



EMPLOYMENT TRIBUNALS

Claimant:
Mr Mark Mills

v

Respondent:
Generator Power Limited

Heard at: Reading

On: 9 March 2020

Before: Employment Judge Hawksworth (sitting alone)

Appearances

For the Claimant: Mr T Beazer (friend)

For the Respondent: Ms C Widdett (counsel)

RESERVED JUDGMENT

The claimant's claim for arrears of pay fails and is dismissed.

REASONS

Claim, hearing and evidence

1. The claimant worked for the respondent from 16 October 2017 to 1 February 2019. By a claim form presented on 10 June 2019 after a period of ACAS early conciliation from 22 April 2019 to 13 May 2019, the claimant brought claims for unfair dismissal and for arrears of pay. The respondent's ET3 and grounds of resistance were presented on 1 August 2019. The respondent defends the claim.
2. The complaint of unfair dismissal was dismissed on withdrawal on 10 December 2019.
3. The hearing took place on 9 March 2020. I heard evidence from the claimant and, on behalf of the respondent, Mr Kevin Manley, the claimant's former line manager. Mr Manley had prepared a witness statement which I read. I read the claimant's statement of claim which was attached to his ET1, and treated this as his witness statement.
4. There was a bundle of 155 pages which contained all the documents which both parties wanted to refer me to.

Issue for determination

5. The parties confirmed that the issue for me to determine was whether the claimant should have been paid at the rate of £13.50 per hour rather than £12.50 per hour. The claimant said that the higher rate should have applied from 12 December 2017.

Findings of fact

6. The claimant applied for a position with the respondent as a Field Service Engineer, also known as a Mobile Engineer, that is an engineer who attends sites rather than working in the depot.
7. The claimant was not offered the post of Field Service Engineer, but he was offered a position working in the depot as a Yard Engineer on an hourly rate of £12.50. He began working for the respondent on 16 October 2017, based at the Reading Depot.
8. The claimant's contract of employment provided that his hourly rate of pay would be £12.50, 'to be reviewed after your probationary period' (page 44). The clause continued 'There will be a periodic salary review however the company is under no obligation to increase your salary.'
9. On 4 December 2017 the claimant's duties were changed by his line manager Mr Manley from depot based to site based. He became a Field Service or Mobile Engineer. He was provided with a van and a mobile phone. The claimant understood he would get some training for the new role, but he did not. Mr Manley told the claimant that he would have to serve his 6 months probationary period before a pay rise could be given.
10. On 24 April 2018 the claimant had his probationary review meeting with Mr Manley. Mr Manley was happy with the claimant's work and said that his contract would be changed to Field Service Engineer and he would receive training to enable him to work as a Sync Engineer which would be a promotion for him. The claimant did not receive the training.
11. The claimant thought that following the completion of his probationary period, his hourly rate would increase to £13.50. Mr Manley was not authorised to agree a pay rise for the claimant on completion of his probationary period or to alter the claimant's terms and conditions. The claimant was aware that any change to his terms and conditions would have to come from head office.
12. Mr Manley asked the respondent's head office whether the claimant could have a pay rise. The claimant chased Mr Manley for an update on whether his hourly pay would increase. The respondent's service director decided not to award a pay rise to the claimant until he had sync engineer training. The claimant made a formal grievance complaint, but he did not receive the pay increase.

13. A document at page 87 of the bundle showed Reading Depot rates of pay for engineers from December 2018 onwards and gave different rates for Generator Engineers (another term for Yard Engineers), Field Service Engineers and Mobile Service Engineers.

The law

Deductions from wages

14. Section 13 of the Employment Rights Act 1996 provides that an employer must not make a deduction from the wages of a worker employed by him unless the deduction is required or authorised to be made by a statutory provision, by a relevant provision of the worker's written contract; or by the written consent of the worker.
15. Where the total wages payable to a worker on any occasion is less than the total amount of wages 'properly payable' to the worker on that occasion, this is treated as an unauthorised deduction from wages.

Breach of contract

16. The Employment Tribunals Extension of Jurisdiction Order 1994 allows an employee to bring proceedings in the employment tribunal for the recovery of damages for breach of contract if the claim arises or is outstanding on the termination of employment (article 3).

Conclusions

17. The key questions are:
 - 17.1. whether the claimant had a legal entitlement under his contract of employment to an hourly rate of £13.50 and if so from what date;
 - 17.2. alternatively, whether it could be said that an hourly rate of £13.50 was 'properly payable' to the claimant, and again, from what date.
18. The claimant's contract states that his hourly rate is £12.50 and that there is no obligation on the respondent to increase his salary. The rates of pay set out at page 87 were not included in the claimant's contract of employment and do not form part of his contract.
19. When the claimant agreed to a change of duties to become a Field Service Engineer, he was aware that changes in his terms and conditions would have to come from head office. The claimant did not receive any contract of employment recording the change to his duties or any pay rise.
20. On the completion of the claimant's probationary review, the respondent considered whether to increase the claimant's hourly rate but decided not to. The contract referred to a pay review after the probationary period, but this gave a right to a review only, not a right to an actual pay rise.

21. The claimant's entitlement to pay is not affected by the fact that he did not have the training he was expecting.
22. In the circumstances, the fact that the claimant continued to be paid at £12.50 per hour despite his change of duties and despite completion of his probationary period did not amount to a breach of contract.
23. Also, it cannot be said that an hourly rate of £13.50 was 'properly payable' to the claimant, either after the change of role or after the completion of his probationary period, because no-one with authority to alter the claimant's terms and conditions agreed that he could have a pay rise.
24. The claimant's claim for arrears of wages therefore fails, as the claimant had no legal entitlement to be paid the higher hourly rate.

Employment Judge Hawksworth

Date: 9 March 2020

Sent to the parties on: 21 April 2020

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For the Tribunals Office

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All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Note:

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.