



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **and** **Respondents**

Mrs M Pedro **Holy Trinity CofE Primary School**

HELD AT: Ashford **ON: 1 March 2019**

BEFORE: Employment Judge K Bryant QC

Appearances:

For the Claimant: In Person

For the Respondent: Mr M Honeyman (Solicitor)

JUDGMENT

1. The Claimant's claim for unauthorised deduction from wages is well-founded.
2. The Respondent is ordered to pay to the Claimant the sum of £74.07.

REASONS

3. Having announced its judgment and given reasons orally, the Claimant requested written reasons; the following are those written reasons.
4. Both parties presented small bundles of documents to the tribunal. The Claimant gave evidence on her own behalf by reference to a short statement included in her bundle. The tribunal then asked her a number of questions in

- relation to the documents in her bundle and those in the Respondent's bundle. She was also asked a very few questions by the Respondent's representative. The Respondent called no witness evidence.
5. The Claimant's claim is for unpaid wages. Her employment has now terminated but no claim relating to her dismissal has been raised in the ET1 in this case or added by amendment. The Claimant mentioned issues concerning her dismissal during the course of the hearing, including one concerning notice as discussed further below, but any claim relating to her dismissal would have to be pursued separately.
 6. As clarified with the Claimant at the start of, and during, the hearing her claim concerns four matters:
 - 6.1 A retainer of 50% pay to which she says she is entitled for August 2018;
 - 6.2 An underpayment for September 2018; the Claimant accepts that she was paid for the right number of hours and the sole issue here is the hourly rate of pay;
 - 6.3 An underpayment for October 2018; for this month, the Claimant raises the same hourly rate issue as for the previous month and also says that she was not paid for enough hours;
 - 6.4 The final matter raised concerns notice entitlement.
 7. The fourth part of the Claimant's claim as outlined above seemed at the start of the hearing (since this is the way it was put by the Claimant) to concern the termination of a contract of employment in the summer of 2018. During the course of her evidence it seemed that instead it concerned an alleged variation to her existing contract of employment which took place in the summer of 2018. However, on further discussion between the Claimant and the tribunal it seems that the real issue for the Claimant concerns the termination of her employment in or around October 2018. As indicated above, there is no claim in this case concerning the termination of the Claimant's employment; any such claim would have to be the subject of separate proceedings.
 8. Turning to the remaining three aspects of the Claimant's case, the tribunal has made the following findings of fact.
 9. The Respondent is a primary school. The Claimant was employed from 13 November 2017 as a Learning Support Assistant. She was employed on terms that were set out in a written contract provided to her in, it seems, March 2018. The reason for the delay in provision of the written contract is unclear, but in any event the Claimant accepts that its terms bound her relationship with the Respondent.

10. The written contract provided for employment for a fixed term expiring on 24 July 2018, working 8 hours per week at a rate of pay equivalent to £9 per hour.
11. The notice provisions contained in the written contract are in some respects internally inconsistent, in particular as to the notice required on either side to terminate the contract before the expiry of its fixed term, but what is clear is that if there was no new contract entered between the parties, or variation of the existing contract, it would expire with effect from 24 July 2018, ie the end of the summer term.
12. In about April 2018 the contract was varied to increase the Claimant's hours from 8 to 16 per week. Both parties accept that this was a valid variation to her contract of employment. All other terms remained the same. The variation was recorded in a 'Change to Contractual Details' document, although the Claimant says that she never saw that document. There is no suggestion that a new contract was issued at this time.
13. On 6 July 2018 the Claimant was provided with a further Change to Contractual Details document. This time, the document recorded the date of change as 25 July 2018 and a change of hours from 16 to 0 per week. Under a heading 'Extension to Contract', a question is asked as to whether there is to be an extension to a contract and the answer given is 'yes' and a revised end date is given of 5 April 2019. There was also a change of role to SEN Administrator.
14. The Claimant continued to work until the end of the summer term. She then returned at the start of the autumn term in the first week of September 2018.
15. On 20 September 2018 the Respondent gave to the Claimant a new contract in similar form to the original written contract. This version contained a number of changes from the previous terms, including a lower hourly rate of pay. The Claimant did not sign this contract and expressly refused to accept its terms.
16. The Claimant worked a total of 72.5 hours in September 2018 and 9.8 hours in October 2018. She was paid for both months at the rate of £8.10 per hour, which was neither the original rate nor the rate set out in the document handed to the Claimant on 20 September 2018.
17. In light of the evidence presented by the parties and the above findings of fact, the tribunal has reached the following conclusions.
18. In terms of the contractual terms agreed between the parties, the tribunal has no hesitation in finding that with effect from 25 July 2018 the Claimant's original contract of employment was varied in accordance with the document

- that had been handed to her on 6 July 2018. Her other contractual terms, ie those to which no mention was made in the Change to Contractual Details document, remained as set out in her original written contract. There was then no further variation of the Claimant's contract of employment prior to its eventual termination. In particular, the Claimant expressly refused to accept the document handed to her on 20 September 2018 and so it cannot reasonably be argued (and, in fairness, the Respondent did not seek to argue today) that she should be deemed to have accepted its terms by continuing to work.
19. Therefore, throughout the period from August to October 2018 the Claimant's rate of pay was £9 per hour and her hours had been reduced from 16 to 0 such that she had no entitlement to a minimum number of hours' work or pay.
 20. The Claimant seeks to argue that she was still entitled to a minimum of 16 hours per week as she had been before 25 July 2018, but (a) she has not explained why that should be so, (b) it is clearly inconsistent with the Change to Contractual Details document that she relies on as effecting a variation to her contract of employment and she cannot pick and choose which parts of the express variation she wants to be bound by, and (c) it is undermined by emails sent by the Claimant herself in October 2018 which refer, in terms, to her contract having been varied so as to reduce her hours from 16 to 0 per week.
 21. That deals with the aspect of the claim based on an alleged entitlement to a minimum of 16 hours per week for October 2018. From 25 July 2018 onwards, the Claimant was on a zero hours contract and was only entitled to be paid for hours that she actually worked.
 22. That also effectively deals with the claim for a retainer of 50% pay for August 2018. No evidence has been presented to support any entitlement to a retainer over the course of the school's summer holiday, whether 50% pay or otherwise. In any event, since the Claimant was only entitled to be paid for hours worked, and she did not work any hours in August 2018, she has no entitlement to any pay for that month.
 23. Finally, there is the question of the hourly rate of pay for September and October 2018. The Claimant was paid at the rate of £8.10 per hour but, as already indicated above, she was still entitled to be paid at the rate of £9 per hour. Indeed, the Respondent's head teacher said as much in an email sent to the Claimant in October 2018.
 24. The Claimant was therefore underpaid 90p per hour. For September 2018 that amounts to underpayment of 90p per hour x 72.5 hours = £65.25. For October 2018 the underpayment is 90p per hour x 9.8 hours = £8.82.

25. In the circumstances, the Claimant's claim succeeds and the Respondent is ordered to pay her the total sum of £74.07 in respect of underpaid wages.

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Employment Judge K Bryant QC
1 March 2019