# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| Mr D Millington | **v** | Her Majesty's Revenues and Customs |

**Heard at:** Bury St Edmunds (by CVP) **On:** 14 January 2021

**Before:** Employment Judge Cassel

**Appearances**
**For the Claimant:** In person.
**For the Respondent:** Ms M Tutin, Counsel.

**COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.**
This has been a remote hearing on the papers which had not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

## JUDGMENT

1. The respondent paid to the claimant all wages owing to him under his Contract of Employment.

2. The claim of unlawful deduction from wages fails and is dismissed.

## RESERVED REASONS

### Background

1. The claimant, Mr Daniel Millington brings claims of unlawful deductions from his wages contrary to s.13 of the Employment Rights Act 1996 by his employer HM Revenue and Customs.

2. A preliminary hearing took place on 13 May 2020 before Employment Judge Chudleigh. The issues were identified at paragraph 3 onwards of the Case Management Summary in the following terms:

   (i) What sums were properly payable to the claimant under his contract of employment upon his transfer to HMRC's Reading branch with effect from 2 January 2018?

   (ii) Has there been a deduction, or series of deductions, from the sums properly payable to the claimant?

   (iii) If so, what deduction, or series of deductions has been made and when?

3. At the hearing today which took place by video link, the claimant represented himself and Ms M Tutin appeared for the respondent.

4. I heard evidence from the claimant who had prepared a written statement and from Ms Carole Martin who had also prepared a written statement. In addition, I received a bundle of documents and a chronology. I was also provided with three documents from the claimant which were screen shots taken from the Internet and related to the provision of accommodation by the respondent as reported on the Internet. At the end of the evidence I was provided with written submissions from both parties, for which I am grateful which were augmented by oral submissions.

**Findings of Fact**

5. I make the following findings of fact based on the balance of probabilities having considered those documents to which my attention was drawn.

6. The claimant worked at the Valuation Office Agency (VOA) between September 2015 and July 2016. The VOA is an agency of the respondent but is responsible for setting its own pay scales and allowances. Ms Martin gave evidence, which I accept, that even though the VOA is an agency of the respondent, each organisation will deal with and take into account such matters as recruitment “hotspots” and local demand. At that stage the claimant worked in Reading.

7. In July 2016 the claimant began working for the respondent’s Fraud Investigation Service department and worked at Custom House, Lower Thames Street, London. The appointment followed an external application and having been appointed the claimant satisfied criteria to qualify for additional pay, which is referred to as “London Pay”. Elsewhere in the rest of the country “National Pay” applied. A pay guide was issued by the respondent which is referred to as “HR 41080”.

8. Within that document (HR 41080) criteria are described to determine whether a member of staff qualifies for London pay. The document was exhibited at pages 89-94 of the bundle and conditions included a requirement for an assignation to a London office where the employee was permanently based and to work there for at least 40% of their working week. London offices designated to fall within the London pay arrangements were specified and there was no dispute that Custom House was a place to which London pay applied. The area where those arrangements applied generally covered an area bounded by the M25. Offices in Staines were also covered but not offices in Reading, to which office the claimant subsequently moved.

9. I was also referred to another of the respondent's policy "HR41062" which was described in the following terms. It sets out how pay is affected by an employee moving to a new role at the same grade. If an individual moves between the London and National pay areas, their current basic pay moves to the equivalent position in the new pay range area for their current grade. A formula is set out explaining how the new pay range is calculated, which must be used to determine an individual's equivalent basic pay in the new location.

10. The claimant received a letter of appointment on 28 July 2016 and of particular relevance in these proceedings within the letter of appointment was the following "any attendance allowance and/or supplements attached to the new post" would be received upon transfer from another government department on promotion. The terms of appointment confirmed that the respondent's full terms and conditions of service, policies and procedures were available on the departmental intranet. The claimant received pay notification by letter, which was exhibited at pages 115-117 in which there was an explanation that he would receive a pay increase by reason of his promotion from administration officer to officer and that he was moving from the National to London pay area.

11. On 12 November 2015, prior to the transfer by the claimant to Custom House, a list of proposed office closures was published by the respondent. It was part of the plan to get business areas closer together with the creation of regional offices. Of those offices that were due to close, Custom House was identified as one of them. The program was referred to as "BOFL" which I was told was an abbreviation for Building our Future Location. The date of the announcement is of some importance to the claimant as the grounds of resistance to his claim indicate that when a request was made by him for a transfer to the Reading branch no such announcement had been made.

12. In October 2017 the claimant requested a transfer to the Reading office having learnt that there was a need for investigators at this location. The request was at the instigation of the claimant and not at the instigation of the respondent. This is an important distinction, as others were required to move location as part of the reorganisation. For those thus affected it was envisaged that they would return to the London area but in the interim would still be paid London pay. Ms Martin also explained that although personal preferences would be taken into account it was by no means certain that a requested location by those required to move would be the one to which they did in fact have to move. Operational considerations were of considerable importance and those moving from the London area, she explained, could have been relocated to Croydon rather than Reading.

13. The respondent's view was simply this. As a result of his voluntary transfer to Reading he ceased to be entitled to London pay and his salary and what was described as the Criminal Investigation Directorate Attendance Allowance was reduced accordingly.

14. At pages 144-145 an email was sent by the claimant's new line manager, Mr R Tredgett, which brought to his attention a decrease in his pay at the start of his transfer that any overpayment of London pay could be recovered and if he wished to retain London pay he was given the option of returning to a London office.

15. An overpayment was made in January 2018 and to the considerable distress of the claimant the full overpayment was recouped the following month, which it was accepted was a breach of the respondent's policy. I was told that an apology was subsequently made to the claimant's union representative.

16. The claimant was aggrieved and raised a grievance in May 2018 in terms that he had not been notified of the change in his pay upon his transfer to Reading while some of his colleagues had retained their London pay. The claimant gave evidence that his grievance was never formally dealt with although my attention was drawn to correspondence from Mr Tredgett who forwarded the grievance to HR, relayed the response and in correspondence from Mr I Woolston, who is a senior officer, on 25 July 2018 gave an explanation as to the claimant having been notified previously of the pay differential on his move to Reading and that it was still open to him to return to the London office should he wish to receive London pay.

17. There appeared to be no dispute that the claimant had received appropriate monthly payments calculated at the relevant National pay applicable at the time of payment.

**Relevant Law**

18. S.13 of the Employment Rights Act 1996 gives an employee a right not to suffer unauthorised deduction.

19. Under s.13(3) is the following:

> "Where the total amount of wages paid on any occasion by the 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."

## Conclusions

20. The claimant was provided with a letter of appointment at pages 63-65 of the bundle. At paragraph 3 of that letter is the following:

> "HMRC publishes guidance on the About you intranet pages which detail and explain the policies on which your employment is based. You will have full access to this and you are encouraged to familiarise yourself with it. Amendments may be made to terms and conditions from time to time: these will be displayed on the intranet and you should ensure that you make yourself aware of them."

21. At pages 66-73, the claimant's section 1 statement, terms of employment are exhibited. There was no dispute that these were signed by the claimant on 7 December 2016. At paragraph 18.1 was the following:

> "Changes to your terms and conditions of employment may be made from time to time as a result of collective agreements between HMRC and the recognised unions…"

22. The first issue for me to consider was whether those two documents referred to as HR 41080 and HR 41062 provided terms that were incorporated into the contract. Again, there is no dispute that these were clearly described terms and apparently no dispute that formally no amendment to the contract was needed to incorporate them. The question remains of course as to whether they were and are terms that relate to pay within the relationship between the two parties

23. Within her written submissions, Ms Tutin refers extensively to a number of legal authorities and more particularly Alexander v Standard Telephones and Cables Ltd [1991] IRLR 286 in which there is helpful guidance as to whether any part of a document is apt to be a term of a contract. I have also had the opportunity of considering the matters set out in Hussain v Surrey and Sussex Healthcare NHS Trust [2011] EWHC 1670 in considering whether the parties intended a provision of a collective agreement to have a contractual effect including the wording of the provision, the importance of the provision to the contractual working relationships, the level of detail, the certainty of what the provision requires, the context of the provision and whether the provision is workable.

24. The conclusion I reach is that the terms within those two documents are apt for incorporation into the individual contract of employment and were so incorporated, and thus they applied to the claimant's contract of employment and form the basis of calculation of pay as outlined above.

25. Having heard from the claimant, I do understand that he feels aggrieved that colleagues with whom he works in Reading, and with whom he had previously worked at Custom House receive pay based on London pay rather than National pay whereas he receives pay calculated at National pay rates. However as was so clearly highlighted in Ms Martin's evidence, there is a clear distinction to be made between the situation of the claimant who sought a transfer to those colleagues who were required to transfer by the respondent and expected to return to London in due course.

26. Having reached the conclusions that I do, I do not find that there has been any underpayment in the pay to the claimant made by the respondent and that there were no deductions or series of deductions as envisaged under s.13 of the Employment Rights Act 1996.

27. For these reasons the claim of unlawful deduction from wages fails and is dismissed.

_____
Employment Judge Cassel

Date: 19 January 2021

Sent to the parties on: ..02/02/2020.....

.....
For the Tribunal Office