



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR IAN TAPPING

AND

Respondent
THE MINISTRY OF DEFENCE

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 11TH JUNE 2021

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS S HORNBLOWER (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim for unlawful deductions from salary between 26th November 2019 and 13th March 2020 is dismissed;
2. The claimant's claim for the unlawful deductions from salary in the failure to make employer's pension contributions from 1st January 2020 until 13th March 2020 is dismissed;
3. The claimant's claim for unpaid holiday pay is dismissed;
4. The claimant's claim for unlawful deduction from wages in the failure of the trustees of the pension fund accurately to calculate his pension entitlement is adjourned for fourteen days.

Reasons

1. The claimant has a number of claims before the tribunal which are listed for final hearing commencing on 4th October 2021. The claims before the tribunal today (as set out above) are separate and discrete monetary claims which it was determined could be heard separately rather than as part of the final hearing of the other claims.
2. The claims can be set out very briefly. From 26th November 2019 the claimant was seconded to a role which should have attracted an income uplift (TAHL). On 6th January 2020 he submitted his resignation with a termination date of 13th March 2020. In fact he did not receive any income uplift, and his resignation was incorrectly recorded as taking effect immediately. Both these resulted in an under payment of salary and holiday pay. These errors were rectified by payments in March, April and May 2020. There is no dispute that in relation to salary and unpaid holiday pay that the claimant has now received all sums due to him. Similarly it is accepted that the respondent has made the appropriate pension contributions. Those three issues were the ones listed for resolution at this hearing, and as all have been resolved they are therefore dismissed as there are no sums outstanding in respect of any of them.
3. There is however a remaining potential dispute. The claimant contends that the pension projection he received in January 2020 was based on contributions up until 31st January 2020, and on his incorrectly calculated salary without the TAHL payment. It thus does not take into account all of his actual pensionable pay, nor the whole of his period of service. It gave a figure of £10,114.20 as the projected pension. He has not received any corrected projection and is concerned that his pension is still being calculated using the wrong figures. In his witness statement he calculates that this may be reflected in an annual loss of approximately £3600. Shortly before the hearing the respondent provided an updated final retirement quote which gives a figure of £10,247.92 and which the claimant only opened in the hearing. The claimant remains unconvinced (at least until he sees the specific basis of the calculation) that the correct figure can only be some £133 greater than the uncorrected figure.
4. The respondent's position is that it does not wish to be unhelpful, and to that end Mr Cornford has offered to help the claimant to obtain the calculations; but that it does not have any control over the pension fund or administer it. In the hearing I expressed the view that I could not see any basis for any claim in the Employment Tribunal for the failure of a pension fund accurately to calculate the appropriate pension due. Even if the claimant is correct and the amount of the pension has been incorrectly calculated (about which I hold and express no view) the claim does not appear to fall within the jurisdiction of the Employment Tribunal. It is expressly not wages within the meaning of the Employment Rights Act (s27(2)(c); and does not appear to me to fall within the tribunal's contractual jurisdiction as the claim was

neither outstanding on termination nor arose from termination. The claimant suggested that it might fall within the breach of contract jurisdiction in that it arose from the respondent's breaches of contract in the failure to make the correct contractual payments originally. I confess I am unpersuaded by that argument. If the pension fund is making errors in the calculation of a pension despite having been provided with the correct figures and length of service by the respondent then any loss is not caused by any breach on the part of the respondent. In any event the trustees of the pension fund are not respondents to this claim and is not open to a tribunal to make an award against a non-party.

5. The respondent has taken a neutral position in that relations between it and the claimant have been fraught and Ms Hornblower did not wish to be thought to be opportunistically relying on a point not taken by it before. The respondents are therefore neither advancing the proposition that the tribunal does not have jurisdiction over this part of the claim, nor seeking to dissuade the tribunal from it.
6. The question of jurisdiction, and that of the correct identity of the respondent to the this part of the claim had not been raised before today. Accordingly I indicated that I would not dismiss that part of the claim today but would give the claimant the opportunity to make any further submissions on this point within 14 days. If he does not do so this part of the claim will be dismissed on the basis that the tribunal has no jurisdiction to hear it.

Employment Judge Cadney
Date: 14 June 2021

Sent to the Parties: 25 June 2021

FOR THE TRIBUNAL OFFICE