



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Adamu Thomas

**Respondent:** The Kingsdale Foundation

**Heard at:** Croydon (by CVP)

**On:** 5 July 2024

**Before:** Employment Judge Lumby

## REPRESENTATION:

**Claimant:** Mr J Small

**Respondent:** Ms J Shepherd (of counsel)

## JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 1 February 2021 to 31 January 2023.
2. The respondent shall pay the claimant £640.17, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

## REASONS

1. In this case the claimant Mr Thomas brings monetary claims for breach of contract and unlawful deduction from wages against his employer, the Kingsdale Foundation. Mr Thomas is employed as a teacher at the Kingsdale Foundation School and the respondent is his employer. The period claimed is February 2021 to January 2023 and the amount unlawfully deducted is said to be £8,335.15. The respondent denies the claims.

2. The issue to be determined is whether the claimant's pay is calculated pursuant to the prevailing rate for Upper Pay Scale 3 in the School Teachers Pay and Conditions or instead in some other way.
3. This has been a remote hearing which has been consented to by the parties. The documents that I was referred to are in a bundle of 775 pages, the contents of which I have recorded. I have also been provided with witness statements from the claimant and from Mr Steve Morrison who is the headteacher at the Kingsdale Foundation School, a chronology and a draft list of issues. The order made is described at the end of these reasons.
4. I have heard from the counsel for each party. The claimant and Mr Morrison both gave evidence.
5. As there was insufficient time to hear closing submissions on the day, both counsel subsequently provided written submissions.

### **Facts**

6. There was a degree of conflict on the evidence. I have heard the various witnesses give their evidence. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to or reading the factual and legal submissions made by and on behalf of the respective parties.
7. The claimant began employment with the respondent's predecessor on 11 April 2005, working as a maths teacher.
8. Teachers' pay was set by reference to the then current School Teachers Pay and Conditions (referred to as the STPCD). At that time, this set the pay for each grade of teacher, with variations depending on whether the school was located inside or outside London. The grades ranged from the lowest at M1 to the highest at M6. There was also an upper scale for teachers who had passed a threshold, ranging from the lowest at U1 to the highest at U3. In each case the pay for each grade was precisely identified (referred to as spine points), rather than being within a range.
9. The claimant started on grade M4 with his initial pay set by the STPCD December 2005. His contract contained the following provision at clause 4:

*“You will be paid a salary calculated in accordance with the relevant order made by the Secretary of State for Education and Employment under the School Teachers’ Pay and Conditions Act 1991 and any successor legislation.”*

In addition, clause 27(b) provides:

*“During your employment with the Council your Terms and Conditions of Service will be those laid down by ... the Teachers’ Pay and Conditions Act 1991 and the orders and regulations having effect thereunder and any statutory re-enactment or modification thereof”*

10. The school became a foundation school in September 2005 and converted to Academy status on 1 November 2010. This involved a TUPE transfer to the respondent. The STPCD continued to be applied to all existing staff, although the respondent had the ability to set its own pay policy. At this point, the claimant was graded as U2 on the upper pay scale.
11. The claimant progressed to grade U3 on the upper pay scale on 1 September 2012.
12. New regulations came into force in September 2012 pursuant to the Education (School Teachers Appraisal) (England) Regulations 2012, moving pay from specific figures to bands and linking pay with performance. This was reflected in the STPCD 2013 where individual national spine points ceased to exist and the upper scale became a range.
13. The respondent introduced a new pay and appraisal policy in September 2013, after extensive consultation. This removed the upper pay scale and replaced it with a three tier expert teacher scale, ranging from Expert Pay Level 1 to 3 (Level 3 being the highest). Expert teachers were expected to demonstrate that they were able to perform to the required level and to take on additional duties.
14. The claimant was paid on the basis of Expert Pay Level 3 from the introduction of the new policy in the autumn term 2014 until January 2018, when he was informed he would be placed on the M6 pay level from 1 February 2018. The claimant raised a grievance in relation to this decision on 19 April 2018 which became an appeal to Salary Appeals Committee about his movement from the expert teacher level to the main pay scale. He also issued a claim in the Employment Tribunal on 13 July 2018 for unlawful deduction of wages for the movement to the main pay scale and the removal of an allowance referred to as an Academy Allowance. The Salary Appeals Committee determined in July 2018 that his pay should be safeguarded (ie not reduced in any way) and a back payment made in relation to the withdrawn Academy Allowance. The claimant subsequently withdrew the claim to the Employment Tribunal.

15. In the meantime, the respondent had on 7 May 2018 launched a formal consultation on a new pay and appraisal policy. This policy was implemented on 1 September 2018 and provided that the respondent would be informed by but not bound by the STPCD.
16. From September 2019 onwards, the claimant was placed on the M6 pay scale but continued to receive top up payments to achieve an aggregate pay of £52,036 a year (from autumn 2019, he received an Academy Allowance/TLR and a TUPE safeguarded sum of £5,558, from autumn 2020 the sum was £4,309 and from autumn 2021 the sum was £4,309). The sums take into account raises in the M6 pay scale but any increase reduces the safeguarded amount so kept his salary static. The effect of this is that his net pay did not reduce or increase during this period.
17. The total amounts paid in the years in dispute for the purposes of this case if the Academy Allowance/TLR are disregarded are (i) from September 2020 - £46,933 (ii) from September 2021 - £46,933. The figures from September 2022 have not been provided but have been calculated using his monthly salary payslips.
18. The claimant from late 2021 sought clarity as to his salary status and submitted a grievance on 20 July 2022 in relation to unlawful deduction of wages due to his move to the main pay scale. He argued that his contract in 2005 incorporated the STPCD and that the 2021 version stated that "*a relevant body must pay a teacher on the upper range if: a) the teacher is employed in a school as a post-threshold teacher, for as long as the teacher is so employed at that school without a break in the continuity of their employment*". He claimed that his contract could not be unilaterally varied by the employer. The respondent claimed not to have received this grievance when chased but explained that the complaint should be made to the Salary Appeals Committee as before.
19. Arguments were raised by the parties as to the performance of the claimant, counsel for the claimant arguing that he was an exceptional teacher, the respondent claiming there were performance issues. Mr Morrison pointed to the self-assessment forms within the bundle, which have been completed by the claimant but provided no evidence to support his assertions; he also pointed to the complaints logged in relation to the claimant and contained in the bundle. The claimant's refusal to undertake additional duties was also noted. Having reviewed the bundle and heard the evidence given by the witnesses, I do find that the respondent had legitimate concerns about whether the claimant was performing as an exceptional teacher.
20. Counsel for the claimant has also raised issues with the credibility of Mr Morrison. I do not agree with these issues and find him a very credible witness.

21. These proceedings were issued on 1 February 2023.

### **Submissions**

22. The claimant's case is that he was paid on the respondent's Upper Pay level 3 ("UPS3") from September 2012 to 2018. Subsequent to that, it has paid him as a M6 with a top up to ensure his salary was not reduced. If he was paid by reference to UPS3, his pay would have increased, and he has therefore suffered a shortfall to which he has not consented. The claimant denies that there were issues with his performance to justify moving him down a level. He also denies that there was any variation to his original contract. The claimant in his ET1 points to section 12.2 of the STPCD for 2020/21, 2021/22 and 2022/23 which provides:

*"Any pay increase or safeguarded sum (for the safeguarded period) awarded to a teacher on the main pay range, the upper pay range or the unqualified teacher pay range in accordance with Parts 3, 4 and 5 and any movement between those pay ranges must be permanent for as long as the teacher remains employed within the same school but is not otherwise to be deemed to be permanent by operation of the terms of this Document or any earlier Document."*

23. The respondent contends that the STPCD ceased to apply to the claimant's contract following the adoption of the new pay policies in 2013 and in 2018, each of which would have the effect of varying the claimant's contract. If incorrect, it argues that the STPCD does not require schools to increase salaries every year and gives it discretion to choose where on the pay range the claimant's pay lay.

### **Law**

24. Having established the above facts, I now apply the law.

25. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") and the claim was outstanding on the termination of employment.

26. Normal contractual principles apply to claims under the Order, which includes the right of set-off, even in circumstances where the employer has not entered an employer's counterclaim under paragraph 4 of the Order, see for instance *Ridge v HM Land Registry* [2014] UKEAT 0485/12.

27. The claimant also claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.

28. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.
29. The Deductions from Wages (Limitation) Regulations 2014 apply to claims issued on or after 1 July 2015. These regulations have introduced section 23(4A) to the Employment Rights Act 1996 which limits claims for unlawful deductions to the period of two years ending with the date of presentation of the complaint.

### **Conclusions**

30. The claimant has limited its claim to the period February 2021 to January 2023 to ensure compliance with the two-year limit imposed by the Deductions from Wages (Limitation) Regulations 2014. On that basis, the respondent has accepted that there are not timing issues with the claim. In addition, the claimant has removed his claim in relation to unlawfully withheld pension contributions during the relevant period. This has addressed a jurisdiction issue raised by the respondent in relation to this.
31. An assessment of whether the claimant is entitled to be paid on the Upper Pay Scale assessed pursuant to the STPCD requires an analysis of the claimant's contract as entered into, followed by an assessment of the effect of the variations the respondent claims occurred in 2013 and 2018.
32. It is clear from clause 4 of the claimant's contract that his pay was to be "*calculated in accordance with the relevant order made by the Secretary of State for Education and Employment under the School Teachers' Pay and Conditions Act 1991 and any successor legislation*". There is no dispute between the parties that this is reference to the relevant STPCD from time to time. Similarly, it is clear from clause 27(b) of the contract that his terms and conditions will be governed by the STPCD.
33. The TUPE transfer that occurred in 2010 when the school moved to Academy status will not have impacted these terms and conditions.
34. The respondent argues that the implementation of the new pay policy on 1 September 2013 was fully consulted upon and had the effect of varying the claimant's contract, essentially to substitute the new policy for clauses 4 and 27(b). I do not agree. The contract does not contain a mechanism allowing unilateral amendments of this kind and even if it did, such a mechanism would be of questionable enforceability. The fact that a consultation occurred does not mean that a unilateral imposition was acceptable. Mr Morrison in his evidence to the tribunal talked about making alternative arrangements for staff that did not want to change. In addition, he commented that the

claimant was the only staff member who would not change to the new system and it was not enforced on him as they wanted to come to an amicable agreement. That approach suggests that the respondent knew that it could not unilaterally impose a new system without the agreement of all employees.

35. I therefore find that the implementation of the new pay policy in 2013 did not have the effect of removing clauses 4 and 27(b) from the claimant's contract.
36. The same arguments have been presented by the respondent for the new pay policy implemented in September 2018 similarly taking effect as a variation of the claimant's contract. For the same reasons, I do not accept these arguments and similarly find that the implementation of the new pay policy in 2018 did not have the effect of removing clauses 4 and 27(b) from the claimant's contract.
37. This means that clauses 4 and 27(b) are still in force in relation to the claimant's contract and the terms of the STPCD will continue to apply. The effect of section 12.2 of the STPCD for 2020/21, 2021/22 and 2022/23 is that any pay increase awarded to the claimant is permanent, meaning that the claimant's pay cannot go down whilst he remains at the school. In addition, that section identifies three pay ranges (the main pay range, the upper pay range and the unqualified teacher pay range) and provides that any movement between them is also permanent. This means that the claimant cannot be moved off the upper band so long as he remains employed at the school.
38. The next question therefore is whether for the period claimed (from February 2021 until January 2023) the claimant was entitled to the prevailing advisory upper scale 3 under the STPCD or instead whether the respondent had discretion to determine the claimant's rate of pay within the upper pay range.
39. The claimant argues that the respondent's expert level 3 is the same as the former upper pay level 3 and therefore the claimant should be paid on the basis of expert level 3. Whilst a neat argument, this does not reflect what the claimant's contract says, which is that the STPCD is to be used to set the claimant's salary. The effect of clause 12.2 is that the claimant cannot have his pay reduced nor can he be moved down to the main pay range or lower. It does not say that a teacher on upper pay level 3 (U3) has to be paid the advisory figure nor that they must be paid at the top of the range provided. Section 14.1 of the STPCD for 2020/21 provides:

*"A teacher on the upper pay range must be paid such salary within the minimum and maximum of the upper pay range set out below as the relevant body determines. At Annex 3, advisory pay points for the upper pay range are set out to help support decisions about pay for teachers on the pay range. However, the advisory points are advisory and not mandatory and all decisions relating to pay progression must continue to be based on performance."*

It then sets the Inner London Area pay range as being £46,971 to £50,935 for the year from 1 September 2020. The range from 1 September 2021 is the same and for the year from 1 September 2022 it is £49,320 to £53,482.

40. This means that the claimant should not automatically be paid at the top of the range and it is for the respondent to set his pay within the applicable range, subject to not reducing his pay in any way. For these purposes (and bearing in mind the performance concerns raised by the respondent), the amounts actually paid to the claimant (as evidenced by the annual salary statements) can be used as the level set by the respondent, disregarding any TLR payments but including the safeguarding or TUPE payments. These figures are (i) from September 2020 - £46,933 (ii) from September 2021 - £46,933. No figures for the year from September 2022 have been provided but the payslips for the period after date show a monthly salary of £3,941.50, which gives an annual salary of £47,298.
41. Finally, in order to ascertain whether there has been an unlawful deduction of wages, it should be considered whether the amounts for the relevant period paid to the claimant were below the minimum of the upper pay scale range for that year. The minimum figure for the year from September 2020 is £46,971 but the pay to the claimant was £46,933, giving a shortfall for the year of £38. The same figures apply for the year from September 2021, so there will be the same shortfall. The minimum figure for the year from September 2022 is £49,320 but the pay to the claimant was £47,928, this gives a shortfall for the year of £1,392.
42. The relevant period for these purposes is February 2021 to January 2023. This comprises seven months for the year from September 2020, all of the year from September 2021 and five months from September 2022. Based on the above figures, the shortfall for the first period is seven twelfths of £38 and so is £22.17 and the shortfall for the second period is the full £38. The shortfall for the third period is five twelfths of £1,392, giving a figure of £580. The total shortfall is therefore £640.17.

## **Decision**

43. The tribunal finds that the claimant's complaint of unauthorised deductions from wages is well-founded and that the respondent made an unauthorised deduction from the claimant's wages in the period 1 February 2021 to 31 January 2023, totaling the gross sum of £640.17.
44. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 2; the findings of fact made in relation to those issues are at paragraphs 6 to 21; a concise identification



of the relevant law is at paragraphs 24 to 29; how that law has been applied to those findings in order to decide the issues is at paragraphs 30 to 41; and how the financial award has been calculated is at paragraph 42.

**Employment Judge Lumby**  
**1 August 2024**

Judgment sent to the parties on:  
**6 August 2024**

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For the Tribunal:

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