



24 April 2013

PRESS SUMMARY

Barts and the London NHS Trust (Respondent) v Verma (Appellant) [2013] UKSC 20
On appeal from [2011] EWCA Civ 1129

JUSTICES: Lord Hope (Deputy President), Lord Walker, Lady Hale, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEAL

This case concerns a pay protection provision in the 2002 version of NHS Terms and Conditions of Service for Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales) (“the NHS Terms”). The Appellant is a doctor specialising in oral and maxillo-facial surgery. She trained as a dentist in India but later qualified as a doctor and has been in the UK since 1996. From late 2006 to early 2007, the Appellant worked for the Luton and Dunstable Hospital NHS Foundation Trust as a “trust grade doctor in oral surgery”. She was subsequently employed by the Respondent as a “Foundation Year 1 Pre-Registration House Officer”. That was a training position and was a necessary step to the Appellant qualifying as a consultant.

The contract between the Appellant and the Respondent was governed by the NHS Terms. A document called the “Pay Circular”, to which reference was made in the NHS Terms, set out the basic rates of pay per annum of doctors and dentists in each of fifteen pay grades. Each pay grade had a number of levels of pay (referred to in the NHS Terms as “incremental points”). The Appellant’s position with the Luton and Dunstable Hospital NHS Foundation Trust was treated as falling within the lowest pay grade, namely “Hospital Practitioner”. The pay for that grade was determined, not on the basis of an annual salary, but on the basis of the number of sessions worked. A session consisted of a working period of 3.5 hours. The pay for the post was limited to a maximum of five sessions per week. The appellant in fact only worked two sessions per week.

The NHS Terms included a pay protection provision which, in essence, enabled a doctor moving to a lower paid training post to retain his/her previous salary. Paragraph 132 of the NHS Terms provided: “Where a practitioner takes an appointment in a lower grade which is recognised by the appropriate authority as being for the purpose of obtaining approved training ... the practitioner shall, while in the lower grade, continue to be paid on the incremental point the practitioner had reached in his or her previous appointment. Such a practitioner shall receive the benefit of any general pay awards. On reappointment to the higher grade or on appointment to another higher grade, the practitioner’s starting salary should be assessed as if the period spent in the approved training post had been continuing service in the previous higher grade...” Paragraph 135 was an interpretative provision which provided: “a. the rate of salary for a part-time practitioner shall be taken to be the corresponding point in the salary scale, except for a practitioner employed as a part-time medical or dental officer under paragraphs 94 or 105, for whom it shall be the maximum amount appropriate to nine notional half-days...”

The question in the present case concerns the meaning of those provisions. The Appellant brought a claim against the Respondent arguing, amongst other things, that there had been an unlawful deduction of her wages contrary to Part 2 of the Employment Rights Act 1996 (a concept that includes

a failure to pay an employee what is contractually due to him or her). The Appellant argues that she is entitled to the basic hourly rate she had received whilst working for the Luton and Dunstable Hospital NHS Foundation Trust for each hour worked in her new post for the Respondent. By contrast, the Respondent argues that the Appellant's pay protection should be limited to five sessions per week, i.e. the maximum period she could have worked in her previous post. The Employment Tribunal agreed with the Respondent. The Employment Appeal Tribunal reversed that decision. The Court of Appeal (Elias LJ dissenting) restored the decision of the Employment Tribunal.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores the decision of the Employment Appeal Tribunal. The case is remitted to the Employment Tribunal in order to determine the outstanding issues identified in the order of the Employment Appeal Tribunal. Lord Carnwath gives the only judgment.

REASONS FOR THE JUDGMENT

- The different approaches adopted by the various judges who have considered this case demonstrate that paragraph 132 of the NHS Terms is not well drafted. It is disturbing that a provision designed to confer important rights on employees should be so obscure. The provision, however, is unlikely to cause problems in the future [21, 22].
- The issue in this case has to be resolved by applying the ordinary principles of contractual interpretation according to which the object of the court is to ascertain the intention of the parties by examining the words they used and giving them their ordinary meaning in their contractual context [26].
- The critical words in paragraph 132 of the NHS Terms are “the practitioner shall ... continue to be paid on the incremental point the practitioner had reached in ... her previous appointment”. The “incremental point” is a reference to the relevant point in the scale for the practitioner's grade as shown in the Pay Circular. Since, for the Appellant's grade (i.e. Hospital Practitioner), that point is expressed in terms of sessional rates, some means must be found to convert those rates into a form which can be applied to the different terms of her training post, in which her periods of work were measured in hours not sessions. [27].
- The most obvious way of doing that is by converting the sessional rates to hourly rates [27]. It may be counter-intuitive that those rates should not be limited in some way be reference to the number of sessions which were, or could have been, worked in the former post [27]. However, there is nothing in the wording of paragraphs 132 or 135(a) to support such a limitation [28].
- The exceptions relating to part-time medical and dental officers appointed under paragraphs 94(b) and 105 of the NHS Terms support that construction of paragraph 132. The existence of such a specific limitation makes it more difficult to imply some other unspoken limitation applicable to the Appellant's case [28].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html