Case No: 2303304/2019

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE K ANDREWS**
sitting alone

BETWEEN:

Miss A Escoffery

Claimant

and

Epsom & St Helier University Hospitals

Respondent

ON: **4 December 2019**

Appearances:
For the Claimant: **In person**
For the Respondent: **Ms Ibbotson, Counsel**

REASONS FOR THE JUDGMENT DATED 4 DECEMBER 2019 PROVIDED AT THE REQUEST OF THE CLAIMANT

1. In this matter the claimant complains that unlawful deductions have been made from her salary by the respondent - for whom she still works. In short, she says that she is entitled to be paid a basic salary of £27,022 per annum whereas in fact she is being paid a basic of £23,363 per annum.

Evidence

2. I heard from the claimant and, for the respondent, from Ms Z Alexander (Head of Occupational Health). I also read a signed witness statement of Ms D Eyitayo, Director of People, who was present but the claimant confirmed that she did not challenge any of Ms Eyitayo's evidence.

3. I also received a bundle of documents from each party.

Relevant Law

4. Unpaid wages: If a worker suffers an unauthorised deduction from his or her wages he or she may make a complaint to the Tribunal (section 23 of the

1996 Act). Where the total amount of wages paid is less than the total amount properly payable, the amount of that deficiency is a deduction (section 13).

5. Therefore this case is determined by answering the relatively straightforward question of what was properly payable to the claimant which in turn is answered by establishing what was agreed between the parties.

Findings of Fact

6. Having assessed all the evidence, both oral and written, and the submissions made by the parties I find on the balance of probabilities the following to be the relevant facts.

7. The claimant applied for the role of Occupational Health technician in response to an advert which specifically stated the relevant salary range was £23,809 to £27,022. It also stated that the respondent was looking for someone to work full-time but would also welcome candidates interested in part-time roles. Under working pattern it stated 'part-time 30 hours per week'. The respondent accepts, and I agree with them, that this advert was unclear. It did not expressly say that the salary of anyone doing the role on a part-time basis would be prorated. It should have done. The claimant was entitled, at that stage, to believe that the advertised salary range was for the part-time role.

8. The claimant was interviewed on 19 October 2018 by Ms Alexander and another respondent employee. The claimant was described as the standout candidate and Ms Alexander telephoned her on the same day and offered her the role. The claimant's case is that she accepted the role during that telephone conversation. Ms Alexander's evidence was less sure. Her general recollection was that the claimant did not accept then although she candidly acknowledged that that she might be wrong about that. In any event Ms Alexander says that she is sure salary was not discussed during the conversation but that it was clear the post was part-time. The claimant accepted that there was no agreement on specific salary with Ms Alexander in that call. I find that the claimant did accept the offer during this conversation on the basis of the advertised salary range but with no agreement on a specific point within that range.

9. On 23 October a conditional offer was sent to the claimant. This letter did not refer to a specific salary but rather to a pay band but it expressly said that salary and band point would be confirmed upon receipt of current payslips and that the hours were part-time, 30 per week.

10. In the course of the claimant providing those payslips, she and Ms Woods - Recruitment Adviser - had conversations about salary. The claimant's evidence was that in the course of these conversations Ms Woods said that she could not see matching the claimant salary would be a problem. This led Ms Woods to ask Ms Alexander on 9 November if they could match the claimant's current salary which would be at the top of the relevant band. In this email there was again no express reference to prorating. Ms Alexander

replied on 12 November confirming that she was happy to support the proposal as the claimant was the standout candidate. Ms Woods then emailed the claimant on 14 November confirming the offer was a salary of £27,022 prorated to £23,363 for 30 hours per week.

11. I find that it is more likely than not that Ms Woods did not make it clear to the claimant that the salary - even if matched at the top of the respondent's pay band - would then be prorated. My reason for saying this is that Ms Woods did not make that clear in her email exchange with Ms Alexander. No doubt that is because they were both working on the assumption that part-time hours receive prorated salary. Ms Woods probably felt that it went without saying but these things do need saying.

12. The claimant replied to the 14 November offer on the same day attaching a copy of the original advert and seeking clarification given that it did not mention the salary would be prorated. Ms Woods replied thanking the claimant for highlighting the error on the advert but stated that if working part-time the hours will always be prorata. In response to that the claimant emailed Miss Woods and said:

> 'At this stage I am disappointed to learn that the salary is pro rata but I am prepared to proceed with the acceptance of the position. I am available to start on Monday 19th November.'

In fact the claimant commenced employment on 26 November.

13. On 3 December a letter was sent to the claimant confirming the offer of the appointment setting out her terms and conditions of employment. This included a basic salary of £23,363. I find that this is the letter of appointment referred to in the respondent's recruitment & selection policy. The claimant did not sign and return this document as she was invited to do but she did continue to work for the respondent. It is clear that she was still unhappy about the salary that she had accepted and relatively quickly raised that with the respondent's Chief Executive (on 18 December) and this ultimately led to a lengthy grievance process the detail of which is not relevant to the decision I have to make today.

Conclusions

14. As I have already noted, the original advert was unclear. I understand why the claimant was confused at the outset of the process and when she received the specific confirmation from Ms Woods as to what her salary would be. Even in the discussion she had with Ms Woods I understand why the claimant continued to be unclear and thought that Ms Woods was talking about matching her then current salary in its entirety.

15. However ultimately the position was spelt out to the claimant in Ms Woods' email of 14 November and the claimant expressly accepted the salary that was on offer. At that point, therefore, she entered into a contract of employment knowing that the salary she would be paid would be £23,363 and as the respondent have paid her since then in accordance with that

contract there has not been an unlawful deduction from wages and the claim must fail.

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Employment Judge K Andrews
Date: 23 January 2020