



EMPLOYMENT TRIBUNALS

Claimant: Mr William Byron

Respondent: The Commissioners for His Majesty's Revenue and Customs

Heard at: Cardiff ET (by video link) **On:** 11th January 2024

Before: EJ W Brady

Representation

Claimant: Ms C Knowles (Counsel)

Respondent: In person

RESERVED JUDGMENT

1. The Claimant's claim for the unauthorised deductions of wages is not well-founded and is not upheld.
2. The claim was not presented within the applicable time limit. It was reasonably practicable to do so. The claim is therefore dismissed.

REASONS

Introduction:

1. The claimant has been employed by the respondent since 6 December 2021. He claims that the Respondent has made unauthorised deductions from his wages since he began his employment with the Respondent. ACAS was notified under the Early Conciliation period on 12 April 2023 and the certificate was issued on 24th May 2023. The ET1 was presented on 24th June 2023.

Claims and Issues:

2. At the outset of the hearing the issues were agreed upon as follows:

- 2.1 Were the wages “properly payable”? Does the sum claimed by the Claimant fall within the definition of wages in section 27 of the ERA 1996.
- 2.2 The contract issued on 19th November 2021 stated that the Claimant’s salary was £26,586. Was this a mistake? Was the claimant aware that this was a mistake? Did he notify the employer and when?
- 2.3 Was the contract subsequently varied?
If so when?
- 2.3 Was the contract affirmed by the fact that Mr Byron continued to work for the employer?
- 2.4 Did the claimant continue to raise objections? When?
- 2.5 If there was a deduction, was the claim presented in time? Was there a series of deductions or did the deductions end once the new contract had been issued?

Procedure, documents and other evidence heard:

3. The Tribunal heard evidence from Mr Byron, the claimant. The Respondent called Mr Jody Davies (the claimant’s line manager from 06th December 2021 to July 2022), Ms Jessica Cann, (the claimant’s line manager from 26th September 2022 to 4 August 2023), Ms Stephanie Poole (who was the line manager for Mr Davies and Ms Cann), and Ms Nicky Buckley (who is the Senior Operations Manager in Human Resources Operations for the Respondent). The Tribunal also had sight of an agreed bundle of 280 pages, a bundle of witness statements for the above-named witnesses, and the Respondent’s skeleton argument.
4. The hearing was held remotely, Mr Byron wore protective glasses throughout the hearing as a reasonable adjustment. Mr Byron was encouraged to ask for any additional breaks as and when required.

Findings of Fact:

5. The Respondent is the national taxing authority for the United Kingdom. The Claimant was employed as an Assistant Officer (A.O), Customer Service Consultant in Personal Tax (PT).
6. The Respondent advertised for an Administrative Officer on 16th November 2020. In the advertisement, the salary minimum was advertised as £19550 and the salary maximum was advertised as £21020.

7. On 30th November 2020 the Claimant applied for the role of Administrative Officer – Customer Service Consultant.
8. Almost a year later, on 19th November 2021, the Respondent confirmed to the Claimant that pre-employment checks had been completed and sent a written contract to the Claimant. On that contract, the salary was £26,586.
9. The Claimant noticed that the salary was higher than that originally advertised and discussed it with his then employers who suggested that it might be due to the passage of time between the original advertisement and the offer, or that perhaps the role had been regraded. He did not raise it with the Respondent and on 2nd December 2021, he accepted the offer of employment, believing that he would receive the salary as detailed in the contract.
10. The Claimant began working for the Respondent on 6th December 2021. He was employed as an Administrative Officer in the role of Customer Service Consultant in PT.
11. The Claimant received his first payslip on 31st December 2021, he noticed that he had received less than he had expected but thought it might be because he was on probation or due to an emergency tax code. The FTE (full-time equivalent rate of pay) on the payslip was detailed as £21,249.
12. The Claimant received his second payslip at the end of January 2022. Again he noticed that it was less than he had expected, but again he believed that it might be because he was on a probationary period. He did not raise it with the Respondent at this time.
13. On 9th March 2022, the Claimant raised the issue of his pay with his line manager, Mr Jody Davies. Mr Jody Davies advised the Claimant to contact the Service Centre.
14. On the morning of the 25th March 2022, the Claimant contacted the Human Resources Service Centre to question the pay discrepancy, he was advised that his pay was in accordance with the guidance pay ranges and that the AO national minimum salary was £21,249.
15. On the afternoon of 25th March 2022, during a monthly Personal Development Conversation, the Claimant again queried his salary with Mr Jody Davies and stated that he was receiving less than his contract had indicated and asked whether it might be due to being placed on an emergency tax code. Mr Davies explained to him that the discrepancy would not be because of an emergency tax code and advised that he should raise the issue with HR as only HR is equipped to deal with and resolve contractual queries. The Claimant agreed to contact HR and told Mr Davies that he might also contact ACAS for advice.

16. On 8th April 2022, the Respondent emailed the Claimant explaining that the salary in the first written contract was a clerical error and that it should have read £21,249. A new contract was issued by the Respondent to the Claimant with the correct figure on the contract.
17. On 25th April 2022, the Claimant discussed the contract with the HR department. He explained that he was not satisfied with the new contract. The HR department then sent him the link to the formal complaints procedure. The Claimant did not make a formal complaint.
18. On 6th June 2022 an email was sent out asking for volunteers for a role as a "SPOC", which involved assisting colleagues voluntarily. The Claimant applied for and was appointed to this voluntary role. At that time he did not raise any issue about his pay.
19. Between July 2022 and September 2022, the Claimant had a temporary line manager, Mr Richards. During this time there is no record of the Claimant raising any issue about his pay.
20. On 29th September 2022, Ms Cann was appointed as the Claimant's line manager. At that time Ms Cann spoke to the Claimant's two previous line managers. She was briefed that there had been an issue with the Claimant's contract but as no recent complaints had been made it was believed that that issue had been resolved. She was also briefed that the Claimant had not been attending the office to work but had been working from home, and she was asked to ensure that he did start working in the office for some of the time.
21. Between September 2022 and December 2022, Ms Cann had several conversations with the Claimant about him returning to work in the office. In December 2022, Ms Cann sought to formalise the Claimant's home working arrangement by getting him to sign a "Special Working Arrangement" (SWA) form to recognise a change in contractual terms and to permit increased home working. At that time, the Claimant told Ms Cann that he did not want to sign anything that would recognise a change to his contractual terms as he had an ongoing issue with his pay due to the differences in his original and revised contracts. The Claimant would not agree to return to the office, neither would he sign the SWA form. The Claimant had not raised the discrepancy with the contract with Ms Cann prior to her requesting him to sign the new SWA agreement in December 2022.
22. On 5th April 2023, the Claimant contacted HR about the revised contract.
23. On 12th April 2023 the Claimant contacted ACAS for Early Conciliation.
24. On 10th May 2023 a further copy of the revised contract was sent to the Claimant by HR.

25. On 12th May 2023, the Claimant emailed HR to reject the revised contract.

26. On 24th June 2023 the Claimant presented the ET1.

Law:

27. Ms Knowles produced a skeleton argument in which she argued that the original contract contained a “mistake” and that the mistake should be rectifiable if it is a “common mistake” or if it is a “unilateral mistake”. She then argued that the new contract had been affirmed in the period between July 2022 and December 2022 when the Claimant did not appear to have rejected the new contract.

28. With regard to implied agreement, the Tribunal was referred to the case of “Solectron Scotland Ltd v Roper & others {2004}IRLR 4” where Elias J stated, “The fundamental question is this: is the employee’s conduct by continuing to work only referable to his having accepted the new terms imposed by the employer? That may sometimes be the case...If they reject the change they must either refuse to implement it or make it plain that by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing his conduct is entirely consistent with the original contract continuing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct.”

29. The Tribunal was also referred to the case of GAP Personnel Franchises Ltd v Robinson EAT where it was held that even if the employee raised no complaint because he did not wish to lose his job, the Employment Tribunal can still find that at a certain point the employee may properly be taken to have affirmed the contract by acquiescence.

Time Limits:

30. The time limit for submitting a claim for the unauthorised deduction of wages is 3 months beginning with the date of payment of the wages from which the deduction was made (section 23 (2)(a) ERA) with an extension for early conciliation unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Tribunal considers reasonable.

Conclusions:

31. I find that the original contract was replaced by the revised contract on 8th April 2022. Given my conclusions concerning the time limits, I have not considered whether the initial mistake was rectifiable.

32. On the 25th April 2022, the claimant raised with HR the fact that he did not accept the new contract. However, after this date, he did not then raise the issue again until December 2022. He did not raise a grievance, or a complaint. He had been told by Mr Davies on March 25th 2022, that the only department that could resolve the matter was the HR department, but after 25th April 2022, he did not raise the matter with them again. He also did not mention it again to his line managers until December 2022 when he was asked to sign the SWA. I therefore find that the new contract was affirmed by the Claimant in the period between April 25th 2022 and December 2022.
33. Having found that the new contract was affirmed, the last possible date for an unlawful deduction of wages would have been 30th April 2022 or possibly 31st May 2022. To have been within the time frame for submitting a claim, the Claimant would have had to have submitted his claim within 3 months of that date (plus any extension for ACAS conciliation).
34. The Claimant submitted his claim on 24th June 2023, he is therefore out of time to claim for the unauthorised deduction of wages.
35. I have considered whether it was reasonably practicable for him to present the claim in time. The Claimant accepts that he told Mr Davies that he was considering consulting ACAS when he discussed the matter with him in March 2022. I therefore find that it was reasonably practicable for the claimant to have presented the claim within the permitted timescale, but he did not. The claim is therefore out of time.

Employment Judge W Brady

Date 22nd January 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 23 January 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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