

sb



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr E Akele

AND

London Business Connections
2013 Ltd – (in liquidation)

FINAL HEARING

HELD AT: London Central **ON:** 10 April 2019

BEFORE: Employment Judge Russell (Sitting alone)

Representation:

For Claimant: In person

For Respondent: Not present or represented

JUDGMENT

1. The Claimant is owed £4,373.70 (net) by way of commissions earned and unpaid up to the effective date of termination of employment or 28 March 2018.
2. The Claimant is owed £3,966.44 (net) by way of unpaid notice pay.
3. The Claimant's claims of unfair dismissal, arrears of pay, holiday pay and redundancy are dismissed.
4. To the extent the amounts due under clauses 1 and 2 of the judgment above are not paid by the National Insurance Fund the Claimant will be an unsecured creditor in the liquidation.

REASONS

5. The Claimant was continuously employed from 18 September 2009 to 29 March 2018 as a Field Sales Agent. When working for the Respondent company which sold BT's portfolio of products and services to the business market under licence, the Claimant earned £2,750 per month (£35,000 per annum) plus commission. None of this is in dispute.

6. The Claimant claims however that he was only paid redundancy pay in May 2018, did not receive written (or any) notice of termination of his employment and is owed notice pay plus commission which he suspects the Respondent's director Noel Johnston has retained illegally. The Claimant no longer wishes to pursue his claims of unfair dismissal (given the Respondent's financial situation) nor accrued holiday claim which he cannot substantiate.

7. Having heard evidence from the Claimant on oath and read the pleadings and connected papers as well as the Claimant's schedule of loss and recent correspondence to and from the tribunal I make the following findings.

- (i) The reason for the Claimant's dismissal was redundancy. The Respondent ceased to carry on its business after the end of March 2018 due to BT deciding not to renew its licence from that date. The Respondent was aware of this on or about 26 January and communicated BT's decision to the Claimant on or about 2 February 2018.
- (ii) However, the Respondent did not give the Claimant notice at that time (orally or in writing) or at all but led the Claimant to believe his employment would continue with a local business, continuing to undertake BT work, and with his continuity of employment preserved. The Claimant may have been naïve to have believed that but was told by Mr Johnston the Respondent's director, that he was not being made redundant and was offered alternative employment during this time (albeit not 'suitable' as on a much lower wage). He continued to work hard and earn commissions during February and March. There were some fifteen sales agents then employed by the Respondent and most if not all continued to work until the end of March alongside the Claimant.
- (iii) On 29 March BT came into the Respondent's premises and removed all PCs, shredded documents and effectively shut down the business. The Claimant's employment ended on that day. However, he had genuinely not expected this and had not had a realistic opportunity to look for another suitable job whilst still in employment which made it more difficult to mitigate his loss going forward. Neither was he paid commission due to him including that earned in February and March 2018. I accept the Claimant's evidence that Mr Johnston told him he would be paid (even though this did not happen) and also that Mr Johnston subsequently stated that "he intended to make London

Business Connection insolvent to avoid the above payments” or words to that effect. The presumption is that Mr Johnston collected after 31 March 2018 but before 18 January 2019 on behalf of the Respondent company, all commission due to the Claimant and his co-worker sales agents. In any event on 18 January 2019 the tribunal were advised the Respondent company was insolvent by its legal representatives (who then came off record) and on 8 February 2019 a winding up order was effected and the Respondent company into creditors voluntary liquidation. The insolvency practitioner being Dominik Thiel-Czerwinke, Begbis Traynor.

- (iv) The Claimant presented his claim to the Employment Tribunal on 25 April 2018. At that time, he believed the Respondent was giving to be pushed into insolvency by Mr Johnston. At that time the Claimant had not received his redundancy payment. This was however subsequently paid to him by covering the statutory minimum amounts, but through a letter which although dated 28 March 2018 was actually sent to the Claimant on or about 5 May 2018. I accept this letter was received then and had been backdated. The Claimant continued to push for other payments due expressing his wish for a speedy trial. Unfortunately, the hearing listed for September was postponed (on the application of the Respondent) leading to this hearing in April 2019. By which time the Respondent company had indeed (as anticipated by the Claimant) been put into liquidation with significant debts noted including to its landlord and the HMRC. The Claimant is named as a creditor but at a value of £1 only. I can only speculate as to the reason for the delay between April 2018 (when the business closed down) and January/February 2019 (when the business was wound up) but the Claimant’s view (that this delay allowed Noel Johnston to collect all commissions accrued to March 2018) seems credible. Whether or not this involved improper conduct by the Respondent’s director is not a matter for the Employment Tribunal’s jurisdiction but I do find that the Claimant was as at 31 March 2018 owed £6,431.91 gross commission payment and is still owed that sum today. Plus, he is also entitled to eight weeks (an amount seemingly accepted by the Respondent) of notice (having been employed over eight years continuously by the Respondent) which payment remains outstanding. A gross payment of £5,833. He was not working out his notice during February and March 2018 as he had not been dismissed.
- (v) His contractual entitlement was to net payments of £4,373.70 and £3,966.44 by way of commission and notice respectively. To allow for basic rate tax deduction of 20% and National Insurance 12% as all the monies due to the Claimant come between primary threshold and the upper earnings limit. He cannot recover all of this but should be entitled to claim eight weeks pay representing the commission and all (as less than twelve weeks) pay in respect of his notice pay from the National Insurance Fund due to the Respondent’s insolvency. However, the cap of £489 on each “week’s pay” is likely to apply (the amount only increased to £508 after 6 April 2018 and the Claimant’s

redundancy was effected on 31 March 2018). Any balance due will be a debt in the liquidation where the Claimant will remain an unreceived creditor.

Employment Judge Russell

Dated: 29 May 2019

Judgment and Reasons sent to the parties on:

3 June 2019

.....
For the Tribunal Office