



EMPLOYMENT TRIBUNALS

Claimant: Mr P Collins

Respondents: (R1) The Governors Ellis Guildford School
(R2) Nottingham City Council

Heard at: Nottingham **On:** Friday 13 July 2018

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr J Ludford-Thomas, Solicitor

RESERVED JUDGMENT

The Employment Judge gave judgment as follows: -

1. The claim that the Claimant has suffered an unlawful deduction of wages fails and is dismissed.

REASONS

Background and Issues

1. The Claimant presented his claim to the Tribunal on 17 January 2018. At that stage he had been employed by the Respondent as a Teacher since 1 January 2008. He resigned from his employment on 15 April 2018 but at the time that he made his claim to the Tribunal he was still in the employ of the Respondents.

2. It is not in dispute that Ellis Guilford School is a community school maintained by the second Respondent. The first Respondent as a governing body have a right to a delegated budget and is treated as the employer of the Claimant for this complaint. It is also accepted that any decision, declaration, order, recommendation or award made during proceedings has effect as if made against the second Respondent.

3. In the circumstances of this case the Claimant's claim comprises a sole complaint of an alleged unauthorised deduction from wages. That complaint is made under Section 23 of the Employment Rights Act 1996 ("ERA"). As the Claimant's contract of employment is with the second Respondent the sole Respondent to the Claimant's ET claim is the second Respondent.

4. It is noted that the Respondents accept that the claim was presented in time. The Claimant had applied for the position of House Manager under a restructure undertaken by the school but he had not been successful and his role of Head of Year had disappeared.

He does not dispute that his salary was protected for a period of 3 years and that he knew about that.

5. The claim relates to an allegation that the Claimant has suffered an unauthorised deduction from his wages. He says that he had been paid what is described as a Teaching and Learning Responsibility payment ("TLR") which was paid to him in addition to his annual salary. The payment continued to be paid to him from 1 September 2014 to 31 August 2017 and he says he did not know that this payment had been withdrawn from him and was subject to the same protected pay period. He complains that he was not informed in writing about the change and should have been issued with a new contract of employment. He also said that he continued to perform those duties.

6. The Claimant's contention is that the non-payment of this TLR from 1 September 2017 until his employment ended on 15 April 2017 was an unauthorised deduction from wages. He says that he was unaware of any time limit to the pay protection and that he continued to perform duties commensurate with the TLR.

7. The Respondents deny that they had made any unauthorised deduction of wages or breached the Claimant's contract of employment.

8. It is conceded by them that the TLR falls within the definition of wages within Section 27(1)(A) of the ERA. They also agree that the Claimant had previously been entitled to the TLR which they paid him until 1 September 2017. It is their contention that the deduction was authorised. They say that the TLR 3year safeguarding period had ended on 1 September 2017 and that from that date the Claimant ceased to be entitled to be paid it. He had been notified in writing beforehand that this was to take place. It was not necessary to issue him with a new contract for the changes to be effective.

Evidence

9. I heard evidence from the Claimant and from Dr Sally Coulton the Head Teacher of Ellis Guilford School. I also had 2 further witness statements from Dawn Greenshields and Peter McCabe, former colleagues of the Claimant. The evidence was not substantially in dispute in this case. This case is about the interpretation of what happened. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

The Facts

10. Ellis Guilford School is a community school maintained by the Nottingham City Council.

11. Mr Collins commenced his employment at the Ellis Guilford School in January 2008. He was employed as Head of Science. His offer of employment is at pages 41-2 and his contract of employment is at pages 43-7. His contract of employment was signed by him on 3 July 2007.

12. Mr Coffins signed an updated contract of employment on 18 September 2013 (pages 50-4). At that time, he became Year Manager. Clause 4 of his contract says;

"Terms and Conditions of Employment

During your employment with the authority your terms and conditions of employment will be in accordance with: -

(a) the current Education (Teachers) Regulations and amendments; (b)

(b) the School Teachers Pay and Conditions document;

(c) the Conditions of Service for School Teachers in England and Wales (the Burgundy Book) as negotiated by CLEA/ST."

13. The contract stated that his commencing salary was 236,756.00 per annum, plus he would receive a TLR1b allowance of 29,012.00. It goes on to say:

"Your salary has been calculated in accordance with the School Teachers Pay and Conditions document. The Governing Body will review your salary position annually for implementation from 1 September according to the criteria set out in the School Teachers Pay and Conditions document."

14. The School Teachers Pay and Conditions document referred to is issued annually by the Secretary of State. The governing body of the school has the power to decide to pay a TLR to its classroom teachers. It was paid for undertaking "a sustained additional responsibility in the context of the school's staffing structure for the purpose of ensuring the continued delivery of high quality education and learning for which the Teacher is made accountable".

15. In the spring/summer 2014 the school conducted a restructure. The Year Manager roles were deleted and replaced with House Leader roles with effect from 1 September 2014. A consultation document was issued for the benefit of the trade unions and is at pages 55-6. In the managements consultation with the staff (including Mr Collins) it was made clear that any Year Manager who was unsuccessful in obtaining a House Leader role would have his or her pay protected for 3 years with effect from 1 September 2014. This is confirmed in the minutes of the Resources and General Purposes Committee held at the school on 28 April 2014 (pages 70-1).

16. In respect of the additional duties during the period of paid protection for Year Managers unsuccessful in obtaining a House Leader role Dr Coulton sent an e-mail to Lee Goodfellow (school staff member trade union representative) on 4 June 2014 (pages 74-5). This confirmed that until the appointments had been made it would be very difficult to provide a definitive list of the responsibilities that could be taken on that could be commensurate with being paid on a TLR 1b. In the school the only TLR 1 roles were faculty leaders, directors of achievement, some subject leaders and house leaders. The type of responsibility would be negotiable with individuals and dependent on the skills and abilities of the staff in question. The one thing that Dr Coulton could be certain of was that there would an increased teaching commitment from the current 15/25 that Year Managers had for anyone not appointed to a house leader role.

17. Mr Collins was not successful in obtaining a House Leader role. He remained in the employment of the school as a Science Teacher. None of his duties as a Science Teacher post 1 September 2014 did in themselves attract TLR's and would not have altered the pay protection period in any event. Mr Collins therefore ceased to be entitled to the TLR1b that he had been paid as a Year Manager but this would also be pay protected and effectively continued to be paid to him for a period of 3 years from 1 September 2014 to 31 August 2017.

18. On 11 June 2014 Dr Coulton wrote to the Claimant. It was in response to an e-mail he had sent regarding his employment status given the restructuring from year teams to house teams.

The e-mail is at page 169-70. It says: -

"As has already been clarified in the consultation documentation which was made available to all staff and in my response to the feedback from Trade Union representatives, any current post holders who are not appointed into the new structure will have their pay safeguarded for 3 years and will be able to negotiate other

responsibilities commensurate with their TLR and based on their skills and experience."

19. It goes on to say: -

"You are now in a position where your TLR 1b will be safeguarded for 3

years and you will need to meet with me to discuss potential responsibilities. Whether this can be resolved within the next 5 days will depend on the outcome of our discussions."

20. It can be seen from this that it was clear to the Claimant that the payment of the TLR 1b would not continue after 1 September 2017.

21. As at 1 September 2014 the School Teachers Pay and Conditions document 2014 and guidance on school teachers pay and conditions was in force. The document is at page 78-164 of the bundle.

22. Paragraph 31.1 provides (page 109): -

"General circumstances in which safeguarding applies

31.1 Paragraphs 32 to 38 apply to a teacher in the following circumstances: -

(b) the relevant body determines, whether as a result of a change to its pay policy or to the school's staffing structure, that the duties for which the teacher was awarded a TLRI or TLR2 or an unqualified teacher's allowance are no longer to include the responsibility for which the respective allowance was awarded or are to include a different responsibility, or the responsibility (whether or not it has changed) merits an allowance of a lower annual value."

23. It also provides (page 109-10):

"Entitlement to a safeguarded sum

32.2 A teacher who falls within paragraph 31.1 (b) shall be paid the difference between an allowance to which they were entitled prior to the event or events in paragraph 31.1 (b) occurring and any lower allowance of the like kind which the teacher is to receive to take account of the event or events. TLR1s and TLR2s awarded to teachers employed under a fixed term contract or whilst they occupy another post in the absence of a postholder must not be safeguarded after the fixed-term contract expires or the post ceases to be occupied.

32.4 Each payment made in accordance with paragraphs 32.1 (a), (b), (c) or (d), 32.2 or 32.3 shall be known as a safeguarded sum and a teacher falling within more than one of those paragraphs or subparagraphs is entitled to a safeguarded sum under each paragraph."

It also provides (page 111);

"The safeguarding period

34.1 Unless otherwise provided for in this document, the relevant body must pay a safeguarded sum until: -

(a) The date on which the safeguarding period ends, being the third anniversary of the date on which a teacher subject to paragraph 31.1 (a) starts work in the

new post referred to therein and in all other circumstances the third anniversary of the relevant date as defined in paragraph 35.1 ."

24. The relevant date is defined in paragraph 35.1 of the document (page 12):

"(a) in respect of a decision taken between 1 April and 31 August this is the following 1 September."

25. "Additional duties" is dealt with in paragraphs 37.1 and 37.2 which state (page 11 3):

"37.1. If the total of all safeguarded sums payable to a teacher from time to time exceeds 2500, the relevant body must review the teacher's assigned duties and allocate such additional duties to the teacher as it reasonably considers are appropriate and commensurate with the safeguarded sum, for as long as the teacher continues to be paid safeguarded sums which in total exceeded 2500.

37.2. The teacher shall not be paid any safeguarded sums if the teacher unreasonably refuses to carry out such additional duties, provided that the teacher is notified of the relevant body's decision to cease paying the safeguarded sums at least one month before it is implemented."

26. Paragraphs 37.1 and 37.2 do not mean that any additional duties given to a teacher in receipt of a safeguarded sum would alter or override the safeguarding period. Section 3 at page 161 contains guidance:

"73. The relevant body should ensure that appropriate notice is given of any new duties which are being given to the teacher as work commensurate with their safeguarded sum or sums. All such additional responsibilities allocated should be kept under review, including taking such action as may be required when the safeguarding period ends. Headteachers will want to consider whether the additional duty is still required; whether it should now attract an additional payment (such as a TLR payment); and, if so, the most appropriate person to undertake the duty."

27. Under the Pay and Conditions document referred to above the safeguarding period remains a finite period regardless of any additional duties given to the teacher in receipt of a safeguarded sum. For Mr Collins the finite period was the period from 1 September 2014 to 31 August 2017 and Mr Collins was aware of this.

28. It was Dr Coulton's view that she did not consider that any additional duties undertaken by Mr Collins warranted an additional payment as they were in line with the expectations of all teachers in the school and the change of GCSE examination specifications in 2017 meant that course work was no longer a component of the science qualification.

29. Not only did Mr Collins receive notification direct from Dr Coulton on 11 June 2014 (page 169-70) he also received confirmation in an e-mail from Mark Astill (Business Director) on 17 March 2016 (page 172). That says:

'Paul

Following your recent enquiry to look at your personnel file for evidence of notification of your TLR being safeguarded for 3 years, as promised I have looked in to e-mails sent in relation to this but not found in your file. I have located the e-mail below, written by the Head shortly after you were unsuccessful at interview in 2014.

This clearly states that you would have 3 years protection of your TLR 1b (I have highlighted this yellow for your reference).

I do have a further e-mail from before the recruitment process stating that unsuccessful candidates would be subject to 3 years protection should you wish to see this also.

I trust this resolves your initial query."

30. The position was also confirmed in statements of salary sent to the Claimant on 1 March 2016 (page 171) and 9 February 2017 (page 175).

31. In a letter from Mrs A Mellors, Head of School to Mr Collins dated 19 June 2017 (page 176) she confirmed the ending of TLR safeguarding following the restructure. That letter says:

"On 1 September 2014, we implemented a restructure in the school in relation to the guidance and support procedures and the house team structure was put in place. This resulted in a change to our TLR structure which impacted on your post within the school as the year manager role ended.

Your TLR and responsibilities were removed from the teaching staff structure as your duties no longer included the significant responsibility for which the TLR was originally awarded.

As a result of this change and in accordance with the provisions of School Teachers Pay and Conditions, you were paid a safeguarded sum for a period of three years from 1 September 2014 until 31 August 2017.

Although you have previously been informed of this by letter I am writing to confirm that the period of safeguarding will end on 31 August 2017 and your substantive pay from 1 September 2017 will be 238,633 representing UPR3."

32. On 1 September 2017 the school ceased to pay the TLR 1b to the Claimant. The Claimant at no stage brought any internal grievance in respect of this matter. He did not complain at all that he would not receive the payment which he now says he continued to be entitled to. The Respondents did not issue a new contract of employment.

The Law

33. The Claimant's claim is that he has suffered an unlawful deduction from his wages under Section 13 of the Employment Rights Act 1996 ("ERA"). This provides:

"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.

(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 division shall be treated for the purpose of this part as a deduction made by the employer from the worker's wages on that occasion."

34. In this case the Claimant claims that the payment previously paid to him (the TLR) ceased to be paid to him from 1 September 2017. He says this was properly payable to him under Section 13(3) of the ERA.

35. He goes on to say the non payment of that sum therefore amounted to an unlawful deduction of wages.

36. It is agreed by the Respondents that the TLR paid to the Claimant falls within the definition of wages within Section 27(1)(a) of the ERA which includes in the definition:

"(a) Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise".

37. It is accepted that this was a sum payable to the Claimant in connection with his employment and was an emolument referable to his employment paid under his contract of employment.

38. Mr Ludford-Thomas for the Respondent says as follows: -

1. The Claimant had previously been entitled to the TLR.
2. He was not paid the TLR from 1 September 2017.
3. The TLR 3-year safeguarding period had ended on 1 September 2017.
4. This was in keeping with and authorised by the Claimant's contract of employment.
5. From that date the Claimant ceased to be entitled to be paid the TLR.
6. The Claimant had been notified in writing beforehand this was due to happen.

39. Mr Ludford-Thomas referred me to the case of **Kerr v The Sweatershop Scotland Limited and The Sweatershop (Scotland) Limited v Park** [1996] IRLR 424. This case was heard by the Employment Appeal Tribunal in Scotland. The case is of persuasive authority as acknowledged by Mr Ludford-Thomas. The case held that notification of a deduction to a worker can be provided by reference to terms and conditions allowing for the deduction provided this notification is sent to the worker individually.

My Conclusions

40. I am satisfied that the TLR payment made to the Claimant was indeed wages as defined in Section 27(1)(a) of the ERA.

41. This sum had been paid to the Claimant under the terms of his contract up until 1 September 2017.

42. This deduction then continued until the end of his employment with the school on 15 April 2018.

43. I am satisfied that in the management's consultation with the school staff including the Claimant it was made clear that any year manager who was unsuccessful in obtaining a house leader role would have his or her pay protected for 3 years with effect from 1 September 2014.

44. Dr Coulton had also made it clear in an e-mail sent to the Claimant's staff trade union representative that until the appointments post the restructure had been made it would be difficult to provide a definitive list of the responsibilities that could be taken on that would be commensurate with being paid on a TLR 1b. The type of responsibility would be negotiable with individuals and dependent on their skills and abilities of the staff in question.

45. Whilst the Claimant was not issued with a new contract of employment I am satisfied that this was not necessary for the Respondents to be entitled to make that deduction. I am satisfied that the Claimant was aware by June 2014 that he would cease to be entitled to the TLR 1b and that this sum would be pay protected and continued to be paid to him for a period of 3 years from 1 September 2014 to 31 August 2017. I am also satisfied that with effect from 1 September 2014 he had ceased undertaking the additional duties that gave him the entitlement to the payment and that he knew this.

46. I am satisfied that what happened complied with the School Teachers' Pay and Conditions document 2014 and the guidance on school teachers' pay and conditions to which his pay was subject.

47. In this case I am satisfied that the deduction was authorised by his contract. That: -

- The safeguarding provisions applied
- The Claimant was entitled to a safeguarding sum
- He was notified of the safeguarding in an e-mail to him on 11 June 2014 which included the TLR payment.
- He was aware that at the end of the safeguarding period he would no longer receive the payment.
- He did not continue to perform the TLR duties during the safeguarding period.
- The safeguarding period had expired and during that time he made no complaint

48. The Respondents were therefore entitled to cease to make the payment of the TLR 1b with effect from 1 September 2017 and there has therefore been no unlawful deduction from the Claimant's wages. The deduction was authorised by the Claimant's contract of employment from the date he ceased to be entitled to be paid the TLR i.e. 31 August 2017.

49. His claim that he has suffered an unlawful deduction of wages fails and is dismissed.

Employment Judge Hutchinson
8 August 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE