EMPLOYMENT TRIBUNALS

Claimant: Mrs A Al-Azzani

Respondent: Ummel Umineen Academy Limited

Heard at: Cardiff **On:** 16th May 2022

Before: Employment Judge G Duncan

Representation
Claimant: In person
Respondent: Mr Henry, legal representative

REASONS

Introduction

1. The Claimant, Ms Al-Azzani, brings this claim against the Respondent, Ummel Umineen Academy. She worked as a teacher for a number of months in 2019. The Claimant states that she commenced her employment in May but the Respondent says that it was not until September 2019.

2. The Claimant has represented herself throughout the proceedings. The Respondent is represented by Mr Henry, legal representative.

3. The matter came before me on the 16th May 2022 for a full merits hearing. The hearing took place in person.

Procedure

4. The Claimant by way of ET1 received on 3rd Jan 2020 commenced her claim against Anouska Cullen. The claim outlined that she was seeking payment due to a failure to pay a monthly wage as agreed between the parties. She states that the Respondent reduced her hours of work and required her to take a pay cut. Accordingly, she states that she terminated her contract. She initially claimed for two months' pay.

5. The Respondent by ET3 and attached rider states that the Claimant has made a claim for observing lessons for which she was never entitled to payment. It is denied that the Claimant is entitled to any period for the

observation. It is asserted that the Claimant attended at interview and was informed that observation lessons were to be attended on a voluntary basis. The Respondent states that the Claimant started her role as a science teacher on 10th June 2019 and that she initially worked four hours per week before these hours were increased from the September term. The Respondent asserts that the Claimant was failing to perform her role to a satisfactory standard having received two complaints regarding her teaching. On 29th September 2019, the decision was made to reduce the Claimant's hours. Accordingly, the Respondent asserts that the Claimant resigned with immediate effect and failed to work her four weeks' notice. The Respondent admitted that they had failed to pay the Claimant the sum of £100 but that this was subsequently paid to the Claimant on 2nd March 2020.

6. The matter initially came before EJ Beard on 1st June 2020. The Claimant did not attend that hearing as she was out of the country caring for relatives. The Judge expressed a view that on the evidence available it appeared that there seemed to be no prospects of success given that the Claimant had accepted that she was not to be paid for the observation lessons. Directions were made for legal submissions relating to the basis upon which her claim was being pursued. Both parties filed documents in response to that order.

7. The matter then came before EJ Webb on 17th December 2021 to consider if there was jurisdiction to hear a purported claim for unfair dismissal. Plainly, there was not given the period of service falling far short of the requisite two years. The Judge allowed an amendment to the claim for holiday pay and made directions through to a final hearing.

8. In consideration of the claims, I have had regard to the 190-page bundle, the witness statement of Joanne Small on behalf of the Respondent, the statement from the Claimant, dated 6th April 2022, and the additional submissions document prepared by the Claimant.

Preliminary Issues

9. At the start of the hearing, a number of preliminary issues arose. The Claimant had brought to the Tribunal a bundle of documents upon which she wanted to rely. Two documents included email chains that the Claimant said were relevant to some of the issues raised by the Respondent. I took the view that they were potentially relevant, and an opportunity should be afforded to Claimant to rely upon those documents at the hearing.

10. One document was a duplicate of the submissions that had already been sent to the Tribunal and Respondent. Another was dated the day of the hearing and included what appeared to be notes and questions prepared in response to the Respondent's statement. In the circumstances I raised that this appeared to be preparatory notes rather than a document that amounted to a statement of evidence. Regardless, I expressed the view that this was a direct preparatory response to the Respondent's statement and that in the circumstances it would be inappropriate for the Tribunal to

consider it. I ensured that Mr Henry was given the necessary time to consider the email chains that were adduced.

11. Further, the Claimant had raised in an email prior to the hearing that she was not prepared for the full merits hearing. The Tribunal received an email dated 15th May 2022 stating that she had not had time to consider the bundle. Within the email chain on the file, there is reference to Mr Henry having sent a draft bundle to the Claimant on 21st April 2022 and receiving a response on 7th May 2022. The response requested that a number of documents be included in the bundle. Mr Henry accordingly requested the dates for the documents so that they can be included. No response was received by the Respondent and so the documents were simply included as undated. I pointed this out to Claimant, and she agreed that the documents had been received when sent by Mr Henry. Further, it was acknowledged that many of the documents were her own documents with which she was very familiar having created or held them personally. It was not the case that any of the documents had taken her by surprise.

12. Accordingly, I indicated that this appeared to be a hearing that could proceed fairly based on the evidence available and that Claimant had obviously been given sufficient opportunity to prepare. Regardless, I granted a 40-minute adjournment to allow the Claimant to confirm that all documents had been included in the bundle and that she was ready to proceed. Upon reconvening, the Claimant confirmed that she was ready to proceed.

Issues

13. The issues that I must determine are helpfully summarised by EJ Webb at P105 of the bundle. They are as follows:

    i) When did the Claimant become an employee of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

    ii) Did the Respondent fail to pay the Claimant correctly for any annual leave the Claimant took during her employment?

    iii) Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted?

    iv) Did this claim arise or was it outstanding when the Claimant's employment ended?

    v) Did the Respondent do the following: change the hours the Claimant was expected to work; change the amount the claimant was paid; treat the claimant in a disrespectful, unprofessional way.

    vi) Was that a breach of contract?

    vii) How much should the Claimant be awarded as damages?

Factual Matrix

14. In considering this claim, I had the benefit of hearing oral evidence from the Claimant and one witness on behalf of the Respondent, Joanne Small.

15. The first engagement between the parties is an email at 107 of bundle. The Claimant sent emails on 23rd April 2019 to state that she is interested in a teaching role. The responses are at page 108 and the email leads to a discussion being arranged to take place on 29th April 2019 at 12noon as per the email at page 110.

16. The evidence on the nature of the discussion that took place is vague. It is asserted that the Claimant was not told that there would be observation sessions. The Claimant states in oral evidence that she was seeking paid work and expecting to be paid.

17. The discussion that did take place leads to documents being sent at 19:51 on 29th April 2019 with a request that if Claimant wanted to take the role, the application form and references should be completed.

18. Of significance in this case is the email at page 115 sent to Claimant from the Respondent at 14:04. It states that "your first lesson will commence 10th June 2019, staff wages are paid the following on the 4th of the month so you will receive your first wage 4th July 2019, we do not pay wages to potential teachers who come in and observe some lessons. You will have a trial period up until the end of the summer term". It is therefore accepted that the Claimant knew as of the email at 115, dated 14th May 2019, that she would not be paid for observation lessons. Of note she does not object to this arrangement at any point in the correspondence with the Respondent.

19. In response, clarification is though sought by the Claimant at page 116 of bundle. She states that she got the impression that you accepted me as a teacher who can start immediately. This was not the Respondent's understanding for the reasons already outlined in the email dated 10th June 2019. In my view, there is clear confusion on the part of the Claimant.

20. The email at page 117 supports the contention that the Respondent was of the view that the Claimant would not be paid until she started teaching. The email states "I was under impression that you were aware you would not be paid until you started teaching". The phrase, in my view, is important, "I was under the impression" gives a view into mindset of the author to which I attach weight. The email is reenforced by that on 17th May at page 119. The author states "very sorry if you feel I was not clear sister, but I have made the situation clear now". Again, the clear inference is that the Respondent is of the understanding that the Claimant would not be paid.

21. In my view, the absence of response by the Claimant on this point is relevant. The correspondence that follows demonstrates that both parties were trying to resolve the exact hours that the Claimant would work. Regarding the contract that was formulated, I must determine when and how the employment started. Having read the entirety of the

correspondence, I am satisfied that the emails during May give me insight into the discussion that took place at the meeting in May. Namely, that observation sessions would lead to employment but that it was never the intention that the Claimant would be paid for observation. This is supported by the fact that the Claimant continued observing, without pay, in May and the start of June prior to 10th June 2019. I am satisfied that the terms agreed, on balance, were that of the contract found at p112. Namely, £144 a month and £72 for august to reflect the school holidays. I must read the ordinary meaning of the words contained in the contract. In my view, it is clear that for each month the pay would be £144 save for August where £72 would be paid. It does not state that there would be an hourly rate. It does not state that for the last week or so of July, where no teaching was undertaken due to the summer holidays, that the Claimant would not be paid. It is simple, half pay for August, the rest of the year full pay. Regardless as to whether this coincides with half term, easter or Christmas holidays. Those are the terms that were agreed.

22. In my judgment, the Claimant's argument that she should be paid per hour is not supported by the contemporaneous evidence or any evidence relating to the discussions that took place at the time that the contract was formulated. Nor is it supported by the way in which the Claimant was actually paid for the work that she undertook. In addition to the fact that she did not raise the issue regarding payment for observation, she did not raise payment terms whilst in employment. I am satisfied that, on balance, there is no entitlement for observation days to be paid and that it was the intention of both parties that the Claimant should be paid on a monthly basis, regardless of whether the month was four or five weeks in length, or even if a number of the weeks were not physically worked due to school holidays.

23. The Claimant criticises the Respondent for not being clear but there are multiple examples of the Respondent in correspondence clearly demonstrating a point but the Claimant not grasping the explanation. I referred earlier to an email requesting the application form, pre-employment health form and DBS check. The same had to be chased by email on 16th July at p134. I do not know why this was the case, but it is just one of the examples where the Claimant was requested to do something but did not follow up as expected. This conduct fits into a wider pattern of misunderstanding.

24. The Claimant was offered further hours in the September term. The amended contract can be found at page 135. It is again further support to the way in which the Claimant would be paid, namely, not an hourly rate. She was to work the hours stated for £532 from September to July and £266 for August.

25. There appears to have been considerable disagreement over how the Claimant was paid and when. I have regard to the text messages at page 138 onwards. There are multiple issues around payment methods. Criticism of late payment is levied upon the Respondent but in my judgment, it is not necessary for me to deal with this in any great length other than to say that the parties do not agree as to the exact method of payment. The exact method of payment, whether cash, BACS or cheque makes little difference in this case.

26. The Claimant worked in accordance with the agreement from 10th June 2019 until the hours were increased at start of September.

27. On the 23rd September 2019, a meeting took place between parties at which various issues were raised with the Claimant and it was communicated to her that there would be reduction in hours.

28. The Claimant disputes that there were issues with performance, the Respondent states that they received two complaints and those issues are as outlined at page 157. I attach considerable weight to this document. It is the most contemporaneous document of the circumstances surrounding the meeting and the issues that were encountered. I also have regard to the evidence I heard from Ms Small. She was clear that she wanted to give the Claimant an opportunity to address the concerns, put in more support in place and wanted to introduce walk in observations so to monitor and assist the Claimant. She presented as a credible and consistent witness.

29. I consider that, as you would expect in a school, there were safeguards in place to prevent teachers feeling as if they were overwhelmed or unsupported. The Claimant, I find, to this day, has failed to properly understand and show insight into those concerns. I was struck by the lack of acceptance of the issues raised and the genuine concern that the Respondent felt towards the Claimant. The Claimant's focus was upon the impact of people coming into her lessons rather than recognising that there were issues that needed to be addressed. It seems to me that observations are likely to be a necessary part of the monitoring of a classroom and the performance of teachers. The Claimant makes much criticism of the Respondent, but I reject that. Having considered both accounts regarding the nature of the discussion around the reduction of hours, I prefer the evidence of the Respondent that the reduction was agreed at the meeting. I find, on balance, that the Claimant agreed to the reduction given the explanation that was provided to her.

30. If I am wrong in that respect, I do not consider that the Respondent acted in breach of contract by reducing hours. I am satisfied that the Respondent was entitled to act in the manner that it did given the evidence of complaints, issues with allocation of work, poor progress of students and reluctance to allow walk ins. It fits the general picture of evidence that necessary to reduce working hours. The Claimant, it appears, was not performing her role to the expectation of the Respondent.

31. The response to the agreement was that the Claimant resigned. She outlines in her letter on 29th September 2019 that she resigned due to a decrease in hours. She did not work her notice.

32. After the conclusion of her employment, it was accepted that the Respondent owed the Claimant £100 in unpaid wages. It transpired shortly before the hearing that the Respondent had sent a cheque to the Claimant in 2021 but that the Claimant had failed to present the cheque to her bank. Accordingly, the cheque was no longer valid. The Respondent only learnt of this in the days prior to the hearing. The Respondent therefore agreed to reissue the cheque.

Law

33. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA:

> "An employer shall not make a deduction from wages of a worker employed by him unless—
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> (a) 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
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> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

34. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.

35. For the purpose of considering whether there was an unauthorised deduction in wages, I must construe the contract to consider the Claimant's entitlement and whether the Respondent adhered to this arrangement. I must determine the amount that is properly payable.

36. In consideration of the claim for holiday pay, I have regard to the Claimant appearing to pursue her holiday pay as a breach of contract. I must construe the appropriate leave entitlement and consider whether there is a failure on the part of the Respondent to adhere to the agreement.

37. The Claimant argues that the Respondent acted in breach of contract by unilaterally amending the terms of the contract in respect of working hours. She claims that the Respondent therefore should pay her notice pay given the fundamental breach. I must construe the contract and consider whether the Respondent acted in breach of the same.

Conclusions

38. Having made the findings of fact as outlined under the factual matrix above, I reach the following conclusions.

39. In respect of unpaid wages, I have found that the contract stipulated a monthly payment to be made. I have considered the detailed and complicated calculations advanced by the Claimant and consider that they amount to a distorted approach to the calculation of wages. The calculations bear no resemblance to the contract that was agreed between the parties and are an artificial approach. The calculations bear no resemblance to the payments actually made. I have already found that the Claimant is not entitled to payment for the observations. The claim for unpaid wages is therefore dismissed.

40. I consider the calculation for holiday pay to be equally distorted. Aside from the fact that I struggle to follow the Claimant's arguments, the contract is clear in terms of how holiday would be accrued to be taken during the allocated school holiday. The Claimant was a teacher and it must follow that the holiday the Claimant takes fall into the allocated holidays as set by the school. It makes absolutely no sense for her to have taken holiday in term time. The reality is that the Claimant's holiday entitlement was far exceeded by the school holidays for which she was permitted not to work. For example, she did not work between 18th July and the start of the September term. For this, she was paid the whole month of July. I dismiss the claim for holiday pay.

41. I find that the Claimant has failed to prove that the Respondent acted in breach of contract. If anything, the Respondent would have been entitled to argue that it was the Claimant that was in breach for failing to adhere to the notice provisions. As outlined above, the Respondent offered support and amendment to the contract by agreement. I therefore dismiss the claim for breach of contract.

42. As outlined above, the Claimant is entitled to a declaration that the Respondent failed to pay her £100. I recognise entirely that the Respondent sent a cheque that the Claimant failed to cash. I have therefore recorded this on the face of the judgment so that anyone considering the case in the future can recognise that the Respondent accepted this error and sought to rectify it.

Reconsideration

43. In drafting these written reasons, I acknowledge that the Claimant has appeared to request a reconsideration of my decision. The Claimant has been particularly eager to request these reasons, having done so prior to receipt of the judgment. She has also sought a reconsideration before sight of the written reasons. I therefore refer the Claimant to rule 71 of the Employment Tribunal Rules that states that a party may apply for reconsideration within 14 days of the written reasons. I expressly refer the Claimant to this rule as, at present, I do not have any information from the Claimant as to why she states that I should reconsider my decision. It would be of no benefit to the Claimant to proceed to reconsider my decision without this information. Accordingly, she must write to the Tribunal within 14 days of receipt of the written reasons if she wishes to proceed with the request for reconsideration and outline the basis upon which she states that this is necessary.

Employment Judge **G Duncan**
Date 29th June 2022

WRITTEN REASONS SENT TO THE PARTIES ON

1 July 2022

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FOR EMPLOYMENT TRIBUNALS