



EMPLOYMENT TRIBUNALS

Claimants:

Mr M Herei

v

Respondent:

ISS Mediclean Limited

Heard at: London (South) (via CVP)

On: 19 February 2025

Before: Employment Judge Fredericks-Bowyer

Attendances:

For the claimant: In Person

For the respondent: Ms B Balmelli (Counsel)

WRITTEN REASONS

Introduction

1. At a hearing on 19 February 2025, I dismissed the claimant's claim for unlawful deduction from wages. Upon promulgation of that judgment, the claimant wrote in and asked for written reasons. The request was made in time. There was then significant delay in that reasons request reaching me. I wrote out to explain the delay on 29 May 2025.
2. There was then further significant delay caused by my own planned and unplanned absence from the Tribunal, and the usual workload of a busy Tribunal region. I apologise for the delay in the production of these written reasons.
3. The case is about the claimant's contract of employment. He claims for unlawful deduction from wages, whilst remaining employed, on the basis that he is doing two roles at the respondent. The respondent says he is doing just one role, and relies on documents showing contractual variation.

The hearing

4. The hearing was listed for one day. It last until lunchtime. The claimant represented himself in the hearing and gave evidence on his own behalf. The respondent was represented by Ms Balmelli of Counsel, who called upon the evidence of Abdeslam Sahraoui. I had access to a bundle of documents which ran to 154 pages. Page references in this judgment are references to pages of that document.

The issues

5. The claimant sought to introduce submissions and evidence in relation to the handling of the grievance. His only claim, in the proceedings, was for what he described as arrears in pay. He remained employed, and so the only claim available to him for arrears is through the unlawful deduction from wages legislation. The issues, therefore, were:-

5.1. What was the claimant's role, from when?

5.2. What was the claimant's salary for that role?

5.3. Has the claimant been paid less than the salary for the role he holds?

5.4. If so, he will have suffered an unlawful deduction from wages.

The facts

6. These are the facts as I find them on the balance of probabilities, having heard the evidence in the case:-

6.1. The claimant commenced work as a domestic supervisor with Ecovert FM Limited on 15 November 2011. He was based at West Middlesex University Hospital, worked 40 hours per week in a shift pattern, and was paid a salary of £15,496.90 per annum. He signed his contract of employment (pages 37 to 44) on 15 February 2012.

6.2. The claimant TUPE transferred into the respondent's employment in June 2013

6.3. On 18 October 2013, the claimant was promoted to Patient Services Supervisor (job description at pages 45 to 52). This meant that he was responsible for ensuring that high levels of work and hygiene standards are adopted throughout the hospital, as well as manage and motivate team members. The claimant signed the "job description changes" document on 18 October 2013 (page 52).

6.4. On 20 October 2015, the claimant changed his shift pattern to a fixed schedule of working evenings (2:30pm-10:30pm Monday to Thursday, and 3:00pm-11:00pm Friday) (page 53). The claimant wrote that he agreed to a change and signed the letter on 1 November 2015.

6.5. On 6 June 2016, the claimant changed his shift on a Friday to match that of the other days, signing a contract variation agreement for a "new work rota" on 9 June 2016 (page 54).

- 6.6. On 17 June 2020, the claimant signed a job description to undertake the duties of a Late Shift Duty Manager. The job description was at pages 55 to 56. The claimant signed it on 17 June 2020. The claimant contends that this was a temporary change, which he did agree to, and which has remained in force until the vacancy was filled. Mr Sahraoui's evidence was that he explained the additional duties to the claimant in a meeting on 17 August 2020. He says he explained the combined duties to the claimant in that meeting, including informing him of a salary increase to reflect the additional responsibility taken on as a Late Shift Duty Manager. He says the claimant did not object and agreed enthusiastically. Mr Sahraoui said that the claimant understood this to be a permanent change.
- 6.7. The respondent's evidence is supported by the letter issued by hand to the claimant on 17 August 2020 (pages 57 to 58). That document was signed by both parties on the same date. The letter refers, I find, to the claimant's terms and conditions of employment of 18 October 2013 (as amended). The letter says, relevantly:-

"I am pleased to confirm the following changes have been made with effect from 17th June 2020.

- *Change of job title to Patient Services Supervisor & Late Shift Duty Manager*
- *Change in salary to £25,000 per annum*

However as agreed you will continue to be paid hourly at £12.00 per hour for 40 hours a week. I will communicate to you when you will be transferred into salaried paid staff.

All other terms and conditions remain unchanged.

Please sign and return one copy of the letter to acknowledge your acceptance of these changes..."

- 6.8. The parties agree that the claimant has been performing a combined role incorporating the patient services supervisor job description and the late shift duty manager job description since 17 August 2020. They agree that he has been paid £12.00 per hour for 40 hours per week (as amended to reflect workforce increments. They agree that the claimant signed and returned agreement to those terms. Given the plainly permanent nature of the change in the wording of the letter of 17 August 2020, and Mr Sahraoui's clear sworn evidence I find as a fact that the amendment was intended to be a permanent alteration to the contract.
- 6.9. There is no evidence supporting the claimant's assertion that the position was temporary or would be reviewed. Only his oral evidence sets that out. I do not consider the respondent understood the position to be temporary. If it did, it would have said so in writing, particularly as it so diligently recorded the claimant's shift changes in signed writing. In my view, it is more likely than not that the claimant is mistaken about the change being temporary. In any case, it

is an agreed fact that that agreed position of the 'dual role' in August 2020 was never reviewed or further amended.

6.10. On 2 July 2023, the claimant raised a grievance about his working arrangement (pages 60 to 61). In the grievance, the claimant confirms that he had been carrying out the dual role for the agreed salary. He said he understood it would be temporary, but as the years have passed, he is now concerned that the dual role requires him to do an increasing amount of work. He also said that he does not feel he is paid 'accordingly' for the dual role.

6.11. The grievance did not resolve matters, and the claimant eventually issued this claim.

Relevant law

7. An employer is unable to deduct from the wages of a worker employed unless this is authorised by statute or contract, or where the worker has previously agreed to the deduction in writing (section 13(1) Employment Rights Act 1996). Wages must be 'properly payable' to count as a deduction (section 13(3)). Determining whether wages claimed are 'properly payable' requires the tribunal to consider the circumstances of the case and what the contract of employment means for those circumstances (Agarwal v Cardiff University and anor [2019] ICR 433 CA; Delaney v Staples (t/a De Montfort Recruitment) [1991] ICR 331 CA).

8. This means that interpreting the correct contractual position is key in situations such as this where there is disagreement about them. In Arnold v Britton [2015] UKSC 36, Lord Neuberger outlined how a court or tribunal should approach disputes about the meaning of contractual terms. The correct way to do so is to interpret the intention of the parties as to the meaning of the terms by reference to "*what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean*" (per Lord Hoffmann in Charterbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38).

9. To assist with this exercise, Lord Neuberger reviewed existing authorities and distilled them into six relevant factors to be considered in order to determine how a contract has been constructed and how it should be interpreted. Those factors are [para 15]:

9.1. the natural and ordinary meaning of the clause;

9.2. any other relevant provision of the contract (Lord Neuberger was considering a lease in Arnold but the same principles apply);

9.3. the overall purpose of the clause and the contract;

9.4. the facts and circumstances known or assumed by the parties at the time that the document was executed; and

9.5. commercial common sense; but

- 9.6. disregarding subjective evidence of any party's intentions.
10. Consequently, the interpretation is an objective exercise by design. Lord Neuberger emphasises the importance of the ordinary language of the provision being considered, which should not be undervalued by any reliance on what is said to be commercial common sense within the surrounding circumstances [para 17]. The clearer the natural meaning of a clause, the more difficult it is to justify departing from that meaning [para 18].
11. Employment contracts may be varied by agreement, and where the employee performs services in exchange for pay, the Tribunal is usually able to find the consideration required to make such agreements binding (*Attrill and ors v Dresdner Kleinwort Ltd and anor* [2013] EWCA Civ 394). Those contracts can also be varied by conduct, and the law generally recognises variation by conduct quite quickly where the clause is a central one to the contract (like this one), such as where it relates to pay or job role (*Jones v Associated Tunnelling Co Limited* [1981] IRLR 477 EAT).

Discussion and conclusions

12. In my judgment, the claimant's presentation of his case was slightly contradictory. He accepted that he had agreed to the variation which led to him doing the dual role (albeit on a temporary basis). He also argued at one point in the hearing that he was doing two full jobs and should have been receiving two full salaries (one for each half of his dual job description). Finally, it appeared that what he really wanted was for his role to be re-graded or the salary assessed, and then have that re-grading back dated for the three years that he did the role.
13. As explained in the hearing, the Tribunal has no power to re-grade or set the salary level of the claimant's job role. That is for him to take up with the respondent if he wishes. The Tribunal makes an assessment of his contractual position as it stands and then assesses whether he was paid accordingly.
14. The respondent's submissions were simple. The claimant had one contract, dated October 2013. The terms were then amended by his first promotion, and then the 17 August 2020 "change" to the contract letter amended only the title and the salary, also incorporating the new job description. The amendments were, the respondent submits, valid contractual variation, agreed to and performed, and so the claimant has suffered no shortfall in wages.
15. I prefer the submissions of the respondent. The claimant had a binding employment contract, which was amended by agreement on 17 August 2020 so that he would combine two roles and get paid £12.00 per hour for his 40 hour weeks. Noting *Arnold*, I do not consider there is realistic scope to argue that the letter of 17 August 2020 committed the parties to reviewing or amending the contractual change because it was temporary. The wording of the letter, in my judgment, is an unequivocal variation of the claimant's contract. That is the plain reading of the letter, which refers to specific changes to the contract (and confirms the rest of the contract is in force).
16. The claimant may now consider that the 'deal' is bad, but in my judgment it is the deal that he agreed to. Even if he signed the document in August 2020 without

understanding its true effect, he has been performing his part of the contract since then and had no complaints about it until his grievance three years later. I consider he performed his side of the bargain without any protest for three years. In those circumstances, even if for some reason I overlooked the signed agreement, per Jones, I would conclude that the parties had agreed to vary the claimant's salary and job role by their conduct.

17. Either way, I conclude that the claimant's employment contract was varied on 17 August 2020 in the way that is agreed. I conclude that was a binding variation because there was consideration on each side. The claimant was paid more money to perform a bigger job role. I consider that the variation was permanent, until something else was agreed. Even if I considered it had been temporary, the claimant has not persuaded me that there was any agreement about when a re-assessment might occur, and has not persuaded me there has been any other contractual variation to his contract terms.
18. Consequently, I conclude that the claimant has been paid according to the employment contract in place between the parties. There has been no shortfall in pay according to his contractual entitlement. He has therefore suffered no unlawful deduction to his wages. The claim is not well founded and is dismissed.

Employment Judge Fredericks-Bowyer
11 December 2025

Sent to the parties on:
12 December 2025

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For the Tribunal Office:

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