



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Ulla Luttners  
**Represented by:** Mr Kennedy of Counsel

**Respondent:** Guys & St Thomas' NHS Foundation Trust  
**Represented by:** Ms Genn of Counsel

**Heard by CVP on:** 17 February 2021

**Before:** Employment Judge Martin

## REASONS

1. Oral reasons were provided at the conclusion of the hearing. These reasons are prepared at the request of the Claimant.
2. By a claim form presented on 26 February 2019 the Claimant brought a claim of unauthorised deductions from wages. The thrust of the Claimant's argument is that she agreed to take a job on the condition that she was paid at band 4 which the Respondent agreed but in fact she continued to be paid at band 3. The Respondent says there was no such agreement.

### The issues

3. Was there was a binding agreement between the Claimant and the Respondent that she would move to a new role and be paid at band 4.
4. If so, was she paid at band 4?
5. If not, what should she have received in wages?

### The law as relevant to the issues

6. Section 13 of the Employment Rights Act 1996 states an employer shall not make a deduction from wages of a worker employed by him unless – 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 the worker has previously signified in writing his agreement or consent to the making of the deduction

7. **New Century Cleaning v Church** IRLR 27 CA which held that for wages to be properly payable there must be a legal (not necessarily contractual) entitlement to them.
8. **Steel v Haringey LBC** EAT 0394/11 which was a case dealing with job evaluations. The EAT commented that a claim based on the proposition that there ought to have been such an evaluation fell outside the tribunal's jurisdiction.

### **Findings of facts and Conclusions**

9. The Claimant brings claims for unauthorised deductions from wages pursuant to s13 ERA. The burden of proof is on the Claimant to show wages were properly payable and the she was entitled to those wages.
10. This claim centres on conversations between the Claimant and Mr Landers in April 2018 when a position on the 9th floor became vacant. This was previously filled by a band 4 medical secretary, Ms Gibson, who was retiring. A decision was made by the Respondent not to fill the post with a like for like replacement with the secretarial work undertaken by Ms Gibson to be done by other medical secretaries instead. The role was to be at band 3. The Claimant was employed on band 3 in the Ridley ward reception. The Claimant accepted that there were differences in her role and the role that Ms Gibson had undertaken
11. There are two situations relating to gradings that are relevant in this case. The first is when an employee applies for a position at a higher grade. It was accepted by both parties that a move into a role at a higher grade would require an open and competitive competition. Who was appointed would depend on who performed the best at the interview against the criteria and competencies for the post. To move into a different role at the same band does not need an open competition and staff can be slotted into different jobs within the same band.
12. The second situation is when a role changes from one band to another band. In this case there must be formal job evaluation process undertaken.
13. I heard that the Claimant was well thought of and that she was very good at her job. This case is not about whether the Claimant was good enough for a band 4 role, but about whether she had been promised that the role she went to would be a band 4 role. It is not about whether the role left vacant by Ms Gibson should have been categorised as a band 4 role or not. This is a management decision and not one that I can or should make.
14. The Claimant's case is that she told Mr Landers that she would not move to the new role unless it was band 4 and that Mr Landers said it would be band 4 provided he could get the funding (which was subsequently agreed).
15. The Respondent's position is that there was no such agreement. Mr Landers gave evidence that he told the Claimant in April 2018, in more than one meeting, that he was not able to agree a grade 4 banding for this position as it was outside his authority but that he would review whether a re-banding exercise should be undertaken. His evidence is that the Claimant told him

she would do the new role provided that it was re-banded to band 4, and that if it was not then she would return to her old role in the Ridley reception. His stance is that no promises were made, merely an undertaking to look into it and that the Claimant started the new role knowing that the job evaluation process would need to be done for it to be a band 4 role and that she would have to attend a competitive interview as it was a band higher than her current band. He did say that if there was an evaluation to grade 4 and a competitive interview he thought it most likely that the Claimant would be appointed as she was a good employee and was already doing the job.

16. These conversations were not documented. I have to decide whose evidence I find to be more likely to be correct on the balance of probabilities. In coming to my decision I have considered all the other factors raised by both the Claimant and Respondent in submissions.
17. It is for the Claimant to establish that there are wages which are properly payable. The Claimant relies on the making of a promise. She knew that the background is the retirement of a medical secretary, and tasks this role involved. The Claimant accepted the differences between what she was doing and being a medical secretary and what she would be required to do in the role.
18. On the balance of probabilities, I find that there was no promise, or any guarantee given to the Claimant. The Claimant wanted a band 4 role when it was first raised that she might move to the role left after Ms Gibson left. She knew that the audio typing was hived off and the role was administrative in nature. I find no evidence that she was offered or accepted a band 4 role at any time. I find that there was an agreement to explore what could be done by way of regrading which would lead to a competitive interview and in any event everything was dependent on obtaining funding.
19. In all the circumstances I do not find that the Claimant has shown that she was promised a band 4 role or that there were wages properly payable and that she was entitled to them.

Employment Judge Martin

Date: 14 April 2021