



EMPLOYMENT TRIBUNALS

Claimants: Mr P G Wignell
Mr T Crookes
Respondent: GAP Group Limited
Heard by Cloud Video Platform in Leeds **On:** 8 August 2023
(Reserved Decision
22 August 2023)

Before: Employment Judge Shulman

Representation

Claimants: Mr Wignell in person
Mr Crookes by Kerry Wood Partner
Respondent: Ms J Ferrario (Counsel)

RESERVED JUDGMENT

The claimants' claims for unauthorised deduction of wages are hereby dismissed.

REASONS

1. **Claims**
 - 1.1. Unauthorised deduction of wages - Mr Wignell claims £1566.50 and Mr Crookes claims £1219.23.
2. **Issues**
 - 2.1. Are the claimants entitled to increases in salary for the year ended April 2022, having regard to the terms of their statements of terms and conditions of employment.

- 2.2. Regardless of the claimants' statement of terms and conditions of employment, are the terms relating to salary reviews implied into their contracts because those terms represent custom and practice within the respondent organisation?

3. The law

The Tribunal has to have regard to the following provisions of the law:

- 3.1. Sections 13(1)(a) and section 13(3) Employment Rights Act 1996 (ERA).
- 3.2. The grounds on which a term may be implied into a contract are very limited. It is not sufficient for the proposed term to be a reasonable one in all the circumstances. A term can only be implied in the case of custom and practice because it represents the custom and practice in that employment and is "reasonable, certain and notorious" – see **Devonald v Rosser and Sons** [1906] 2 KB 728 CA.

4. Facts

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The claimants both expected salary increases with effect from April 2022.
- 4.2. Neither of them received those salary increases, Mr Wignell because he did not have six months' service, commencing employment as he did on 1 November 2021, and Mr Crookes because he had received an interim increase in salary in August 2021.
- 4.3. It was not in dispute that both claimants were in receipt of statements of terms and conditions of employment. Under the heading "Salary" it stated "Your salary will be reviewed annually with your first review taking place" in the case of Mr Wignell in April 2022, and in the case of Mr Crookes in April 2021. The statement carried on in each case "The Company is under no obligation to increase your salary". Therefore, the Tribunal finds that the employees had a contractual right to have both of their salaries reviewed, but not a contractual right to have salary increases.
- 4.4. Despite not being under no obligation to increase salaries, the respondent has some specific reasons or rules for issuing guidance to assist management in carrying out annual reviews. This guidance has been in use since 2007, but not apparently put in writing so that management, let alone employees, could refer to it.
- 4.5. The Tribunal was however shown an email dated 10 March 2022 written by Ms C Dunning, Head of HR, to a Mr J Ward of management. The material parts of that email stated "All employees with over six months' service will be eligible for an annual increase unless ... the employee received an interim increase during the year". The latter reason could still be the subject of an increase with the reason for it.
- 4.6. Mr Wignell was caught by the six month rule, because he only started employment on 1 November 2021. Mr Crookes was caught by the interim increase rule, because he received an increase in August 2021.

4.7. The Tribunal finds that neither of the claimants were made aware of these rules prior to the decision not to give them salary increases. Indeed although the rules had existed since 2007 it was only managers who carried out reviews and probably employees who fell foul of them who were likely to know of them. At the material time not even Mr Wignell's inexperienced line manager, Johnny Metcalfe, knew of the rules. The respondent accepts that these rules need to be made more transparent.

4.8. Mr Wignell said he was promised an increase by Mr Metcalfe. There is no evidence that that is the case. Mr Wignell also said that a notice that went up at the respondent's premises was a personal promise to him, Mr Wignell, of an increase in salary. This was a notice to all GAP Group entitled Personnel – Annual Benefit Review – April 2022 the relevant part of which reads as follows:

“Annual Salary Review

Every year the company reviews the benefits it offers and in doing so takes into consideration several factors when deciding what, if any, salary increase will be awarded. These considerations include the current rate of inflation; company performance; the employment market; pay rates within the industry and pay awards within the UK.

We are pleased to advise that the board have agreed to an increase this year of 3.75% which will take effect from 16 March 2022 and will be paid in your April salary. Your manager will meet with you in due course to advise you of the increase you have been awarded.”

4.9. The Tribunal finds that this was not a personal offer to any employee in the respondent organisation, including Mr Wignell. It was a general announcement which promises nothing. The relevant document in this case is the statement of terms and conditions of employment (see above).

4.10. Mr Wignell and Mr Crookes also said others in the same categories as them had received increases and Mr Wignell and Mr Crookes had not. The respondent investigated the others and there was no one who was in the same position as Mr Wignell and Mr Crookes.

4.11. For the record it should be stated that Mr Wignell raised an informal grievance and Mr Crookes a formal grievance and an appeal. Neither were successful. It should also be said that both claimants remained in employment at the time of this hearing and both received an increase in salary in April 2023.

5. Determination of the Issues (After listening to the factual and legal submissions made by and on behalf of the prospective parties):

5.1. The Tribunal finds that the respondent has no obligation to increase salaries of employees, including the claimants and that the claimants are bound by the terms of their respective statements of terms and conditions of employment.

5.2. That being the case the respondent was entitled to withhold salary increases to the claimants for any reason. The reasons they gave, in the case of Mr Wignell was the six month rule and in the case of Mr Crookes the interim increase rule were not necessary because the respondent was under no obligation to do any more than review employees' salaries.

- 5.3. That is as well for the respondent because we find that the so called rules for not increasing salary do not constitute the **notorious** element of the implied term of custom and practice.
- 5.4. What is clear is that the “deduction” from wages in this case, namely, the non-payment of a salary increase, is authorised to be made by a relevant provision of the workers’ contracts, that provision being that the respondent is under no obligation to increase the claimants’ salaries.
- 5.5. In the circumstances the claimants’ claims for unauthorised deduction of wages are hereby dismissed.

Employment Judge Shulman

Date 24 August 2023



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