

Employment Appeal Tribunal holds that pay progression clause did not allow automatic pay increments

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The Employment Appeal Tribunal has ruled that an employee's employment contract did not entitle her to annual pay increments subject to satisfactory performance, regardless of HR's assurance during the recruitment process that the employee's pay would increase in this way. On review of the clause, this was not its meaning and there was also an entire agreement clause in the contract, which meant that the employee could not rely on the prior discussions with HR.

The claimant, Ms Earle, joined the Equality and Human Rights Commission in 2009. Her position was graded at level 5 on the Commission's pay scale which had a number of pay points ranging from £43,680 to £53,093. Ms Earle was disappointed with the starting salary but was given an oral assurance by an HR officer that her salary would progress up the scale and that her salary would increase subject to satisfactory performance.

The employment contract contained a clause which said that: (i) pay would be reviewed annually until the maximum range for the grade was reached; (ii) a decision on progression would include a performance assessment; (iii) there was no obligation on the EHRC to increase salary on review; and (iv) an increase in pay one year would not create any right or entitlement in subsequent years. The employment contract also contained an entire agreement clause which meant that the contract would supersede any earlier oral or written agreement between the Commission and Ms Earle.

As a government funded body, the Commission was affected by funding constraints in the aftermath of the financial crisis and imposed a pay freeze on its staff. Given the circumstances, it considered that nothing would be gained by conducting staff pay reviews. Ms Earle brought a claim for

breach of contract because she had not received the incremental pay increase to which she claimed she was entitled and the Commission had not conducted a pay review.

The EAT, having regard to the express provision of the clause, which stated that there was no obligation to increase pay, held that the decision to increase pay was discretionary and there was no entitlement to automatic salary progression in Ms Earle's employment contract. It also held that the wording did not provide that her salary would increase subject to satisfactory performance, although performance was an important consideration. Ultimately, the decision on pay was discretionary and as such, the Commission was under a duty not to exercise its discretion irrationally or capriciously. However, the EAT held that the Commission had not acted irrationally or capriciously because the pay increments clause considered factors other than ones which were personal to Ms Earle.

In considering the effect of the assurance from HR, the EAT held that this discussion before the contract was entered into could not overrule the Commission's contractual discretion. In any event, even if this discussion had contractual force, it had been superseded by the employment contract by virtue of the entire agreement clause. The EAT did uphold Ms Earle's claim that she had been contractually entitled to a pay review, however, whilst the Commission was technically in breach, even if a review taken place, there was no chance that Ms Earle would have received the pay increase sought. Therefore, although successful in principle, no damages could be awarded to Ms Earle.

This case emphasises the need for clear drafting in pay increase or review clauses. Had the relevant clause referred only to employee performance, regardless of its budgetary constraints, the Commission's decision could have been found to be unlawful.

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