



EMPLOYMENT TRIBUNALS

Claimant: Mr J Moss
Respondent: East of England Ambulance Service NHS Trust
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 21 June 2021
Before: Employment Judge Burgher

Appearances

For the Claimant: In person
For the Respondent: Ms J Smeaton (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

1 The Claimant's claim for unlawful deduction of wages fails and is dismissed.

REASONS

Issues

1. The Claimant and presented his complaint the Tribunal on the 2nd of December 2020. His claim related to not being paid at the appropriate paypoint from 8 March 2020. he stated that his loss was ongoing. he quantified his loss as follows:

- 1.1 £7,279.04 for ongoing loss of earnings due to not being paid at the correct pay point from 8th of March 2020.
- 1.2 £6,640.77 for ongoing loss due to affecting his home life balance by him having to work on average 34.5 hours extra month (which he was paid for).
- 1.3 £15,000 for additional compensation due to the inconvenience of having to proceed with the grievance bring a tribunal claim and the effect that this has on his health.

2. I indicated to the Claimant at the outset of the hearing that the claim brought by him did not permit me to make awards in respect of 1.2 or 1.3 above. Therefore my consideration was limited to his claim in respect of 1.1 above.

Evidence

3. The Claimant gave evidence on his own behalf. Mr Marcus Bailey, chief operating officer of the Respondent gave evidence on the Respondent's behalf. Both witnesses gave evidence under oath and were subjected to cross examination and questions from the Tribunal.

4. The Tribunal was also referred to relevant pages in a bundle consisting of 353 pages.

Facts

5. The Tribunal found the following facts from the evidence.

6. The Claimant commenced employment with the Respondent on the 23 July 2012. On 7 September 2015 the Claimant started in the role as a student paramedic, on band pay scale 5 with the Respondent. He was required to undertake a period of initial training, before registering with the Health and Care Professions Council ("HCPC") to gain the approved qualification as a paramedic.

7. The Claimant commenced the Student Paramedic Pathway in order to become a fully qualified paramedic. As such he was firstly required to study at an approved university, alongside his continued employment with the Respondent.

8. Following completion of the approved qualification, the next step on pathway is status as a Newly Qualified Paramedic ("NQP"), where the student must register with the HCPC. At this stage the student has to undertake a 2 year 'Consolidation of Learning' period, before becoming a fully-qualified Paramedic.

9. As a trainee progresses along the Student Paramedic Pathway, the pay that they are entitled to increases. Once they have completed the Consolidation of Learning period, the individual attains the role and pay of a Band 6 Paramedic.

10. It is generally anticipated that a student paramedic will proceed along the pathway and qualify as a fully qualified paramedic within a 2.5 year period. However, the terms of the contract mean that this qualification could be sooner or later than this period. Whilst proceeding along the pathway pay increases are granted on different spinal points.

11. There were delays in implementing the Student Paramedic Pathway due to issues on the academic side by not having approved providers, which were not caused by the Respondent. This delayed the Claimant's ability to register with HCPC. Notwithstanding this in 2018 the Respondent moved the Claimant to spine point 16 of Band 5 (and his salary was increased to £22,128). A similar increase in spine point was applied to other Student Paramedics in a similar situation to the Claimant. Such an increase would ordinarily only occur once a paramedic student had registered with the HCPC.

12. The Claimant was eventually able to complete the approved training and was able to register with the HCPC. The Respondent offered the Claimant the opportunity to undertake fast track training to expedite his registration as a fully qualified paramedic. The Claimant did not take up this offer as he did not believe it was in his best interests to do so as it was specific to the Respondent and was not nationally recognised training.

13. The Claimant submitted a grievance as he did not believe it was fair for him to be Band 6 paramedic by March 2020. He stated that he should have been deemed to be this given the concessions that were made to a group of student paramedics who were unable to gain full paramedic status with HCPC September 2016 and March 2017 due to delays in academic institution approval. However, this request was not accepted. The Claimant would not have been able to qualify in this period even had the delays not occurred.

14. The Claimant was eventually able to provide documentary evidence to qualify as a fully qualified paramedic on Band 6 which he did on 8 March 2021.

Law and conclusions

15. Section 13 of the Employment Rights Act 1996 states:

An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

16. The relevant consideration in this matter is what is properly due to the Claimant from March 2020 for the purposes of section 13 (3) ERA.

17. The Claimant maintains that he ought to have been paid at Band 6 as a fully qualified paramedic from March 2020 at the latest he claims the shortfall in payments due to him from then.

18. The Respondent maintains the Claimant was not a fully qualified paramedic from March 2020 and therefore did not qualify for Band 6 rate. It was for the Claimant to complete the relevant documentation to evidence the qualification and he did not satisfactorily do this until March 2021. The Claimant was offered fast track but he did not take this up. He could not be classed as Band 6 until he had fully qualified.

19. I concluded that whilst there was the expectation that student paramedics would qualify as band 6 fully qualified paramedics within a period of 2.5 years this was not a contractual entitlement. Important qualification stages had to be completed before this could take place.

20. I conclude that the Claimant was paid at proper rate from March 2020 and therefore his claims that he was subjected to unlawful deduction of wages fail and is dismissed.

**Employment Judge Burgher
Date: 28 June 2021**