



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4100289/2021**

**Hearing held by CVP on 29 March and 30 April 2021**

**Employment Judge McFatridge**

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**Mr Ross Corbett**

**Claimant  
Represented by  
Mr McLaughlin,  
Solicitor**

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**Royal Mail Group Ltd**

**Respondent  
Represented by  
Ms McKenna,  
Solicitor**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is the claimant's claim of unauthorised deduction of wages is not well-founded. The claim is dismissed.

### REASONS

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1. The claimant submitted a claim to the Tribunal that he had suffered an unlawful deduction of wages. He stated that he had been receiving a leadership allowance of £37.42 weekly for 13 years and that this had been removed with effect from 30 October 2020. It was his position that he was entitled to receive this sum as wages and that he had not authorised the deduction. The respondent submitted a response in which they denied the claim. It was their position that the claimant was no longer entitled to the leadership allowance and that accordingly he had not suffered any

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unlawful deduction when the respondent ceased paying this. The hearing took place over CVP. It had originally been set down for three hours and it was not possible to complete the evidence during this period. The claimant's representative was unable to continue with the hearing in the afternoon due to other commitments. The claimant's evidence concluded on 29 March and the hearing was then adjourned to 30 April when Ms Laura Mitchell an Operations Manager with the respondent gave evidence on behalf of the respondent. Both parties lodged a joint bundle of productions. There was also a statement of agreed facts. On the basis of the evidence and the productions I found the following essential facts relevant to the claim to be proved or agreed.

### **Findings in fact**

2. The respondent are Royal Mail. The claimant commenced employment with them in 1988 as an OPG (Ordinary Postal Grade) worker. He was based in Dumfries Post Office. Initially he worked on a three week rotation working early, back and night shifts. In 2006 the claimant applied for an internal role which was advertised. The role was entitled DOM Support. DOM stands for Delivery Office Manager. This was classed as a specialist post. As DOM Support the claimant required to carry out certain laid down tasks. There were additional pay allowances attached to this post which the claimant considered attractive and which led him to apply. One of these allowances was dawn shift allowance. This was an allowance paid to him on the basis that the job involved continuous early morning starts. The other allowance was called leadership allowance.
3. At the commencement of his employment in 1988 the claimant was given a formal letter offering him the appointment. This was lodged (page 26-27). The claimant was said to be offered employment on the basis of enclosed formal statement and contract documents. It was stated that any variation would be subject to discussion or negotiation between the Post Office and the appropriate trade unions or, where applicable, arbitration. The enclosures to that letter were lodged (pages 27-30). The terms and conditions of employment stated that his starting pay would be at the rate of £69.25 per week and that this would be increased by annual increments in accordance with his pay scale. It stated

“Details of the pay scale for the grade are enclosed and details of overtime rates and allowances are set out in the staff contract manual.”

The terms and conditions also contained a statement to the effect that the claimant would be “subject to the rules, notices, instructions and other directions issued from time to time in regard to his employment.”

4. In or about October 2000 the respondent produced a directive relating to allowances which was lodged (pages 31-42). The directive was described as 10/2000. It states

“This directive implements the changes to the allowances from 8 May 2000 for CWU represented grades within the new Way Forward pay package.”

The section regarding allowances is contained in paragraph 2 (page 31), it states

“The Way Forward agreement lists allowances that will be available within the new pay package. These are the only payments over and above the new higher level of basic pay that should be made. Many of the existing allowances have been absorbed within the higher level of basic pay which will now reflect and reward the broader range of skills covered by the new grade.

Where existing allowances will continue within the new pay package the criteria for payment remain generally unchanged from the previous national agreement (see annexe 1).

Most of the allowances within the new pay are assigned (i.e. paid to jobholders during periods of paid absence). Common principles that apply to these allowances are

- Evidence of entitlement is obtained from the appropriate work area job description, assessed against the criteria for the allowance.

All assigned allowances are fully pensionable and contributory and paid in current week.

- Payments are made for work within conditioned hours only. There is no additional payment for hours worked as overtime or SA. Ad hoc payments will be made on an intermittent

pensionable basis (one week in arrears) where employees perform the appropriate task within conditioned hours on an ad hoc basis rather than as a normal requirement of their job.

- Payments are made pro rata to conditioned hours (including single rate overtime) to less than full time employees.
- Apart from the leadership allowance which may be combined with another allowance in certain circumstances (e.g. with TPO duty for TPO in charge) no more than one assigned allowance may be claimed by any employee during any week.”

10 5. Paragraph 4 states

“Payment during absence and on change of job.

As currently, assigned off allowances will continue to be paid during periods of paid absence, and abated in line with pay for periods of absence on less than full pay.

15 Intermittent and ad hoc allowances will only be paid for periods actually worked.

Payment continues so long as the employee holds the job concerned. As soon as an employee ceases to hold a job that qualifies for a particular allowance then payment ceases.

20 For swaps or exchange of job for periods less than on full week there is no change in assigned allowance payments for the employees involved. For temporary job changes lasting one week or more, allowances will be paid to each employee according to the attendance actually worked.”

25 6. Section 13 applies to leadership allowance and states

“This allowance replaces the existing supervisory postal allowance (sometimes also called PHGA or postal chargeship allowance) but with the criteria for the allowance remaining unchanged (except that in future payment will be during conditioned hours only). Note that the A in PHGA relates to the additional supervisory allowance and not to a level tasks. The allowance reflects additional supervisory responsibilities and not simply carrying out administrative tasks of the sort that have always been appropriate to PHG/LA2 grades.”

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7. The document contains a substantial list of allowances which are set out in a tabular form with three columns. In the column for Leadership Allowance column 2 states that this is open to operational grade and operational support grade. Column 3 contains the description/qualifications for each allowance. In respect of leadership allowance it states

“Paid where there are no senior officers present and the following criteria are met (during conditioned hours only)

- (a) Supervision is for at least one and three quarter hours a day (separate periods of 30 minutes may be aggregated)
- (b) Between 06:00 and 22:00 there are at least six employees (including the allowance holder) on duty in an office, section or railway station and effective supervision cannot be given by a substantive supervisor
- (c) Primary responsibility is taken for a section of work or employees during the preparation for first delivery and the sole manager on duty is in charge of at least 30 employees and is unable to be reasonably expected to exercise adequate supervision
- (d) In charge of a sorting office or railway station at night with at least four employees (including the allowance holder) are on duty or three in the case of a TPO
- (e) Exceptionally for a single period of one and a half hours supervision on station duties
- (f) If an inspection has established the need for supervision in addition to that which can be normally provided and there is a minimum requirement of two hours’ supervision; allowance holders should only be expected to undertake manipulative work during their supervision periods as long as this is consistent with their being able to exercise effectively the required degree of employee control.”

8. When the claimant was appointed as DOM support in 2006 he began to be paid leadership allowance and also an allowance called Night Attendance or Dawn Start Allowance because he required to start work prior to 6am. Initially the claimant started work at 3:40am. At some point

subsequent to this the Royal Mail reduced the number of hours worked per week for hourly paid staff from 39 hours to 38 hours. As a result of this the claimant's start time changed from 3:40 to 3:52. By working 12 minutes fewer each day he reduced his normal working hours to 38 hours per week.

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9. The claimant would carry out supervisory duties between 3:40 or 3:52 and 6am when the two managers who were on the establishment of the Dumfries local delivery office would start their shift. He would check the security of the yard and vehicles. He would check the perimeter of the office. He would open up and check the alarm. If any issues arose he would phone the management helpline or deal with them. Some mornings he would require to deal with phone calls from staff who were phoning in sick. Sometimes he would require to deal with calls from the road services which were the Royal Mail deliveries which delivered postal items from the sorting office in Carlisle and arrived every morning. If an employee phoned in sick the claimant would take the details and either pass on to a manager after six o'clock or input into the computer himself depending on what it was. If there was an issue regarding the alarm he would be able to send an email to the appropriate quarter. Usually between 2 and 3 road services would arrive with mail from the Carlisle mail centre prior to 6:00am. On occasions the claimant would have to deal with calls from customers who were awaiting specific deliveries of things like tickets etc.

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10. There would be some staff who came in to scan parcels who would come in at 4:00am. There were also locker staff who came in at 5:00am. The claimant would be responsible for supervising them.

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11. At some point prior to 2017 another manager who was not on the establishment of the Dumfries local delivery office started using the Dumfries local delivery office as his base. This manager was called Gordon Kerr. He would come in at around 5:30am every day. When he came in he would do some managerial work which mainly involved inputting parcel deliveries into the computer. He also carried out some manual tasks such as sorting letters and putting them into individual delivery pigeon holes. He did some portering, moving bags to individual delivery frames. Even after Mr Kerr started coming in at 5:30 the

claimant's role did not change. He was still expected to carry out the same supervisory duties up until the two establishment managers came in at 6:00am.

- 5 12. In or about 2017 the claimant was advised by his then manager Mr Power that Mr Power required to carry out a review of allowances to ascertain whether the claimant's role still qualified for the allowances which he was receiving. The claimant was advised that this review had been carried out and that he was to retain his leadership allowance.
- 10 13. The claimant was unaware of any other reviews of his allowances ever taking place up until 2020.
14. The claimant did not receive any documents in respect of the review in 2017. He had a verbal discussion with Mr Power at the time but that was all.
- 15 15. In or about February 2020 Mr Dave Turner the claimant's then manager approached the claimant to advise that he required to carry out an audit of allowances. He said he had to complete this and he did not think that the claimant would be entitled to the leadership allowance. He said he would look into it and then after a time came back and advised the claimant that he would not be entitled to it. The claimant commenced a grievance process. The first part of the process was a meeting with John Payne his line manager. It was a verbal meeting and no record was kept. Mr Payne inputted the claimant's evidence into the respondent's online HR system known as PSP (People Services Portal). Mr Payne then sent the claimant an email to advise that his grievance had been unsuccessful. He was not given any reasons for this. The claimant then intimated that he wished to escalate his grievance to stage 2. The claimant had a telephone meeting with Nicole Ball a second line case manager with the respondent on 14 May 2020. The claimant was accompanied by his union representative Mr Young. A note of this telephone meeting was lodged (page 66). I consider this to be an accurate record of what took place at that telephone call. The claimant explained that he started at 3:52 and was responsible for various aspects of the unit including security, mail arrivals and dealing with problems and that on a daily basis he was accompanied by two other

ordinary postal workers. One did the locker and one did the Thornhill Road service. He indicated that when he first took on the role there were early sorters in each morning and so he would have been responsible for six or more people but with changing duty patterns this had become less common. His union representative indicated that he considered that the claimant qualified for the allowance because his hours were 03.52 to 13.52. The claimant was responsible for the office before the managers came in at 6:00am and therefore satisfied the provision of having supervision for at least one and three quarters hours i.e. from 3:52 to 6:00am.

16. Mr Corbett then sent a further email to Nicole Ball the following day setting out his position in more detail. This was lodged (page 67).

17. Ms Ball wrote to the claimant on 20 May 2020 advising that the claimant's grievance was not upheld. Her email was lodged (page 69). She attached a report setting out her reasoning (page 70). In this report she indicated that she had spoken to Mr Turner to confirm details and request documents. She referred to the schedule of authorised allowances. Her position was that in order to receive leadership allowance all of the criteria which were relevant required to be followed. This meant that not only had supervision to be for at least one and three quarter hours a day but between 06:00 and 22:00 there were at least six employees (including the allowance holder) on duty in an office section or railway station and effective supervision could not be given by any substantive supervisor.

18. She then stated

“Having reviewed the sign on sheets for the past week and discussed morning planning with the Delivery Office Manager over the past few months it does not appear that there are ever more than four individuals present in the office prior to managers arriving between 05:30 and 06:00. The DOM articulated that this may happen on occasion during peak but is never a regular allowance.”

The claimant duly raised a third stage appeal using the respondent's processes which was acknowledged on 21 May 2020 (page 71-72). A grievance appeal meeting took place over Skype on 30 June. The



claimant attended along with his trade union representative. The appeal meeting was conducted by Laura Mitchell an Operations Manager with the respondent. A note of the meeting was lodged (pages 75-77). I considered this to be an accurate albeit not verbatim record of what took place at the hearing. During the hearing the claimant's union representative stated that the job had been advertised with the leadership allowance. He stated (page 77) that this post advertised with the allowance therefore it was considered an implied term of contract that part of the post was the leadership allowance and it differentiated from an OPG position. The claimant and his representative also made the point that when Mr Gordon Kerr came in at 5:30 he was carrying out OPG work and not managerial work. Ms Mitchell asked the claimant if Mr Kerr was completing any managerial work during that time the claimant confirmed that Mr Kerr completed the tracked mail compliance report. This involves inputting the tracking numbers of tracked mail and parcels. The union representative summarised the claimant's position as follows:-

1. "The post of DOM Support in Dumfries DO was advertised in 2006 listing the tasks involved and that the post would attract early shift allowance and leadership allowance. The hours of attendance are 04:00 to 14:00. The DOM Support oversaw wave arrivals (two or three wave arrivals and more on occasion) and was person in charge for staff reporting prior to the management team reporting at 06:00. The allowance also recognised that staff would contact Mr Corbett out of hours to report intended absences and other matters.

Mr Corbett has received this allowance for 14 years and it is considered an implied term of contract.

2. The post was reviewed in 2017 by Darren Power DOM. Mr Power transferred some tasks to management team (RCS) and added the Thornhill Road Service and temporary collections to the role after 09:00. Mr Power maintained the allowances attached to the post in recognition of Mr Corbett's role after hours. Each annual review of allowances has maintained the allowance.

3. In responding to his grievance RM have responded that a manager commences work at 05:30 and that this negates the qualification for the allowance. This floating manager has reported at this time for a

number of years and this is not a recent occurrence. The individual is not part of the templated management team which comprises Dave Turner and John Payne. The individual reports to perform OPG work and the CWU have repeatedly asked for this to cease. Mr Power took this into account during his review of the post in 2017 and subsequent reviews annually.

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4. Nothing has changed to the post that would negate the allowance.
5. Mr Corbett does assume responsibility for a group of fellow employees as quoted in the schedule of allowances and meets the criteria for the allowance.
6. LM confirmed all parties had nothing further to add and closed the meeting.”

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19. Ms Mitchell considered the matter and advised that she was not prepared to uphold the grievance. She wrote to the claimant on 25 September 2020 confirming this (page 78). She attached a decision report which was lodged (page 79-81). She stated that she had not required to interview any witnesses apart from Mr Corbett. She did say she had taken appropriate advice from the respondent’s HR service. She noted that “through interview we have discussed several changes to the DOM Support role which have taken place since Mr Corbett took up the role. The office has also been through numerous revisions and managerial changes throughout this time all of which would have potential to impact upon Mr Corbett’s eligibility for the allowance. The key question is whether Mr Corbett was eligible for the allowance at point of review and I do not believe that he was. She then set out her rationale for this. It was her view that the claimant required to meet all of the criteria which were listed in order to qualify for the allowance albeit she considered that many of these criteria were criteria which were mutually contradictory and could not therefore be considered relevant. Her view therefore was that the claimant required to meet all of the criteria after excluding those which were clearly irrelevant. She considered that the criteria which the claimant did require to meet were criteria (a) supervision is for at least one and three quarter hours a day (separate periods of 30 minutes may be aggregated), (d) in charge of a sorting office or railway station at night with at least four employees (including the allowance holder) are on duty. She

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had clarified with HR that Dumfries would qualify as a sorting office and that hours prior to 6:00am would count as at night on the basis that 10:00pm to 6:00am is considered a night shift. She considered that none of the other criteria were relevant. Her view was that Mr Corbett's hours of supervision were up to 05:30. After 05:30 the qualification that there were "no managers present" did not apply since Mr Gordon Kerr was in the office. She noted that he was there as a manager. He was carrying out managerial duties which included inputting tracking numbers. It was not relevant that he was not actually supervising; the criteria was whether or not he was actually present. It therefore followed that even if one were to assume that the claimant had a supervisory role between 03:52 and 05:30 then he fell short of the one and three quarter hours. In any event, her view was that the first member of staff the claimant supervised did not come in until 4:00am therefore the claimant was only supervising from 4:00am until 5:30. In addition, he was always supervising less than four individuals.

20. The claimant had no further right of appeal under the respondent's grievance process. The claimant continued to be paid leadership allowance in his pay after he received Ms Mitchell's letter but he then sent an email to the respondent saying that he would prefer they did not continue to pay this if he would at some stage be required to pay it back. He did not want to build up a large debt to the respondent which he would then be asked to pay in one lump sum. The last payment of leadership allowance in the claimant's pay was on 30 October 2020.

## 25 **Observations on the evidence**

21. I considered that both witnesses were attempting to assist the Tribunal by giving truthful evidence. A considerable time was spent at the hearing going over evidence relating to the processing of the claimant's grievance and the claimant's view that the managers involved ought to have interviewed other members of staff with a view to ascertaining the facts. I considered that such procedural criticisms of the respondent's grievance process were not in any way relevant to the matter which I required to determine. In any event, I accepted the evidence of the respondent's witness that the respondent at all times were prepared to proceed on the

basis of the facts presented to them by Mr Corbett and accordingly there was no need for them to check these facts by reference to witness evidence.

### Issues

- 5 22. The sole issue which I required to determine was whether or not the claimant had suffered an unauthorised deduction from wages. It was common ground between the parties that the question between them was whether the wages were “properly due” or not.
- 10 23. The parties made full submissions. The claimant’s primary submission was that deductions had been made in contravention of section 13. There was no evidence provided of a relevant provision of the claimant’s contract that authorised the deduction to be made. The claimant had been working for 13 years carrying out duties and responsibilities and receiving leadership allowance without it being challenged until 2020. The duties and responsibilities which were carried out and which were listed by Laura Mitchell at page 67 were the same as those carried out for the last 13 years. No issues had been raised in the past. There was no evidence whatsoever of the claimant’s entitlement to allowance being assessed against his job description as was provided for in the respondent’s schedule of allowances. The claimant did not consent to the reduction. It was unilateral. There was no suggestion here that the claimant had had his previous employment terminated and then been re-engaged on different terms.
- 15 24. In addition, the claimant’s secondary position was that even if the respondent were entitled to review his pay then the conclusion they had come to was flawed and that even on review the claimant was entitled to the allowance claimed on the basis of the criteria set out. It was their view that a manager had to be present. It was their view that although Mr Kerr was in the building he was not to be regarded as present because he was carrying out ordinary postman duties. Their view was that the respondent ought to have carried out an enquiry to establish exactly what it was that Mr Kerr was doing before they came to the view that would unilaterally remove his allowance. The claimant’s position was that he was carrying
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out supervisory duties between 3:52 and 6:00am. The respondent ought to have enquired as to whether or not this was factually correct and whether the claimant's position that although Mr Kerr was in the building he was not to be regarded as present was correct. It was their position  
5 that the employer could not make such a decision without being in full possession of the facts and required to carry out a reasonable investigation before making such a determination.

25. The respondent's position was that there was only one question which was whether the claimant was eligible to leadership allowance from  
10 30 October 2020 which was the date it was removed. There was an agreed statement of facts. It was their view that the payment of leadership allowance was subject to eligibility criteria contained in the directive and that it was subject to periodic review. The CWU were aware the review was taking place and the claimant was aware of previous reviews. The  
15 claimant had confirmed in evidence that he understood that the respondent were entitled to carry out a periodic review as to whether or not he was still entitled to leadership allowance. The claimant's own position as stated in the grievance appeal notes was that the first member of staff who he was responsible for came in at 4:00am. Mr Kerr started at  
20 5:30. The claimant was only carrying out supervisory duties with no manager present for one and a half hours. The respondent were perfectly entitled to come to the view that he no longer qualified for this allowance. There was no need for any procedural requirements to be met. The respondent were under no duty to interview Mr Kerr. The claimant's own  
25 evidence was that Mr Kerr was present in the building. He was carrying out the input of tracked mail information and this is a managerial duty.

### **Discussion and decision**

30 26. I considered that I required to deal with the question of whether or not the respondent had made an unlawful deduction of wages in this case in two stages. The first stage was essentially whether or not the respondent was entitled to carry out a review of the claimant's attendance allowance and

remove the allowance unilaterally in terms of their contract of employment with him. The second was whether, if they were entitled to carry out such a review were they correct in stating that the claimant no longer qualified for leadership allowance. I considered that the second of those questions was by far the easiest one to answer and shall deal with this first.

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27. The eligibility criteria for leadership allowance are clearly set out in the documentation provided by the respondent. I considered that the appropriate formulation to use was that set out in page 41 which is in the Royal Mail Pay Directive. Similar information is contained in two guides which were also lodged and although they set matters out in a slightly more easy to read format I considered that it was appropriate to go back to the terms of the directive as more properly representing the terms of the contract agreed between the claimant and the respondent based on collective bargaining between the respondent and the relevant unions.

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28. I did not agree with the respondent's witness that the claimant required to meet all of the relevant criteria. It appeared to me that this was putting much too high a hurdle. The various criteria are simply listed (a)-(f). The words and or or are not used. Logically one could not meet all of the criteria unless paragraph (f) applied which refers to an inspection being carried out and states that if an inspection is carried out the minimum period of supervision required is two hours. I could not entirely follow Ms Mitchell's thought processes. She indicated that she had followed a process whereby she checked the claimant's circumstances against each individual criterion. Where he clearly did not comply with one of the criterion for example (b), she decided that that was not relevant. There were other criteria which he did not comply with were considered to be relevant.

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29. In any event, my view is that on a proper reading of the criteria the claimant would be eligible for the allowance if any single one of the criteria applied. Unfortunately for the claimant I considered it to be clear from the evidence that none of the criteria do apply. The claimant's position was that criteria (a) applied. This meant that allowance would be paid where there were no senior officers present and (a) supervision is for at least one and three quarter hours a day (separate periods of 30 minutes may be aggregated).

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The claimant's own evidence was that the first member of staff he required to supervise started at 4:00am. There was no manager present until 5:30 but after that Mr Kerr was present. I considered it to be irrelevant that the claimant was still expected to carry out his supervisory duties. He is only  
5 entitled to the allowance when he is carrying out such duties when no manager is present. It is therefore my view that if the respondent were entitled to review the claimant's allowances then the claimant was not entitled to the allowance. I did not consider that the claimant's criticisms of the process adopted by the respondent in dealing with his grievance  
10 were relevant. The claimant's own evidence was that Mr Kerr was there at 5:30. There was no need for the respondent to interview Mr Kerr to double check information which was provided to them by the claimant. I agreed with Ms Mitchell that the claimant did not fulfil the terms of criteria (d) either but I did not consider that the claimant would also have had to  
15 meet criteria (d) if the facts were such that criteria (a) were met. I saw criteria (d) as an alternative means of qualifying for the allowance.

30. I considered the first question to be much more difficult and surprisingly so given that the respondent are a large organisation where terms and conditions of employment are negotiated by collective bargaining at  
20 national level.

31. I considered that the only information before me which was relevant was that of the directive which sets out the position regarding allowances. It does not expressly say anywhere that these allowances are subject to review. The respondent's position in evidence was that these allowances  
25 are subject to annual review however the claimant's evidence was that he had had one review he was told about in 2017 which appears to have been carried out as a paper exercise by his manager with no record of his reasoning having been kept and nothing else. I was not prepared to make a finding that it was custom and practice for these allowances to be  
30 reviewed annually at least in the case of the claimant given the complete absence of any information relating to this.

32. The directive states in paragraph 2 that "evidence of entitlement is obtained from the appropriate work area job description assessed against the criteria for the allowance." It states at section 4

“Payment continues so long as the employee holds the job concerned. As soon as an employee ceases to hold a job that qualifies for a particular allowance then payment ceases.”

5 I noted the point made by the claimant in submissions that the respondent had given absolutely no information regarding any revision of the claimant’s job description. It was noted during the appeal process that the original advert for the DOM Support position could not be traced. The only contract of employment which is lodged is the original documentation given to the claimant when he started in 1988. There is no job description  
10 for the job of DOM Support that he took over in 2006. It appears to me that given the terms of the directive the claimant’s entitlement to allowance is based on his work area job description. I considered that I was entitled to draw the inference that the work area job description which he had been given in 2006 met the criteria for the allowance since the allowance was  
15 paid without question for around 13 years afterwards. I note that paragraph 4 states that payment continues so long as the employee holds the job concerned. There was no evidence before me that the claimant had been dismissed or resigned from this role or agreed any change in his contract of employment. It may well of course be that the respondent did  
20 change the claimant’s job description but if they did so then they did not provide me with any evidence of this. I entirely appreciate that it may be possible for an employer to change an employee’s job description without dismissing them and offering them re-engagement on different terms and conditions of employment. That having been said, I consider that in this  
25 case I do not have sufficient evidence before me to show that the claimant’s job description was actually changed. Indeed the evidence seems to be that the claimant carried on doing exactly the same job and the only change was that someone else entirely started coming into the office which meant that the claimant was no longer carrying out his duties  
30 without a manager present from 5:30 onwards. I entirely accept that the claimant’s evidence was that he carried on doing exactly the same duties as before.

33. As against that there is the clear statement in paragraph 2 that



“As soon as an employee ceases to hold a job which qualifies for the allowance then payment ceases”

5 In this case, although the work that the claimant was doing, and hence his job description, may not have changed, an external factor relating to that job – namely the fact that a supervisor started being present at 5.30 – did mean that the job no longer qualified for the allowance. My view therefore is that, although the matter is finely balanced, on a true interpretation of the contractual terms the respondent were entitled to cease payment of allowance if the claimant ceased to hold a job which qualified for the allowance. The claimant was therefore not entitled to the allowance after 10 30 October as part of his “proper pay” and there was therefore no unlawful deduction.

15 Employment Judge: Ian McFtridge  
Date of Judgment: 25 May 2021  
Entered in register: 04 June 2021  
and copied to parties

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