



EMPLOYMENT TRIBUNALS

Claimant: Mr Richard Allbury

Respondent: London Borough of Southwark

Heard at: Croydon, London South (by CVP)

On: 11 October 2023

Before: Employment Judge Skehan

REPRESENTATION:

Claimant: Mr Ocloo, representative

Respondent: Ms Chan, counsel

RESERVED JUDGMENT

- 1.
2. The judgment of the Tribunal is that the complaint of unauthorised deductions from wages is not well-founded and dismissed.
3. It is noted that there is a process whereby the claimant can challenge his allocated career grade within the collective agreement however the claimant had not been notified of this process prior to the hearing.

REASONS

4. The claimant is a skilled carpenter who has worked for the respondent since July 1975, for 48 Years. The claimant continues to work for the respondent. This litigation arises from the implementation by the respondent on 1 April 2021 of the Southwark Trade and Craft Agreement 2021 (the collective agreement).
5. At the commencement of the hearing, I noted that there was no agreed list of issues and time was taken to discuss the issues. I reminded the parties that we were dealing with an unauthorised deduction from wages claim only and the tribunal would be concerned with what was 'properly payable' to the claimant. Time was given to the representatives to directly discuss the issues to be determined by the tribunal in this case. It was agreed between the parties that the issue was whether

the claimant's wages were paid properly in accordance with the collective agreement. The parties agreed that this involved two questions for the tribunal being:

- a. Whether in April 2021 the respondent correctly identified the claimant's career grade as 'Craft Operative'.
 - b. Is there a process whereby the claimant can challenge the career grade of Craft Operative, and was the claimant notified of that process.
6. Mr Ocloo requested a postponement of this hearing on the basis that:
- a. in identifying the issues, Ms Chan had submitted that there was a set procedure under the collective agreement for any affected employee to challenge their allotted career grade and that process should be followed by the claimant. It was common ground that the claimant had not followed this route. Mr Ocloo said that the claimant was, up until this submission, unaware of this potential route and an adjournment of this hearing would allow him to do so.
 - b. Mr Ocloo submitted that this claim related to similar matters as raised by Mr Reach (claim number 2302831/2023) and consideration should be given to hearing the two claims together. I was told that Mr Reach's matter was listed for a final hearing in December 2023. There was no information in relation to Mr Reach's claim before me. In addition, Mr Ocloo submitted that Mr Reach may have relevant information to give within the claimant's claim. I noted that if it was the case Mr Reach had relevant evidence in respect of the claimant's claim, it would be expected that the claimant calls him as a witness to this hearing.
7. Any postponement was opposed by the respondent: Ms Chan submitted that the procedure for challenging the claimant's grade, was one that remained open to the claimant regardless of this litigation and should not delay this litigation. Ms Chan objected to the postponement on the basis that the parties had prepared and were ready to proceed, costs had been incurred for today's hearing including her brief fee. She submitted that while the findings of this tribunal may be relevant to and may be referred to within Mr Reach's claim there was no reason to delay this matter further.
8. I was not provided with sufficient information to identify common issues between the claimant's claim and that of Mr Reach. Any decision to postpone today's hearing to be heard alongside Mr Reach's risked not only delay and additional expense within this claim but also potentially derailing the subsequent claim. I noted the internal processes available to the claimant, however this is a claim for unauthorised deductions from wages issued on 3 April 2023. I concluded that a postponement at this very late stage was not in line with the overriding objective, to deal with the matter fairly and justly, particularly avoiding delay and saving unnecessary expense. The matter proceeded.
9. The hearing was heard by video on the CVP video platform. I note that the claimant has some hearing difficulties, and initially had difficulty in hearing the tribunal. A workaround was identified by the claimant using a different device to access the hearing. The claimant thereafter confirmed that he could properly hear the tribunal and properly participate within the video hearing.

The Facts

10. As is not unusual in these cases, the parties have referred in evidence to a wider range of issues than I deal with in my findings. Where I fail to deal with any issue raised by a party or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance in determining the issues. I only set out my principal findings of fact. I make findings on the balance of probability taking into account all witness evidence and considering its

consistency or otherwise considered alongside the contemporaneous documents. Reference to page numbers below are reference to the agreed bundle in this matter.

11. Witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief. Both witnesses were cross-examined. I heard from the claimant on his own behalf. On behalf of the respondent, I heard from Mr Dannatt, the respondent's business manager within Southwark Building Services. Early conciliation in this matter commenced on 3 August 2022 and concluded on 5 August 2022. The ET1 was presented on 3 April 2023.
12. On 1 April 2021, the Southwark Trade and Craft Agreement 2021 (the collective agreement) came into force, changing the claimant's terms and conditions of employment. It is common ground that the collective agreement is properly implemented and applies to the claimant. The collective agreement provides specifically for 'career grades. It states 'Following an extensive benchmarking exercise; reviewing industry standards and the recommendations of national bodies and salary comparisons in both the public and private sector - the following roles have been assigned to each grade:
 - a. Craft Operative +
 - i. Electrician
 - ii. Plumber
 - iii. Welder/Fitter
 - iv. Trades with additional skills
 - b. Craft Operative
 - i. Carpenter
 - c. Technician
 - i. ...
 - d. Trainee/Apprentice
13. The collective agreement divides each grade into three pay bands. These are:
 - a. Qualified
 - b. Experienced; and
 - c. Lead
14. The collective agreement contains an assimilation appendix. The relevant parts are
 - 1.1. Existing staff will be moved onto the Career Grade Structure using the following methodology:
 - 1.1.1. Wages from the following complete financial years will be reviewed (2016/17; 2017/18; 2018/19) – excluding overtime, call out payments and tool allowance that will continue under the new agreement. The best earnings of these years will be selected. The annual pay awards within the reference years will be included in the calculations for previous financial years in the reference period in order to accurately determine current pay.

.....
 - 1.1.3. Individuals are then matched to the nearest pay point, rounded up. Should this result in a pay increase of less than £500, compared to the basic assimilation then a further pay point will be added.
 - 1.1.4 Any Craft Operatives with 3 years' post qualification experience will be matched to pay point 4 of the grade as a minimum.

.....

1.2 An enhanced assimilation methodology will apply on the basis that individual colleagues currently apply a skill in addition to their core trade that they can demonstrate through their work. Guidance to this assessment can be found in the Skills Pathway. For the purposes of assimilation, a review of works undertaken from 01 July 2019 to 31 December 2019 will be undertaken.

15. It was common ground that the collective agreement deems the 'experienced' pay band to be those with at least three years' experience. There is no accommodation for or recognition within the collective agreement for substantial experience above this level. The claimant's 48 years' experience, an additional 45 years, does not attract any further pay benefit.
16. The new terms and conditions of the claimant's employment introduced by the collective agreement were negotiated by a bargaining group by means of collective bargaining. The bargaining units determined what trades would sit in what career grade. The role of a carpenter was assigned to the grade of Craft Operative. It was common ground that the usual position would be that carpenters would be assimilated within the 'Craft Operative' career grade.
17. The claimant accepts that the respondent reviewed his wages in the manner set out within the collective agreement above by reference to 2016/17; 2017/18; 2018/19. The best earnings of these years was selected and he was matched to the nearest pay point, rounded up. His qualifications were taken into account to the extent that they are acknowledged under the collective agreement in that he was matched to pay point 4 of the career grade.
18. I was referred to the trade and craft skill pathway document, created to supplement the collective agreement. This sets out how staff can move between pay bands (not career grades), setting out clear expectations on band progression and competency levels required for progression. This document [page 498] sets out a process involving career panels. It states that the purpose of the skills pathway is to provide guidance to an employee and how they can demonstrate that the level of proficiency has been reached to progress to the next band of their career grade.
19. I was referred to the, 'failure to agree' letter from Unite dated 11 August 2022 [159]. This includes the comment that, '.... Members are not being paid correctly in relation to their additional skills ...'. Mr Dannatt said that that the letter from Unite was not factually correct and was discussed with the bargaining unit. He acknowledged that part of the process envisaged under the collective agreement relating to the potential movement between career grades had stalled. For this reason, in July 2022, he introduced the pro forma assimilation document, [page 514]. This document used the same terminology as within the skills pathway document and was intended to implement an evidence-based approach when considering additional skills. It introduced a way for staff to potentially move from one career grade to the next if they can demonstrate additional skills. Mr Dannatt accepted that prior to this time the process was not clear.
20. The process for moving from Craft Operative to Craft Operative+ involves the individual completing this form and providing details of their additional skills. The form identifies examples of supplementary additional skills which include, for carpenters, patch repair plasterwork, basic plumbing works, clearing blockages, wall tiling, mold treatment, finishing trades and carpentry and

associated plumbing and finishing work to install complete sink base units. The form specifies that the skills must have been consistently used since April 2021. Thereafter, the individual and manager should undertake a one-to-one meeting where the additional skills are discussed and recorded. Line manager support is required, and the form envisages that the matter thereafter goes to the business manager for consideration.

21. Mr Dannatt said that this pro forma assimilation document was made available to all managers with direct line management responsibility in August 2022, and further steps were taken by the respondent to bring this to line managers attention in September 2022. The respondent also around that time sent a text message to all front-line operatives, including the claimant bringing this document to their attention directly. Mr Dannatt said that this new process had been used successfully by individuals and Mr Dannatt had dealt with cases last week where backpay had been awarded to the implementation of the collective agreement in 2021. Mr Dannatt confirmed that it was open to the claimant to follow this process, and should he be able to demonstrate that he had the additional skills and have used them over the relevant period, the respondent would act accordingly and potentially backdate his pay to 2021.
22. I queried why, given that the claimant had raised a grievance and thereafter gone as far as issuing proceedings in this matter, this process had not been brought expressly to the claimant's attention in the context of this dispute. No explanation was available.

Process followed in relation to the claimant.

23. The claimant's terms and conditions of employment changed under the collective agreement with effect from 1 April 2021. By way of background, the claimant explained that prior to the introduction of the collective agreement, he always had an apprentice working with and training was always part of his role. Payment for this training part of his role stopped when the collective agreement came into force. In addition, the previous pay structure was a fixed salary and on each occasion on which the claimant carried out a job, payment by reference to a 'schedule of rates' was paid. The claimant says he undertook callouts at night and weekends dealing with emergencies at the respondent's properties. He dealt with matters such as broken windows, forced entry for people who lost their keys and locksmithing. He dealt with repairs following floods including repairing dangerous ceilings which would be classed as a 'wet trade'. He did waxing, which would normally be classed as plumbing, UPVC doors and windows, and window repairing classed as glazing. The claimant also says he carried out floor and wall tiling that are classed as 'wet trades and high security locks and forced entries that are classed as 'locksmith' work.
24. Mr Dannatt said that as the claimant was a carpenter, he was initially placed by the respondent on the Craft Operative grade on experienced band, spinal pay column 4 taking into account his years of experience. The claimant asserts that his grade should be properly assimilated as a 'Trade with additional skills' that would place him within the 'Craft Operative +' career grade. The claimant had a meeting with Mr Dannatt on 23 April 2021, shortly after the implementation of the collective agreement. Mr Dannatt explained how the claimant's assimilation had been dealt with. He had identified the work carried out by the claimant over the relevant period of 01 July 2019 to 31 December 2019. Mr Dannatt showed the claimant a breakdown of the work carried out. We were referred to the printouts of jobs completed by the claimant between 1 July 2019 and 31 December

2019. Mr Dannatt said that it was not possible to identify the actual work carried out by the claimant from this information as other may have been involved.

25. The claimant was frustrated during this meeting with Mr Dannatt and felt the meeting was not making any progress. He concluded by saying that he was happy to stay in the grade that he had been assimilated at, but he would not carry out the additional skills in the future. The claimant's evidence was that, despite this comment, he did continue to carry out the additional skills as he felt not to do so would disadvantage his colleagues. He was not happy to accept the respondent's assessment of his career grade but he considered that they, 'agreed to disagree', and expected that he would have a one-to-one meeting where his additional trades would be documented and ready for the review panel, however this did not happen.
26. The claimant said that Mr Dannatt later emailed him a filtered list of jobs compiled from the original 400 approximately jobs worked on by the claimant alone during the relevant period as set out above. The claimant believed that the respondent did have the information to identify his previous work carrying out other trades but had simply not used it. During the hearing Mr Dannatt disputed that the jobs carried out by the claimant alone could be identified from either list. Further Mr Dannatt said it was not possible to assess the relevant trades carried out by the claimant on any particular job by the information within the lists. Mr Dannatt said that reference to 'wet trades' within the list was potentially misleading as it was only used as a description of the works with a view to getting the work raised rather than an assessment of the trade. Mr Dannatt said that his review of the actual work carried out by the claimant during the relevant period indicated that there were not enough instances of the claimant using the additional trades to warrant a change within the career grade.
27. Mr Dannatt said that while there was a process involving a career panel to work through the pay bands, the position with moving career grades was different and that is why the process and pro forma was introduced in August 2022 are set out above. This was for a one-off assimilation process those employees who had fallen through the gaps previously. Mr Dannatt explained that should the claimant continue to query his assimilation; this process is open to him and he should follow it. He would be required to set out his additional skills in the pro forma and seek his line managers approval. You if he was successful within this process, the respondent would backdate his pay to when it is accepted that he used the additional trades to the level required under the collective agreement. Potentially, this could be backdated to 1 April 2021.
28. The claimant raised a complaint within an email to Mr Dannatt on 20 May 2021. Mr Dannatt responded giving details of the grievance process on 25 May 2021. The claimant's grievance included a complaint that he had been incorrectly assimilated and his skills in respect of other trades had not been properly assessed. I was referred to the 'Stage I complaint outcome' dated 11 February 2022 within the bundle [178] dealing with the claimant's grievance. This states inter-alia, in relation to the claimant's allegation that he has undertaken different trades, '*... I cannot make an accurate assessment [in relation to the work carried out] and believe this should be considered at the review process. After speaking to [Mr Dannatt] .. This should be scheduled as a priority. I will recommend this part of this response that a firm date be issued to you by the end of February 2022. You also provided detail, within your complaint that you have successfully completed a locksmith and used to change locks and carry out forced entries. It is my decision that locksmith course constitutes a*

speciality within the carpentry trade. After reviewing the city and Guilds carpentry courses, a carpenter would be expected to install locks, ironmongery, a building site, or in domestic and commercial premises as well as a range of repair and maintenance activities. As an example of a different speciality, I would class on vented cylinder installations for a plumber in the same context.' The grievance outcome goes on to acknowledge that the claimant has 46 years' service as a carpenter within the respondent organisation and the reviews envisaged under the collective agreement has not happened and there does not appear to be regular one-to-one with the claimant's line manager. It states, *'it is my view that this should be prioritised so any additional skills that you wish to present can be reviewed and considered at this review'*. The claimant was informed of his opportunity to appeal.

29. Mr Dannatt in his witness statement states [para 23] that, *'although I was not directly involved with the complaint handling [claimant's grievance] I am aware that the claimant's complaints were acknowledged and fully dealt with. The complaints were not upheld as it was concluded that the assimilation process has been correctly applied to the claimant.'* This is not the case. The claimant's complaints that have subsequently led to this litigation, were referred back to Mr Dannatt, who appears to have ignored them. Mr Dannatt introduced a pro forma to deal with this very problem in August 2022, but did not raise this directly with the claimant. There is no evidence before the tribunal to indicate that there was any follow-up whatsoever by the respondent directly to the claimant. The claimant complains within his claim form of 3 April 2023, *'... I have tried to speak with my managers but they don't listen... [the respondent] have not followed their procedures throughout this whole new pay scale. I am being belittled and sometimes being pushed and pushed...'*

The law

30. This is a claim for unauthorised deductions from wages only. The relevant provisions of Part II of the Employment Rights Act 1996 :

13(1) An employer shall not make a deduction from wages of a worker employed by him ...

13(3) 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 ... the amount of the deficiency shall be treated ... as a deduction made ... on that occasion ...

23(1) A worker may present a complaint to an employment tribunal

(a) that his employer has made a deduction from his wages in contravention of section 13 ..."

31. S.27(1), defines wages as 'any sums payable to the worker in connection with his employment... whether payable under his contract or otherwise.'

32. 'Properly payable' suggested that some legal — but not necessarily contractual — entitlement to the sum in question is required. A claim for unlawful deduction from wages is properly within the jurisdiction of the Employment Rights Act 1996 Pt II if it is for an identifiable sum of money properly payable in connection with a worker's employment on a particular occasion. Deciding whether wages are 'properly payable' can require employment tribunals to resolve any disputes as to the meaning of a contract, including questions of interpretation and implication.

Deliberation

33. The claimant has 48 years' service. He is a skilled tradesman. He is not office-based or used to dealing with documentation and it can be seen from the bundle that he had assistance from his wife with some of the correspondence. He was acting in person in part during this claim. The claimant remains employed by the respondent. The claimant provided helpful and straightforward evidence to the tribunal, and I make no criticism of the claimant.
34. While Mr Dannatt provided helpful and straightforward evidence during the hearing, the respondent's actions in ignoring the practicalities of the claimant's predicament and failing to make clear the available pathway introduced in August 2022 to address issues employees may have with career grade assimilation within the collective agreement to the claimant, have played a substantial part in this litigation proceeding.
35. It is common ground that the collective agreement was properly implemented and properly applied to the claimant from 1 April 2021 to change his terms and conditions of employment.
36. Mr Ocloo accepted that the claimant's salary was properly calculated on assimilation by reference to the formula set out within the collective agreement referred to above. The claimant questions why his 48 years' service had not been taken into account in relation to his pay grade. It is common ground that the collective agreement takes experience in excess of 3 years into account and simply does not make any provision for those with substantially more experience. While I can see and empathise with the claimant's complaint, this does not change the provisions of the collective agreement. The claimant's experience has been taken into account to the fullest extent provided for within the collective agreement. There are no outstanding sums that are properly payable due to the claimant under the collective agreement as a result of the claimant's substantial experience.
37. On the introduction of the collective agreement in April 2021, Mr Dannatt initially assimilated the claimant on the Craft Operative career grade. The common starting point was that carpenters were to be allocated to the 'Craft Operative' career grade. Mr Dannatt considered that there was insufficient evidence to allocate the claimant to the Craft Operative+ career grade by reference to the claimant's assertions that he was undertaking different trades during the relevant six-month period, alongside the documentation that was available to him. It was envisaged that there would be a way of challenging this initial assimilation further, however this was not introduced by the respondent until August 2022.
38. I place no weight upon the claimant's comments made at his meeting with Mr Dannatt on 23 April 2021 indicating that he 'was happy' with the grade. These comments are born out of frustration, and it can be seen from shortly after this meeting and consistently thereafter including the claimant's grievance, that the claimant was unhappy with his career grading.
39. The claimant sought to challenge his career grade assimilation by way of the respondent's grievance procedure. However the grievance outcome received in February 2022 redirected the claimant to a process under the collective agreement that, at that point, was not available. The claimant's complaints were not fully dealt with within the grievance procedure, but the claimant was referred to Mr Dannatt. There was little point in the claimant appealing this grievance decision in those circumstances. The claimant is not criticised by this tribunal for failing to follow the grievance procedure further.
40. Mr Dannatt acknowledged that prior to August 2022, there may have been employees who had 'fallen

through the gaps' by being unable to properly challenge their career grade assimilation. Hence, he introduced the new procedure and pro forma in August 2022 to allow this to happen. Mr Dannatt confirmed that other employees have followed the process, demonstrated that they have been incorrectly assimilated, had their career grade amended and been awarded backpay to April 2021.

41. The respondent's evidence is that all line managers and Craft Operatives were informed of the new process in August 2022. No documentation has been produced demonstrating this step. I conclude that the claimant was unaware prior to this hearing that the process had been introduced. This is a matter where the claimant has raised a grievance expressly questioning his career grade, the grievance procedure outcome told the claimant that '*... I cannot make an accurate assessment [in relation to the work carried out] and believe this should be considered at the review process.*' and this was expressly referred back to Mr Dannatt. At that time Mr Dannatt was aware that no appropriate procedure was available to the claimant. Yet, when a procedure was introduced later that year in August 2022, no action was taken to expressly inform the claimant of that development or invite him to follow the internal process.
42. I have revisited the respondent's response and do not consider a fair reading of the respondent's response or any of the documentation to which I have been referred, sets out this process with any clarity for the claimant. The first occasion on which the process introduced in August 2022 to address career grade issues for those who may have, 'fallen through the gaps' during the assimilation process was clearly explained to the claimant was within this hearing. I conclude that the respondent did not, prior to today's hearing, take reasonable steps to bring this to the claimant's attention. The claimant., and his concerns in respect of career grade have been previously ignored by the respondent.
43. There appears to be a fundamental difference of opinion between the claimant and respondent in respect of whether or not 'locksmith' work falls within the remit of carpentry or whether it could be properly considered as other trades. The indication provided within the grievance outcome was, '*a carpenter would be expected to install locks, ironmongery, a building site, or in domestic and commercial premises as well as a range of repair and maintenance activities.*'. There is a suggestion from the claimant that the extent of his work as a locksmith has been misunderstood. This is something that may be revisited within the internal procedure by reference to evidence of specific jobs. This is also separate to the claimant's assertions that he had carried out 'wet trades', which again is something that may be revisited within the internal procedure should the claimant provide evidence as required. I refer to my comments below in respect of jurisdiction in relation to these matters.
44. I raised concerns with the parties at the outset of the hearing in relation to jurisdiction. This claim for unauthorised deduction from wages relates to what is properly payable to the claimant. While I can examine the contract of employment and make findings in respect of its meaning including questions of interpretation and implication, I do not consider that it is within the tribunal's jurisdiction in an unauthorised deduction from wages claim to conduct any assessment in place of an envisaged internal evaluation process to assess the claimant's career grade. I consider that a claim based on the proposition that there ought to have been such an evaluation carried out by the respondent would fall outside of the tribunal's jurisdiction for an unauthorised deduction from wages claim.
45. Turning back to my list of issues, whether the claimant's wages were paid properly in accordance with the collective agreement. In considering whether in April 2021 the respondent correctly identified the claimant's grade as 'Craft Operative', I note that it is common ground that the starting point for carpenters was allocation within the Craft Operative career grade. The collective agreement

provides for an enhanced assimilation methodology for employees who apply a skill in addition to their core trade. This involved a review of the work undertaken from 01 July 2019 to 31 December 2019. This review was carried out by Mr Dannatt. There is a process to challenge this review, that is as yet unutilised by the claimant. It remains possible that, should the claimant follow the internal procedure and provide sufficient evidence, the initial assimilation for the claimant of Craft Operative may be deemed incorrect at a later date. In those circumstances backpay would be 'properly payable' as of that later date. However, when considering the situation as of the date of this claim being 3 April 2023, and it remains unchanged as of the date of the hearing, the respondent has identified the claimant's grade as, 'Craft Operative' in accordance with the provisions of the collective agreement, and that career grade is deemed correct. I conclude that the claimant has been properly paid at the career grade of Craft Operative in accordance with the provisions of the collective agreement.

46. I refer to my findings above and also conclude that prior to this hearing the claimant has not been informed of the appropriate internal procedure, introduced by the respondent in August 2022, that should be followed to address his concerns in respect of the correct career grade assimilation. I note the respondent's submissions that this process remains open to the claimant should he have the evidence to demonstrate that he has used additional trades during the applicable period.
47. For the reasons set out above, I conclude that as of the date of the claim form, and continuing to the date of the hearing, the claimant's wages were paid properly in accordance with the collective agreement. The claimant's claim for unauthorised deduction from his wages contrary to Section 13 of the Employment Rights Act 1996 is unsuccessful and dismissed.

Employment Judge Skehan

24 October 2023

Judgment sent to the parties on:

14 November 2023

For the Tribunal:

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