EMPLOYMENT TRIBUNALS

Claimant: Dorina-Gabriela Foszto

Respondent: Metroline Travel Limited

Heard at: Watford (by video) **On:** 19 August 2022

Before: Employment Judge Din

REPRESENTATION:

Claimant: In person
Respondent: Clare Nicolaou, Aereus Employment Law

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The Claimant's complaint that there was an unauthorised deduction from her wages is not well-founded. This means the Respondent did not make unauthorised deductions from the Claimant's wages as a result of failing to move her to higher pay grades on 1 September 2019 and 1 September 2020.

REASONS

Introduction

1. The Claimant is Dorina-Gabriela Foszto (**Claimant**).

2. The Respondent is Metroline Travel Limited (**Respondent**). The Respondent is a large bus company, with a number of garages and routes around London and the Home Counties.

Claims and issues

3. The Claimant was employed by the Respondent on 2 January 2019.

4. The Claimant claims that she has suffered an unlawful deduction from wages as a result of the failure of the Respondent to move her to higher pay grades:

    a. on 1 September 2019 after four years of service as a bus driver with her previous employer and the Respondent; and then
    b. on 1 September 2020 after five years of service as a bus driver with her previous employer and the Respondent.

5. The Claimant bases this on a scheme introduced by the Mayor of London in January 2018 called the "Licence for London" (**LfL**) and what she was told when she was interviewed for her employment at the Respondent.

6. The Respondent denies that there has been an unlawful deduction from wages. In particular, the Respondent states that the Claimant has misunderstood the effect of the LfL scheme. The Respondent states that the LfL scheme provides bus drivers with the opportunity to start on a pay grade commensurate with their experience as bus drivers. However, it does not transfer continuity of employment. As such, in order for the Claimant to get to the next pay grade with the Respondent based on length of service, the Claimant needs to have completed that length of service at the Respondent, not as a bus driver with the Respondent and any previous employer bus companies.

7. In light of this, according to the Respondent, the Claimant would have moved pay grades with the Respondent (if she stayed employed by the Respondent as a bus driver):

    a. on 2 January 2023 after four years of service with the Respondent; and then
    b. on 2 January 2024 after five years of service with the Respondent.

8. The Respondent further denies that what the Claimant may have been told at her interview impacts the Respondent's analysis above.

9. If her claim is successful, the Claimant seeks a remedy by way of the difference between the wages she states she should have received if she was placed on the correct grades at the correct times, compared with the wages she actually received from the Respondent.

Procedure, documents and evidence heard

10. The Claimant's claim form was received by the London Central Tribunal office on 6 November 2020.

11. The Respondent's response form was provided on 7 January 2021.

12. The Respondent provided a 93-page bundle of documents (with index) in advance of the hearing. This included the Claimant's schedule of loss as at 1 October 2021.

13. References to page numbers in this judgment are references to the bundle.

14. In addition to the materials in the bundle:

   a. the Respondent provided a witness statement from Joannis Evlogimenos dated 3 April 2022.
   b. the Claimant provided a witness statement dated 7 October 2021, and a witness statement from Gokan Zerkin dated 7 October 2021, with accompanying documents. The relevant accompanying documents are included in the bundle.

15. The Claimant made two corrections to her witness statement. At paragraph 1, it states that she is working as a bus driver at the Respondent. However, since the time of her statement, and as of 9 April 2022, she has left the Respondent and is no longer employed by the Respondent. At paragraph 2, it said "Prior to working at Metroline Travel Ltd, I was employed at Tower Transit LTD as a bus driver for 4 years and 3 months". This period should have been "three years and four months".

16. The Claimant and Mr. Evlogimenos appeared at the hearing. Mr. Zerkin did not appear. The Respondent had no objection to Mr. Zerkin's witness statement being entered into evidence. However, the fact that the Respondent was not able to cross-examine Mr. Zerkin was taken into account when considering Mr. Zerkin's evidence.

Facts

17. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.

<u>The Claimant's employment</u>

18. The Claimant was employed by the Respondent from 2 January 2021 until she left to join another bus company in April 2022.

19. Prior to joining the Respondent, the Claimant worked for Tower Transit Operations Limited (**Tower Transit**) as a bus driver. She worked at Tower Transit for three years and four months before joining the Respondent.

20. Prior to joining the Respondent, the Claimant signed a document entitled "Main Terms and Conditions of Employment", which was an agreement between the Claimant and the Respondent, on 20 December 2018 (pages 30 to 40) (**Employment Contract**).

21. The Employment Contract states at clause 1.2 that "Your [i.e. the Claimant's] continuous employment begins on **Wednesday 02nd January 2019**" (bold in the original). It goes on to state at clause 1.3 that "No employment with a previous employer counts towards your period of continuous employment with the [Respondent]".

22. In common with other bus operators, the Respondent has pay grades for bus drivers that increase with experience and length of service.

23. Clause 5.1 of the Employment Contract states that "The current rates of pay are attached at Appendix 1 to this document". Appendix 1 sets out various grades. The key pay grades for the purpose of this case are:

    a. "Driver.11": described as "New entrant"; "post 2012"; "2 years service";

b. "Driver.12": described as "New entrant"; "post 2012"; "4 years service"; and
c. "Driver.5": described as "Driver > 5 year service".

24. Each pay grade has different pay rates attached to it. Of the three pay grades highlighted above, "Driver.11" has the lowest pay rates and "Driver.5" has the highest pay rates.

25. The Employment Contract is silent as to which pay grade the Claimant was to be on when joining the Respondent. However, it is agreed that the Claimant joined the Respondent at the "Driver.11" grade.

<u>Licence for London</u>

26. The LfL scheme is a voluntary scheme agreed between bus operators (including the Respondent), Transport for London (the integrated transport authority for London) and Unite the trade union.

27. According to a document from October 2017 referred to by the Respondent as the "Terms of the Licence for London" (pages 41 to 43) (**LfL Terms**), the LfL scheme "enables drivers with the Licence for London (**LfL**) to start at a new Bus Operator at the open pay grade that is equivalent to their level of service, thus not having to start again as if they were a new entrant bus driver" (paragraph 1.c.).

28. The Claimant has tried various routes to find the same or a similar document that has been signed by the Respondent. This is described in her witness statement at paragraphs 12 to 15, and see also pages 59 to 63 of the bundle. According to his witness statement, Mr. Zerkin too has attempted to find a signed version of the LfL Terms. Neither succeeded.

29. The Respondent has stated that no such signed document exists, and the document referred to above sets out the terms of the LfL. This is supported by the response to the Claimant from the FOA Case Management Team at Transport for London (pages 62 and 63), which refers to the document at pages 41 to 43. In the absence of evidence to the contrary, I proceed on the basis that the terms of the LfL as applicable to this case are set out in pages 41 to 43.

30. As set out in paragraph 2.a. of the LfL Terms, a bus driver that wishes to apply for a new job that is covered by the LfL scheme has to apply for it in the "usual process and pass pre-employment checks, assessments and interviews". If a bus driver wishes to make use of the LfL, they "must provide an uncertified copy of the LfL at the application stage…" (paragraph 2.b of the LfL Terms). If the application is successful and on verification of the LfL by the previous employer, "the driver will start at the new employer at the rate of pay that is open to staff with the same level of service at the new employer at the time of the job application" (paragraph 2.d. of the LfL Terms). Further, the LfL terms say that "The 'open' rate of pay means that open to staff joining the new employer at that point in time, and not any rates that are at the time closed for progression for any reason, including TUPE grades" (paragraph 2.e. of the LfL Terms).

31. The LfL Terms then state "Service will not be continuous for employment law purposes" and "The LfL will apply to pay grades/rates only – it will not preserve

or apply to any other terms and conditions (including for example service related benefits) – these will be set by the new employer" (paragraphs 2.f. and 2.h. of the LfL Terms respectively).

32. In accordance with the LfL Terms, the Claimant obtained an LfL issued by Tower Transit in December 2018 (pages 46 and 47). This stated that her employment start date was 1 September 2015, her "LfL Continuous Start Date" was 1 September 2015 and her then current LfL service as at December 2018 was three years and three months.

The Claimant's interview

33. The Claimant asserts that on the on the day of her interview with the Respondent on 14 December 2018, one of the Respondent's recruitment officers, a Mr. Keith, told her that according to her previous experience with Tower Transit, she would be placed "…on the pay grade DR11 (2 years experience)" as the Respondent "has no grade for 3 years experience" (paragraph 4 of the Claimant's witness statement).

34. The Claimant goes on to say that Mr. Keith said to her that "after 1 year in service with [the Respondent], [the Claimant] will be on DR12 (4 years experience) and after another year on DR5" (paragraph 4 of the Claimant's witness statement).

35. In oral evidence, the Claimant stated that she agreed to join the Respondent on the basis of Mr Keith's comments. She stated that she would not have changed companies from Tower Transit to the Respondent otherwise.

36. The Tribunal has not heard from Mr. Keith and there is no further evidence as to what was said or not said at the time of the Claimant's interview.

37. The Respondent agrees with the statement regarding the Claimant being placed "on pay grade DR11", or "Driver.11" as referred to in Appendix 1 to the Employment Contract at the start of her employment with the Respondent.

38. In respect of what happens after one and then two years of service, the Respondent states that the Claimant must have misunderstood what had been said to her. In any event, the correct description of the relationship between the Claimant and the Respondent is set out in the Claimant's Employment Contract, which followed the interview and, the LfL Terms, which contradict what Mr. Keith is purported to have said.

39. I deal with these issues further in the conclusions section.

The Claimant's complaints

40. Both the Claimant and the Respondent agree that the Claimant was placed on grade "Driver.11" as referred to in Appendix 1 to the Employment Contract as a result of the LfL Terms and her prior experience with Tower Transit. The Claimant and the Respondent accept that this was the appropriate pay grade for the Claimant at the start of her employment with the Respondent.

41. The Claimant found that she had not been moved to a higher pay grade in accordance with her understanding of what Mr. Keith had told her at interview (paragraph 5 of her witness statement). She has provided her hours and pay calculations (pages 64 to 72), as well as pay slips (pages 82 to 93) to demonstrate what she was, in fact, paid. She has also submitted a schedule of loss (pages 26 to 27).

42. According to her witness statement (paragraph 5), the matter came to the Claimant's attention after completing a year's service with the Respondent. However, the Claimant did not make a complaint following the 1 September 2019 date. She only did so following the 1 September 2020 date. She stated in oral evidence that she was waiting to see what the Respondent would do before raising the issue.

43. On 23 September 2020, the Claimant sent an email to the Respondent's HR department (page 53) asking that it be considered as a formal letter of grievance in line with the Respondent's grievance procedure. The Claimant stated that she joined the Respondent on 2 January 2019 "with Licence for London", which meant that, according to her, her length of service from her previous employer would be honoured to keep all of her length of service as a bus driver.

44. She went onto say that her length of service with her previous employer had been honoured (by which I understand she means she was placed on the Driver.11 grade, rather than the grade for completely new bus drivers). However, this had not changed her pay grade "…as I have now completed 5 years, yet I'm not being paid correctly. This is not just a breach of [the LfL] (in agreement with [the LfL]), but also an unlawful deduction of wages".

45. The Claimant concluded by stating that because the Respondent chose to honour her length of service, but has not paid her the correct wages, she is requesting to be put on the correct pay grade, Driver.5, and back paid for the money that she is owed, "since [the Claimant] was supposed to be on [Driver.12] since September 2019 and [Driver.5] from September 2020".

46. The Claimant did not refer to any discussion with Mr. Keith or her interview in her email of 23 September 2020. She appears to rely solely on the LfL Terms in that email.

47. The Claimant accepts that her case relates to pay grade progression and not to any other benefits. As such, she does not dispute that the Respondent was correct to only take into account her service with the Respondent (and not her prior service as a bus driver with Tower Transit) for the purposes of other benefits, such as sick pay (see clause 9.2 of the Employment Contract at page 35). This, she believes, is consistent with the LfL Terms.

48. A Human Resources Advisor from the Respondent's Human Resources team, Ms. Johnson, passed the Claimant's 23 September 2020 email to the Respondent's Area Operations Director, Mr. Dalby, on 24 September 2020 (page 52). Mr. Dalby stated (also page 52): "This should not be accepted as a grievance as the employee when applying if they had read the [LfL Terms] would have been fully aware of the requirements. I also understand local management have explained this to this individual". He concludes by saying,

"Do training not cover this as part of the induction, if not we should do to stop these unnecessary grievances" (page 52).

49. Ms. Johnson sent an email on the same date (page 54) to Mr. Evlogimenos, who was the manager who dealt with the Claimant's complaint. In it, Ms. Johnson referred Mr. Evlogimenos to the Claimant's 23 September 2020 email and said "we are not accepting this as a grievance as Mrs Foszto should have been aware of the LfL criteria when she began with [the Respondent]". Ms. Johnson asks Mr. Evlogimenos to explain the following to the Claimant "so she is clear". Ms. Johnson goes on to say that "When an employee starts with a Licence for London, they start on the open pay grade equivalent to the length of service with their previous company. However your actual service is not continued and you start as a new employee. This means you do not receive any of the other benefits associated with length of service, such as increased holiday or company sick pay entitlements. This also extends to pay grade progression, so you will need to complete the appropriate years of service with [the Respondent] before your pay grade will change".

50. Mr. Evlogimenos states in his witness statement that whilst the Claimant's pay started at the Driver.11 rate, her continuous service with the Respondent only started in January 2019 (paragraph 6). As such, in order for her to be entitled to the next pay grade up (i.e., Driver.12) she must have worked for the Respondent for four years, not have worked as a bus driver for four years. Mr. Evlogimenos goes onto say that this is a service-related benefit that apples to length of service with the Respondent only. He adds that the Claimant has misunderstood the LfL Terms in this respect.

51. Mr. Evlogimenos then says that the Claimant would be entitled to the higher pay rate in January 2024, but not before that. Further, if the Claimant were to move to another bus operator then the number of years she had been driving would be taken into account for the purposes of her starting pay at that new operator, but again, her continuity of service would not be preserved and she would have to work for that new operator for a particular period of time until she received a further pay rise.

52. The Claimant stated in oral evidence (and it is not disputed) that neither Mr. Evlogimenos nor Mr. Dalby were present at her interview with Mr. Keith, and so do not know what was represented to her by Mr. Keith.

53. On 24 September 2020, Mr. Evlogimenos wrote to the Claimant stating that he was writing in response to the email grievance the Claimant had sent to the Respondent's Human Resources team alleging unlawful deduction of wages (page 56).

54. The letter went on as follows: "The grievance you have submitted has not been accepted as you are not entitled to [the Driver.12] pay grade until you have completed four years' service with [the Respondent]. [The Driver.5] pay grade will be applied after having been with [the Respondent] for five years. This is in line with the Licence for London criteria where you join [the Respondent] on the equivalent pay grade dependent on the length of service with your previous company".

55. It goes on, "When joining [the Respondent] you were placed on pay grade [Drive.11] which is the pay grade equivalent to the length of service with your

previous company. Your actual service is not continued and you start as a new employee. This means you do not receive any of the other benefits associated with length of service, such as increased holiday or company sick pay entitlements. This also extends to pay grade progression, so you will need to complete the appropriate years of service with [the Respondent] before your pay grade will change".

56. In evidence, the Claimant states that dismissing the grievance in this way was against normal grievance procedures (paragraph 7 of her witness statement). Mr. Evlogimenos states in his witness statement that he was advised that this would not be treated as a grievance because it was "nothing more than a misunderstanding" (paragraph 7 of his witness statement).

57. In her witness statement, the Claimant says that, as a result of its actions, the Respondent has failed to commit to the LfL Terms. She points to her then latest LfL from September 2021. I believe she is referring to pages 50 and 51, albeit there is some discrepancy in the dates and the length of service stated. However, her underlying point is clear – her LfL states a period of continuous service beyond her time at the Respondent, and this should (according to the Claimant) be the basis for her pay grade at the Respondent. The Respondent denies this.

58. The Claimant states that she decided to pursue her complaints further following discussions with her Unite union representative, who was initially to represent her in this dispute (see paragraph 8 of the Claimant's witness statement). Unite are a party to the LfL scheme. The Claimant stated in oral evidence that Unite are no longer involved in the case.

59. The Claimant's witness statement at paragraph 15 alleges that the Respondent's "recruitment department's intention to deliberately misinform the new recruits about salary schedule and pay upgrade periods is not only intentional but done in bad faith". The Respondent denies this.

60. The Claimant adds in her witness statement that if she was to resign and return to the Respondent within six months, then the Respondent would have to honour her service and offer her the Driver.5 pay grade. The Respondent does not dispute this.

61. The Claimant states that she is "desolate and humiliated" by the situation that she says the Respondent has put her through and refers to Mr. Zerkin going through the same issue.

<u>Mr. Zerkin</u>

62. As noted above, although the Tribunal had the benefit of Mr Zerkin's witness statement, Mr Zerkin did not appear and the Respondent was unable to cross-examine him.

63. According to his witness statement, Mr. Zerkin worked as a bus driver at the Respondent from December 2018 to June 2020. Prior to working at the Respondent, he was employed at another bus company, Go Ahead London General (**Go Ahead**) as a bus driver.

64. Mr. Zerkin states that he was unaware of the LfL scheme, and a recruitment officer at the Respondent, a Mr. Buck, brought it to his attention. According to Mr. Zerkin, Mr. Buck advised Mr. Zerkin to retrieve his LfL from Go Ahead. Mr. Zerkin says that he was told by Mr. Buck that with an LfL, he would be on his pay grade for a single year and then moved to pay grade Driver.11 (i.e. the pay grade commensurate with two years' service). If he was not to use his LfL, then he would be on his current pay grade for a further two years before moving to pay grade Driver.11.

65. In this regard, Mr Zerkin refers in his witness statement to page 73, which is an email from Mr. Buck to Mr. Zerkin dated 16 November 2018. In it, Mr. Buck states: "The Licence for London only applies to pay grade/rates- it does not preserve or apply to any other terms and conditions (including for example service related benefits. –these are set by the new employer i.e. [the Respondent]".

66. It is difficult to interpret this email (or the surrounding circumstances) fully in the absence of evidence from Mr. Buck, the opportunity to ask questions of Mr. Zerkin or the emails surrounding the email of page 73. However, Mr. Buck's email repeats what is said in the LfL Terms. As such, it should be interpreted no differently to the LfL Terms (something I shall return to).

67. Mr. Zerkin goes onto state that after a year his pay grade was not moved. He raised a grievance. The Respondent refused to take the matter further on much the same grounds as stated to the Claimant in this regard. The relevant correspondence is at pages 75 to 81.

68. Mr. Zerkin states that he raised this matter with his garage manager, and she told him that there were five or six similar cases at another bus garage. I have no further evidence as to these cases or their outcomes. As with the Claimant, Mr. Zerkin also tried to find a final version of the LfL Terms, also without success.

69. Mr. Zerkin says that because the Respondent failed to hear his grievance, to provide a signed version of the LfL Terms and to adjust his pay grade, he decided to leave and join another bus company, Arriva. He states that before he signed his new contract with Arriva he made sure that Arriva would honour his service as soon as he completed four years' service including that noted in his LfL. He states that Arriva did indeed put him on the relevant pay grade taking into account this four years' service as noted in his LfL.

70. The Claimant also asserts that other bus companies, included her new employer, have interpreted the LfL Terms to regard continuity of service for the purposes of grade progression as including prior relevant service with other employers.

71. Beyond the Claimant's comments and Mr. Zerkin's witness statement, I have not seen evidence of this. In particular, I have not seen additional evidence of whether this is, in fact, the approach of other bus companies. If it is their approach, I have not seen whether this is as a result of those companies' interpretation of the LfL Terms, or a separate part of those companies' employment terms.

Law

Unauthorised deduction from wages

72. Section 13(1) of the Employment Rights Act 1996 (**ERA 1996**) provides that an employer shall not make a deduction from wages of a worker employed by the employer unless 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 the worker has previously signified in writing their agreement or consent to the making of the deduction.

73. The definition of "wages" is found in section 27(1) of the ERA 1996. For current purposes, it means any sums payable to the worker in connection with his employment, including any fee, bonus, commission, holiday pay or other emolument "referable to his employment, whether payable under his contract or otherwise".

74. A deduction is defined in section 13(3) of the ERA 1996 as follows: "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 wages properly payable by him to the worker on that occasion…the amount of the deficiency shall be treated…as a deduction…".

75. The Court of Appeal held in *New Century Cleaning Co Ltd v Church* [2000] IRLR 27 that wages will be "properly payable" only if the worker has a legal (although not necessarily contractual) entitlement to the wages.

76. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to section 23 of the ERA 1996.

77. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within three months beginning with the date of payment for the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Conclusions

78. The key issues concern what wages were properly payable to the Claimant.

79. From the above, and as confirmed in oral evidence, it is the Claimant's case that, although she was placed on the correct pay grade (Driver.11) when she joined the Respondent, she should have been placed on the:

    a. Driver.12 pay grade on 1 September 2019 following four years as a bus driver incorporating her time both at Tower Transit and the Respondent;
    b. Driver.5 pay grade on 1 September 2020 following five years as a bus driver incorporating her time both at Tower Transit and the Respondent.

80. The Respondent states that the Claimant's time with Tower Transit should not be counted for the purposes of pay grade progression with the Respondent and only (in accordance with the LfL Terms) with respect to the grade that she joined the Respondent at. The correct dates (if the Claimant had stayed

employed by the Respondent as a bus driver) for pay grade progression with the Respondent would, therefore, have been:

a. Driver.12 pay grade on 2 January 2023 following four years of service with the Respondent; and then
b. Driver.5 pay grade on 2 January 2024 following five years of service with the Respondent.

Employment Contract

81. The Employment Contract at paragraph 1.3 states that "No employment with a previous employer counts towards [the Claimant's] period of continuous employment with the [Respondent]". Further, at paragraph 1.2., it states that the Claimant's continuous employment begins on 2 January 2019. This is the date on which the Claimant's employment with the Respondent began (paragraph 1).

LfL Terms

82. Although the LfL scheme is not referred to in the Employment Contract, the Respondent has stated that it complies with the LfL Terms. This is demonstrated in the case of the Claimant as she was placed on the Driver.11 pay grade on her starting her employment with the Respondent, rather than the pay grade at which completely new entrants are placed.

83. As such, it needs to be considered whether the LfL Terms, if properly interpreted, meant that the Claimant was entitled to move pay grades at the Respondent on the basis of her continuous service as stated on her LfL, rather than her continuous service with the Respondent in accordance with her Employment Contract.

84. The Overview section of the LfL Terms state that the "…scheme enables drivers with a Licence for London (**LfL**) to start at a new Bus Operator at the open pay grade that is equivalent to their level of service, thus not having to start again as if they were a new entrant bus driver" (1.c). The emphasis is on the start point of employment.

85. The LfL Terms state at 2.d. that "If the application is successful and on verification of the LfL by the previous employer, the driver will start at the new employer at the rate of pay that is open to staff with the same level of service at the new employer at the time of the job application". This talks about the rate of pay at the start of the driver's employment. It does not refer to progression through pay rates beyond that.

86. The LfL Terms make it clear that service will not be continuous for "employment law purposes". This does leave open the possibility that service may be continuous for purposes outside of "employment law purposes", such as – possibly – pay grade progression. However, there is nothing explicit. The LfL Terms go on to say that "The LfL will apply to pay grades/rates only – it will not preserve or apply to any other terms and conditions (including for example service related benefits) – these will be set by the new employer".

87. The Respondent has stated that pay grade progression is a matter for the new employer, in this case the Respondent. A pay increase is service-related benefit. This is in contrast with the pay grades/rates at the start of employment, which it agrees are covered by the LfL Terms.

88. In my view, the LfL scheme relates to the start of a bus driver's employment. The LfL Terms do not extend to pay grade progression. This is because the Overview of the LfL Terms makes clear that the LfL Terms concern the start of a bus driver's employment. Although the LfL Terms state that they "..will apply to pay grades/rates only", this has to be read in the context of the Overview. As such, they apply to pay grades/rates at the start of a driver's employment, not to pay grade/rate progression whilst the driver is in the bus company's employment.

89. In light of this, the LfL Terms do not support the Claimant's case.

The Claimant's interview

90. I now turn to what Mr. Keith may have told the Claimant at interview. The Claimant' interpretation of what Mr. Keith may have said is inconsistent with the terms of the Employment Contract (which followed the Claimant's discussion with Mr. Keith) and the LfL Terms. It is also inconsistent with what the Respondent said to the Claimant and to Mr. Zerkin subsequent to their raising the issue of continuity of employment.

91. The preliminary question before I need to decide whether Mr. Keith made these statements is whether, even if Mr. Keith did make the comments that the Claimant says he did, they override the Claimant's (subsequent) Employment Contract or the LfL Terms for the purposes of this claim. I find that they do not. This is because of Mr. Keith's (apparent) position with the Respondent, the fact that the terms were not reflected in the Employment Contract and were expressly contradicted in the subsequent Employment Contract, and the LfL Terms.

92. As such, I do not consider Mr. Keith's comments further.

Mr. Zerkin

93. Mr. Zerkin's evidence also does not alter those conclusions. Even if Mr. Buck made comments to Mr. Zerkin similar to those that the Claimant says were made to her by Mr. Keith, this does not alter my conclusions with respect to the claim before me. Further, the fact that another bus company may have employed Mr. Zerkin on more favourable terms with respect to continuity of service for the purposes of pay grade progression does not assist the Claimant – that is a matter for Mr. Zerkin and his new employer, rather than assisting with the interpretation and potential impact of the LfL Terms in this claim. The same is true for any arrangement that the Claimant may have come to with her new employer.

Claim

94. As the Claimant did not suffer an unauthorised deduction from wages, her claim is not well-founded.

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Employment Judge Din

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Date 7 September 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 23 September 2022

FOR EMPLOYMENT TRIBUNALS