



# THE EMPLOYMENT TRIBUNALS

**BETWEEN**

**Mr Thomas Hone**

***Claimant***

**and**

**Sartre Group Limited**

***Respondent***

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** London Central

**ON:** 16 September 2019

**EMPLOYMENT JUDGE:** Mr Paul Stewart

### ***Appearances:***

**For Claimant:** in person

**For Respondent:** Mr Leon Devereux, Managing Director

### **JUDGMENT**

The Respondent is ordered to pay to the Claimant the sum of £5,654.77 being the gross sum unlawfully deducted from his wages for the period from 1 January 2019 to 10 February 2019 with the Respondent being entitled to claim credit for such sums as lawfully might be deducted from that gross sum in respect of income tax and national insurance under the PAYE system.

### **REASONS**

1. The Claimant was employed from October 2015 until 10 February 2019. His employment terminated because he gave one month's notice of termination on 11 January 2019 and his contract provided he should be placed on gardening leave.
2. He was not paid either for the month's notice or for the period from 1 to 11 January 2019.
3. The Claimant's contract of employment dated 6 October 2015 set his salary at £33,000. In April 2018, this was increased to £37,000. However, the Claimant was at a stage in his life when financial responsibilities were kicking in. He was about to get married; children were in the offing and he wanted to buy a house on

one income, that being his. He had talked previously with Mr Leon Devereux, the managing director of the Respondent company, about unhappiness in the workplace and they had both agreed it was better that an unhappy employee should make his unhappiness known to the employer before deciding to leave.

4. With this in mind, the Claimant met with Mr Devereux on 7 June 2018 and revealed he was minded, because of financial commitments, to seek employment elsewhere. Mr Devereux decided, off his own bat, that the Respondent could help the Claimant by reorganising his remuneration so that the Claimant's salary would rise but also the threshold at which he became entitled to receive commission would rise. The effect of this was to ensure that, were the Claimant to bill sufficient to just touch the new threshold, his monthly salary would be the equivalent of his earnings of salary plus commission under the previous remuneration structure.
5. The new remuneration structure would mean that the Claimant would be able to negotiate a higher mortgage with lenders who typically discount variable commission from their assessment as to the borrower's income. Mr Devereux, so it seems to me, was adopting an enlightened approach to man management. The Claimant, in charge of a team working within the Respondent's recruitment business, had not been very successful in hitting the targets for billing that had been set. Instead of metaphorically applying a stick to the Claimant, Mr Devereux was offering a carrot – rewarding the Claimant thereby encouraging him to stay with the Respondent and, removed from the financial concerns he was labouring under, perhaps perform better.
6. Mr Devereux informed Mr Higgins, the Respondent's Head of Operations, of the offer he had made to the Claimant which had been gratefully accepted. Mr Higgins was responsible for overseeing salary and commission calculations. He noted on a spreadsheet concerning the Claimant:

Has to bill £52K @ 25% to cover £13K increase in salary – add to threshold?
7. The result was that the Claimant started to be paid salary at the rate of £50K per annum.
8. The enlightened approach adopted by Mr Devereux was, to some extent, a bit of a gamble. If the Claimant did improve his billings such that he hit the revised threshold, the Respondent would not lose out financially. However, if he failed to hit the revised threshold, the Respondent would lose out in paying as salary the equivalent of commission which would have to be earned.
9. And if the Claimant were both to fail to achieve the new threshold and, after several months, resign, then the Respondent would both lose in the sense of paying the Claimant more and in the sense of discovering the retention value of paying the Claimant more to have no effect. And this, of course, is what happened.
10. After the Claimant had resigned, then Mr Devereux wrote to him on 22 January 2019 saying:

In June 2018, it was agreed that your salary would increase by £13,000 pounds (from £37,000-£50,000). This is the first time I have entered into such an agreement with an employee, and I did so with some concerns. However, I did so on the condition that this

increase would be offset against the next £13,000 of commission payments. In effect, the increase was a loan in all but name (for the purpose of your personal circumstances) to be repaid out of your commission income.

In making the above agreement, neither of us had foreseen circumstances in which you would not make any placements, and therefore not bring in any commission income, between June 2018 and December 2018. The obvious result of this is that during those months, when we had expected that you would be repaying the 'loan', the business was receiving nothing back from you. The increase in gross salary and subsequent costs to the business amounted to £7,583.31 (please see breakdown below). As I'm sure you can appreciate, this is money I am keen to reclaim.

11. The difficulty with this approach is that it seeks to recast the agreement which Mr Devereux made with the Claimant from being an alteration in the salary structure into a loan agreement. But as the Claimant has pointed out, the Respondent runs a scheme whereby it finances in advance the purchase of season travel tickets for employees to commute to work and that scheme has paperwork and formalities that clearly indicate the provision of capital assistance is a loan. Mr Devereux was unable to recollect the precise words used in the discussion with the Claimant when asked if the term 'loan' had ever been mentioned. Had it been mentioned, it is difficult to see why Mr Devereux should have written on 22 January 2019 that:

In effect, the increase was a loan in all but name (for the purpose of your personal circumstances) to be repaid out of your commission income.

12. Furthermore, one would have expected that Mr Higgins who received information about the arrangement in the immediate aftermath of Mr Devereux's meeting with the Claimant, to have recorded on the spreadsheet somewhere that the arrangement concerned a '£13K loan' and not, as he did record, that it concerned a "£13K increase in salary".
13. Mr Devereux acknowledged that it would have been better if he had recorded in writing the terms of whatever had been agreed but this does not detract from my finding that what was agreed was an increase in salary for the Claimant within an adjustment of the salary and commission structure.
14. Mr Devereux argued that the fact it was a loan should entitle the Respondent under paragraph 6.5 of the Employment contract to deduct from the Claimant's salary or other payments due to him or owed to him at any time "any outstanding loans or advances made" to the Claimant. This was an argument which failed on my determination that the June agreement did not involve the Claimant being given a loan by the Respondent.
15. By paragraph 6.5, the company was also entitled to deduct any "loss sustained by the Company ... caused by your breach of contract" or "any fines or charges imposed or levied against the Company as a result of your breach of contract or breach of Company rules ...".
16. The Claimant admitted that he had breached the contract in that he had not sought and received prior express written permission of the Respondent before setting up a DropBox account into which he had placed a mirror image of the files available to him on his company desktop computer, thereby enabling him to work on the Respondent's business throughout his Christmas holiday. This rendered him, by virtue of paragraph 22.3 of his contract, to disciplinary action up to and including dismissal.

17. After the Claimant had given in his notice, the Respondent invited him on 25 January 2019 to sign and return the Respondent's employee post-termination compliance statement which entailed him signing an undertaking that he had deleted all data of the Respondent that were on any of his devices. The Claimant signed and returned that statement on 28 January having first deleted all data of the Respondents that he held. He did not sign a series of undertakings that were sent to him by solicitors acting for the Respondent on 4 February 2019 because the undertakings were contained in a document given the heading of an intended matter in the Queen's Bench Division between the Respondent as claimant and the Claimant and his new employer Amazon EU SARL (UK Branch) as the defendants. He resisted signing those undertakings on advice.
18. Mr Devereux accepted that the Claimant's breach of contract had not led to any fines or charges being levied on the Respondent and he also indicated he was not able to prove that the Claimant had occasioned the Respondent to suffer any loss through his breach of contract. In the circumstances, therefore, it was not open to the Respondent to justify the non-payment of the Claimant's salary from 1 January to 10 February 2019 on the basis of setting off a loss which it had incurred through the admitted breach of contract.
19. In conclusion, therefore, I find that there has been no loan agreement created between the Claimant and the Respondent justifying the Respondent's action in seeking to set off the gross pay of the Claimant which has been withheld. I further find there to have been no loss that the Respondent has suffered through the Claimant's admitted breach of contract. The Claimant should have received gross pay for the first 41 days of 2019 amounting to £5,654.77. The Respondent should have paid the same to him deducting the appropriate sums for national insurance and income tax properly deductible under the PAYE system. I therefore order such payment to be made.

**EMPLOYMENT JUDGE- Stewart  
On: 16 September 2019**

**DECISION SENT TO THE PARTIES ON  
18/09/2019**

.....  
**FOR SECRETARY OF THE TRIBUNALS**