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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Shakur

**Respondents:** 1) London Borough of Redbridge  
2) The Governing Body of Seven Kings High School

**Heard at:** East London Hearing Centre

**On:** Tuesday 11<sup>th</sup> June and Wednesday 12<sup>th</sup> June 2019

**Before:** Employment Judge Hallen (sitting alone)

## Representation

**Claimant:** In Person  
**Respondent:** M. Stanley (Counsel)

# RESERVED JUDGMENT

The judgment of the Tribunal is that:-

The Claimants claim for unlawful deduction of wages for the two year period immediately preceding the presentation of his claim from 10<sup>th</sup> of July 2016 until 10<sup>th</sup> of July 2018 is unfounded and is dismissed.

# REASONS

## *Background*

1 The Claimant in his Claim Form dated 10<sup>th</sup> of July 2018 claimed both unlawful deduction of wages and disability discrimination. The Respondent in its Response Form disputed that the Claimant was discriminated against on a basis of disability and also disputed his claim in respect for unlawful deduction of wages. It specified that the correct name for the Respondents was the London Borough of Redbridge and the Governing Body of Seven Kings High School. There have been 3 Preliminary Hearings in respect of this matter. The first one was on 8<sup>th</sup> of October 2018 before Employment Judge Hyde. The second one was on the 19<sup>th</sup> of December 2018 before Employment Judge Ross and the

third one was on 18<sup>th</sup> of February before Employment Judge Prichard. At the last of these Preliminary Hearings, the Claimant confirmed that he was withdrawing his claim for disability discrimination which was withdrawn at that hearing and that he was focusing on his claim for unlawful deduction of wages.

2 From that previous Preliminary Hearing, the Respondent confirmed that it was making a claim for an over payment of wages to the Claimant. At today's hearing, Counsel for the Respondent confirmed that the Respondent would be pursuing separate action in the County Court in respect for this overpayment and this was not a matter that was for the Tribunal to consider. In addition, Counsel observed that there was a jurisdictional issue which the preceding three Preliminary Hearings did not consider. This related to s23 (4A) of the Employment Rights Act 1996 (ERA). This provision confirmed that in respect of unlawful deduction of wages claims made pursuant to s13 of the ERA, such claims could only go back for a period of 2 years prior to the presentation of the Claim Form. Accordingly from a jurisdictional point of view, counsel submitted that the Claimants claim for unlawful deduction of wages could only be considered for the period 10<sup>th</sup> of July 2016 until 10<sup>th</sup> of July 2018 (the assessment period) which was the date of the presentation of the Claim Form by the Claimant. The Tribunal agreed with this submission and confirmed to the Claimant that the Tribunal only had jurisdiction to hear evidence and make a determination in respect of the unlawful deduction of wages claim for this period of time.

3 The issue for this Tribunal was as follows:-

To determine whether the Claimant had a deduction made from his wages for the period 10<sup>th</sup> of July 2016 until 10<sup>th</sup> July 2018 pursuant to section 13 ERA?

4 The Respondent submitted that the Claimant was paid his correct wages on the basis of the formula contained in the School Teachers Pay and Conditions Document (September 2018) which was the terms and conditions relating to payment of wages for all teaching staff being qualified and non-qualified. The Respondent submitted that the Claimant was in the teaching establishment as a non-qualified Foreign Language Assistant. For the above period, the Claimant, it was submitted worked part time by way of a local agreement for 15 hours per week which equated to 46.15% of a full time equivalent (a full time equivalent working 32.5 hours per week). The Respondent submitted that the Claimant had received his correct contractual entitlement to wages for the assessment period and was paid at the correct percentage of 46.15% of a full time equivalent.

5 The Claimant for his part asserted that he did not work 15 hours per week part time for the assessment period but that he worked 19.5 hours a week and that this equated to 59% of a full time equivalent salary rather than 46.15% as was paid to him by the Respondent.

6 The task for the Tribunal was to ascertain what the correct percentage amount should have been paid. The Respondent asserted that it was correctly calculated at 46.15% of a full time equivalent. The Claimant asserted that it should have been 59% of a full time equivalent arguing that his hours were 19.5 per week rather than 15 hours per week.

7 If the Tribunal found that the Claimants assertion was correct and that he should have been paid at 59% of a full time equivalent then the parties agreed that they would attempt to conciliate the matter and the Claimant would be paid the correct amount based upon this percentage for the assessment period being the two year period immediately preceding the presentation of his Claim Form.

8 The Tribunal had before it a relatively short witness statement presented by the Claimant of two pages which was a D9 and a D10 of the bundle of documents supported by a short email chain of one page at D11. The Respondents submitted a witness statement from Nicholas O'Brien being the Assistant Head teacher at Seven Kings High School and the line manager of the Modern Foreign Languages department in which the Claimant worked. In addition, a second witness, Leslie Elaine Shepherd the Team Leader Pay and Contracts London Borough of Redbridge was called to give evidence. She also presented a witness statement. There was an agreed bundle of documents and the Claimant and Respondents two witnesses were subject to cross examination and questions from the Tribunal.

### **Facts**

9 The Claimant was employed as a Foreign Language Assistant at the Seven Kings High School which is a school catering for children from 14 years to 18 years of age from the local community. It consists of a Primary School, High School and a Sixth Form. It is a very high performing school and rated as outstanding by OFSTED. The school is maintained by the London Borough of Redbridge. It is also a teaching school and a leading body in the Seven Kings Teaching School Alliance.

10 The Claimant is currently employed at Seven Kings High School as a Foreign Language Assistant in the Modern Foreign Languages Department. The Claimant joined the school as a Foreign Languages Assistant under a programme operated by the British Council for the period 1<sup>st</sup> September 2007 to 30<sup>th</sup> June 2008. Thereafter he was retained as an unqualified teacher and employed on a succession of fixed term contracts and the employment was regularised as a permanent contract from 1<sup>st</sup> September 2016. The Claimant was issued with a statement of main particulars of employment in August 2007 containing his terms of employment which was pages B1 to B3 of the bundle of documents. All maintained schools are bound by the statutory terms set out in the School Teachers Pay and Conditions Document extracts of which were of pages C1 to C11. Under this document all teaching personnel must be employed either as a teacher or an unqualified teacher and their pay is and was to be determined in accordance to that document. The relative provisions of the pay and conditions document were at page C7 in the bundle of documents. Paragraph 51.5 reads as follows:-

*“A teacher employed full time must be available to perform such duties at such times and such places as may be specified by the headteacher... for 1265 hours to be allocated reasonably throughout these days in the school year or which the teacher is required to be available for work.”*

In addition paragraph 51.2 specifies:-

*“A teacher employed full time must be available for work for 195 days of which:-*

- a) *190 must be days of which the teacher may be required to teach pupils and perform other duties;*
- b) *5 days must be days in which the teacher may only be required to perform other duties;*

*Those 195 days must be specified by the employer or if the employer so directs by the headteacher.”*

11 The Claimants hours of work and arrangement to work were agreed by the previous Head teacher of the school Miss T. The Respondent produced a letter dated 7<sup>th</sup> October 2011 marked Respondent Exhibit C which confirmed that from 10<sup>th</sup> October 2011 the Claimants hours would be different from his colleagues by way of a local agreement agreed between him and the school. It went on to confirm that the school had calculated his hours at 78% of the full time equivalent teaching assistant post to take into account the fact that he would not be required to attend departmental meetings or continued professional development.

12 Subsequently, the Head teacher Miss T agreed with the Claimant from September 2015 that the arrangement would be that he would work 15 hours per week. This was confirmed at C13 which was a payroll instruction form sent to the London Borough of Redbridge. It was dated 1<sup>st</sup> September 2015 and was signed by Miss T. It confirmed that from 1<sup>st</sup> September 2015 the Claimant would be working 15 hours per week which was broken down into three 5 hours sessions being on Monday, Wednesday and Friday. Mr O'Brien gave evidence which was accepted by the Tribunal that if what the Claimant was specifying was correct namely that he did 59% of the full time equivalent then he would have expected Miss T to have confirmed this on the payroll instruction form. However, the form does not specify this. Instead it specifies 15 hours per week. The Tribunal noted that the form indeed did have the option of a percentage addition for a full time equivalent and that the percentage equivalent was not completed by the Head teacher Miss T at the time. The Tribunal noted that if what the Claimant was saying was correct, that he was doing 59% of a full time equivalent, it would have been expected and required of Miss T to have completed the percentage on this school pay roll instruction form. It was noteworthy that she did not do so.

13 Mr O'Brien gave evidence which was accepted by the Tribunal that the Claimants duties and role as a Foreign Language Teaching Assistant was different and distinct from the duties of a qualified classroom teacher and indeed these duties were specifically excluded from the Claimants remit by way of a local agreement with Miss T the previous Head teacher. The reason for this was that the Claimant had a disabled son which he cared for and therefore they both agreed that he would not have to undertake specific duties outside the hours of work that he had agreed with Miss T namely 5 hours per day on Monday, Wednesday and Friday. Specifically, the Claimant did not have to undertake weekly break time duties, did not have to attend service training outside normal hours and did not have to attend parent evenings.

14 Mr O'Brien gave evidence which was accepted that the Claimant worked 3 days a week being Mondays, Wednesdays and Fridays. There were five 1 hour lessons each day. As a Foreign Language Assistant, there were no prescribed numbers of teaching hours/planning, preparation and assessment hours. Time was given each week to help

with any collation of materials that the Claimant wanted to use in his lesson, to read over materials that may have been sent by staff to use during the lesson. He therefore worked 13 hours as teaching hours and 2 hours a week for his own work. The Tribunal did not accept the Claimants evidence that he undertook 19.5 hours per week and this was on the basis that he had agreed 15 hours per week with Miss T in September 2015 which arrangement continued throughout the relevant period of 10<sup>th</sup> of July 2016 to 10<sup>th</sup> of July 2018 being the assessment period.

15 The Respondent produced a table of payments made to the Claimant for the assessment period from July 2016 until July 2018 which was at page B62 of the bundle of documents. The Claimant agreed that the correct pay scale 6 for the payment paid to him for the relevant period was £29,130.00 for the years 2016 to 2018 and £29,421.00 for the period 1<sup>st</sup> September 2017 to 31<sup>st</sup> August 2018. Based upon this spinal point and the Claimants contractual hours of 15 per week, the table showed that the Claimant was paid 46.15% of the full time equivalent salary for the relevant periods. It was put to the Claimant and accepted by him that for the relevant period he received the correct salary calculated on this basis.

### **Law**

16 Pursuant to s13(1) of the ERA,

*“an employee has a right not to suffer unauthorised deduction from his wages. 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 relevant provision of the workers contract*

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

17 A worker has the right to make a claim for unlawful deduction of wages to an Employment Tribunal. Pursuant to s23 ERA(4A)

*“An Employment Tribunal is not to consider a complaint brought under s13 as relates to a deduction where the date of payment of wages upon which the deduction was made was before the period of two years ending with the date of presentation of the complaint”.*

18 The Claimants Claim Form was presented on 10<sup>th</sup> of July 2018 and therefore the relevant assessment commenced on 10<sup>th</sup> of July 2016.

### **Tribunal Conclusion**

19 In this case, the Tribunal had to ascertain the Claimants correct contractual hours for the assessment period that is specified above as well as ascertaining if the Claimant was paid in accordance with those hours pursuant to the School Teachers Pay and Conditions Document 2018.

20 As specified in the facts section of this judgement, the Tribunal accepted the Respondents evidence that the Claimant had negotiated a separate local agreement between himself and the then Head teacher which catered for reasonable adjustments being made to the Claimants contract of employment to cater for his being able to look after his disabled son. Accordingly, from September 2015 and throughout the assessment period, the Claimant worked for 15 hours per week being split between 5 hours on a Monday, 5 hours on the Wednesday and 5 hours on a Friday.

21 The agreement specifically reached between the Claimant and employer was that he was not required to undertake duties outside those working hours as he had to look after his son. Therefore, the Claimant did not do playground supervision duties, attend parent's evenings or attend continued professional development after school.

22 The Claimant contended that he undertook 19.5 hours per week which was 59% of the full time equivalent. Accordingly, he argued that he should be paid at 59% of the full time equivalent salary rather than 46.15% which was what he was actually paid for the relevant assessment period. The Tribunal did not accept his evidence in this regard. As specified in the facts section of the judgement, the Tribunal accepted Mr O'Brien's evidence that the Claimants duties were reduced to cater for reasonable adjustments that the school had made for him to be able to look after his disabled son. Furthermore, if what the Claimant said was true that he was doing 59% of a full time equivalent, the Tribunal would have expected Miss T the Head teacher to have specified as much in her instructions to the school's payroll team as set out at B13 of the bundle of documents. This was the variation of the Claimants contract of employment and specified that he was working 15 hours per week. It did not specify that he was working 59% of a full time equivalent teacher. If this was the case, Miss T would have specified a percentage in such document and the document does indeed contain a provision for her to have specified such. It was telling that Miss T did not do so leaving the percentage column blank and inserting a specific number of hours that the Claimant worked per week this being 15 hours. The Claimant agreed under cross examination that he was paid according to the schedule contained B62 of the bundle of documents for the relevant assessment period. This was at the rate of an equivalent full time salary for the relevant years at a percentage of 46% being 15 hours per week.

23 Accordingly, the Claimants contention that he should be paid at a 59% of a full time equivalent was not accepted by the Tribunal and his claim for unlawful deduction of wages between the periods 10<sup>th</sup> of July 2016 to 10<sup>th</sup> of July 2018 is dismissed.

Employment Judge Hallen

20 June 2019