



EMPLOYMENT TRIBUNALS

Claimant: Khelsea Robinson

Respondent: Michael Hyde & Associates Limited

HELD AT: Manchester (by Cloud Video Platform) **ON:** 10 June 2022
23 June 2022 (in chambers)

BEFORE: Employment Judge Fearon

REPRESENTATION:

Claimant: *In person*

Respondent: *Mr James Lennon (Director)*

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's complaint of unauthorised deductions from wages is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as a Part II Architectural Assistant from 1 April 2020 until 8 October 2021. The claimant presented a claim on 17 December 2021 for unauthorised deductions from wages on the basis that her contractual salary was £27,000 gross per annum and she was never paid her full salary during her employment with the defendant. The respondent says the claimant agreed to a reduced salary at the outset of her employment and was paid in accordance with that agreed salary.

The Issues for the Tribunal to decide

2. What sum was properly payable?
 - 2.1 What salary was agreed by the claimant and respondent?
 - 2.2 Was the contract varied in relation to the claimant's salary either by express agreement or impliedly?
3. If not, was there a deduction from the claimant's wages and if yes how much?
4. If there was a deduction was it:
 - 4.1 Required or authorised by statute?
 - 4.2 Pursuant to a relevant written contractual provision of which the claimant had written notice before the deduction was made?
 - 4.3 Agreed to in writing by the claimant before the deduction was made?
5. How much is the claimant owed?
6. Should there be an uplift for the respondent unreasonably failing to follow the ACAS code on grievance procedures?

Evidence

7. The claimant submitted a bundle of documents totaling 45 pages. The day prior to the hearing the respondent filed a bundle of documents and emailed a copy to the claimant. The claimant was given opportunity during an adjournment of the hearing to consider the bundle and she agreed to the hearing proceeding thereafter. I heard evidence from the claimant and from James Lennon on behalf of the respondent.

Findings of Fact

8. In a letter to the Claimant dated 17 February 2020, the respondent confirmed the claimant's acceptance of their offer of employment to her as a Part II Architectural Assistant and offered her a salary of £27,000.00 per annum paid monthly in arrears.
9. On 20 February 2020 the claimant's start date of 1 April 2020 was confirmed.
10. On 04 March 2020 the respondent sent to the claimant a copy of the Contract of Employment for her to review and sign, including the offered salary of £27,000 per annum.
11. On 16 March 2020, given the Covid pandemic situation, the Claimant contacted Mr Lennon of the respondent asking if everything was still fine for her employment commencing with the respondent and Mr Lennon told her that it was.
12. On 30 March 2020 Mr Lennon spoke to the claimant informing her that the respondent was in financial difficulty and in order to still be able to employ her the respondent could only offer her a salary of 80% of the amount they had originally offered of £27,000, ie a salary of £21,600.
13. At this stage the claimant had left her previous employment. In response to the respondent's query, she had confirmed to the respondent that her previous employer was unable to re-hire her and then furlough her as they were public sector funded. In evidence Mr Lennon confirmed that an existing staff member of the respondent's staff was furloughed so the respondent could employ the claimant; given the claimant's previous employer could not re-hire her, he did not want to leave the claimant unemployed by withdrawing the offer of employment made to her and wanted to offer her employment on terms which she could accept and the respondent could afford. In evidence the claimant confirmed that she was told at that time if she did not accept the reduced salary offered then the respondent could not afford to employ her.
14. The respondent confirmed to the claimant on 30 March 2020 that the reduced salary was for a 5 day working week. The claimant confirmed in evidence that on 30 March 2020 she agreed with the respondent to accept the reduced salary of 80% of £27,000.
15. The claimant in evidence said she was given the impression on 30 March 2020 that she would be given some kind of compensation for agreeing to the reduced salary either reduced hours or alternatively the reduced pay would be paid back to her when the respondent could afford to do so.
16. In an email to the recruitment consultant, Will Davis of Tonic Careers Limited, dated 3 April 2020, Mr Lennon confirmed the claimant had agreed to employment with the respondent on a reduced salary as her previous employer could not re-hire and furlough her. He said it was hoped this situation would be temporary but only time would tell. There was no mention in that email of any form of compensation being offered to the claimant for agreeing the reduced salary.
17. In an email dated 8 April 2020 to Hilary Garrett of the respondent, the claimant questioned if the 80% wage she had agreed reflected a 4 day working week. On 8

April 2020 Hilary Garrett replied by email and confirmed to the claimant that the reduced salary of 80% of the original offer was for a full working week. The claimant did not seek any other clarification about any other form of compensation for the reduced salary and did not further query the reduced salary being for a full working week.

18. On 17 April 2020 Mr Lennon emailed his colleague, Kathleen Wilson, indicating that the claimant's contract needed to be amended to confirm the reduced salary and that amendment could be done by either amending the contract or leaving the contract as drafted and confirming the adjustment by letter.
19. Mr Lennon confirmed in evidence that the new agreed salary was not confirmed in writing but was agreed orally on 30 March 2020 and the claimant commenced employment and continued to work for the respondent on the basis of that agreement and did not question it.
20. The Claimant confirmed in evidence that on 30 March 2020 options were mentioned to her of reduced hours or the respondent paying her the difference between the original salary offered and the reduced salary when it could afford to do so. She says she thought it was simply an ongoing situation that she would be paid less in accordance with the reduced salary until the company could pay her at the level of the original offer of £27,000.
21. On 23 June 2020 Mr Lennon of the respondent spoke to the claimant and confirmed her salary would be increased to 90% of £27,000 as from 1 July 2020. The claimant in evidence confirmed she was not aware of any changes to her terms and conditions at this stage and was still under the impression that the respondent would pay back the salary shortfall when it could afford to. She did not query at that time any of her terms and conditions of employment and did not query with the respondent as to if and when any payback would be made for the reduction that she agreed to her salary on 30 March 2020.
22. Because of ongoing financial difficulties during the pandemic, the respondent had to consider making redundancies in October 2020. At the consultation conclusion meeting on 23 October 2020 the claimant agreed to remain on a salary of 90% of £27,000 as had been paid from 1 July 2020. The claimant in evidence accepted this was on the same terms and conditions as agreed on 30 March 2020. In October 2020, she did not seek any clarification of any of the terms and conditions of her employment nor raise any queries about any form of compensation for the originally agreed 20% reduction to her salary nor in relation to the 10% reduction of the originally agreed salary of £27,000 which was applicable from 1 July 2020.
23. The claimant continued to work for the respondent on a salary of £24,300 gross (90% of £27,000) until she resigned by letter dated 8 September 2021. The reason given for her resignation was:

“After careful consideration, I feel that I would benefit greatly from a different working and learning environment and that in order to achieve my career goals, the time is right to move on.”

She did not question in that letter whether she would be paid any additional sums for the 3 month period she worked on 80% of the original agreed salary nor for the period since 1 July 2020 when she worked for the respondent on a salary of 90% of £27,000.

24. An exit interview took place on 17 September 2021 by Teams, attended by the claimant, Mr Lennon and Hilary Garrett. At that meeting it was confirmed to the claimant that pursuant to her contractual terms, the respondent would be seeking to recover from her the Part 3 course fees they had paid for her which amounted to just short of £2,000.
25. Clause 24.5 of the contract of employment dated 4 March 2020 provides for the recoupment of training fees. Clause 24.5.1 entitles the respondent to recoup 100% of the course fees where the claimant's employment terminates prior to her completing the Approved Course. The claimant had not completed her course at the time her employment terminated. Clause 24.5 continues by stating "*Such sums may be recovered in whole or in part by deduction from payment of your final salary or other payments due to you on the termination of your employment*".
26. At the meeting on 17 September 2021, Mr Lennon confirmed that the deduction for course fees would be made from the claimant's final salary which meant that she would not be paid up to her termination date. He also confirmed the claimant would be placed on garden leave as from 21 September 2021 and there would be no objection if she could accelerate the start date with her new employer.
27. At that meeting the claimant indicated she was looking to be paid the shortfall in her salary for the period during which she was paid 80% of the original salary offered and thereafter for the period she was paid 90% of the salary originally offered.
28. On 21 September 2021 the claimant sent a grievance letter to the respondent raising issue with the following: not being given an opportunity to repay her course fees in instalments, the deductions from salary, excessive overtime and substandard IT equipment.

Law

29. 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— (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 (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."
30. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
31. Section 13(3) ERA provides: "Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after

deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”

Discussion and conclusions

32. I find that on 30 March 2020 the claimant agreed to vary her employment contract when she accepted the respondent's offer for her to commence employment with the respondent as a Part II Architectural Assistant on 1 April 2020 on a reduced salary of £21,600 which was 80% of the originally agreed salary of £27,000. All other agreed terms and conditions as set out in the contract dated 4 March 2020 remained the same, including that this was a full time position with the claimant working 5 days per week.
33. The claimant claims she accepted the reduced salary on the basis that she would be compensated for the reduction. The respondent said it was hoped this was a short term situation with the claimant being on a reduced salary but that they did not know when this could be reviewed in the context of the Covid pandemic situation which was unfolding.
34. On 8 April 2020, 8 days after agreement having been reached, the Claimant asked the respondent if the reduced salary reflected a 4 day working week and it was confirmed to her that the salary was for a 5 day working week. She did not query this further. She raised no other queries about any other terms and conditions of her contract of employment nor any queries in relation to any possible compensation for agreeing a reduced salary.
35. The claimant has provided no evidence that any agreement was reached with the respondent about paying any form of compensation in consideration of her agreeing to commence employment on a reduced salary of 80% of that originally agreed. I find that the claimant commenced full time employment (5 days per week) with the respondent on 1 April 2020 on the basis of an agreed salary of £21,600 and that there was no agreement as to any form of compensation in terms of reduced hours or payback of the reduced salary amount.
36. The claimant worked from 1 April 2020 for a period of 3 months on the 80% salary. On 23 June 2020 the respondent confirmed an increase to the claimant's salary to 90% of £27,000 effective from 1 July 2020. No other changes were made to the claimant's contractual terms at that time. The claimant did not raise any queries about any form of compensation for the reduced salary at that time. The claimant then continued working for the respondent on this basis until she resigned by letter dated 8 September 2021.
37. The claimant in evidence agreed that she worked for 18 months on a reduced salary, that there was no specific agreement between her and the respondent as to any compensation for agreeing the reduced salary and that she did not challenge that position.

38. I find that the claimant agreed to vary her contractual terms and conditions and throughout her employment with the respondent she was paid in accordance with the contractual terms agreed.
39. Course fees were deducted from her final salary in accordance with clause 24.5 of her contract of employment.
40. I find that the total amount of wages paid by the respondent to the claimant were the amounts properly payable by the respondent to the claimant and I therefore find no unauthorised deductions were made to the claimant's wages.
41. The claimant's claim is not well founded and is dismissed.

Employment Judge Fearon

Date: 1 August 2022

JUDGMENT SENT TO THE PARTIES ON

4 August 2022

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