THE EMPLOYMENT TRIBUNALS

Claimant: **Mr Jonathan Hope**

Respondent: **David S Poole Accountancy Services Limited**

Heard at: **North Shields Hearing Centre** **On: Monday 4 March 2019**

Before: **Employment Judge A M Buchanan sitting alone**

Representation:

Claimant: **In person (assisted by Mr David Hope – father)**
Respondent: **Mr Michael Harkness Director (assisted by Ms Alison Marsh)**

JUDGMENT

It is the judgment of the Tribunal that the claim for breach of contract is not well-founded and is dismissed.

REASONS

Preliminary Matters

1. By a claim form filed with the Tribunal on 21 November 2018 the claimant advanced a claim of breach of contract pursuant to provisions of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order"). The claimant asserted that the respondent was in breach of his contract in paying him for the period from 26 September 2017 until 25 September 2017 ("the material period") at the apprenticeship rate provided for by Regulation 4A(d) of the National Minimum Wage Regulations 2015 ("the 2015 Regulations") as opposed to the rate for a worker aged 18 years or over but not yet 21 as provided for by Regulation 4A(b) of the 2015 Regulations ("the higher rate") for the material period.

2. The claimant entered into an early conciliation with the respondent on 24 September 2018 and that period ended on 24 October 2019.

3. By a response filed on 24 January 2019 the respondent denied all liability to the claimant and asserted that the claimant had been paid at the correct rate during the material period.

4. It was agreed that if there was an underpayment, the amount underpaid and to which the claimant was entitled was £2,939.00 gross.

5. It was confirmed that this matter was advanced as a claim of breach of contract under the provisions of the 1994 Order and the respondent confirmed that it made no counter claim. It was accepted that the claim was filed in time. A claim under the provisions of part II of the Employment Rights Act 1996 was not advanced given that such a claim would have been considerably out of time. The claimant's employment with the respondent ended on 8 July 2018 and so the avenue of a claim under the 1994 Order was available to him. There was no issue in respect of the claimant's rate of pay from 26 September 2017 until the date of his resignation on 8 July 2018. There was no issue in respect of the amount paid to the claimant during the material period other than the hourly rate itself and therefore I have not considered any question arising under the 2015 Regulations other than that related to the hourly rate paid to the claimant.

Witnesses

6. The background facts were agreed between the parties and so I did not hear evidence but dealt with the matter by oral submissions.

Documents

7. I had before me documents attached to the form of response namely a pro-forma tripartite agreement prepared by a representative of Derwentside College ("the College") and signed by the parties and a representative of the College on 26 September 2016 being pages 1,4,5,6,9,10,11,12 and 13 of that document. It was explained that the other pages of that document (which were not before me) were retained by the College and had no bearing on the relationship of the parties. These pages showed that the claimant was to undertake an Intermediate Level Apprenticeship at the College. I also had attached to the response a letter dated 21 September 2016 sent by the respondent to the claimant setting out the terms of an *"Offer of Accounting Apprenticeship"* which was signed by the claimant and the respondent on 26 September 2016 at the same time as the said tripartite agreement. During the course of the hearing, there was handed to me a copy of a further tripartite agreement entered into between the same parties on 9 October 2017 and including a three page "*Apprenticeship Agreement"* dated 9 October 2017 entered into between the claimant and the respondent whereby the respondent agreed to provide an apprenticeship to enable the claimant to achieve "*Accountancy Level 3"* and which was described in the tripartite agreement as a "*Level 3 Advanced Apprenticeship".* These documents regulated the second year of the claimant's studies at the College and work with the respondent and were not directly relevant to the issues I had to determine.

The Hearing

8. The hearing had been listed under the so-called short track for two hours and no case management orders had been given. The parties attended without any witness statements, without any bundle of documents and without any authorities or copy statutory provisions. Neither party was professionally represented. The issues raised before me were not without complexity and I therefore reserved my judgement. I issue

this judgement now with full reasons in order to comply with Rule 62 (2) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Submissions

9. I heard submissions from the father of the claimant and from Mr Harkness on behalf of the respondent.

Claimant

9.1 For the claimant it was said that the relationship between the parties went well for the first year from September 2016 until September 2017 and the claimant passed the intermediate level qualification. That was achieved by the claimant working three days per week with the respondent and having one day per week day release to the College. The claimant was paid the apprenticeship rate during the material period.

9.2 A second agreement was entered into in October 2017 under which a dispute arose in 2018 when it was said that the claimant had not been straightforward with the respondent in relation to his progress at the College. That dispute led to the claimant taking legal advice and subsequently resigning his employment without notice on 8 July 2018.

9.3 It was asserted by the claimant that the agreement that he had signed in relation to the material period was not a valid apprenticeship agreement because it failed to comply with the requirements of the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"). It was submitted that as a result the respondent was not entitled to pay the claimant the apprenticeship rate for the material period and ought to have paid the higher rate and that was the basis of the claim advanced. Nothing was raised by the claimant in the work place in respect of any underpayment in the material period because he did not realise he had been underpaid until after his employment terminated in July 2018.

Respondent

9.4 It was submitted that the respondent contacted the College in August 2016 to find an apprentice for the purposes of its small accountancy business. The respondent company comprises Mr Harkness as director and now two other employees. The claimant was taken on as an apprentice. The College provided three potential candidates of whom two were interviewed and the claimant was chosen and began working in September 2016. The first year the claimant undertook the AAT (Association of Accounting Technicians) Level II Intermediate Apprenticeship and passed that examination in 2017. All the documents were produced by the College and signed by the parties and in addition the claimant was made an offer of accounting apprenticeship in a letter of 21 September 2016 which he also signed. The documents were all standard documents provided by the College and it was agreed that the claimant's rate of pay increased to the higher rate from September 2017 and the claim therefore related to the period from September 2016 to September 2017. The respondent did not accept that it was in breach of contract or should have paid at the higher rate for the material period. The respondent company had relied on the College to provide the correct documents and had followed all the advice given by the College and it was submitted

that the claimant knew that if he had a grievance, he had to raise that with Mr Harkness as his line manager.

9.5 The day release to the College in the first year 2016/2017 was successful. In the second year the claimant was not successful by the time his employment ended on 8 July 2018 and it was said that he had not been straightforward with the respondent about his progress and this was not known to Mr Harkness until he received a telephone call from the College in May/June 2018 to say that the claimant was undertaking a resit of a particular element of his course for the fourth time: that situation had not been made known to the respondent before that point. The respondent stated that it could not have known the claimant required further advice or assistance without that information having been provided to it - which it was not. The claimant had not raised the issue about any alleged underpayment until after the date he left the respondent company.

The Law

10. I have considered the appropriate legal provisions and these are set out:-

10.1 The 2015 Regulations Regulation 5 which reads:

"(1) The apprenticeship rate applies to a worker –
(a) who is employed under a contract of apprenticeship, apprenticeship agreement (within the meaning of section 32 of the Apprenticeships Skills Children and Learning Act 2009) [or approved English apprenticeship agreement (within the meaning of section A1(3) of the Apprenticeships Skills Children and Learning Act 2009)] or is treated as employed under a contract of apprenticeship and
(b) who is within the first twelve months after the commencement of that employment or under nineteen years of age.

(2) A worker is treated as employed under a contract or apprenticeship if the worker is engaged –
(a) in England, under Government arrangements known as Apprenticeships, Advanced Apprenticeships, Intermediate Level Apprenticeships, Advanced Level Apprenticeships or under a Trailblazer Apprenticeship…..

(4) In this regulation –
(a) "Government arrangements" means –
(i) in England, arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973 or section 17B of the Jobseekers Act 1995…
(b) "Trailblazer Apprenticeship" means an agreement between an employer and a worker which provides for the worker to perform work for that employer and for the employer or another person to provide training in order to assist the worker to achieve the apprenticeship standard in the work done under agreement
(c)" apprenticeship standard" means the standard published by the Secretary of State in connection with the Government arrangements known as Trailblazer Apprenticeships which applies as respects the work done under the agreement.

10.2 The Apprenticeship, Skills, Children and Learning Act 2009 ("the 2009 Act") section 3(2) which reads:

(1) In this chapter "apprenticeship agreement" means an agreement in relation to which each of the conditions in sub-section (2) is satisfied.
(2) The conditions are-
(a) that a person ("the apprentice") undertakes to work for another ("the employer") under the agreement
(b) that the agreements is in the prescribed form
(c) that the agreement states that is governed by the law of England and Wales
(d) that the agreement states that it is entered into in connection with a qualifying apprenticeship framework.

10.3 The Apprenticeship (Form of Apprenticeship Agreement) Regulations 2012 ("the 2012 Regulations") paragraph 2 which reads:

Form of the apprenticeship agreement

2(1) The prescribed form of an apprenticeship for the purposes of section 32(2)(b) of the Act is-
(a) a written statement of particulars of employment given to an employee for the purposes of section 1 of the 1996 Act or
(b) a document in writing in the form of a contract of employment or letter of engagement where the employer's duty under section 1 of the 1996 Act is treated as met for the purposes of section 7A of the 1996 Act
(2) An apprenticeship agreement must include a statement of the skill, trade or occupation for which the apprentice is being trained under the apprenticeship framework
(3) This regulation does not apply where regulation 4 applies.

10.4 I note that these regulations came into force on 6 April 2012 and it is common ground that regulation 4 of the 2012 Regulations has no bearing on this claim.

10.5 Section 17B of the Jobseekers Act 1995 which reads:
(1) For the purposes of or in connection with any scheme within section 17(A)(1) the Secretary of State may
(a) make arrangements (whether or not with other persons) for the provision of facilities
b) provide support (by whatever means) for arrangements made by other persons for the provisions of facilities
(c) make payments (by way of fees, grants, loans or otherwise) to persons undertaking the provision of facilities under arrangements within paragraph (a) or (b)
(d) make payments (by way of grants, loans or otherwise) to persons participating in the scheme
(e) make payments in respect of incidental expenses.

10.6 Section 2 of the Employment and Training Act 1973 which reads:

(1) The Secretary of State shall make such arrangements as he considers appropriate for the purposes of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities or of assisting persons to obtain suitable employees (including partners and other business associates)

(2) Arrangements under this section may:-……..

(c) subject to the restriction in paragraph (a) of this subsection to persons in Great Britain, be made in respect of employment in training anywhere in the United Kingdom or elsewhere……..

10.7 I have reminded myself of the characteristics of a traditional common law contract of apprenticeship. Unlike a contract of service which has as its object the performance of work, the primary purpose of the contract of apprenticeship at common law was training. Therefore, there was no need for the mutual obligations of work and pay that characterise a contract of service. The contract of apprenticeship secured for an apprentice payment during the period of the apprenticeship, instruction and training during the usually lengthy period of the apprenticeship and in addition the status of being an apprentice and the promise of being given a good start in the labour market. Contracts of apprenticeship were generally for a fixed term over a considerable period of time with little or no opportunity to bring the contract to an end save in exceptional circumstances. If a contract of apprenticeship was wrongfully terminated before the training was complete, then the damages payable to the apprentice could be very considerable depending upon the circumstances. For those reasons, contracts of apprenticeship at common law were increasingly unpopular and employers were unwilling to enter into them.

10.8 In an attempt to improve the quality and take-up of apprenticeships in recent years, various statutory provisions have sought to revive apprenticeships and the first such attempt was the creation of the "*Modern Apprenticeship"* in 1994 which in 2004 were renamed as "*Apprenticeships".* The 2009 Act introduced a statutory form of apprenticeship known as an "*Apprenticeship Agreement*" with effect from 6 April 2011 but with effect from 26 May 2015 the "*approved English apprenticeship"* regime has replaced the apprenticeship agreement in England (but not in Wales) by virtue of what is Chapter A1 of the 2009 Act. The Institute of Apprenticeship is charged with developing apprenticeship standards to be observed in the approved English apprenticeship regime and if no such standard has been developed, then the Apprenticeship Agreement regime continues to apply.

10.9 I note that the Court of Appeal in **Flett -v- Matheson 2006 ICR 473** decided that the so-called modern apprenticeships were capable of being construed as traditional common law contracts of apprenticeship with all the difficulties that entailed of bringing such contracts to an end in the event that the apprentice was unsatisfactory. The 2009 Act makes it clear that apprenticeship agreements are not to be treated as contracts of apprenticeship and section 35(2) of the 2009 Act makes it plain that an apprenticeship agreement is to be treated as a contract of service. Thus, if an apprenticeship agreement is brought to an end wrongfully then the measure of damages is likely to be considerably less than would have been the case if the contract had been a contract of apprenticeship.

10.10 The 2009 Act sets out various conditions which must be observed if there is to be a valid apprenticeship agreement. If those conditions are not met, then the question arises as to the status of any agreement which does not comply with those conditions. The risk for an employer is that a non-compliant apprenticeship agreement could be construed as a contract of apprenticeship with all the resulting problems in respect of termination. However, in the circumstances of this case, such a conclusion would help

the respondent achieve its aim of having paid the correct rate to the claimant in the material period given the contents of Regulation 5 of the 2015 Regulations.

10.11 I have reminded myself of the decision of the Employment Appeal Tribunal in **Chassis and Cabs Specialists Limited -v- Lee 0268/2010** where the Tribunal concluded on the particular facts of that case that a modern apprenticeship agreement did give rise to a contract of apprenticeship but noted that factors which would point against such a conclusion would be the duration of the agreement, the level of qualification being worked towards and whether training or work was the central feature of the arrangement.

10.12 I have reminded myself of part of the judgement of Pill LJ in **Flett** (above) paragraphs 28 and 29 where he quoted with approval guidance from Widgery LJ in the decision in **Dunk -v- George Waller and Sons Limited** in respect of the nature of a common law contract of apprenticeship::

"Widgery LJ stated, at page 634c-f:

"A contract of apprenticeship is significantly different from an ordinary contract of service if one has to consider damages for breach of the contract by an employer. A contract of apprenticeship secures three things for the apprentice: it secures him, first, a money payment during the period of apprenticeship, secondly, that he shall be instructed and trained and thus acquire skills which would be of value to him for the rest of his life, and, thirdly, it gives him status, because the evidence in this case made it quite clear that once a young man, as here, completes his apprenticeship and can show by certificate that he has completed his time with a well-known employer, this gets him off to a good start in the labour market and gives him a status the loss of which may be of considerable damage to him.
It seems to me, therefore, that in this case not only must we say that the apprentice is to be compensated for the loss of wages during the remainder of his apprenticeship contract but that we must also give him something in respect of the loss of training and loss of status which has also resulted. ……..I am satisfied that a sum, difficult though it may be to assess, is properly to be awarded for the loss of teaching, the loss of instruction and the loss of status."

10.13 I have reminded myself of part of the judgement of Mr Recorder Underhill QC (as he then was) in **Chassis** (above) where he includes further extensive quotes from the decision in **Flett.**

20. There have been several recent authorities which have considered the application of the relevant law in the context of modern forms of tripartite agreements combining on-the-job and off-the job training. The leading case is Flett v Matheson [2006] IRLR 277. In that case the claimant and the respondent had, together with a training provider, entered into an arrangement for an "Individual Learning Plan" ("ILP") under a "modern apprenticeship scheme" produced by the Joint Industry Board for the Electrical Contracting Industry. The issue was whether the claimant was employed under a contract of employment or a contract of apprenticeship. The Court of Appeal, overturning the decisions of the employment tribunal and this Tribunal, held that he was employed under a contract of apprenticeship. At para. 34 Pill LJ said:

"The contract is called in the ILP an apprenticeship and is a combination of off and on the job training. What occurs at the place of work is part of the training required to obtain the qualification stated in the ILP and the employer has responsibility for the completion of logbooks for that purpose. A lengthy period of training is contemplated. Moreover, while the employer does not provide the more academic part of the training, he is required to give the apprentice time off to

obtain it and to fund the cost of attendance at classes. The fact that under the tripartite arrangement, a part of the training is provided by a third party and not the employer is not in my view crucial to the analysis of the employer's obligations under the tripartite arrangement constituted by the ILP. There is an obvious advantage to all parties in the more academic part of the training being arranged by a specialist organisation at a college. The whole thrust of the documentation in my view supports the view that the contract comes with the category of apprenticeship."

At para. 38 he said:

"In my judgment, the use of the word 'apprentice' in the documents is an important element in construing the obligations under the ILP. To decide upon the extent of those obligations it is, however, necessary to construe the particular agreement, and not rely on the label alone. On the other hand, because an agreement is described as a modern apprenticeship, its construction should not be approached on the basis that it is necessarily something fundamentally different from a traditional apprenticeship."

At para. 40 he said:

"... The arrangement has the essential features of an apprenticeship, as stated by Widgery LJ in Dunk. The fact that some training is provided by a party other than the employer does not in my judgment deprive the relationship between employer and apprentice of a long-term character which persists until the end of the training period contemplated. As already stated, it is not surprising, in modern conditions, that a specialist provider is included in the arrangements."

The authority referred to is Dunk v George Waller & Son Ltd [1970] 2 QB 163. Widgery LJ did not in that case seek as such to define the essentials of a contract of apprenticeship, but the passage referred to by Pill LJ is at p. 634 C-D, where he says:

"A contract of apprenticeship secures three things for the apprentice: it secures him, first, a money payment during the period of apprenticeship, secondly, that he shall be instructed and trained and thus acquire skills which would be of value to him for the rest of his life, and, thirdly, it gives him status, because the evidence in this case made it quite clear that once a young man, as here, completes his apprenticeship and can show by certificate that he has completed his time with a well-known employer, this gets him off to a good start in the labour market and gives him a status the loss of which may be of considerable damage to him."

It is worth noting also that Pill LJ observed at the end of para. 33 that:

"If, as appears to be the case, the appellant was receiving less than the national minimum wage, it points to the agreement being one of apprenticeship."

The Issues

11. Having reminded myself of the legal background to this matter, I identify the following issues for me to determine with particular reference to Regulation 5 of the 2015 Regulations:

11.1 Does the agreement entered into between the parties in September 2015 at the beginning of the material period amount to an approved English apprenticeship within section A1(3) of the 2009 Act?

11.2 If not, does the arrangement entered into between the parties in September 2016 at the beginning of the material period amount to an apprenticeship agreement within the meaning of section 32 of the 2009 Act?

11.3 If the agreement entered into does not comply with the formalities required by the 2009 Act referred to at 11.1 and 11.2 above, then what is the status of that agreement? In particular, was that agreement a contract of apprenticeship at common law?

11.4 If not a contract of apprenticeship but a contract of service, was the claimant nonetheless **treated** as employed under a contract of apprenticeship as set out in Regulation 5(1)(a) as explained in Regulation 5(2) and 5(4) of the 2015 Regulations?

Conclusions

12.1 On 26 May 2015 the approved English apprenticeship regime replaced the apprenticeship agreement regime which had been in force since 6 April 2011. However, that replacement was and remains gradual and only applies when the Institute of Apprenticeship has developed and approved the general apprenticeship standard for a particular industry. I am concerned with the position in September 2016. I have consulted the website of the Institute for Apprenticeships and find that even today there is no approved standard for accountancy/taxation professionals save at level 7 which was not applicable to the claimant. In any event that level 7 standard had not been approved in September 2016. Accordingly, I conclude that when the parties entered into the arrangement in September 2016, the apprenticeship agreement regime was the one which governed their relationship and I must therefore have regard to the provisions of section 32 of the 2009 Act. The arrangement entered into between the parties in September 2016 was not an approved English apprenticeship and that part of regulation 5(1)(a) of the 2015 Regulations does not apply to this case.

12.2 I move on to consider the second issue as set out at paragraph 11.2 above. I have given detailed consideration to the tripartite agreement entered into between the parties and the College on 26 September 2016 and the letter dated 21 September 2016 ("the Letter") entitled *"offer of accounting apprenticeship*" issued by the respondent and signed by the claimant on 26 September 2016.

12.3 The provisions of section 32 of the 2009 Act are detailed. I am satisfied that the Letter requires the claimant to undertake work for the respondent but I am not satisfied that the Letter is in the prescribed form or that it states that it is governed by the law of England and Wales or that it states it is entered into in connection with a qualifying apprenticeship framework.

12.4 I have considered the 2012 Regulations and in particular whether the Letter complies with the requirements of Section 1 of the Employment Rights Act 1996 ("the 1996 Act"). The provisions of section 1 of the 1996 Act require (amongst other matters) a statement as to the date on which an employee's period of continuous employment began, a statement in relation to the terms and conditions in relation to incapacity for work due to sickness or injury and a statement in relation to pension and pension schemes. If

there are no relevant particulars to be entered in respect of certain matters then that fact is to be stated as set out in section 2 (1) of the 1996 Act. Section 3 of the 1996 Act requires a compliant statement issued under section 1 of the 1996 Act to include a note in respect of disciplinary procedures and that also is absent from the Letter. Whilst there is reference in the Letter to the claimant working towards the AAT qualification, there is no explanation of that qualification or any reference to it being a qualifying apprenticeship framework. Accordingly, I conclude the agreement entered into between the parties on 26 September 2016 as evidenced by the Letter does not comply with the provisions of section 32 of the 2009 Act as supplemented by the 2012 Regulations and the Letter amounts therefore to a non-compliant apprenticeship agreement.

12.5 As I have concluded that the agreement entered into between the parties is not an apprenticeship agreement complying with section 32 of the 2009 Act that particular route to pay the apprenticeship rate to the claimant for the material period is not available to the respondent. Therefore, I turn to the third issue set out at paragraph 11.3 above which is whether the Letter as supplemented by the tripartite agreement reveals a common law contract of apprenticeship.

12.6 This question brings into sharp focus the contents of the Letter which evidences the relationship between the parties to this litigation and indeed continued to govern their relationship when the second tripartite agreement was entered into in relation to the period from September 2017 onwards.

12.7 The arrangement envisaged by the Letter is one which can be brought to an end by two weeks' notice. The relevant clause reads: "*Probationary Period. You will have a probationary period of three months. During this time the notice period for both you and David S Poole Accountancy Services Ltd is one week. Following completion of the probationary period the notice period will increase to two weeks".* That provision runs entirely contrary to a common law contract of apprenticeship which was invariably a long-term contract which had training as its central purpose and was not able to be terminated save in exceptional circumstances until that training was complete: a period of five years or more was not unusual.

12.8 Furthermore, the Letter speaks in these terms about the position of the claimant: "*Nature of Position. This is a permanent position. It is our intention to support you from AAT level 2 through to AAT level 4 certification. Progression through the AAT qualifications is a requirement of retaining this position. Upon completion of AAT level 4 we would be looking to employ you as a qualified accounting technician".* Earlier in the letter I find the following paragraph: – "*As a member of our team we would ask for your commitment to deliver outstanding service that exceeds client expectations and to represent yourself and our company in a professional manner when attending college as part of your apprenticeship. In return we are committed to providing you with every opportunity to learn grow and enable you to reach the highest level of your ability and potential".* In relation to job description I find the following provision: *"Job description. Assisting senior members of staff with a variety of general practice accounting duties while*

working toward AAT qualification and day release College attendance. You will also be expected to assist with general administrative duties and answering telephone calls". The hours of work were for the claimant to work between 9:30am and 5pm three days per week and attend college on one day except during academic holidays when he was required to attend the office.

12.9 I have considered the guidance set out above in **Flett** and in **Chassis** and whilst I note that there is reference in the Letter and indeed in the tripartite agreement to training being offered, I conclude that the overall effect of the Letter as supplemented by the tripartite agreement gives rise to a contract of service. The ability on the part of the respondent to bring the contract to an end on one or two weeks' notice is fatal in my judgement to the arrangement being construed as a common law contract of apprenticeship. Furthermore, whilst training is envisaged, that is not in my judgement the central purpose of the contract. The claimant was required to represent the respondent company and to carry out general administrative duties at all times and to assist the respondent's senior members of staff. I conclude that the Letter evidences a contract of service between the claimant and the respondent. Accordingly, the route available to the respondent to pay the apprenticeship rate on the back of having entered into a contract of apprenticeship as set out in regulation 5(1)(a) of the 2015 Regulations is closed to it.

12.10 The last route available to the respondent to being able lawfully to pay the apprenticeship rate for the material period relies on whether the claimant was treated for the purposes of Regulation 5 of the 2015 Regulations as employed under a contract of apprenticeship namely the issue set out at paragraph 11.for above.

12.11 To answer this question I must consider Regulations 5(2)(a) and 5(4)(a)(i) of the 2015 Regulations.

12.12 In this case the claimant entered into the agreement with the respondent on 26 September 2016 in accordance with the Letter which I have analysed above. At the same time both parties entered into a tripartite with the College under which the claimant was to be trained at the College to achieve an Intermediate Level Apprenticeship. The programme of study was defined as *"AAT Foundation Certificate in Accounting"* and the document headed "*apprenticeship agreement"* provides for him to follow a program described as "*Intermediate Level Apprenticeship AAT Foundation Certificate in Accounting from 27 September 2016 to 28 September 2017".* I am satisfied from page 13 of the tripartite agreement that all parties signed it on the same day as the Letter on 26 September 2016.

12.13 That being so I am satisfied that the claimant was engaged under a government arrangement known as an intermediate level apprenticeship for the material period. The arrangement between the parties as evidenced by the Letter began at the same time as the intermediate level apprenticeship offered by the College and referred to in the tripartite agreement. I am satisfied that the government arrangement known as an intermediate level

apprenticeship resulted from arrangements made by the Secretary of State falling within regulation 4(a)(i) of the 2015 Regulations.

12.14 The claimant successfully undertook and completed the intermediate level apprenticeship by September 2017 and whilst the Letter then still governed of the relationship of the parties a further tripartite agreement was entered into to provide for the claimant to move on to the level III advanced apprenticeship. I am satisfied that for the material period the claimant was engaged under an arrangement known as an intermediate level apprenticeship and that route set out in regulation 5(1)(a) of the 2015 Regulations lawfully to pay to the claimant the apprenticeship rate of the national minimum wage for the material period is available to the respondent. For me to conclude otherwise would be to strain the natural meaning of the 2015 Regulations and in particular the words "*is engaged"* in Regulation 5(2) beyond breaking point.

12.15 The next condition for payment of the apprenticeship rate is set out in regulation 5(1)(b) of the 2015 Regulations namely that the claimant was within the first 12 months of the commencement of his employment (which he was) or under the age of 19 which from 10 October 2016 he was not. However, as he meets one of those requirements I conclude that for the material period the claimant was paid correctly at the apprenticeship rate. In fact, this last condition was not in dispute between the parties.

12.16 Accordingly, I conclude that the application for breach of contract in respect of the material period is not well-founded and is dismissed.

EMPLOYMENT JUDGE BUCHANAN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 9 April 2019