



EMPLOYMENT TRIBUNALS

Claimant: Mr C Mansfield
Respondent: Queen Mary University of London
Heard at: East London Employment Tribunal
On: 4 May 2021
Before: Employment Judge Russell
Members: Mr M Rowe
Ms G Forrest

Representation

Claimant: In Person
Respondent: Ms S Tharoo (Counsel)

REMEDY HEARING

The Judgment of the Tribunal is as follows: -

1. The Respondent made an unauthorised deduction from the Claimant's wages in respect of pay in the sum of £53,152.85 gross and in respect of pension in the sum of £12,003.14.
2. These sums were paid in full by the Respondent on 24 February 2021.
3. No further award is made pursuant to section 24(2) Employment Rights Act 1996 in respect of further losses attributable to the Respondent's conduct.
4. There shall be no uplift in respect of an unreasonable failure to follow the relevant ACAS Code.

REASONS

1. By a Judgment sent to the parties on 4 January 2021, the Employment Tribunal upheld the Claimant's claim of unauthorised deduction from wages in respect of the period from February 2019 to February 2021. It dismissed the

claims of failure to make reasonable adjustments, discrimination arising from disability, harassment related to disability and direct disability discrimination. Full written reasons were provided.

2. The matter is listed today by way of a Remedy Hearing.

3. Shortly after receipt of the liability Judgment, the Respondent made a payment in respect of the arrears of pay and the reduced pension contributions. The Claimant accepted today that the sums due had been paid in full.

4. The outstanding two issues to be decided were: (1) whether or not the Claimant was entitled to an award of interest on the unpaid wages and payment of credit card charges said to be incurred as a result of the underpayment; and (2) whether or not there should be an uplift pursuant to section 207(a) of the Trade Union Labour Relations Consolidation Act 1992 in respect of an unreasonable failure to follow the ACAS Code on Disciplinary and Grievance.

5. The Tribunal heard evidence from the Claimant today and from Mr Goodwin for the Respondent. We were provided with an agreed bundle and we took into account those pages to which we were taken in evidence. We heard submissions from Ms Tharoo and from the Claimant on his own behalf.

6. Dealing first with the question of interest, the Tribunal is a creature of statute and its powers to hear claims and to make awards arises solely from statute and secondary legislation. There is no statutory provision permitting an award of interest in an authorised deduction from wages claim, unlike for a discrimination claim. However, section 24(2) of the Employment Rights Act 1996 provides that where a Tribunal makes a declaration that there has been an unauthorised deduction from wages, it may order the employer to pay to the worker an additional amount to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

7. Three important considerations arise: whether to exercise the discretion, what amount if any is appropriate in all of the circumstances and the award is not punitive but to compensate for financial loss attributable to the unauthorised deduction.

8. The Claimant has disclosed a number of credit card statements for a Santander account which show various interest charges for the period 28 March 2019 to March 2021. On 28 March 2019 the interest charged was £29.03, thereafter the amount increased over time to a high point of £69.96 in August 2020. The most recent statement for March 2021 shows a monthly interest charge of £53.22.

9. The statements are so heavily redacted that it is impossible for the Tribunal to see the number of transactions or the nature of the expenditure. Furthermore, the statements show that even as at 28 March 2019, the Claimant was already paying significant interest on a debt balance which arose before the deduction from wages took effect. In other words, even when on full pay, the Claimant was incurring interest charges on his Santander credit card.

10. It was common ground between the Claimant and the Respondent that in a case where the deduction of wages was a fraction of the overall pay due, it would not be appropriate to award all of the interest. There must be some reflection of the partial pay in order to be make an award which is just and attributable to the unauthorised deduction. It is simply not possible on the evidence adduced for the Tribunal to say what amount of interest, if any, is attributable to the unauthorised deductions and what amount to the Claimant's ordinary expenditure which would have accrued interest even if paid in full.

11. In deciding whether to exercise our discretion, the Tribunal also took into account that the claim is for deductions over a two-year period. The delay in deciding this case is in part due to the addition of the disability discrimination claims which did not succeed. If this had been a simple claim for unauthorised deductions from wages it would have been listed and heard within a six-month period. Very shortly after receipt of the Judgment, the Respondent paid the Claimant the outstanding sums. It did not wait until a decision on remedy today. For these reasons, the Tribunal find that it was the delay in obtaining a ruling on liability which has caused the period of deduction to be as lengthy as it has been.

12. For these reasons, the Tribunal declines to make any award in respect of credit card interest.

13. Turning next to the question of ACAS uplift, section 207A(2) of TULR(C)A provides that:

“(a) if in the case of proceedings to which the section applies, it appears to the Employment Tribunal that the claim to which the proceedings relate concerns the matter to which a relevant Code of Practice applies;

(b) the employer has failed to comply with that Code in relation to that matter; and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so increase any award it makes to the employee by no more than 25%.”

14. In other words, again there is a discretion in the Tribunal having regard to all of the circumstances and the justice and equity of the case to make an ACAS uplift award if three gateway conditions are satisfied. Firstly, that a Code applies, secondly that there has been a failure to comply with the Code and thirdly the failure was unreasonable.

15. It is agreed that a claim for unauthorised deduction from wages is “relevant proceedings” for the purposes of Schedule A2 of TULR(C)A and that the Code of Practice on Disciplinary and Grievance procedures applies.

16. The Tribunal had regard to its findings of fact and conclusions in the liability Judgment relevant to a dismissal procedure as set out below:

- Paragraph 104: there was a clear failure to follow the Respondent's own policies even though HR had made clear in September 2017 that this should happen before the pay reduction was implemented. The

Claimant's pay was reduced without a panel hearing and had no right of appeal. The Tribunal was satisfied that another teaching fellow without a disability, unable to fulfill well over half of their contractual hours and after a series of protracted discussions over two academic years with no progress being made in finding work to make up a full-time role, would also have had their pay reduced.

- Paragraph 106: the context was important when considering the disability claim. There had been multiple face to face meetings to discuss the Claimant's duties over at least two academic years. None had achieved a mutually agreed solution and by as early as October 2017 the parties had reached an impasse.
- Paragraph 115: the decision to impose the variation without a proper procedure was oversight and not in any way because of a desire to dismiss the Claimant due to his disability or request for reasonable adjustments. Any employee unable to perform two-thirds of their job would, after more than two years of unsuccessfully trying to find a solution, have had a pay reduction imposed. The failure to follow a proper procedure was entirely due to the passage of time, a sense of frustration of the delay and the belief that the situation could not persist. In the circumstances, we concluded that the Claimant's disability was in no sense whatsoever a material cause for the failure to follow a proper procedure.
- Paragraph 127: in considering the unauthorised deduction from wages claim, this was an untenable situation and there was a need to break the impasse which had developed. The Respondent was acting for the right reasons in trying to help the Claimant but did not follow the process to terminate the contract or act within any contractual power to vary pay.

17. On the basis of those findings and conclusions, the Tribunal is satisfied that there was a failure to comply with the Code in respect of a dismissal procedure within section 207A. The Respondent should have commenced a capability procedure to deal with the issues about the Claimant's workload and pay.

18. However, the Tribunal does not conclude that the failure was unreasonable in all of the circumstances of this case. The Respondent and the Claimant had conducted a very significant number of meetings over a lengthy period of time to discuss alternatives to a reduction in pay. Indeed, matters had reached an impasse and a position which was untenable. We take into account the Claimant's own role and responsibility for the protracted discussions and the very many meetings that had taken place without progress being made. Even if the failure had been unreasonable, for the reasons that we have already given, it would not be just and equitable in all the circumstances to make any uplift.

19. The Claimant also seeks an ACAS uplift for unreasonable failure to comply with the Code in respect of the grievance procedure. The Claimant submitted a written grievance in December 2018 and was notified by 5 February 2019 that an Investigating Officer had been appointed. There were a series of interviews with the Claimant and the three managers involved in the decision to reduce the salary. By a letter dated 8 May 2019 the Claimant was informed that his

grievance had not been successful. The Claimant was advised of his right to appeal against the grievance decision. The Claimant exercised his right of appeal on 20 May 2019. There was a panel hearing on 5 September 2019 and by letter dated 12 September 2019 the Claimant was informed that his appeal had not been successful.

20. The Tribunal had regard to the requirements of the Code when dealing with grievance matters, in particular the need to hold a meeting to discuss the grievance, to allow the employee to be accompanied at the meeting, to have a decision in writing on appropriate action, to be advised of the right of appeal and to have a written decision on the outcome of that appeal.

21. The Claimant's assertion of unreasonable failure to comply appeared principally to be based on the importance attached by the Code in avoiding unreasonable delay, although he did also raise complaints about the appropriateness of the initial grievance decision maker.

22. The Tribunal had regard to the nature of the grievance which the Claimant had submitted. This was not a simple grievance about wages but a complex grievance raising many issues out of alleged disability discrimination and the Claimant's initial assertion that there had been a termination of his contract by reason of the pay reduction imposed without his consent. There was a long history to the dispute between the parties and an ongoing employment relationship, both rendering particularly important the need for careful investigation and consideration of the evidence. In all the circumstances, the Tribunal does not accept that a period of five months between the submission of the written grievance and the first grievance decision amounts to unreasonable delay. Similarly, for the appeal process a period of four months is not unreasonable delay.

23. For these reasons, the Tribunal does not conclude that there was a failure to comply with the Code in relation to grievance. Even if there had been, and for the same reasons, the Tribunal would have found that such failure was not unreasonable and that it would not be just and equitable in all of the circumstances of the case to make any adjustment to the awards made.

24. The Claimant is entitled to a declaration in respect of the sums due and which have now been paid in full. No further sums are awarded to the Claimant.

25. We would like to thank the Claimant and Ms Tharoo for their careful submissions and focus in this remedy hearing.

Employment Judge Russell
Date: 5 October 2021