



EMPLOYMENT TRIBUNALS

Claimants: (1) Mr W Trela
(2) Mr A Javaid

Respondent: Tunstall Group Holdings Limited

Heard at: Hull **On:** 10 February 2017

Before: Employment Judge Davies

Representation

Claimants: 1. In person
2. Mr K Ali, counsel

Respondent: Mr P Crow, solicitor

JUDGMENT

1. The Second Respondent is removed as a Respondent from these proceedings.
2. The Claimants' claims of unlawful deduction from wages are well-founded and succeed.
3. The Respondent shall pay the first Claimant **£26,283.13** net and shall be responsible for the payment of tax and National Insurance contributions to HMRC.
4. The Respondent shall pay the second Claimant **£20,290.93** net and shall be responsible for the payment of tax and National Insurance contributions to HMRC.
5. Pursuant to Rule 76(4) Employment Tribunal Rules of Procedure 2013 the Respondent shall in addition pay the first Claimant costs in the sum of **£390**, being the issue and hearing fees paid by him.
6. Pursuant to Rule 76(4) Employment Tribunal Rules of Procedure 2013 the Respondent shall in addition pay the second Claimant costs in the sum of **£390**, being the issue and hearing fees paid by him.

REASONS

Introduction

1. These were claims brought by Mr Wojciech Trela and Mr Aleem Javaid against their former employer, Tunstall Group Holdings Limited, for unlawful deduction from wages. Mr Trela has represented himself today and Mr Javaid has been represented by Mr Ali of counsel. Mr Crow, solicitor, has represented the Respondent. I was provided with an agreed bundle of documents and I heard evidence from the two Claimants and from Mrs T Tait on their behalf. For the Respondent I heard evidence from Mr J Furniss and Mr A Miller.

Issues

2. There is a single issue in this claim. Were the wages paid on any occasion to the Claimants less than the wages properly payable on that occasion, i.e. in July 2016 should the Claimants have been paid in their wages a bonus pursuant to the Project Titan Bonus Scheme?

Facts

3. At the time of the events with which I have been concerned both Claimants were employed by Tunstall Group Holdings Limited. They worked within the finance group of Tunstall Healthcare. The First Claimant was Head of Planning and Reporting. The Second Claimant was Group Financial Controller. The First Claimant's line manager was Mr Miller, who was the Director of Group Finance. Mr Furniss was Company Secretary. The Chief Financial Officer was a Mr Parker and the Group Chief Executive Officer was a Mr Stobart.
4. From 2008 the majority shareholder in Tunstall Healthcare Group was a private equity investor known as the Charterhouse Group ("Charterhouse"). In or about April 2015 Charterhouse were considering selling their shareholding and at about that time Mr Miller informed both Claimants of that fact. The plan was that JP Morgan were to be instructed to lead an auction process to manage bids for the shareholding and Deloitte were to be involved in dealing with the due diligence process. It was not disputed that that would lead to a significantly increased workload for the finance team. Among other things they would need to satisfy information requests from bidders and complete their annual audit in a significantly shortened timescale.
5. In general terms, the process expected to culminate in the sale of Charterhouse's shareholding was named Project Titan. I was not shown any formal definition of what "Project Titan" meant and I suspect it was not ever formally defined. It is clear that in practice Project Titan is the name that was applied to the process that started with the indication by Charterhouse that they wanted to sell their stake.
6. There was a meeting on 14 May 2015, referred to as a "kick off meeting", at which JP Morgan presented some slides. Those slides included a detailed transaction timetable setting out a number of steps in the process that was envisaged. Among those steps at round 1 was the distribution of information, the holding of presentations and discussions and then a date for round 1 bids

to fall due. There was a round 2, the end point of which was the making of binding offers. The next section in the timetable was headed "Signing/Closing" and it listed "confirmatory DD/final negotiations", "sign SPA" then "completion". The next section in the transaction timetable was headed Finance in Progress and it included six further steps.

7. In advance of the kick off meeting the slide presentation was circulated by email to those invited to participate in the meeting. That included the First Claimant but not the Second Claimant. There is no dispute that the slide presentation was not provided to him or drawn to his attention at any relevant time. There is a dispute about whether the First Claimant dialled into the meeting and indeed whether he read the slides. I do not need to resolve that dispute for present purposes.
8. On 18 May 2015 the finance leadership team were told about Project Titan. There was a discussion about matters such as the timetable for producing a business plan and what the finance team's involvement would be in the various work streams. On 20 May 2015 group finance staff were told about the project. Work commenced on the project and it did indeed involve a significant workload for members of the finance team. The question of whether retention bonuses would be awarded was raised and there were, for example, discussions about that between the First Claimant and Mr Miller. However, nothing was done about it at that stage. That changed in August 2015 when Mr Smith, a senior financial analyst in the team, resigned. That appears to have provided the impetus for the question of retention bonuses to be resolved.
9. Mr Miller reported Mr Smith's resignation to Mr Parker. Mr Miller explained in his evidence that he was partly involved in the setting up of the bonus scheme because when Mr Smith resigned he put to the Group CEO and the CFO that they needed some form of retention scheme for finance to ensure that they had the team members' services throughout the project. Mr Miller was asked in cross-examination about the purposes of the scheme. He agreed that one of the purposes was to retain staff for the duration of the project. He accepted that the other purpose was to recognise the additional work that was involved in the project. He said that the idea was to incentivise people to do that hard work.
10. Some at least of the bonuses went to the Board of Directors for approval. I have seen the minutes for the relevant meeting. They refer to a proposal that certain employees of the group, referred to as the "fixed exit bonus participants" would be awarded a fixed exit bonus amount, not linked to value, subject to completion of the exit, referred to as the fixed exit bonus. Both Claimants were listed among the fixed exit bonus participants. There were 18 participants in total. Mr Miller and Mr Furniss were also on the list. Those Board minutes and the documents that underlay the Board discussion were not seen by or drawn to the attention of either Claimant at any relevant time. Mr Furniss suggested in his witness statement that it would not be unreasonable to expect that the conditions of the bonus scheme (to which I refer below) included the nature of this proposal adopted by the Board of Directors. However, he accepted in his oral evidence that that was not his own conclusion at the time he received his bonus letter.

11. The letters were sent to the participants on 13 October 2015 and were all in the same terms:

Project Titan Bonus

I am writing to inform you of the bonus arrangements we are putting in place for you in relation to Project Titan.

The Titan Project has consumed a great deal of your time and effort over the last few months and there is every indication that the time commitment going forward will remain intense. In order to recognise the additional demands being put on you in your role we are making you an award subject to certain conditions of a bonus of **50% of your base salary, as at 1 October 2015**. The bonus will attract Income Tax and National Insurance contributions as normal in your territory and will not attract pension contributions.

For you to be eligible to receive your Project Titan Bonus, you must:

- Be employed by a company within the Group when Project Titan completes.
- Not be under resignation or working your notice for any reason, except for reason of redundancy.
- Not be subject to any disciplinary action.

The payment of the Project Titan Bonus will be made in the monthly payroll following the month of completion of the project and operates independently from all other standard bonus schemes that you may be eligible for.

I want to thank you for your ongoing commitment to the business and working with you to a successful completion of a Project Titan.

If you have any questions regarding the above, please initially contact [a named person].

12. The letter was signed by Mr Stobart. No other documents were sent with the letter and as is clear no other documents were referred to. The author of the document did not give evidence to me.

13. In these two claims the meaning of the first bullet point is central: what was meant by the expression “when Project Titan completes”? I heard evidence from each of the witnesses about that. Both Claimants gave evidence that they understood it to mean “when the project ended.” The First Claimant said that he understood this to be a standard retention bonus that was to be an award for time and effort and for seeing the project to a conclusion. The Second Claimant said that his understanding was that it was in order to ensure that all the project work was completed. Neither Claimant understood that the reference to Project Titan completing meant the sale of the Charterhouse shareholding. Mrs Tait was of the same view as the two Claimants in her understanding of the letter.

14. Mr Miller and Mr Furniss gave evidence that their understanding was the opposite. Mr Furniss, who dealt subsequently with grievances about the non-payment of the bonus, said that having done so he concluded that it was reasonable to expect both Claimants to have understood that completion of the project referred to a successful sale of the Tunstall Group. He appears to have come to that view having seen the Board minutes and associated documents that were not provided to the bonus scheme participants at the time. He said in his witness statement that Project Titan was “the sale of the Tunstall Group” and that he believed that it was clear and commonsense that Project Titan would only be completed if there was a sale. Mr Miller’s

evidence was that his understanding was that the bonus was only payable if and when the business was sold. However, in cross-examination he accepted that if the letter had said that no bonus would be payable if the business was not sold it would have defeated the object of the scheme. Indeed he volunteered that the scheme would have been “worthless to us” if it had said that. Despite that he went on to suggest that in the context of group finance it would have been well understood that the term “completion” meant the sale of the business.

15. Project Titan continued for a number of months after the sending of the bonus letters. In the event it did not culminate in the sale of the Charterhouse shareholding. Work on the project in the finance team continued until mid-June 2016. On 15 June 2016 Mr Parker told the First Claimant and Mr Miller to down tools. After that no further work was done on Project Titan by the finance group. The context for Mr Parker’s instruction was that Charterhouse had rejected a proposed sale because the price was too low. I understood that the sale was then not to be pursued, in particular in the context of the uncertainty with the then impending Brexit vote.
16. On 28 June 2016 the First Claimant started work on financial modelling associated with partial debt repayments and debt covenant holidays. This work was part of what was referred to as Project Apple. It was work to deal with the Respondent’s debt situation in the circumstance that now pertained, namely that there was to be no sale. On 30 June 2016 the finance leadership team were told about the rejection of the proposed sale, when Mr Parker read an article out at the leadership team meeting. That article summarised the outcome of the project, i.e. no sale of the shares, and disclosed the expected course of action by the company and the shareholders. Project Titan did not feature on the Finance Leadership Team agenda after that.
17. The only other document to refer briefly to is an announcement made by Mr Stobart on 2 August 2016. He confirmed that Project Titan, which he referred to as “the process designed to find a new owner for the business” was now effectively at an end. He went on to say that the closure of the project meant that they had some immediate challenges to address and that the purpose of the note was to set out the challenges and to explain how they were to be addressed.

Legal principles

18. Claims for unlawful deductions from wages are governed by s 13 and 23 Employment Rights Act 1996.
19. There was no dispute between the parties that the Project Titan Bonus Scheme was a contractual bonus scheme and that if the relevant conditions were met the participants in the scheme were contractually entitled to payment of the bonus. The question in this case is whether the relevant conditions were met.
20. The parties also agreed that the proper approach to the construction of the contractual document was as described by the House of Lords in the well known case of *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1WLR 896. The House of Lords made clear that what is relevant is not the subjective view of either party. Rather the contract is to be construed in line with the meaning it would convey to a reasonable person

having all the background knowledge that would reasonably have been available to the parties in the situation they were in at the time of the contract.

Application of legal principles

21. I start by summarising the relevant background that would reasonably have been available to the parties in the situation they were in at the time of making the contract. That background included the fact that Project Titan was a process designed to find a buyer for the business. There is no question that the aim of that process was to achieve a sale of the business. I have referred to the announcement made by Mr Stobart at the end of the process and it seems to me instructive that in that announcement he referred to Project Titan as being a process designed to find a new owner for the business. Plainly, he had not made that statement that at the time the bonus scheme was agreed, but it is notable that what Mr Stobart subsequently said is consistent with the understanding of both Claimants at the time of what the project was.
22. The relevant background also included the fact that the purpose of the scheme was to ensure the retention of staff within the finance group, particularly following the departure of Mr Smith in August. The aims of the scheme were to reward the hard work that was associated with the project and to retain the relevant staff; as Mr Miller put it, to ensure that they had their services “throughout the project”. I have referred to the fact that it was Mr Miller who went to the CFO following Mr Smith’s departure. He explained the need for a scheme in those circumstances and the Project Titan Bonus Scheme is what resulted from that.
23. I also take into account as part of the relevant background Mr Miller’s evidence that in a financial context the word completion would be understood to mean a sale.
24. I do not find that the relevant background included the Board meeting minutes or associated documents. Those were not reasonably available to the Claimants at the relevant time.
25. Nor in my view does the relevant background include the JP Morgan slide presentation. That was not reasonably available to all the participants in the bonus scheme, nor was it drawn to their attention. Indeed, it was drawn up by a third party some five months before the bonus scheme was implemented and had no obvious connection with that scheme. I pause to note that even if it had been relevant I am far from convinced that the slides cast any light on the meaning of the words used in the bonus scheme letter.
26. Having said that about the background, I turn to the wording of the letter itself. It seems to me that the fundamental emphasis is on the time and effort expended already and to be expended on Project Titan. Indeed, recognition of the additional demands that arose from the project was expressly stated as the aim of making a bonus award. A reasonable observer would understand that the time and effort that had been expended and that were required in the future would be required, regardless of whether a sale of the shareholding was achieved or not.
27. Secondly, the relevant condition refers to “when Project Titan completes.” That is a reference to completion of a project not a reference to completion of a sale. Indeed, the condition does not refer to “successful” completion of Project Titan, and that can be contrasted with the last part of the letter where

there is reference to “successful” completion of the project. It seems to me that if the payment of the bonus was meant to be conditional on achieving a sale that could have been said in clear and simple terms. A reasonable observer would have understood, as Mr Miller did, that if the letter did say that, it would be worthless to the Respondent. The aim of retaining staff would not have been achieved. In those circumstances, the reasonable observer would not consider that the letter meant something that was contrary to the purpose of the scheme.

28. I have referred to Mr Miller’s indication that finance professionals would have understood a more technical meaning of the word “completion” but I have noted that that understanding was not shared by at least three such professionals, that is to say the two Claimants in this case and Mrs Tait. Furthermore, it is important to read the letter as a whole and the letter does not refer to the completion of a sale, it refers to the completion of a project.
29. In all of those circumstances I find that the reasonable observer would have understood the first condition of the bonus scheme to mean that the individual must be employed by a company within the group when Project Titan came to an end, not when a sale of the Charterhouse shareholding was achieved.
30. I find that Project Titan came to an end in June 2016. That happened when the bid that had been put forward was rejected and a decision was evidently taken not to pursue a sale any further. The CFO instructed Mr Miller and the Claimants to down tools. No further work was then done on Project Titan and by the end of the month Project Apple was underway. In those circumstances, both Claimants still being employed by the Respondent in June 2016, the first condition was met by both of them and the bonus therefore became payable to them in the July payroll.

Addendum: Calculation of net sum payable

31. At the hearing, the parties did not have available the appropriate net figures for payment. They undertook to provide figures and to attempt to agree them. They agreed that I should deal with the issue on the papers if the sums were not agreed. I have since been provided with detailed calculations from both Claimants. Those calculations set out the steps taken, the amounts of tax and national insurance calculated, and the net figure arrived at. Supporting documents are attached. I have also been provided with figures by the Respondent. Those figures (which are lower) do not set out any calculations or provide any supporting documents. They essentially amount to a mere assertion as to the relevant sums. The Respondents have not provided any explanation for why their sums differ from the Claimants’, although they have had those figures for some time now. In those circumstances I accept the figures provided by the Claimants and those sums are reflected in the written Judgment above.

Employment Judge Davies

Date 3 March 2017

Sent on 7 March 2017

