



EMPLOYMENT TRIBUNALS

Claimant: Mr. I Ledger

Respondents: 1. Wrexham County Borough Council
2. The Governing Body of Ysgol Bryn Alyn

Heard at: Wrexham **On:** 11 & 12 March 2020

Before: Employment Judge T Vincent Ryan

REPRESENTATION:

Claimant: Mr C Adkins, Trade Union Representative

Respondents: Mr D Bunting, Counsel

JUDGMENT having been sent to the parties on 17th March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Issues

Where the claimant is claiming entitlement to pay progression on the basis of paragraph 4.3.2 of the applicable policy, the issues I had to decide were:

- 1.1 What is or has been, since October 2018 to date, the wage properly payable to the claimant? (Whether it is PSR1 or PSR2)
- 1.2 Did the respondent pay the wages properly payable or is there a deficiency amounting to a deduction? It is common ground that payment has continued at PSR1.

2. The Facts

- 2.1 The employment contract between the parties as to applicable pay rates is set out in STPCD plus the pay policy which is informed by the appraisal and performance management policy.
- 2.2 As regards the pay policy, the principles behind it that are set out in the document say that it is a framework for making decisions on pay in accordance with the STPCD and legislation as approved by the recognised trade unions.
- 2.3 The aim of the policy is to assure quality, recruit and retain and ensure accountability, transparency and objectivity. Decisions under the pay policy are to be made by governors following recommendations by a Head Teacher, and those recommendations are informed by the classroom teacher's performance reviewer.
- 2.4 Throughout this Judgment I will refer to "the respondent" meaning both Wrexham Borough Council and the school's Governing Body collectively, as agreed by the parties as I delivered this judgment.
- 2.5 Under the policy there is a section on pay progression based on performance at paragraph 4.3. The arrangements for this are in the appraisal and performance management policy. Decisions are to be made with reference to performance management or appraisal reports and recommendations, they must be rooted in evidence, and that evidence will only be the evidence available through the performance management appraisal process. All teachers can expect progression to the top of their range because of successful performance management reviews. Some classroom teachers are on the Main Pay Range (there are six points); these teachers have an annual review process and they may progress accordingly, but we are dealing with Upper Pay Range (UPR) sometimes referred to as the Upper Pay Scale (UPS), which Mr Ledger is on. Classroom teachers may progress from the Main Pay Range to UPR and the progression is explained in the applicable contractual documents.
- 2.6 Classroom teachers on the UPR are required to meet specified professional standards. They will be awarded progression following two successful annual performance management reviews; for our purposes it is 2016/17 and 2017/18. There is no evidence available to me for the 2016/2017 year but the issue in any event is whether the 2017/2018-year review was successful. Reviews are deemed successful; this means that they may be either confirmed as successful or they are deemed successful. Reviews are deemed successful unless there is significant concern about standards, and those concerns are raised in writing with the classroom teacher during the review cycle where they have not been sufficiently addressed through support by the school by the conclusion of the process.

- 2.7 The claimant's performance management cycle that we are looking at is 2017/18. Mr Ledger was issued with a statement of objectives on 25 October 2017 for that period; the review period is November to November. He was set three objectives. The only issue, as agreed with the parties, is in relation to objective 2:
- “To successfully implement the updated course content for product design for the current Year 10.”
- 2.8 The success criteria were set out in the document and the primary criterion was that SOLs (Schemes of Learning, otherwise referred to as Schemes of Work or SOWs) were in place by April 2018; this was to be supported by external training. The second criterion was that pupils had to be enabled to articulate the requirements of the course, that is following the structure set out in the SOL. The moderator had to be able to report that everything was in position by July 2018 (the report says 2019 but that was understood and agreed by the parties to be a typographical error and the reference was acknowledged by Mr Adkins to be to 2018); the claimant was to be provided support by being allowed to meet a colleague at another named school. There was also be an evaluation of cost effectiveness against outcomes, and support in respect of that with attendance at the WJEC inset day.
- 2.9 There was a performance management review on 2 March 2018; primarily this involved the claimant reporting on his progress. The scheme of work/scheme of learning was not in place and it was generally accepted (not stated in the document) that it would not be so within the prescribed timescale (referred to as a “timescale” in the objectives); it would not be achieved within the timescale of by April 2018.
- 2.10 The claimant had by then attended external training, not specific to the scheme of work but to inform his preparation. He said that he still needed to book WJEC courses and he reported that he was going to do so. The claimant said he needed to effect the bookings that had been agreed, and he said he aimed to book time off potentially to work at the supporting local school; he reported that he had joined the D & T Hwb. He said that a barrier to achievement was a lack of funding for two days off the timetable, not for training but to work on the SOWs themselves; he was not saying there that there was a lack of funding to cover training but rather just to give him a break from teaching so that he could write up the SOWs. Mr Ledger had, as to all classroom teachers, a 10%-time allowance for PPA (planning, preparation and assessment) which he could have utilised for that writing up but he did not; the respondent considered that it would have been an acceptable and appropriate use of PPA.
- 2.11 The claimant had failed to achieve objective 2, and there is no evidence before me that the respondent failed to support the claimant to achieve it by allowing external training. That was the agreed support in respect of that objective, and the claimant did not adduce evidence of any requests

or applications for external training which were refused or obstructed. He reported he still needed to book WJEC input and that he aimed to book cover, but the question of the respondent's possible failure to support the claimant by allowing external training was not put to the respondent's witnesses. The respondent made it clear to the claimant that he was still required to create the SOWs during the summer term. That was because they were outstanding and not because the respondent excused or overlooked the failure to achieve the objective by April; they still had to be done. The time for achievement of the agreed and crucial objective had not been extended.

- 2.12 The respondent also had concerns in general about the claimant's lesson planning and matters that were raised on book scrutiny on 8 October 2018 within the review period, and lesson observations raised on 28 November 2018 (outside the cycle), but during the period November 2017 and December 2018. The claimant was notified that he was not successful in achieving pay progression from UPR 1 to UPR 2 in December 2018. The claimant had some satisfactory and some unsatisfactory reports, his department was criticised in a report but that was not exclusive criticism of Mr Ledger; it was departmental wide. There were other issues and extraneous information at the back of the minds of the reviewer, the Head Teacher, and therefore put before the governors when they were discussing his application for progression.
- 2.13 On 2 July 2018 the respondent introduced Learning Plans (LPs) in place of Schemes of Work/Schemes of Learning. By that date Mr Ledger had not created SOW/SOLs. He then started on LPs and completed them for the former Year 10, now Year 11 pupils in August 2018, (those pupils were to be Year 11 pupils in September 2018). Those pupils had never had the benefit of SOWs when they were Year 10 students. An SOW is agreed by the parties to be an important document in a pupil's learning.
- 2.14 The claimant's performance management end of year review was held on 26 October 2018. The claimant confirmed that he had attended external courses; it was confirmed that objective 2 had not been met as required. He remained critical of WJEC input (which was a form of external support but not specific to the preparation of SOWs). Mr Ledger confirmed that the effect was it was too late now to do SOWs for 2017/18's Year 10s by the summer term as they had almost completed their work units, so there was little point in completing them; they had already gone beyond the required deadline of April, but he was referring to there being no point doing them during the summer term. SOWs had been overtaken by LPs.
- 2.15 On 3 December 2018 the Head Teacher confirmed that pay progression was not being allowed and the claimant appealed through two stages: stage one and stage two involved different sets of governors on panels. He was unsuccessful because the governors accepted in each case the Head Teacher's recommendations based on the failed objective 2. At Stage 1 some consideration was given to extraneous perceived deficiencies outside the formal review cycle. At stage 1 consideration was

given to the unsatisfactory classroom observation and book scrutiny. The claimant appealed. At stage 2, an effective appeal within the contractual procedure, the panel of governors concentrated solely on objective 2 and the claimant's attempt to achieve it and his failure in that regard. The panel said it was not just desirable for the Year 10 pupils to have SOWs but a necessity and that they were not provided to them by the claimant.

3. The Law

- 3.1 Section 13 (1) Employment Rights Act 1996 (ERA) provides that an employer shall not make unauthorised deductions from wages, (save in certain circumstances that do not apply);
- 3.2 section 13 (3) ERA states that "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 as a deduction made by the employer from the worker's wages on that occasion".

4. Application of Law to Facts

- 4.1 Based on the documented performance management, within the review cycle in question, relevant to the claimant's application for pay progression, the claimant did not have two successful performance management or appraisal reviews. The lack of a SOW was repeatedly raised by the respondent throughout the process, orally and in documentation. The lack of any SOWs for Year 10 was known to the claimant, and that is important as there was no lack of transparency; it was known to Mr Ledger and it was known to his reviewer. The lack of required SOWs potentially affected the quality of teaching and learning and it certainly did not assure the quality that was required, and that was one of the objectives of the policy. The documented evidence showed that the review objectives were accountable, transparent and objective.
- 4.2 In the circumstances described in 4.1 above, progression could not be "deemed" and a judgment had to be made. What was then in issue was whether Mr Ledger's work reached the required standards of performance. Based on the available evidence, the Head Teacher/Principal of the school adjudged that his performance did not merit progression. The respondent followed due process through a 2-stage decision-making process where the claimant could make submissions and representations (and he was represented by his trade union throughout). Representations were made to the governors whose decision it was, and they made a decision they were entitled to make. The decision was that the applicable pay rate, the payable wage, was at UPR1.

- 4.3 It follows from that that the wages properly payable to Mr Ledger from October 2018 to date are at UPR1. He has been paid at that rate. There is no deficiency; there has been no unauthorised deduction.
- 4.4 That said, If I may comment on the documentation: it allowed me to make the findings that I have made, but the documents are not as clear as they possibly could be. I refer in particular to the Review Summary as it replies principally on the report back from the person being reviewed. As a means of communicating the Reviewer's views that form is not particularly enlightening to a reader who was not involved at the meeting. However, it was clear that the claimant did not achieve a second satisfactory review, and for those reasons progression could not be "deemed", and for those reasons discretion applied; the governors have exercised it appropriately using information available, and the claim fails; it is dismissed

Employment Judge T Vincent Ryan

Date:26.03.20

REASONS SENT TO THE PARTIES ON

.....28 March 2020.....

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