



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Ahmed

**Respondent:** Abbey Medical Centre

## JUDGMENT ON RECONSIDERATION

- 1. Paragraph 4 of the Judgment sent to the parties on 5 July 2019 is varied. The Claimant is entitled to £1,560 (two years' unauthorised deductions from wages).**
- 2. Paragraphs 1, 2, 3 and 5 of the Judgment are confirmed.**

## REASONS

1. At a hearing on 26 June 2019, the Tribunal decided that the Claimant's complaints of unfair dismissal and discrimination because of race and/or religious belief failed. The Tribunal upheld the complaint of unauthorised deduction from wages for the period from 24 October 2011 to 28 February 2018, the rate of underpayment being £15 per week. Reasons were given orally on the day of the hearing, the Judgment was sent to the parties on 5 July 2019.

2. On 9 July 2019, the Respondent applied for a reconsideration on grounds that the Tribunal had failed to apply the Deduction from Wages (Limitation) Regulations 2014 which were in force from 8 January 2015 and that the decision was perverse as the Claimant had waived any breach of contract.

3. Written reasons were sent to the parties on 19 October 2019. In it, the Tribunal addressed the Respondent's application and set out its preliminary view that despite the limitation argument not being raised at the hearing, it appeared that there was a real prospect of the Judgment being varied due to the requirement to apply the Regulations. The parties were permitted to make further submissions following which the application would be decided without a hearing, unless one were requested.

4. On 29 October 2019, the Claimant applied for a reconsideration of the

Judgment on grounds that he had not been paid in full since the commencement of his employment in July 2010 and that he felt that he had been discriminated against in matters of pay. Neither party requested a hearing and the Respondent did not send in any further submissions.

5. Both applications were made within the time limits prescribed by Rule 71 of the Employment Tribunal Rules of Procedure 2013.

*The Respondent's Application for Reconsideration*

6. Dealing first with the Respondent's application for reconsideration. The Deduction from Wages (Limitation) Regulations limit the jurisdiction of the Tribunal as regulation 2 provides that the Tribunal is not to consider a deduction made before the period of two years ending with the presentation of the complaint. The Claimant's complaint was presented on 10 May 2018. Despite the Respondent failing to advance this argument at the hearing, the effect of regulation 2 is mandatory and binding on the Tribunal. The Claimant did not bring a breach of contract claim in the Tribunal. As a result, the Judgment must be varied as it is necessary in the interests of justice to correct an award which exceeds the jurisdiction of the Tribunal.

7. The Tribunal found as a fact that the Claimant was contractually entitled to be paid £13 per hour from October 2011 but that he was paid only £12 per hour. The Tribunal also found that the Claimant was not aware of the underpayment until brought to his attention by his accountant in January 2016 and that he thereafter objected to the breach, raising the matter repeatedly with the Respondent. As such, the Tribunal found that he did not waive the breach. The Respondent's application for a reconsideration on grounds that this decision was perverse is no more than an attempt to rehearse arguments advanced, considered and rejected at the hearing. Disagreement with the findings and decision of the Tribunal is not a valid ground for reconsideration.

*The Claimant's application for Reconsideration*

8. As above, the Tribunal found that the breach of contract occurred from 24 October 2011 (the date of the signed contract) and that the Claimant had not proved entitlement to the higher rate of pay from the start of his employment. The Claimant relies in his application on the 2011 contract of employment and payslips to show what he was in fact paid. The contract evidences continuity of employment from 6 July 2010 but not the rate of pay then in force. The payslips evidence what was paid, not what should have been paid.

9. As for the contention that the Tribunal should not permit the Respondent to avoid liability for paying what they legally agreed to, this was not a breach of contract claim and as a matter of law, the Tribunal cannot make an award which exceeds the period of two years preceding the presentation of the claim for the reasons set out above. Whether or not the Claimant has any further claim for breach of contract in the County Court is a matter upon which he must reflect and seek advice.

10. Finally, insofar as the Claimant now alleges that he was discriminated against in terms of pay, this was not a claim before the Tribunal (see the issues as identified by Employment Judge Moor on 23 August 2018). It is not in the

interests of justice to reconsider to permit the Claimant to raise a new claim which could have been raised at an earlier date and which would require a further hearing.

11. None of the matters raised by the Claimant are such that they would give any reasonable prospect of original decision being varied or revoked and it is not necessary to reconsider the judgment in the interests of justice. Accordingly, the Claimant's application for a reconsideration of the Remedy Judgment is refused under rules 70 and 72.

Employment Judge Russell

19 March 2020