



## THE EMPLOYMENT TRIBUNALS

**Between:**

**Claimant:** Mr A Bates

**Respondent:** Deans Blinds & Awnings UK Limited

**Hearing at London South on 10 May 2018 before Employment Judge  
Baron**

**Appearances**

**For Claimant:** The Claimant was not present nor represented

**For Respondent:** Joseph England - Counsel

### JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claim be dismissed.

#### REASONS

- 1 The Claimant presented a claim to the Tribunal on 9 February 2018. The papers were served on the Respondent on 26 March 2018, and the parties were notified of this hearing at that time. The Claimant did not attend. He sent an email to the Tribunal at 21:17 on 9 May 2018 saying that his travel plans had changed and that his hospital appointment was 'now going to clash'. He sought a postponement and a longer listing. Mr England requested that the hearing proceed. I decided that the hearing should proceed. The application for a postponement was made extraordinarily late, and without any evidence I could not accept that the Claimant had not been given notice of any change of any medical appointment much earlier.
- 2 The Respondent provided a modest bundle of documents and a witness statement of Olamide Bankole. She is a HR and Health and Safety Coordinator with the Respondent. The Claimant also provided a witness statement, and I have taken its contents into account.
- 3 The Claimant was a Sales Representative with the Respondent. His employment terminated on 30 November 2016. As is so often the case a dispute has arisen as to the entitlement of the Claimant to commission after the termination of the employment. The relevant term of the Claimant's contract was as follows:

#### **Remuneration**

You will receive a basic salary of £24000 per annum payable in equal monthly instalments in arrears on the last working day of the calendar month.

Additionally you will receive commission of 2.0% on all sales, excluding VAT, which you achieve, which are within Company terms relating to price, delivery product suitability etc.

Commission is paid on order, should you leave the Company, commission on incomplete jobs is paid at the Company's discretion.

- 4 The claim being made was for £2,495.81 and there were some schedules in the bundle prepared by the Claimant with that figure added in manuscript. It was not apparent to Mr England or to me how the Claimant had arrived at that figure, but the issue before me is one of principle.
- 5 The Claimant gave one month's notice on 31 October 2017 and was put on garden leave on 10 November 2017. As mentioned above the employment ended on 30 November 2017. It was the Claimant's case that when his employment started the payment of a 50% deposit by the customer triggered the payment of the commission. However, following a change of ownership of the Respondent the arrangements changed so that the entitlement to commission arose only after the job had both been invoiced by the Respondent and paid for by the customer.
- 6 As I understand the claim as set out in the claim form the Claimant alleged that other ex-employees received commission after the termination of their employment even though the installations had not been completed beforehand, but that the Respondent had chosen to discriminate against the Claimant because he had become employed by a local competitor. However, it appeared from the Claimant's witness statement that he was alleging that some jobs were complete but had not been invoiced. Because of the absence of the Claimant I was not able to obtain clarification.
- 7 Without doubt the provision in question could have been drafted with much more clarity. Mr England submitted that the effect of the provision was that when an employee left the Respondent then the Respondent had a discretion whether or not to pay commission, and the Claimant could only succeed if he could show that such discretion had been exercised irrationally.
- 8 My decision is that the Claimant could possibly succeed in two circumstances. The first was that his entitlement to commission had crystallised before he gave notice. The second was that any potential entitlement to commission had arisen after he gave notice, but that the exercise of the discretion not to pay that commission was irrational. There was insufficient evidence for me to make a finding in the Claimant's favour in either respect.

**Employment Judge Baron**

**Dated 16 May 2018**