Appeal No. UKEAT/0198/13/DA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 10 & 11 April 2014

Before

THE HONOURABLE MR JUSTICE SUPPERSTONE

(SITTING ALONE)

MR S JANDU APPELLANT

CRANE LEGAL LTD (FORMERLY BALSARA AND CO LTD)
RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR PHILIP ENGELMAN (of Counsel)
For the Respondent	MR SIMON HALE (of Counsel Instructed by: Messrs Girlings Solicitors Stourside Place 4th Floor 35-41 Station Road Ashford Kent TN23 1PP

SUMMARY

UNFAIR DISMISSAL - Reasonableness of dismissal

UNLAWFUL DEDUCTION FROM WAGES

The Appellant, a solicitor, was employed under a contract of employment that contained a bonus entitlement. He was dismissed on grounds that he claimed bonuses to which he was not entitled. The ET dismissed his claims for unfair dismissal, unlawful deduction of wages and breach of contract. The issue before the EAT was whether the Respondent had reasonable grounds for its belief that the Appellant was guilty of gross misconduct. The EAT was satisfied that it was so entitled. Accordingly the appeal against the dismissal of the unfair dismissal complaint failed. The EAT further held that if the Appellant had a good claim for bonus, which he did not, it would have to be brought as a claim for breach of contract as his loss, if any, was very difficult to quantify (see **Coors Brewers Ltd v Adcock** [2007] ICR 983). In fact there was no loss.

THE HONOURABLE MR JUSTICE SUPPERSTONE

Introduction

1. Mr Jandu, the Appellant, appeals against the Judgment of an Employment Tribunal sitting at London (Central), chaired by Employment Judge Lewzey and sent to the parties on 23 November 2012, which held that the Appellant's claims for unfair dismissal, unlawful deduction of wages and breach of contract each failed and were dismissed.

The Facts

2. The Appellant is a solicitor. The Respondent, formerly Balsara & Co Ltd, is a solicitor's practice, owned by Mr A Patel, who is the sole principal and managing partner. The Appellant commenced his employment with the Respondent on 10 November 2008, initially as a paralegal, following which he was engaged on a training contract by the Respondent. Upon completion of the training contract, the Appellant was admitted as a solicitor on 15 February 2011 and continued to be employed as a solicitor by the Respondent until he was dismissed on 16 March 2012. During his training contract, the Appellant was paid £18,500 per annum. His contract did not include any entitlement to bonus.

3. The Respondent and the Appellant entered into a new contract of employment dated 19 January 2011, commencing on 5 January 2011. Paragraph 3 of Schedule 1 to the contract provided that the Appellant's remuneration would be in accordance with Schedule 2. Paragraph 2 of Schedule 2 provides for a salary of £30,000 per annum and states:

> **"2.2 In addition to the salary as stated in 2.1 above, the employee shall be paid £10,000 on 31 January 2011, such payment to be on account of the Net Profit Costs received by the firm for work carried out by the Employee, reaching £120,000 in the calendar year (1 January 2011 to 31 December 2011).**
>
> **2.3 If the Net Profit Costs for the year (1 January 2011 to 31 December 2011) does not reach £120,000 then the sum of £10,000 shall be returned to the Employer by the Employee by 1st June 2012.**

2.4 If the Net Profit Costs received by the Firm for work carried out by the Employee exceeds £120,000 for the calendar year, the Employee shall be paid a bonus of 30% of net profit costs over £120,000 on the last month of that calendar year.

2.5 The Employer shall review the remuneration arrangements of the Employee annually."

4. Paragraph 1.4 of Schedule II defines "net profit costs". Net profit costs means:

> **"...in relation to any Month, Profit Costs received by the Firm for that Month less**
>
> **1.4.1 costs draftsmen's fees; and**
>
> **1.4.2 disbursements disallowed or unclaimed or otherwise proving to be unrecoverable by the Firm in assessments taking place during the month; and**
>
> **1.4.3 Recoupments; and**
>
> **1.4.4 Profit costs referable to work done by other fee earners in the firm other than the Employee unless such work is de minimus."**

"Profit costs" are defined in paragraph 1.5. They mean:

> **"...the profit costs (excluding VAT) received by the Firm (including payments on account of profit costs) in respect of bills or claims delivered by the employee for the provision of legal services."**

5. On 16 December 2011 the Appellant handed to Mr Goonaratne, the Respondent's Accounts Assistant, a schedule containing a list of clients' matters, codes and profit costs totalling £478,170.76 in profit costs. The Appellant told Mr Goonaratne that the figure was to be used for his bonus claim and that Mr Goonaratne should do a transfer to him in respect of bonus on that day. Mr Goonaratne told the Appellant that he would need authorisation from Mr Patel. The Appellant explained that he wanted the payment before Christmas. Mr Patel, when he saw the Schedule, was surprised by the profit costs figure as only three months earlier he was concerned that the Appellant would not receive the threshold of £120,000. He instructed Mr Kumar, the Respondent's Office Manager, to investigate the matter.

6. The Appellant's brother, Mr Randeep Jandu, is a solicitor who was also working for the Respondent. He too had a contract containing a bonus entitlement, but the terms were different from those in the Appellant's contract. Mr Patel told Mr Kumar that Mr Randeep Jandu had

come to him in October 2011 with two schedules detailing profit costs generated on his files over an 18-month period in order to negotiate a pay rise. As part of the exercise Mr Kumar conducted in relation to the Appellant, he also reviewed Mr Randeep Jandu's schedule to establish how much work overlapped with the Appellant's claim, as the Appellant and his brother worked alongside each other and often on the same matters.

7. Mr Kumar's evidence was that he went through Mr Randeep Jandu and the Appellant's schedules systematically to identify duplicate entries. At paragraph 41 of the decision it is noted that:

> **"In relation to Syndicate Bank where [the Appellant] claimed profit costs in the sum of £1,837...he found an entry on Mr Randeep Jandu's schedule for the same amount. In total Mr Kumar found 19 duplicate entries totalling £127,011 on [the Appellant's] schedule. Of particular significance he found one entry by [the Appellant] relating to Canara Bank in the sum of £45,588 and another entry in relation to RSM Tenon in the sum of £50,917.50. Mr Kumar took the view that these were senior solicitor's files dealing with complex issues and high value clients, where it was unlikely that [the Appellant] would have carried out 100% of the work and his brother done nothing. Mr Kumar reported his findings to Mr Patel on 8 January 2012."**

8. On 6 February 2012 the Appellant was suspended. The letter informed the Appellant that investigations were continuing, but once the investigations were concluded the Respondent would anticipate seeking an explanation for a number of matters, and in particular for:

> **"(i) at least one of the transfers you caused to be made from the firm's client account to office account;**
>
> **(ii) your failure to keep proper records; and**
>
> **(iii) your detailed allocations of work between one fee earner and another."**

9. The letter continued:

> **"We should warn you that these matters if proved might well be considered as misconduct and even gross misconduct."**

10. An investigatory meeting took place on 14 February 2012, attended by Mr Patel, Mr Kumar and the Appellant. At this meeting Mr Patel explained that the purpose was to check

matters concerning the Appellant's billing and obtain his clarification and explanations. 11 matters under 11 file numbers were under discussion. The evidence of Mr Patel and Mr Kumar was that the Appellant was uncooperative and gave evasive or non-committal answers at this meeting (paragraph 49).

11. A disciplinary hearing took place over three days on 2, 5 and 6 March 2012. The meetings were recorded and professionally transcribed. Each of the ten allegations put were considered with detailed questioning and documents were examined by all those present.

12. At paragraphs 57-69 of the Decision the Employment Judge described briefly the ten allegations that were considered at the disciplinary hearing. In relation to a number of allegations the Appellant maintained that the matters had been discussed with Mr Patel. Mr Patel's evidence was that they had not been discussed with him (see, for examples, paragraphs 59-64 and 69).

13. Ms Wilson, an independent costs draughtsman, had been instructed by RSM Tenon, a client of the Respondent, in February 2012 to prepare a report of legal costs charged by the Respondent in relation to legal work done on the administration of Life and Style Retail Ltd (in administration). Ms Wilson considered around 95 lever arch files. The total profit costs on the files were £138,750, of which £97,800 was attributed to the Appellant and Mr Patel. Ms Wilson concluded that the amounts claimed and charged by the Appellant to RSM Tenon were not reflected on the files and could not be justified.

14. Subsequently in June 2012 Ms Wilson was again instructed by the Respondent in relation to 32 files worked on by the Appellant. Her instructions were to select at random a minimum

of six files and consider the work that had been undertaken by the Appellant and his brother to determine how much time they had spent on the files and prepare a report. One of the files Ms Wilson considered was that of Raza Haider Mirza, chosen at random. This claim was concluded with Mr and Mrs Mirza jointly agreeing to pay £20,000 in full and final settlement to Bank of Baroda. Mr Jandu raised an invoice equating to exactly £20,000, made up of £16,666.67 plus VAT. When she raised her concerns, Ms Wilson was instructed to prepare a bill of costs, which she did. The total profit costs were £1,040 plus VAT and disbursements coming to a total of £7131.25. Subsequently the Respondent instructed Ms Wilson to consider all of the files worked on by the Appellant where he was seeking a bonus payment. She considered each file individually and concluded that the fees claims by the Appellant in his schedule of 16 December 2011, where he claimed £478,170.76, were worth £99,201.92.

15. Mr Patel decided to dismiss the Appellant for gross misconduct and set out his reasons for his decision in a detailed letter dated 16 March 2012, which runs to some 15 pages. The letter concludes by informing the Appellant that he has a right to appeal this decision and that

> **"Any such appeal will be by way of re-hearing and will be chaired by Mr Anthony Owen, who has to date had no dealings with this matter."**

16. The Appellant appealed against his dismissal on 19 March. The appeal heard by Mr Owen, a director of the Respondent, commenced on 3 April 2012. The Appellant was accompanied by his brother. The meeting was recorded and the recording subsequently transcribed. The meeting was adjourned at 6pm and reconvened at the Law Society on 12 April 2012. The Appellant argued that he had done nothing wrong and that the bills in question had been raised with Mr Patel's knowledge and were left with Mr Patel to send out to the clients.

17. Following the meeting Mr Owen decided it was necessary for him to seek further evidence from Mr Goonaratne in connection with the accounting practices of the Respondent. He obtained a witness statement from Mr Goonaratne on 3 May. This was sent to the Appellant with a letter dated 8 May. Mr Owen wrote again to the Appellant on 10 May, attaching a second statement from Mr Goonaratne and various other documents. There followed some further correspondence between Mr Owen and the Appellant, as a result of which the Appellant decided not to attend the final day of the hearing, which took place on 16 May. By letter dated 19 May 2012 Mr Owen informed the Appellant that he dismissed the appeal on all counts.

Unfair Dismissal

18. I turn first to consider the complaint of unfair dismissal. The Employment Judge stated at paragraph 83 of the Decision that:

> **"Having considered all the evidence, the Tribunal is satisfied that the Mr Patel's reason for dismissal was that he found the allegations against Mr Jandu proved, that those allegations amounted to gross misconduct and that in those circumstances the Employment Tribunal finds that the reason for dismissal was gross misconduct."**

19. At paragraphs 84-85 the Employment Judge next considered the fairness of the dismissal. She set out section 98(4) of the **Employment Rights Act 1996** and noted that it is not for the Tribunal to substitute its own view for that of the Respondent. The issue for the Tribunal was whether the dismissal for the reason found fell within the range of reasonable responses of a reasonable employer in these circumstances. At paragraph 86 the Tribunal referred to the guidance in **BHS v Burchell** [1978] IRLR 379. At paragraph 87 it was noted that the Respondent carried out a very thorough investigation into the alleged misconduct, and at paragraph 88 that the Appellant's answers at the investigatory meeting were unconvincing. The Employment Tribunal was satisfied that the Respondent did have a genuine belief, based on reasonable grounds, following an adequate investigation. The investigation was thorough and

disclosed major concerns about the Appellant's conduct (paragraph 89). The Employment Judge then considered whether dismissal in these circumstances did fall within the range of reasonable responses and decided that it did (paragraphs 90-96).

20. Mr Engelman for the Appellant makes three submissions in relation to the appeal against the Tribunal's decision dismissing the claim for unfair dismissal. First, the Employment Judge failed to make any findings which supported the conclusion that the Respondent had acted on reasonable grounds in reaching its belief that the Appellant should be dismissed (the reasonable grounds point"). Secondly, the Employment Judge wrongly concluded that the disciplinary hearing which was conducted by Mr Patel was compliant with the rules of natural justice ("the natural justice point"). Thirdly, the Employment Judge wrongly placed reliance on matters which were not part of the disciplinary hearing ("the further matters point").

21. As for the first ground, the principal point taken by Mr Engleman is set out at paragraph 46 of his Skeleton Argument, namely that the Employment Judge failed to deal with the Appellant's case, which was laid out in his third witness statement and his written closing submissions.

22. Before turning to deal with this ground specifically, the following matters should be noted. First, it is not suggested that the Tribunal misdirected itself as to the legal principles to be applied in a case of dismissal for misconduct. The guidance in **Burchell** was correctly stated.

23. Second, Mr Engleman does not suggest that the Appellant was dismissed for a reason other than gross misconduct. Third, although Mr Engleman suggests in his Skeleton Argument that the Respondent did not have a genuine belief in the misconduct, that submission did not

form part of Mr Engleman's oral submissions. Fourth, if the Respondent had reasonable grounds for dismissal, Mr Engleman does not suggest that the dismissal was not within the range of reasonable responses. The question therefore is whether the Respondent had reasonable grounds for its belief.

24. The Appellant's third witness statement, which runs to some 70 pages, the contents of which form the basis of Mr Engleman's submission that the Respondent did not have reasonable grounds for its belief in the Appellant's misconduct, is dated 21 September 2012. It was produced for the Employment Tribunal hearing. However, the Appellant was dismissed on 16 March 2012 and his appeal was dismissed on 19 May 2012. What the Appellant now says, in his witness statement produced six months after his dismissal, does not in my view assist the Appellant save to the extent that it deals with matters that were known or should have been known to the Respondent at the time of dismissal.

25. Mr Engleman submits that the Appellant's witness statement does indeed cover matters that were known to Mr Patel at the time of dismissal. In support of this submission, Mr Engleman has helpfully produced a five-page document, listing the transactions in issue at the disciplinary hearing and before the Tribunal, and indicating in each case the matters mentioned at the disciplinary hearing and in the Appellant's witness statement and listing those matters omitted from the Employment Tribunal Judgment.

26. Mr Engleman took as an example of matters not dealt with in the Tribunal decision the first of the many allegations made against the Appellant, relating to the case of *Bank of Baroda v Akhter*. In his oral submissions Mr Engleman expanded upon the omissions from the Employment Tribunal Judgment. The same analysis could be conducted in relation to the other transactions, as the table he has now produced indicates.

27. However, in my view, it is clear from the transcripts of the disciplinary hearing that the Appellant's case in relation to the *Bank of Baroda v Akhter* transaction and indeed the other transactions were considered in detail at the Tribunal hearing. The transcripts of the disciplinary hearing were before the Tribunal together with the letter of dismissal, which deals in detail with all the transactions, as were the very detailed statements from Mr Patel and the Appellant dealing with each of the allegations. I accept the submission made by Mr Hale on behalf of the Respondent that in the main each of these transactions raised an issue of credibility. Who was telling the truth, the Appellant or Mr Patel (or other witnesses for the Respondent)? In relation to many of the transactions, as the Tribunal noted, there was a conflict between the evidence of Mr Patel and that of the Appellant. In addition, there was a conflict between the evidence of the Appellant and the Respondent's witnesses as to the processes operated within the firm.

28. Mr Engleman suggests by reference to the information contained in the table that he has produced that the issues involved went wider than that. He gave the 56 Claremont Road transaction as an example of this. However, even in that case, as the Tribunal noted at paragraph 59 of its Judgment, an important issue to be determined was whether the Appellant and Mr Patel had the discussion the Appellant alleged. Mr Patel's evidence was that no such matter had been discussed with him and that it was wholly improper to use deposit monies held on trust for the client pending completion to be taken for fees.

29. Ultimately, in my view, the central issue was one of credibility. The findings of the Tribunal are clear in that regard. The letter of dismissal, which as I have said runs to 15 pages, dealt with each of the transactions in detail and set out the reasons for the decision to dismiss. At paragraph 74 of its decision, the Tribunal noted that the letter sets out Mr Patel's findings in

respect of each of the allegations and that he found each allegation proved. The Tribunal noted that at the investigatory meeting Mr Patel and Mr Kumar had found the Appellant's answers unconvincing. The Employment Judge found that the Appellant was evasive and equivocal in many of the answers he gave. The Employment Judge added that she could understand that during the investigation his answers might have been unconvincing. His answers in cross-examination before the Tribunal were equivocal and unconvincing in many cases and avoided answering the questions put to him (paragraph 88 of the Decision). The Tribunal concluded that overall the Appellant's evidence lacked credibility (see paragraph 114). It is clear that the Tribunal was of the view that the Respondent's rejection of the Appellant's answers to the allegations that were put to him was within the band of reasonable responses.

30. It appears to me that what Mr Engleman's challenge really comes down to is, as he put it in the alternative in his oral submissions, that the decision of the Tribunal is not **Meek**-compliant and the Tribunal has failed to set out proper reasons for its decision in finding that the Respondent had reasonable grounds for its belief. Mr Engleman submitted that the Tribunal's decision did not include findings of fact relevant to the issues which had to be determined and that it failed to inform the reader how the relevant findings of fact and the relevant law had been applied in order to determine the issues, as is required (see **English v Royal Mail Group Ltd** EAT/0027/08). However, in his Judgment in that case Bean J went on to say, at paragraph 12, that:

> **"It is not necessary to deal with every point irrespective of its weight, particularly when the matters raised are very numerous."**

31. At paragraphs 56-69 of its Decision the Employment Judge in the present case described briefly the ten allegations that were considered at the disciplinary hearing. In relation to a number of them she out the material difference in the evidence of the Appellant and Mr Patel

(see paragraphs 59-64 and 69), and in her conclusions on the complaint of unfair dismissal, set out her findings on the Appellant's credibility (at paragraph 88), having concluded that the Respondent had carried out a very thorough investigation into the alleged misconduct (paragraph 87), having heard and read the substantial evidence to which I have referred. There was no obligation on the Tribunal to deal with each and every piece of evidence.

32. The reasons given by the Tribunal for its Decision are intelligible and adequate and provide the Appellant with a proper explanation of why his complaint of unfair dismissal did not succeed.

33. It is convenient next to deal with Mr Engleman's third ground, the subsequently discovered conduct issue. The conduct referred to falls into three categories: first, the Raza Mirza claim; second, the Commercial Road properties; and third, the bill of costs on the Life and Style matter. Mr Engleman points to paragraph 2.12 of the Decision, where the Employment Judge refers to the Respondent running a defence relating to subsequent conduct and to paragraph 91 of the Decision, which refers to Mr Patel seeking further input on a number of matters following the disciplinary hearing. Mr Engleman also submits that there was a failure to provide the Appellant with information about the new allegations, and whilst the Employment Judge concluded at paragraph 87 of the Decision that there had been a very thorough investigation in relation to the alleged misconduct, he made no reference whatsoever to the further allegations.

34. However, the short answer to this ground of appeal is that Mr Patel did not rely on these matters when dismissing the Appellant. He said so in express terms at paragraph 236 of his witness statement, dated 21 September 2012. They were not relied upon in the defence to the

unfair dismissal claim. There is no reason to doubt that the Employment Judge appreciated this to be the position. The subsequently discovered matters would only have been relevant on **W Devis & Sons v Atkins** [1977] IRLR 31 principles in the event that the primary defence to the unfair dismissal claim failed, which it had not.

35. Finally, as to the second ground, the natural justice point, Mr Engleman submits that Mr Patel should not have conducted the disciplinary hearing. Mr Engleman submits that, given the intimate involvement of Mr Patel in the allegations under consideration, it is very difficult to see how he could have reached a conclusion that the Appellant was right and he was wrong. At paragraph 92 of the Decision the Employment Judge stated:

> **"However, the Employment Judge has taken into account that Mr Patel was the sole principal and that there was no other person who could conduct the investigation and disciplinary hearing. The only other director, Mr Tharmakar [meaning Mr Karmakar] was the consultant, and the allegations had a grave impact on the business of the Respondent and also had implications under the Solicitors' Accounts Rules".**

36. Mr Engleman submits that either Mr Karmakar, a director of the Respondent, or a solicitor from outside the firm should have conducted the disciplinary hearing.

37. I reject this submission. In my view, having regard to section 98(4) of the 1996 Act and, in particular, the size and administrative resources of the Respondent, it was reasonable in the circumstances of the present case for Mr Patel to conduct the disciplinary hearing. Mr Patel was the sole principal of the firm and the only director with operational decision-making authority. I accept Mr Hale's submission that it is clear from the dismissal letter that Mr Patel sought to be fair and temperate. In any event, the Appellant was offered an appeal by way of a re-hearing before Mr Owen, the other director of the firm, whom the Appellant describes at paragraph 14 of his witness statement as a person who did not have any day-to-day conduct of the firm and who was working as a solicitor at another firm. The Appellant attended the first

two days of the hearing but chose not to attend the final day of the hearing after a dispute about access to information which he maintained was relevant to the appeal hearing.

38. In his oral submissions Mr Engleman appeared to suggest that the appeal hearing was unfair, and that in itself amounted to a ground of appeal. However, there was no complaint about the appeal in the Appellant's Grounds of Appeal save for a reference in paragraph 15 to the absence of reasons for refusing the appeal. Mr Engleman's Skeleton Argument at the Rule 3(10) hearing also only challenged the appeal hearing on the basis of absence of reasons. Paragraph 2 of HHJ Burke's order records that this challenge was not pursued and was thereby dismissed.

39. In my judgement, for the reasons I have given, the appeal against the dismissal of the unfair dismissal complaint fails.

The bonus claim

40. That leaves the bonus claim. Four points are taken by Mr Engleman. Brief submissions in relation to the first two were made in Mr Engleman's Skeleton Argument at paragraphs-102-109. They were not developed in his oral submissions until his reply. The first issue is whether the Appellant's contract operated in such a way as to provide for a bonus in respect of work carried out by the Appellant during his training contract, in respect of which fees were received during 2011. The Employment Tribunal considered this issue at paragraphs 104-11 of its Decision.

41. I agree with the Employment Judge, construing paragraph 2 as a whole, that the reference to net profit costs "for the calendar year" in paragraph 2.4 relates to the calendar year

1 January 2011 to 31 December 2011. Further, having regard to the evidence considered by the Tribunal, I am satisfied that the Respondent and the Tribunal were entitled to conclude that the intention of the parties, taken with the wording of the contract, meant that the profit costs had to be generated in the calendar year 1 January 2011 to 31 December 2011.

42. The second submission made by Mr Engelman relates to whether it was legitimate for the Respondent in assessing the net profit costs of the Appellant for 2011 to apply differential charging rates for the work done by fee-earners on the files. For the reasons given by the Employment Judge and, in particular, at paragraph 112 of the Decision, I am of the view that the Tribunal was entitled to reach the conclusion that it did.

43. The third submission made by Mr Engleman, which was made for the first time in reply today, was that the Employment Judge failed to deal with the evidence as to the extent of the contribution of the Appellant's brother. This point was not taken in his Skeleton Argument save for a passing reference at paragraph 111 to the absence of reasons for a particular holding. However, HHJ McMullen refused to allow a reasons challenge in relation to these matters to go forward (see paragraph 1 of the order). The point that Mr Engleman seeks to take in reply is not a point that can now be taken.

44. That leaves the fourth submission, which relates to the quantum of any bonus. Mr Engleman submits that, even on the Respondent's case and the findings made by the Tribunal, the Appellant is entitled to be paid a bonus in the sum of approximately £49,000, which he has not been paid.

45. At paragraph 113 of the Decision the Tribunal state:

> **"The Employment Judge then came to consider the merits of Mr Jandu's claim for bonus. The Respondent has set out their case in their schedule of 31 August 2012...supplemented by the evidence of Ms Wilson. That schedule disallowed sums claimed by Mr Randeep Jandu in his bonus claim in the sum of £127,011 and also disallowed work profit cost generated prior to 2011 in the sum of £65,662. The amount accepted as the amount on which bonus could be claimed was £285,500.01 in respect of which the bonus of 30% amounts to £75,950 which does not reach the target of £120,000.00. The Respondent therefore argues that no bonus is due."**

46. Mr Hale accepts that this statement by the Employment Judge is in error, not just on the basis of the mathematical calculation. However, as he notes, the Decision continues at paragraphs 114 and 115. It is only necessary for me to quote paragraph 115, which reads as follows:

> **"The figure put forward by Mr Jandu finally was £422,872.60. Work done in 2010 should, for the reason set out above be disallowed. This amounts to some £65,662.05...The work already claimed by Mr Randeep Jandu amounts to £127,011 and should similarly be disallowed. On the evidence before the Tribunal, the Employment Judge is satisfied that the correct profit cost figure is £75,950.90 which is short of Mr Jandu's target of £120,000.**

47. Mr Engelman observes that the Employment Judge does not say that she accepts the evidence of Ms Wilson, but it is clear from paragraph 53 in her witness statement and the schedule attached to that statement at EM3, that the Employment Judge accepts her figure. The evidence of Ms Wilson was that no bonus is payable to the Appellant.

48. That being so, I can deal with the issue as to jurisdiction very shortly. The principles are not in issue. Under Part II of the 1996 Act employees have the right not to suffer unauthorised deductions from their wages. Section 13 contains the relevant provisions. Section 13(3) provides 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 for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."**

49. In **Coors Brewers Ltd v Adcock** [2007] ICR 983, at 1002, Wall LJ stated at paragraph 56:

> **"Part II of ERA 1996, as I read it, is essentially designed for straightforward claims where the employee can point to a quantified loss. It was designed to be a swift and summary procedure."**

50. Mr Engleman submits, relying on the Judgment of Nicholls LJ in **Delaney v Staples** [1992] 1 AC 687, endorsed by Wall LJ at paragraph 47 in **Coors Brewers**, that the fact that there is a dispute as to the amount of wages properly payable cannot have the effect of taking the case outside section 13 because the dispute can be resolved by the Employment Tribunal.

51. However, I accept Mr Hale's submission that the Tribunal in the present case was entitled to find that this was not the type of case that it was envisaged should fall within the Tribunal's jurisdiction. The Tribunal gave as its reason, at paragraph 99, that the amount of the loss was unquantified. In my view, the better reason is that the loss, if any, as is clear from the evidence, was very difficult to quantify and, when the calculation was completed by Ms Wilson in August 2012, there was in fact no loss. A number of factors to be considered in the quantification involved the exercise of some discretion and judgement, as a result of which, in my view, this is not a case which falls within the category of a case described by Wall LJ as a straightforward claim.

52. Accordingly, if the Appellant had a good claim for bonus, which he does not, it would have to be brought as a claim for breach of contract. For the reasons I have given, the Appellant's claim for bonus fails. Accordingly this appeal is dismissed.