



EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammed Abdul Hannan

Respondent: London Borough of Tower Hamlets

Heard at: East London Hearing Centre (via CVP)

On: 20 and 21 October 2022

Before: Employment Judge Boyle

Representation

Claimant: in person

Respondent: Ms A Stroud of Counsel

JUDGMENT having been sent to the parties on **25 October 2022** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The **REASONS** for the judgment are as follows

Claims and Issues

1. The claimant presented a claim with London East Employment Tribunal on 27 August 2021 alleging unfair dismissal and unauthorised deductions from wages (relating to salary payments he states he was owed by the respondent from 2016 to the date of his leaving employment on 31 March 2021).
2. The respondent lodged an ET3 denying all claims.
3. Whilst there were some issues regarding the bundle which were resolved during the hearing, the case was well prepared with a joint bundle and witness statements prepared. This case was heard by CVP and all parties had a strong internet connection. I have been able to assess all witnesses who gave evidence adequately and formed a view of their evidence.

4. In terms of the issues, the claimant confirmed these to be:
 - a. In relation to his claim for unfair dismissal, that it related to a failure to be offered suitable redeployment opportunities, which if deployed would have kept him in employment for longer and /or given him the opportunity to make an application for early retirement on his 55th birthday on 25 June 2021.
 - b. With regards to his claim for unauthorised deductions from wages, he states he was contractually entitled to a higher salary and that the respondent repeatedly failed to pay this from 2016 onwards.
 - c. As regards breach of contract, it was agreed at the hearing that the claimant could also present this part of his case as a breach of contract claim as he claimed the monies owed were outstanding at the termination of his employment.
 - d. I explained to the claimant that there was no claim in the Employment Tribunal for 'unfair treatment' but this would be considered under his claim for unfair dismissal.

Procedure Documents and Evidence

5. I heard evidence from the claimant. I also heard from the respondent's witnesses Judith St John (former Director. Commissioning and Culture) and Ahmad Al-Adil.
6. The claimant produced witness statements for two former colleagues, Muhammed Showkat Khan and Faruk Miah. Neither of these witnesses were able to attend the hearing. The respondent's counsel pointed out matters upon which she would have wished to cross-examine these witnesses had they attended. Therefore, I have decided that I would disregard their evidence and attach no weight to it.
7. I was supplied with a bundle of papers, and I read all documents referred to in witnesses statement and any additional documents I was referred to by either parties including a document called 'Guidance for Managers on Acting Allowances and Honoraria Payments March 2014.'
8. At the conclusion of the evidence each party made oral submissions.
9. The claimant submitted as follows:
 - a. He asked me to consider his witness statement where he had explained everything about his claim.
 - b. He accepted that the proper process had not been followed by management as regards a salary increase and that management should have known about HR processes.

- c. He did receive honoraria payments on 2 occasions: one for 2015 and a second one in late 2016.
 - d. He was not told that his Individual Right of Review (IRR) had been refused and therefore could not challenge it. He was shocked to discover in 2020 that it had been refused.
 - e. As regards his claim for unfair dismissal, the respondent had a duty to find a suitable role for him to apply for and his preference had been to continue employment with the respondent.
 - f. It had been a very stressful time for him and he had tried his best to find a suitable job. There were not many jobs available.
 - g. He did ask for applications for two jobs (pensions officer and PREVENT role) but did not receive any further details.
 - h. He also asked for details about seven other roles that were being covered by agency staff. He only received details on 24 March 2021 and this was too late for him to act.
 - i. He say he was proactive in trying to find alternative roles.
 - j. Losing his job has had a significant impact on his physical and mental well being and also impacted on his wife.
10. The respondent produced written submissions which counsel referred to during submissions. They can be summarised as follows:
- a. As regards the claim for unauthorised deductions from wages, the Tribunal must first identify what wages were properly payable to the claimant.
 - b. The respondent submitted that there was a process that needed to be followed (i.e. using the IRR) if the claimant wished his job description and pay grade to be reconsidered.
 - c. The respondent stated that in the absence of a successfully concluded IRR, the claimant's salary remained at the PO2 level.
 - d. The respondent accepts that the claimant was not informed his IRR had been refused but he had ample opportunity to follow it up between 2016 and failed to do.
 - e. In any event his existing contract was brought to an end by notice and a new contract offered which took effect in April 2020. Any claim was under the old contract should have been brought no later than 2020.

- f. As regards breach of contract, the respondent's case is that payment of salary at PO2 level was not a breach of contract and in any event the new contract in April 2020 brought an end to claims under the previous contract and therefore there was no breach of contract arising on the eventual termination of employment in March 2021.
- g. As regards unfair dismissal, the claimant conceded his only point related to redeployment. The respondent's submission here were that the respondent had acted reasonably in considering alternative roles for the claimant and had acted reasonably in relation to the Pensions Officer role and PREVENT role identified by the claimant and also in relation to agency roles identified by the claimant.

Fact Findings

- 11. After a careful consideration of all the evidence before the Tribunal over the two day hearing I make the following findings of fact.
- 12. The claimant commenced employment with the respondent in 22 Feb 1999 and worked in the respondent's Community Language Service (CLS) which is part of Children's Services Directorate.
- 13. He held different posts but at all relevant times for these claims, he held the post of Curriculum and Quality Assurance Manager.
- 14. In this role the claimant assumed early GCSE duties and additional responsibilities in May 2014.
- 15. In August 2014, the claimant's manager Showkat Khan submitted a draft amended job description for the claimant to the then Services Head Shazia Hussain.
- 16. On 21 April 2015, Ms Hussain approved an honoraria payment for the claimant.
- 17. The respondent has a formal procedure agreed with their recognised trade union regarding job role changes which is called an Independent Right to Review (IRR).
- 18. On 22 May 2015, Ms Hussain sent an email to Mr Khan agreeing a backdated salary increase for the claimant. This was not in response to an IRR application. I find that Ms Hussain's email was outside of this respondent's recognised process and was an indication of support for an application from the claimant. I find that it was not a binding contractual agreement to increase the claimant's salary as it was not in response to an IRR application from the claimant.
- 19. On 20 August 2015, Judith St John approved a one-off honoraria payment for the claimant in the sum of £2400.

20. On 4 September 2015, the claimant was awarded a one-off honoraria payment which he did not accept until 14 June 2016.
21. On 20 May 2016, the claimant had a meeting with Michelle Vincent in the respondent's Human Resources department. Ms Vincent told the claimant that if he believed his job description had significantly changed then the process to follow was using the respondent's IRR procedure.
22. The claimant submitted an IRR application on 1 June 2016. The claimant's IRR was not approved and never signed off by the respondent.
23. In 2017 Ms Hussain left the respondent's employment and Judith St John became Divisional Director.
24. It is not disputed that the claimant was not informed of the outcome of his IRR, which is regrettable. However, I find that he could have raised this matter in a formal grievance, (the grievance being that his IRR was not being taken seriously), but failed to do so during any point between 2016 and October 2020.
25. The claimant received a further honoraria payment in respect of the period between October 2016 and January 2017.
26. The claimant did not raise the issue of his missing IRR outcome with Ms St John from 2017 onwards until 2020.
27. In late December 2020, the respondent took the decision to close down the CLS.
28. The respondent issued new employment contracts (including to the claimant) in January 2020. All staff were given notice under existing contracts and presented with a new contract which took effect for the claimant on 13 April 2020. The new contract stated that it superceded any other written or verbal agreements.
29. In January 2020, consultation to close the CLS began. This consultation eventually took place over an extended period due to the covid pandemic which resulted in a national lockdown in March 2020.
30. Collective consultation meetings took place on 16 -18 July and 16 September 2020.
31. On 17 September 2020, as he had been identified as being at risk, the claimant was given access to redeployment via the respondent's redeployment register. The Tribunal heard from Mr Ad Adil (a manager in the respondent's People Resourcing Team) that whilst all vacancies with the respondent are available and accessible by all staff, there is an advantage in being on the redeployment register. Further if a redeployee makes an application, the internal vacancy process is stayed while the applicant's application is considered.

32. During consultation and on 5 October 2020, the claimant raised the issue regarding his salary. This was investigated by the respondent.
33. On 16 October 2020, the claimant met with Ms St John (the then Divisional Director) where the claimant asked for his employment to be extended to the end of June 2021 so that he would reach his 55th birthday and could claim early retirement. She explained that the claimant and his manager's role had been retained to the end of March 2021 only in order to facilitate the implementation of support to the voluntary sector. Put simply there was no further work for the claimant to do after this point. Therefore, the claimant's request was refused.
34. The claimant was issued with his notice of redundancy on 7 January 2021. He did not appeal this decision.
35. The claimant identified a role he was interested in applying for on 19 Jan 2021, this being as a pensions officer. Natalie Sylvain, the claimant's People Resourcing Advisor, stated that she did not believe he was suitable for the role but that if he wished to apply, he should change his profile.
36. I find that after considering advice from with Ms Sylvain, the claimant did not proceed with his application.
37. The claimant and Ms Sylvain spoke on 1 February 2021 and discussed the Prevent Role. I also find that the claimant did not apply for the Prevent Officer role as he felt he did not have the experience for this role.
38. The claimant identified some existing short term roles covered by agency staff.
39. The claimant had access to redeployment register and also to all internal vacancies during this time between September 2020 and end of March 2021.
40. He was supplied with job details as late as 24 March 2021, however the claimant did not apply for any roles during this time.
41. The respondent gave reasonable support and access to the claimant during this time.
42. The claimant's employment terminated on 31 March 2021 by reason of redundancy. He worked his notice period.

I have applied the following LAW to these facts

Unfair Dismissal

43. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed.

44. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
45. With a redundancy dismissal the leading case here remains **Williams v Compare Maxam Ltd [1982]**. In general terms the employers acting reasonably will give as much warning as possible of impending redundancies, consult with them about the decision, the process and the alternative to redundancy and take reasonable steps to find alternative such as redeployment.

Unauthorised deductions from Wages

46. S 13 of the ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by either the contract itself or a statutory provision.
47. S13(3) 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 (underlining added).
48. A claim for unauthorised deductions from wages must be presented within three months beginning with the date of payment of wages from which the deductions were made.

Breach of contract

49. An employee can breach a claim for breach of contract in the Employment Tribunal where they say that the employer had breached a term of their contract of employment, they have suffered loss as a result and this loss is still outstanding at the date of termination.

Conclusions

Unfair Dismissal

50. The respondent identified the potential fair reason of redundancy. This was not challenged by the claimant and therefore I find that the reason for the claimant's dismissal was redundancy.
51. Considering now the fairness of that dismissal, the claimant confirmed and did not challenge:

- a. The reason or genuineness of the redundancy;
 - b. The consultation process conducted by the respondent; or
 - c. The selection process conducted by the respondent.
52. The claimant's main challenge was in respect of a failure to act reasonably as regards redeployment.
53. I find that the respondent did take reasonable steps as regards redeployment of the claimant. This is not a duty to find an alternative role or indeed to create one.
54. The claimant had early access to the respondent's redeployment portal in September 2020 and this was in fact before he was given notice of dismissal. He was appointed a contact, Natalie Sylvain, and both spoke to and emailed her on a regular basis. Whilst the redundancy portal does have some advantages to redeployees, they nonetheless have access to the respondent's internal vacancy list in any event. Therefore, any issues with access to the portal did not place the claimant at a disadvantage.
55. I found that the respondent did send details of two roles to the claimant: the first being a pension officer role. The claimant gave evidence that in a conversation with Ms Sylvain on 1 February 2021, he asked her to send this application in for him. The respondent contends that following advice, the claimant did neither update his profile nor ask for his application to be submitted. I accept the evidence from Mr Al-Adil here that if the claimant had asked for his application to be presented it would have been, even if they didn't believe it was 'match'. I prefer here the evidence from the respondent and the contemporaneous documentation that the claimant in fact accepted Ms Sylvain's advice and did not apply for the pension officer role.
56. I find that the conversation on 1 February 2021 was in fact about the Prevent Role which on the claimant's evidence, he did not believe he had suitable knowledge to do. Again, I prefer the evidence of the respondent here. Ms Sylvain thought this was a match. There is no reason the claimant has given as to why Ms Sylvain would recommend a post and then not submit an application unless the claimant did not ask her to do so. I therefore find that claimant did not instruct Ms Sylvain to make this application on his behalf.
57. The claimant says he was keen to find a new role and not be made redundant. If this was the case, I find that there would have been follow up emails from him asking for the progress of these applications.
58. As regards agencies roles I have accepted the evidence of the respondent here, which was not challenged by the claimant, that roles currently filled by agency staff were not part of the redeployment team remit but that Ms Sylvain went over and above to get these details for the claimant. This

took some time for her to receive details of the roles as she had to make separate enquiries relating to seven roles identified by the claimant and that they were only sent to the claimant when he chased this on 24 March 2020.

59. It was unchallenged that all the claimant had to do at that stage was to identify any roles he was interested in applying for. Whilst I accept that the claimant was busy at this time and was experiencing significant family issues, I find that it would have taken him a couple of hours to read the job descriptions and email Ms Sylvain with his thoughts. He did not do so. Again, the claimant said he was keen to find work and therefore I would have expected him to prioritise his job search as time was running out at that point.
60. I find that overall the claimant had access to information to enable him to seek out and apply for suitable roles and that the respondent acted fairly and within the band of reasonable responses throughout.
61. There is a separate point regarding an extension of the claimant's employment for three months until his 55th birthday. I find that even if the respondent had failed unreasonably to do this, this would not have made the overall decision to dismiss unfair. This was because this was only for the claimant to move into the territory of making an early retirement application. Delaying the termination date would not have meant the claimant stayed in work. In any event I find that the respondent considered the claimant's application carefully and rejected it for sound reasons, namely there was no work to do and the additional cost of employing him for several months simply so he could make an early retirement application.
62. Therefore, I find that the claimant was fairly dismissed and therefore his claim for unfair dismissal fails.

Unauthorised Deductions from Wages

63. I need to first determine what wages were properly payable to the claimant.
64. In the claimant's submissions he concedes that the respondent had a process (the IRR) and that his managers should have known about this and didn't follow this.
65. I find that once the claimant had a meeting with Human Resources on 20 May 2016, he and his managers followed the proper process and submitted an IRR.
66. I find that the claimant's IRR was not agreed to and therefore the claimant's salary was not increased as he requested. It is not in dispute, but it is regrettable, that the claimant was not informed at the time in 2016 that this was the case. I agree this means he was prevented from then raising any appeal against a decision he didn't know had happened. However, he could

have brought a grievance about not being informed at the time but did not do so. Nonetheless, this does not change the fact that there was never any decision to increase his salary. I find that the claimant was rewarded for extra duties he undertook in the honoraria payments he received in June 2016 and between October 2016 and Jan 2017.

67. I therefore find that the wages properly payable were those that the claimant was receiving and not any higher amount claimed.
68. Even if I am wrong on this, I find the effect of the claimant being given notice under his existing contract in 2020 and given a new contract means that any claim under that old contract ceased at that point and should have been brought within three months of April 2020. The claimant did not do so and provided no evidence for a delay. I find that it would have been reasonably practicable for him to bring a claim within the prescribed time period. Whilst the claimant did not sign the new contract he received in January 2020, he worked under it without protest from that date. The contract clearly states it supercedes any other written or verbal agreements.
69. On this basis I find that the claimant's claim for unauthorised deductions from wages fails.

Breach of contract

70. This is a claim arising out of the same facts as the claim for unauthorised deductions from wages. I find that payment of the claimant's PO2 salary was in accordance with his contract, and he had no entitlement to any higher salary. The claimant attempted to achieve a higher salary through the IRR process but this was not successful and therefore his salary was not contractually changed through this process.
71. Again, even if I am wrong, I find that the termination of his employment contract and the offering of a new contract to the claimant which came into effect on 13 April 2020 meant that there was no claim for breach of contract outstanding at the time of the termination of his employment.

**Employment Judge Boyle
Dated: 3 January 2023**