. The form showed the Claimant's hours of work to be 40 and confirmed an entitlement to an NVQ allowance of 50p per hour. This document was compared to the ELI information produced at the time of the relevant transfer, there was no reference on page 59 to an NVQ allowance but there was reference was made to an allowance for 50p which was described as an Attendance Allowance.

13. There was no evidence that the details on this document were incorrect and the Claimant did not raise any concerns about the information provided at the time. The Claimant took Mr Shaw to this document in cross examination and he conceded that the details on this form related to the Claimant but was not aware of the terms referred to and denied seeing this document before it appeared in the bundle. The Tribunal therefore conclude that this document was not agreed.

14. It was unfortunate that all documents relating to the Claimant's continuous employment had gone missing. It was the Claimant's evidence in cross examination that he had been told by Mr Shaw that there were only "three papers" in his file and no documents relating to the Claimant's terms and conditions that transferred across from Mouchel. The Claimant told the Tribunal that when he was shown his file, it only contained a copy of his old passport and a working time agreement document, which the Claimant signed on the 15 September 2016 (these documents were in the bundle at pages 42-43 and page 84). The absence of any contractual documents evidencing the terms of the agreement made it difficult to make findings of facts on the terms and conditions relating to the Claimant's employment and in relation to the sums that were legally due to him. In the absence of any agreed documents, the Tribunal had to rely predominantly on the oral evidence of the parties. Where there was any documentary evidence in support, those documents could not be agreed, the Tribunal therefore had to consider the extent to which the oral and written evidence was corroborated and showed consistency.

The Contractual Terms on Transfer to the Respondent.

15. The evidence before the Tribunal reflected that at the time of the transfer, the Claimant was employed as a Team Leader (page 50), a position that he had held from the 29 March 2016. His basic wage was £22,137 (see page 59). There appeared to be a dispute as to the hours the Claimant worked, his ET1 at page 6 stated that he worked 45 hours per week. The ELI document at page 59 referred to a 40 hour week, this was consistent with the Claimant's Data Verification Form. The Claimant in cross examination explained that at the time of the transfer, his hours were 45 as he was entitled to a paid lunch break (which was paid as overtime). The Tribunal noted that the Claimant placed reliance on the Data

Verification Form and there was no evidence that he complained that the information on this document was incorrect in any way.

16. The tribunal therefore find as a fact and on the balance of probabilities that the Claimant was paid for a 40 hour week as the documentation before the Tribunal appeared to be consistent on this point.

17. The Tribunal only saw one document that referred to details of the Claimant's contractual terms which was at pages 39-40, dated the 15 March 2004 "the APCOA contract". The parties agreed that the Claimant transferred across with these terms and conditions. The APCOA contact required him to do shift work over a 7-day period. On the 13 February 2013 the Claimant's days of work were changed to Monday-Wednesday, Saturday and Sunday; this change had been agreed by Mr Dredge (see page 46).

18. The Claimant told the Tribunal that he transferred with a 'holiday bonus' scheme but provided little detail as to the terms of the agreement. Attached to the Claimant's statement was a document headed 'Amended terms and Conditions of Employment – KHALID MAHMOOD' which referred to a scheme that entitled the Claimant to an additional one days leave to be added to his annual leave entitlement up to a maximum of 5 additional days. The document attached to the Claimant's statement also verified that the holiday leave year ran from the 1 April to the 31 March. The APCOA contract stated that the Claimant's annual leave entitlement was 20 days and the amendment to his contractual terms brought the total number of leave days to 25.

19. Although the Claimant told the Tribunal that he had been entitled under this scheme to receive a holiday bonus that equated to five days annual leave per year, payable as a lump sum at the end of the holiday year, there was no credible evidence to suggest that this was the case. It was noted that this was not a claim that he pursued in his grievance (see below) and he made no reference to a holiday bonus in his ET1 (in his ET1 he only ticked the box for holiday pay, he made no reference to being entitled to receive a bonus). Although the Claimant provided part of a document which referred to a holiday bonus, it was clear that this was an extract from part of a larger document. The Tribunal did not have sight of the whole document therefore could not determine the details of the scheme or whether the Claimant was entitled to benefit under the scheme. There was no credible evidence produced by the Claimant as to when he became entitled to receive such a bonus and no evidence to suggest that he was ever paid a holiday bonus. The tribunal considered that the Claimant's evidence was inconsistent on this point. It was only in the course of the Tribunal hearing that he clarified that he was claiming that he was entitled to a lump sum and not to additional leave. The tribunal did not find the Claimant's evidence on this head of claim to be consistent or credible.

20. The tribunal only saw 4 pay slips in the bundle, two from 2016 and two from 2018, all were from the Respondent, the Tribunal saw no pay slips from Mouchel. The two from 2016 showed that the salary was £1844.75 and his monthly allowance was £90. The Tribunal noted that the basic salary appeared to be consistent with the annual salary that appeared in

the Data Verification Form. The November 2016 pay slip showed the Weekend Allowance. A pay slip for April 2018 showed the same figure for salary and a slightly higher figure for the attendance allowance. It was difficult to understand why the Claimant said that he was no longer receiving an NVQ allowance when his basic wage appeared to be unchanged and was consistent with the salary agreed by the Claimant prior to the transfer. The Claimant provided no payslips from Mouchel to support his claim that he was no longer receiving allowances that were due to him under his APCOA terms and conditions.

The Change in Contractual Terms after the transfer.

21. The Claimant's evidence of his change of rostered days was that he was asked by Mr Dredge on the 29 December 2016 to work a different shift, he stated that he was asked to work at Old York Road Depot and to run the base. He agreed to work Monday to Saturday on the understanding that all his benefits remained the same. The Claimant told the Tribunal that he accepted the role on condition that he retained all his benefits and allowances including his Sunday allowance. On the 31 January 2017 the Claimant noticed that he had not been paid his Sunday Allowance and contacted Mr Dredge to raise a complaint. Mr Dredge undertook to check this with his boss Mr Landey and get back to the Claimant, but he never did. The Claimant contacted Mr Dredge again on the 27 February 2017 and then on the 20 April 2017. Although Mr Dredge informed the Claimant that he would get back to him with a resolution, he did not. Mr Dredge then went off sick for 10 months until January 2018 and after returning, he left the business. Mr Shaw told the Tribunal that in his view, that after the Claimant stopped working on a Sunday, he was no longer entitled to receive a Sunday working allowance.

22. The Claimant then presented his written grievance on the 20 June 2017(page 64 of the bundle) to Mr Dredge. The Claimant said in the grievance that removing him from Sunday working "is a breach of the agreement"; he asked to be put back on his Sunday shifts and for a reinstatement of his Sunday Allowance. The Claimant also confirmed that he had raised the issue with Mr Dredge on the 31 January 2017, 27 February 2017 and on the 20 April 2017 but had received no substantive response. There was no evidence that this was investigated by Mr Dredge or escalated to anyone else in the Respondent's organization in 2017.

23. The first evidence of the Claimant complaining that he had not received an NVQ allowance was in an email dated the 13 January 2018 (page 69 of the bundle). In his email he stated that he was being underpaid and asked the Respondent to confirm he was getting his 50p allowance. This matter was firstly investigated by Mr Gentles who noted that the Claimant was being paid "in excess of other Team Leaders" (page 67 of the bundle). The Claimant pursued the matter further providing the names of the other supervisors who he claimed were earning the same as him which he claimed was evidence that he was not receiving his NVQ allowance. This was further investigated by Mr Grafton who checked the records and confirmed to the Claimant that he was receiving 73 pence more per hour more than the other supervisors.

24. The Claimant then sent the Respondent what he described as a 'Pre Action Protocol Letter' dated the 21 February 2018 (page 70 of the bundle. In this document the Claimant stated as follows: "*my contractual working days are Monday, Tuesday, Wednesday, Saturday and Sunday and I was illegally removed from my contractual working days by Mark Dredge".* He stated that as a result of this he had *"lost earnings of £100 per month as my weekend allowance which is not paid from December 2016".* The Claimant asked to be reverted to his contractual working days and for payment of his backdated weekly allowances. He produced a copy of his APCOA agreement to the Respondent. The Claimant then stated that he was *"supposed to get £0.50 per hour extra for my NVQ*" and that his pay slips were too vague to determine if he were receiving it. The Claimant did not refer to the information that had been provided by Mr Grafton and he did not provide pay slip or any other documentation to support his claim.

25. The Claimant then confirmed to Mr Shaw in an email the 24 April 2018 (page 76) that at the meeting to discuss his Pre Action Protocol Letter he wished to discuss an additional concern that "*according to my contract I was entitled for 30 day entitlement per annum but Mark Dredge reduced this to 25 days p. a. without any consultation or notification".* The tribunal also note that in this letter the Claimant appeared to be complaining about his leave entitlement being reduced, he did not complain that he had not been paid a holiday bonus.

26. The Claimant confirmed in cross examination that he delayed raising the holiday pay issue in April 2018 because the holiday year ran from April to March and he was expecting to get his holiday bonus at the end of the year. The Claimant confirmed in cross examination that he had not received his holiday bonus in 2017 and he had not raised it then and agreed that he did not pursue this in 2017 because it was not a concern to him at the time.

27. The holiday entitlement issue was escalated to Ms. Nutley on the 24 April 2018 (who the Tribunal were informed worked in the HR department) who on the same day wrote to Mr Shaw endeavouring to "*see what I can find, beggars belief that he only brings this up now".* Mr Shaw appeared to agree with this sentiment emailing back saying "*Yep=crazy*" (see page 75 of the bundle). Following these initial comments between the two, Mr Shaw and Ms. Nutley (pages 74-5) exchanged further emails on the same day where she stated that "*I think we can safely assume he is only entitled to 25 days, especially as no one on the ELI exceeds 25 days*". From this email exchange, it was clear that they were of the view that the Claimant was complaining about not receiving an additional 5 days annual leave entitlement. There was no evidence that the Claimant asserted that he was entitled to receive an additional payment or that he should have been paid a lump sum in April 2017 and 2018. The Claimant also failed to refer to the documentation that he produced to the Tribunal in respect of the holiday bonus scheme.

The grievance meeting.

28. The Respondent called a meeting on the 2 May 2018 to discuss the Claimant's concerns with Mr Shaw; Ms Nuttall was in attendance. The minutes appeared on page 77 of the bundle. The Claimant told the

meeting that in 2007 he was entitled to 30 days annual leave and given an NVQ award. The Claimant made no reference to an entitlement to receive a holiday bonus payment in this meeting. The Respondent informed that Claimant that the ELI information only said he was entitled to 25 days, this was consistent with the documents before them and the Tribunal noted that this was consistent with the documents in the bundle.

The Grievance Outcome.

29. The Respondent's decision was dated the 18 May 2018 at pages 80-2 of the bundle; written by Mr Shaw. The Respondent concluded that the Claimant had received all the benefits due to him under the contract and that "*Mouchel did not provide any information regarding any allowances paid to staff for NVQ qualifications…".* The Respondent rejected the Claimant's request for "*back dated payments from the 14 September 2016 to the 1 May 2018".* The decision letter went on to state that *"we recognize that this is causing you distress and therefore we are happy to reconsider this decision at any point within three months of the date of this email, if you are able to provide conclusive evidence of your entitlement to this payment".* The Claimant did not provide to the Respondent a copy of the form at page 62-3 of the bundle nor did he provide any of the correspondence or payslips showing evidence of an entitlement to a payment. The Claimant also failed to explain why the evidence that had been provided by Mr Grafton was incorrect.

30. The decision on the Claimant's claim for his additional holiday entitlement was that it was their view that APCOA terms were 25 days per annum and they rejected his claim. This decision was based on the evidence before them.

31. The Respondent also concluded that the Claimant was not entitled to receive a Sunday Working Allowance because the Claimant had not raised this issue with Mr Dredge until June 2017, therefore this "*clearly demonstrated your acceptance of these working hours" (*page 82). This conclusion did not appear to be consistent with the evidence provided to the Respondent that the matter had been raised in January 2017 and in the dates provided thereafter as confirmed in his written grievance.

32. Mr Shaw in cross examination told the tribunal that he assumed that the Claimant had a discussion at the time about the changes to his working arrangements and he would "expect" those changes to be in writing. Mr Shaw did not contact Mr Dredge to confirm what had been discussed with the Claimant at the time of this move, Mr Shaw also confirmed that he did not ask HR for their input before reaching a decision.

33. Mr Shaw was asked by the tribunal whether he had established the terms of the agreement Mr Dredge had reached with the Claimant about his transfer to the new site and he stated that there was no documentation recording this. Mr Shaw told the tribunal that he doubted the Claimant's honesty and integrity about the payments as they had "stopped in 2016"; he confirmed that the Claimant's honesty was doubted as he "expected something to be in writing especially regarding the payments for allowances". The Tribunal felt that Mr Shaw's evidence was rather disingenuous as it had been the Respondent who appeared to have

mislaid all the contractual documents relating to the Claimant's employment as well as all communications with Mr Dredge relating to his move to York Road. There also appeared to be little effort made to establish the nature of the agreement reached at the time between the Claimant and Mr Dredge relating to this move. Mr Shaw accepted that it could have been the failure of Mr Dredge to record the terms of the agreement in writing rather than the Claimant's dishonesty that explained the absence of any contractual documents in the Claimant's file. There was no evidence that Mr Shaw or HR attempted to obtain a statement from Mr Dredge there was also no evidence that they attempted to secure the emails that may have been sent at the time about this matter.

The Law

Employment Rights Act 1996
Section 13 Right not to suffer unauthorised deductions

(1) 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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised--

> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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 (after deductions), 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not

operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Section 23 Complaints to [employment tribunals]

(1) A worker may present a complaint to an [employment tribunal]--

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),
(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with--

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of--

(a) a series of deductions or payments, or
(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the

same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

[(3A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) [and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (2).]

(4) Where the [employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

Submissions

34. The Claimant and Respondent made oral submissions and they are referred to below where appropriate. The Respondent also referred to the following cases:
Abrahall and others v Nottingham City Council and another [2018] ICR 1425 and Carwright and others v Tetrad Limited UKEAT/0262/14.

Decision.

35. As referred to the agreed issues above the only matters before this Tribunal are the Claimant's claims in relation to the Respondent's failure pay to the Claimant his Sunday allowance, his NVQ allowance and the holiday bonus. Although the Claimant also referred to breaches of data protection, this matter was not within the jurisdiction of the Tribunal however facts in relation to the loss of information was referred to in this decision where it related to findings of fact.

36. The tribunal would first like to comment on the evidence in this case. It was of concern that the Respondent had been unable to locate any contractual documents in relation to the Claimant's long employment. The only documents that appeared to be in the Respondent's possession in the Claimant's HR file was a copy of his passport and a Working Time Regulation's opt out agreement. The Respondent was unable to produce any documents created by Mr Dredge in relation to the discussions he had with the Claimant about his move to York Road, these documents were at the heart of the Claimant's claim for his Sunday working payment. Even though Mr Dredge continued to be employed until 2018, he was not interviewed by Mr Shaw or HR and there was no evidence that he was approached for a statement before or after he left. This was surprising as the Claimant raised his grievance in 2017 and Mr Dredge did not leave

until 2018. There appeared to be no effort to establish the terms of the Claimant's agreement reached with Mr Dredge and there was also no evidence to suggest that the Respondent attempted to clarify the contractual position by attempting to gain access to Mr Dredge's emails or written communications with others on the matter.

37. Mr Shaw in his evidence indicated that he felt that the Claimant was being dishonest because he could not provide any evidence to support his claims. However, the Tribunal noted that the Respondent had been unable to produce any documentation about the Claimant's employment and they relied upon the absence of documentation to find against him in his grievance. There was no evidence before the Tribunal to suggest that the Claimant was anything other than an honest and straightforward witness. There was no evidence to suggest that he lacked honesty and integrity.

Sunday Working Allowance

38. The Tribunal will firstly deal with the Claimant's claim that his Sunday working allowance payment was deducted. It was the Claimant's evidence that he had reached an agreement with Mr Dredge that if he agreed to work at York Road, he would continue to receive the same benefits. The tribunal found as a fact in the light of the Claimant's consistent evidence that this was the agreement reached with Mr Dredge. Although the Respondent stated in their closing submissions that Mr Dredge no longer worked for the Respondent, he was in their employment at the time that the Claimant raised his grievance. The Claimant's evidence was that he agreed to change his normal working days on condition that his salary and benefits remained unchanged.

39. The Tribunal also concluded from the facts that the Claimant raised a concern about the loss of this allowance immediately. The Respondent's conclusion that the Claimant failed to raise any concern until June 2017 was wrong on the facts. The Claimant became aware that his entitlement to a Sunday Working Allowance had ceased (in January 2017) he complained orally in January and February 2017 and followed this up with a written grievance. There was no evidence to suggest that the Claimant had by his conduct agreed to a change in his terms and conditions. This evidence also corroborated that the Claimant was able to identify when his pay was short, and when he did so he pursued the matter without delay.

40. The Tribunal have found as a fact and on the balance of probabilities that the Claimant reached an agreement with Mr Dredge to move as long as he retained all his benefits, that included his Sunday Allowance. On this point the Claimant's evidence was found to be entirely consistent. The Respondent's failure to pay the Claimant the Sunday Allowance was a breach of the oral agreement reached with Mr Dredge. The Claimant also complained immediately about the deduction from pay reflecting that he did not consent by his conduct to the deduction from his wages and there was no evidence that the Claimant continuing to work on was evidence that he consented by his conduct to the removal of the allowance. The Claimant's claim for unauthorised deduction in relation to the Sunday Allowance is well founded. The Claimant is awarded the sum of £20 per week, for the period of 29 December 2016 to the 23 June 2018 (date of

the ET1) which is 77 weeks which comes to a total of £1540. This is awarded gross but to be paid net of tax.

The Claim for the NVQ Allowance.

41. The tribunal will next deal with the NVQ claim. The Claimant's claim in relation to this benefit was less clear. It was confirmed that he was entitled to receive an additional 50 per hour allowance. The Claimant failed to escalate his concern about this matter until January 2018. The Claimant's evidence that he had been unable to access his pay slips was unconvincing as he had been able to access his pay slips in January 2017 and had failed to raise a concern. Failing to raise complaint for a year may amount to acquiescence in this case. Even if the Tribunal are wrong that the significant delay amounted to acceptance of any alleged change in any terms; the Claimant failed to establish that the Respondent had made a deduction from his wages in relation to this benefit. The Tribunal found as a fact that the basic salary remained the same before and after the relevant transfer and Mr Grafton had confirmed that the Claimant's hourly rate was higher than his other colleagues on the same grade. This strongly suggested that the NVQ allowance was being paid to the Claimant. The Claimant was unable to provide any evidence to show that a deduction had been made and did not produce any pay slips that supported his case on this point. The Tribunal therefore conclude that this head on claim is not supported on the facts.

Holiday Bonus/Allowance

42. Turning to the last claim pursued by the Claimant in relation to his annual leave bonus payment. The Claimant clarified in the Tribunal that he was not claiming five extra days holiday but a holiday bonus which was referred to in the documents as a holiday bonus scheme. The tribunal were not convinced by the Claimant's evidence which was vague and not supported by any documentation to suggest that he was entitled to receive five days additional leave paid as a lump sum. The Claimant's evidence as to the terms of the bonus scheme were only clarified in the hearing and the document provided was only an extract of a scheme. There was no evidence to suggest that the Claimant was entitled to benefit under the scheme and the Tribunal noted that no mention was made of this bonus in the Data Verification Form, this was a document the Claimant relied upon in his evidence. Had the Claimant been entitled to a holiday bonus, he had an opportunity of amending the Data Verification Form to add this benefit, but he did not do so. The Claimant never provided any clarification of this benefit to the Respondent during the grievance process and could provide no evidence that he ever benefitted under the scheme.

43. The Tribunal also raised an adverse inference from the Claimant's conduct in relation to how he escalated him complaint about the holiday bonus to the Respondent; he made no reference to his entitlement to the payment of a holiday bonus in his written grievance dated the 20 June 2017 (even though by that time the Claimant was aware that he would not receive a payment, if one were due). The Claimant made no reference to this matter in his Pre-Action Protocol letter (page 70). The first time he appeared to mention the holiday entitlement was in an email dated the 24 April 2018 (page 76) when he asked for this matter to be added to the

agenda, this was over one year after he became aware of any alleged breach.

44. The tribunal conclude that the Claimant failed to provide any consistent or credible evidence to support his claim that he was entitled to a holiday bonus. The Tribunal further conclude that the Claimant worked without protest for over a year after becoming aware that the alleged holiday bonus had not been paid. The tribunal conclude that this claim in not well founded on the facts.

Employment Judge **Sage**

Date 4 April 2019