EMPLOYMENT TRIBUNALS

Claimant: **Miss M MacKay**

Respondent: **One To One Support Services Ltd**

Heard at: **Nottingham** **On:** **Friday 15 June 2018**

Before: **Employment Judge P Britton (sitting alone)**

Representatives

Claimant: **In Person**
Respondent: **Ms M Coley, Managing Director**

JUDGMENT

The claim is dismissed.

REASONS

The Issue

1. The issue in this case that I have to decide is whether the Respondent was acting unlawfully pursuant to Part II of the provisions of the Employment Rights Act 1996 in deducting from final monies due to the Claimant when the employment ended, whether it be wages or expenses or otherwise, the sum of £933.34 on account of training costs which had been incurred.

Findings

2. In order to determine the issue I have been taken to documentation.

3. The Claimant having commenced her employment on 14 March 2016,at that stage as a Support Worker for the Respondent, the next day entered into a contract of employment ("the first contract"). It had a clause at paragraph 12 under the heading **TRAINING AND TRAINING COSTS REIMBURSEMENT** entitling recoupment from any wages due if the employment ended and on a de-escalating scale. In other words take the date of the expenditure on the training and it would reduce over the next 12 month period pro rata and thence of course be extinguished. But if the employment ended during the recoupment period the balance would be deducted from any final payment otherwise due to the Claimant. The Claimant signed that contract.

4. On 2 August 2016 the Claimant signed a replacement contract ("the second contract") which had already been signed by her employer via Melanie Ulyatt. The new contract was because by now she had been promoted in that she was now a trainee Senior Support Worker. This contract had a fixed period of duration in that it would run as a contract until 30 June 2017. But it is clear that if

her work was satisfactory, there would then be a further contract before the end of it and the implication being that it would not be of fixed duration. This contract had the same training costs, recoupment clause again at paragraph 12 and with the same upper case heading in bold.

5. Most important if any training costs under the de-escalator clause that I have referred to and which had been genuinely incurred were outstanding if the employment ended, then at paragraph 12.2 it was expressly stated inter alia that

"… To the extent permitted by law the Employee agrees that the Employer may deduct a sum equal to the whole or parts costs due under the terms of their agreement from his final wages (as defined in Section 27 of the employment rights Act 1996) or from any other allowances, expenses or other payments due from the Employer to the Employee".

6. It is to be noted that this clause can therefore be distinguished from that which appears at paragraph 4.8 which deals with the right to make other deductions and because it is obviously tailor made to cover training costs as per the heading. I have then been shown the most meticulous proof of the expenditure on training which therefore shows the balance due, subject to the next point I shall come to, as being that as claimed by the Respondent, namely £933.34. Insofar as the Claimant sought to therefore argue that the training costs had not been expended, I am wholly satisfied on the extensive documentation before me that it was. I am not dealing with whether or not the Claimant was underpaid wages for the attendance at these training courses. It isn't a claim before me. I would only observe on the meticulous records of the employer that prima facie she was.

7. On 29 March 2017 the Claimant's pay was reviewed and was to be increased to £8.25 per hour from 1 April 2017, essentially meaning that she would get a monthly salary gross of £1,072.50. The Respondent inter alia stated in that letter:

"*all terms and conditions will be confirmed under your new contract which is enclosed in this envelope. Working times will remain flexible as per your contract…"*

8. I have that new contract of employment ("the third contract") before me signed off by the employer at the material time. This was an open ended contract which fits with my previous interpretation. But it again had the same clause 12 with the same heading and identical recoupment provisions. Now the Claimant says to me today that she didn't get that contract at the time and only got it later with a letter dated 11 July. But the Respondent counters that this not correct and that what had happened was that the Claimant was being chased to return the contract and when she said she hadn't got it she was sent another one. What the Claimant then says is that she refused to sign it; she says because she didn't like its reference to her now being Senior Support Worker because she didn't want that responsibility because she had yet to complete the necessary qualifying course. But the Respondent counters that today is the first it has heard of that and prays in its aid the meeting that was held, which I shall call a grievance meeting, on 16 October 2017 in which there is no reference to this point and the same applies to the Claimant's grievance letter which preceded that meeting and which is dated 19 August 2017. Why didn't the Claimant raise such a fundamental point? I am not persuaded by what she is telling me. It doesn't fit with the contemporaneous documentation which is the best evidence I have got.

9. The final point to make is that the Claimant requested, because there seems to have been a lateness in actually implementing the pay rise, back pay to 1st April 2017. This payment was made in June 2017. So, as I explained to the Claimant and in terms of the law of contract the employer had made an offer so to speak to increase the pay because of her now being seen as a Senior Support Worker even if she hadn't yet to complete the qualification but which was not long off; the Claimant if she didn't want the responsibility had the obvious right to refuse the new contract and indeed the remuneration but in this case she accepted the money. And I have no evidence that persuades me, and I have referred to the grievance hearing, that the Claimant did anything to indicate that she was not prepared to perform the new contract and in particular thus not going to accept the remuneration; and that is the fundamental. That brings me back to the fact pattern.

10. Under her contract of employment the Claimant was required to give 2 months' notice. As it is she resigned the employment in amicable circumstances on 8 August giving one month's notice to expire on 8 September. It was a nice letter. She clearly had enjoyed working for the Respondent. But she had managed to get herself a Pharmacy Assistant's job closer to home and which was better suited to her family responsibilities But the applecart was upset, so to speak, because the employer in accepting the notice made plain that it would recoup the outstanding training costs. In that context there was therefore the grievance meeting on 16 October 2017 which of course is some six weeks after the employment ended. The position was very clearly explained to her by the respondent. Her proposition appeared to be that because she had not signed any new contract she wasn't bound by it. This is a reiteration of the main theme of her grievance letter. But given the acceptance of the increased pay, she doesn't need to have signed the contract for it to have effect. Having accepted the benefits she is bound by the burdens; in this case the training costs provision.

Conclusion

11. Thus I conclude that the Claimant is liable to repay the training costs. As it is they have been recouped from monies that were otherwise due to her. This the Respondent was entitled to do under Part II of the Employment Rights Act for the reasons I have given. Thus there was no wrongful withholding of wages. Accordingly the claim fails.

Employment Judge P Britton
Date 18 July 2018

JUDGMENT SENT TO THE PARTIES ON

20 July 2018

FOR THE TRIBUNAL OFFICE