

Neutral Citation Number: [2026] EAT 40

Case No: EA-2024-001171-LA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 March 2026

Before:

THE HONORABLE MR JUSTICE COPPEL

Between:

MR ADAMU THOMAS

Appellant

- and -

THE KINGSDALE FOUNDATION

Respondent

The **Appellant** in person
Jude Shepherd (instructed by Veale Wasbrough Vizards) **for the Respondent**

Hearing date: 29 January 2026

JUDGMENT

SUMMARY

UNLAWFUL DEDUCTION FROM WAGES

The appellant teacher complained that his employer had made unlawful deductions from his wages contrary to s. 13 of the Employment Rights Act 1996 (“the Act”) as a result of failing to pay him at the maximum rate under the upper pay range for teachers prescribed by the School Teachers Pay and Conditions Document (“STPCD”). The appellant claimed that that rate was required by his position at the highest, U3, pay point under the pre-2013 STPCD pay scale for post-threshold teachers.

The employment tribunal had correctly rejected that complaint. The STPCD system of pay for post-threshold teachers had changed in 2013 so as to confer entitlement to be paid within the upper range dependent (primarily) upon performance. In the absence of a performance assessment which met the required standard and a consequent decision to pay the appellant at a higher rate, the respondent’s contractual obligation was to pay the appellant at no less than the minimum of the upper pay range. During the claim period permitted by s. 26(4A) of the Act, the appellant’s pay had fallen below that minimum level by £902.67, a slightly higher figure than that awarded by the tribunal.

THE HONOURABLE MR JUSTICE COPPEL:

The appeal

1. The appellant appeals from the judgment of the Employment Tribunal (“the tribunal”) (Employment Judge Lumby) sent to the parties on 6 August 2024 (“the judgment”) in which the tribunal partially upheld his claim for unlawful deduction from wages, contrary to s. 13 of the Employment Rights Act 1996 (“the Act”), awarding him £640.17, but rejected the significant majority of his claim by value. The respondent (“the School”) does not challenge in principle the tribunal’s finding in favour of the appellant but accepts that the tribunal has made a calculation error, such that the award to the applicant should have been £902.67. The School resists the appeal regarding the majority of the appellant’s claim and has lodged a cross-appeal which it wishes to pursue only in the event that the appeal in respect of the majority of the claim is successful.

The tribunal’s judgment

2. I summarise the tribunal’s judgment as follows (references to paragraph numbers are, unless otherwise stated to the paragraphs of the judgment).

- a. The appellant began employment as a maths teacher with the School’s predecessor on 11 April 2005. By virtue of §§4 and 27(b) of the appellant’s contract of employment, he was entitled to be paid according to the School Teachers Pay and Conditions document (“STPCD”) (§9). That entitlement was carried over, pursuant to TUPE, when the appellant’s employer became a foundation school and then an Academy (§10).
- b. The STPCD provided for a main pay scale and a pay scale for post-threshold teachers. On 1 September 2012, the appellant progressed to grade U3 on the post-threshold pay scale (§11). There were three grades on the post-threshold pay scale, each corresponding to a specific salary depending upon a teacher’s location, with U3

corresponding to the highest salary.

- c. There was a significant change to the STPCD pay scales from 1 September 2013, as a result of the Education (School Teachers Appraisal) (England) Regulations 2012 (SI 2012/115) (§12). So far as the post-threshold pay scale was concerned, this became the upper pay range which ceased to be expressed as fixed points U1, U2 and U3, but was expressed as a minimum and maximum figure. Employers were obliged to consider annually where within the range a teacher's pay was to be fixed, according to the teacher's performance (§22.1 of the STPCD 2013). Once increased, a teacher's pay could not be reduced for as long as the teacher remained employed in the same school.
- d. The School introduced its own new pay policy with effect from 1 September 2013, replacing the post-threshold pay scale with a three-tier expert teacher scale. For the purposes of their pay from September 2014, teachers were required to demonstrate that they were able to perform to the required level and that they had taken on, or would take on, additional duties (§13). Teachers who had been on the post-threshold pay scale of the STPCD were given a three-year grace period in which to demonstrate that they qualified to be paid as expert teachers under the School's new policy.
- e. The appellant was paid on the highest expert pay level 3 during the three-year period from September 2014, but from 1 February 2018 he was moved down to the M6 pay level (i.e. at the top of the lower, main STPCD pay scale) (§16). This was explained to me as being due to his reaching the end of the three-year grace period without having demonstrated what the School required of its expert teachers. Ms Shepherd, representing the School, explained, and the appellant did not disagree, that he had taken the view that, as a result of his STPCD entitlements, he had to be paid at the top of the expert scale without having to demonstrate any special competences or additional duties.

- f. The appellant successfully raised a grievance, which became an appeal to the Salary Appeal Committee, regarding his movement to the main pay scale (and also the removal of an allowance referred to as the Academy Allowance. The outcome of the appeal was that his pay should be safeguarded (i.e. not reduced in any way from what it had been before he was moved to the M6 pay point) and a back-payment in relation to the withdrawn Academy Allowance was made (§14). The safeguarding of his pay meant that he continued on the M6 pay grade but received a top-up payment which ensured that his salary remained the same from September 2018 onwards (§16). This continued notwithstanding the introduction by the School of a further new pay policy, affecting pay from 1 September 2018, which was further removed from the STPCD (§15).
- g. The appellant remained aggrieved that he had been moved to the main pay scale and a further grievance, and this tribunal claim, resulted (§18). The appellant contended that (a) he should have retained his position at the top of the STPCD post-threshold pay range (now the upper pay range), and (b) this would have resulted in his pay increasing, as the maximum amount payable on that scale increased annually, rather than remaining frozen.
- h. Contrary to §25, the sole claim before the tribunal was one of unlawful deduction from wages. The appellant could not claim for breach of contract, pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, because he remains in employment so no such claim was outstanding upon the termination of his employment. The unlawful deductions claim was limited to the period February 2021 to January 2023, in accordance with the backdating limitation applied by s. 23(4A) of the Act.
- i. The tribunal rejected the School's contention that the appellant's contract of employment had been varied in 2013 and again in 2018 upon the introduction of the

School's new pay policies (§§35-36). He remained entitled to be paid according to the STPCD, which included provision whereby his pay could not go down, and he could not be moved to a lower pay scale, whilst employed at the School (§37).

- j. The key question which remained was whether the appellant was entitled to be paid at the maximum rate available under the STPCD's upper pay range, as he contended, or – as the School contended – his entitlement was only to be paid somewhere on the upper pay scale, with the School having discretion to fix the amount of pay within the upper pay range (§38). If the latter, then the appellant could lawfully be paid the minimum rate within the upper pay range unless and until his pay was increased to reflect his performance (which did not in fact occur).
- k. The tribunal found in favour of the School on that question, citing §14.1 of the STPCD for 2020/21 (§39). That provision stated:
“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.”
- l. In the tribunal's view, the effect of this provision was *“that the [appellant] should not automatically be paid at the top of the range and it is for the [School] to set his pay within the applicable range, subject to not reducing his pay in any way”* (§40).
- m. The tribunal found, further, that the amounts actually paid to the appellant in the relevant period should be taken to be the level set by the School within the upper pay range (§40). The tribunal bore in mind concerns which were aired by the School during the hearing regarding the appellant's performance (the point being that the School paying the appellant at or below the minimum of the upper pay range was consistent

with it having concerns about his performance).

- n. The amounts actually paid to the appellant during the relevant period were slightly below the minimum of the upper pay range in that period. The tribunal calculated a shortfall of £640.17 which was owing to the appellant (£42). As I have noted in §1 above, the parties agreed that the shortfall between what the appellant was actually paid and the minimum level of the upper pay range should have been calculated at £902.67.

Analysis

3. At the hearing before me, the appellant repeated the submission which he had made to the tribunal that, having attained the maximum U3 point on the STPCD post-threshold pay scale, he was entitled to be paid at the top of the upper pay range regardless of the School's assessment of his performance.

4. In my judgment, the tribunal was correct to rule that the appellant's contractual entitlement was to be paid at a level which fell within the STPCD upper pay range as it was fixed from year to year and that he did not have any right to be paid at the maximum figure or at any other particular level within the upper pay range.

- (1) The appellant's claim fails to recognise the very significant change which occurred in respect of the setting of pay under the STPCD from 1 September 2013. So far as the upper pay range was concerned, the STPCD moved from the pay scale for post-threshold teachers which had three scale points (U1, U2 and U3) and a rule whereby a teacher could not lose scale points once they were achieved (§§19.3 and 19.6 of the STPCD 2012) to an "*upper pay range*", with minimum and maximum pay rates, together with a rule whereby any pay increase within the upper pay range would be permanent for as long as the teacher remained employed within the same school (and a safeguarded sum awarded would likewise be permanent for the

safeguarded period) (§§15.3 and 17.1 of the STPCD 2013). Under the new system, the School had an obligation to consider annually whether to increase the appellant's pay within the upper pay range, and pay decisions had to be "*clearly attributable to the performance of the teacher in question*" (§§22.1, 22.2(d) of the STPCD 2013).

- (2) Critically, it was not the case that the appellant was entitled to be paid at the top of the upper pay range on the grounds that he had been paid at the U3 scale point under the post-threshold pay scale before the change. A decision not to pay him at the top of the upper pay range would not have fallen foul either of the STPCD 2012 rule that he could not lose scale points, as the pay scale for post-threshold teachers, including the U1, U2 and U3 scale points, had been abolished, or of the STPCD 2013 rule that any pay increase within the upper pay range was permanent, which did not apply so as protect pay levels set under the pay scale for post-threshold teachers before the upper pay range came into existence.
- (3) This remained the position under the STPCD 2020, which was the version in force at the outset of the period of the appellant's claim for unlawful deduction from wages. As the tribunal set out, the key provision (§14.1) stated that "*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*". It continued to be the case that a pay increase or safeguarded sum awarded to a teacher on the upper range would be permanent, but that there was no obligation upon the School to give effect to a position in the upper pay range which corresponded to a position which had been fixed according to scale points awarded under the abolished pay scale for post-threshold teachers. That position was underlined by new provision made in Annex 3 of the 2020 STPCD for advisory pay points, corresponding to pay points on the main pay scale and post-threshold pay range, including the appellant's previous U3 pay point. §14.1 of the STPCD stated that "*advisory points are advisory and not mandatory and all decisions relating to pay progression must continue to be based on performance*". A claim for unlawful deduction from wages could not be founded upon a

failure by the School to pay at a level which was advisory only.

- (4) Materially identical provision was made in the STPCD 2021 and 2022, which applied during the remainder of the claim period considered by the tribunal.
- (5) In the absence of the School deciding, having regard to his performance, that the appellant should be paid at a level above the minimum level of the upper pay range, its contractual obligation was – as the tribunal held - to pay him no less than the minimum level of the upper pay range.
- (6) The appellant did not complain before the tribunal that the School had failed to comply with its obligation to assess his performance, and his pay, annually, in order to at least create the opportunity for his pay to be increased within the upper pay range. That would, in any event, have been a complaint of breach of contract, which could not have been brought before the tribunal (see §2h above). A failure by an employer to take steps which might have resulted in wages being fixed at a higher level is not actionable as a claim for unlawful deduction from wages. Such a claim must focus on the wages to which the employee is legally entitled – “*sums payable to the [employee] in connection with his employment*” (see s. 27(1) of the Act) rather than what he might have been entitled to if his employer had behaved differently.
- (7) Therefore, the tribunal was correct to rule that the appellant had suffered an unlawful deduction from his wages, corresponding to the shortfall between his actual pay during the claim period and the minimum level of the upper pay range during that period. As I have noted, the parties were agreed that there had been a miscalculation in the tribunal’s award and that the correct amount of the shortfall was £902.67.

5. I allow the appeal to that extent. Otherwise, I dismiss the appeal. It follows that the School’s cross-appeal does not arise for determination.