



# EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Mr J Hallam

JCB Medway

Heard at: London South Employment Tribunal      On: 25 September &  
2 October 2019

Before: Employment Judge Hyams-Parish (Sitting alone)

Representation:

For the Claimant: In person

For the Respondent: Mr R Wayman (Counsel)

## JUDGMENT

The claim of unlawful deduction from wages is well founded and succeeds. The Respondent is therefore ordered to pay the Claimant the sum of £1,000 on or before 16 October 2019.

## REASONS

### Claim

1. By a claim form presented to the Tribunal on 26 April 2019, the Claimant brings a claim of unlawful deduction from wages, namely that the Respondent failed to pay him a guaranteed bonus which the Claimant says the Respondent agreed to pay.
2. The Respondent's defence to the claim is twofold: firstly that the person who agreed to the bonus did not have actual or ostensible authority; secondly that it did not form part of the contractual agreement, and it would follow

therefore, it was not the intention of the parties, that he would be paid the guaranteed bonus. The Respondent contends that the written contract subsequently issued to the Claimant superseded any prior discussions.

**Practical matters and preliminary issues**

3. The Tribunal was referred to documents in a hearing bundle extending to 88 pages.
4. Witness evidence was provided by the Claimant and, on behalf of the Respondent, Group HR Manager, Anna-Lisa Devoil.
5. The evidence was completed on 25 September 2019 but there was insufficient time to hear submissions and for the Tribunal to give a decision. One of the reasons for bringing the parties back for a second half day was because the Tribunal wanted the parties to address it on the issue of ostensible authority.
6. Because there was doubt raised by the Tribunal, in the course of submissions by the Respondent, about something that the Claimant was alleged to have said in his evidence, he was recalled to deal with that point.
7. An oral judgment with reasons was provided on 2 October 2019. These written reasons are provided at the request of the Respondent.

**Legal principles relevant to claim**

8. The right not to suffer unlawful deduction from wages is set out in s.13 of the Employment Rights Act 1996 which states as follows:

***(1) An employer shall not make a deduction from wages of a worker employed by him unless—***

***(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or***

***(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.***

***(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—***

***(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or***

***(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.***

***(3) 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.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

9. The law relating to ostensible authority is helpfully set out in the case of ***Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd and Another*** by Diplock LJ at pages 505 and 506:

*If the foregoing analysis of the relevant law is correct, it can be summarised by stating four conditions which must be fulfilled to entitle a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown:*

*(1) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;*

*(2) That such representation was made by a person or persons who had actual authority to manage the business of the company either generally or in respect of those matters to which the contract relates;*

*(3) That he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and*

*(4) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.*

*The confusion which, I venture to think, has sometimes crept into cases in my view due to a failure to distinguish between these four separate conditions, and in particular to keep steadfastly in mind (a) that the only 'actual' authority which is relevant is that of the persons making the representation relied upon, and (b) that the memorandum and articles of association of the company are always relevant (whether they are in fact known to the contractor or not) to the questions (i) whether condition (2) is fulfilled, and (ii) whether condition (4) is fulfilled and (but only if they are in fact known to the contractor) may be relevant (iii) as part of the representation on which the contractor relied*

*In each of the relevant cases the representation relied upon as creating the 'apparent' authority of the agent was by conduct in permitting the agent to act in the management and conduct of part of the business of the company.*

10. Counsel for the Respondent said that it was not conditions (3) and (4) above that were central to this case, but rather (1) and (2).

**Findings of fact and associated conclusions**

11. The Respondent is a company that sells new and used motor vehicles through its dealerships.
12. The Claimant applied for and was offered a position with the Respondent, which he commenced on 5 November 2018.
13. The interview and discussions about the post were handled by Shelley Matthews, General Sales Manager, Seat & VW Commercial. The Claimant was familiar with the Respondent having previously been employed at their Gillingham branch between 2013-2014 or thereabouts.
14. There is an email [28] from Ms Matthews to Ms Devoil, dated 1 October 2018, the tone and content of which satisfies the Tribunal that Ms Matthews was authorised to interview and recruit sales people and to discuss commission arrangements with them. The email to Ms Devoil says as follows:

***Hi Anna-Lisa***

***I have offered the position to Jason of sales exec here for CV to replace Andrew. Can you get an offer letter together [address]***

***Start date TBC 15K Basic and commission as attached.***

***Let me know if you need anything else***

***Thank you***

***Shelley Matthews***

15. The general commission plan was enclosed with this email but not details of any guaranteed bonus.
16. During those discussions the Claimant raised the issue of a guaranteed bonus stating that due to the longer lead times on vans and SEAT cars he would struggle with the lower income in those first few months. A guaranteed bonus would therefore guarantee his income during these first few months until he began to receive commissions on actual sales. The Tribunal accepts this as standard practice in sales and was in fact a policy which the Respondent operated from time to time with their employees.
17. The Tribunal accepts that the Claimant had been used to earning commission but in order to compensate for the fact that there would be delay in earning commission with the Respondent he discussed with Ms Matthews an arrangement whereby he would receive a a guaranteed bonus for the months of December 2018, January and February 2019. The reason the bonus payments could be deferred until then was because there was a short period during which the Claimant would continue to be paid commissions from his old job.

18. The Tribunal finds that Ms Matthews said during her discussions that she would need to speak to Geoff Taylor (Head of Business) and obtain his approval.
19. There then followed an email from Ms Matthews at [57]. The agreement to pay a guaranteed commission was set out in an email from Ms Matthews [57] which said as follows:

***Hi Jason***

***Just to let you know your offer letter and pack are out in the post today, you may receive the offer letter separately as the other bits come from Medway.***

***Geoff and I have discussed a guarantee and have decided that November depending on when you start no guarantee, December we will pay £1,000 commission guarantee, then January and February £2000, minimum guaranteed commission.***

***This is strictly confidential between us and would ask that you do not discuss this with anyone.***

***Really looking forward to having you on board and wishing you a huge success here at Ashford***

***Kind regards***

***Shelley Matthews***

20. The Tribunal finds as fact that the bonus amounts promised to the Claimant were a minimum guaranteed bonus for December 2018 of £1,000 followed by £2,000 for January 2019 and £2,000 for February 2019. The Tribunal notes the intention to keep the agreement confidential and concludes that this was because Ms Matthews had put a bespoke deal together for the Claimant to secure him as an employee. The Tribunal accepts that it was not a standard arrangement but that does not mean that amounts outside the standard were never given. Indeed the Claimant referred the Tribunal to an email [84] he received from David Willoughby, going back to when the Claimant had previously been employed by the Respondent, whereby the Claimant was offered a guaranteed bonus of £2,500.
21. It is upon the above basis that the Claimant accepted the offer and commenced employment with the Respondent.
22. It was agreed that the December commission would be paid at the end of January 2019, the January bonus would be payable at the end of February 2019 and the February bonus would be payable at the end of March 2019.
23. The Claimant duly received his employment pack comprising an offer letter dated 2 October 2018, bonus criteria dated 2 October 2018 and a statement of written particulars also dated 2 October 2018. The Tribunal's attention

was drawn to the fact that there was no mention of the guaranteed bonus arrangement in his documentation. The Tribunal's attention was also drawn to copies of two contracts provided for other employees where specific reference was made to a guaranteed bonus in the offer letter. The Respondent also sought to rely on a clause in the Respondent's statement of written particulars (which the Tribunal finds as fact is a standard document issued to all employees in the form given to the Claimant) which says at clause 14:

***This statement supersedes any agreement or arrangement that may have been made between the parties***

24. The Tribunal finds that the agreement the Claimant reached with Ms Matthews was not concluded until after this contract had been drafted and therefore it is no surprise that it did not incorporate the guaranteed bonus. The Tribunal concludes that it could not have been the intention of the parties that the bargain reached between the Claimant and Ms Matthews was somehow forgotten and did not form part of his contract. The Tribunal concludes that a standard clause such as this does not exclude the Claimant from seeking the bonus he says he was due. The Claimant was entitled to look at the contract as a whole and was entitled to rely on the email by Ms Matthews when deciding on 18 October 2018 to accept the offer made to him.
25. The Claimant decided to leave the Respondent's employment and tendered his resignation, with a leaving date of 31 January 2019. On this basis, the Claimant's contention is that he is only entitled to those parts of the guaranteed bonus which related to December 2018 and January 2019.
26. The Claimant was paid £100.00 of December's £1,000.00 guaranteed commission with his salary paid on 28 January 2019. It was agreed that this was a mistake and he was then paid the remaining £900.00 on 1 February 2019.
27. The Claimant subsequently entered into a dispute with the Respondent regarding the January payment of £2,000. He was paid £1,000 of the £2,000 the Claimant says he is owed and therefore claims the remaining £1,000 before this Tribunal.
28. Having already resolved in the Claimant's favour (see paragraph 24 above), that the Claimant is not precluded from being entitled to the bonus by virtue of the clause in the contract referred to at paragraph 23 above, the Tribunal still needs to resolve the issue of ostensible authority.
29. Dealing with the three of the four conditions set out by Diplock LJ in the **Freeman & Lockyer** case (the fourth not relied on or pursued by the Respondent) the Tribunal concludes as follows:

**a. Was a representation made to the Claimant that Ms Matthews**

**had authority?**

The answer to this is yes. Her email is such a representation together with the fact that she had discussed the matter with Mr Taylor and he had also agreed the bonus. It is not clear what other interpretation could be taken from that email that she appeared to have authority to make the offer.

**b. Was the representation made by someone who had actual authority to manage the business of the company or in respect of those matters to which the contract relates?**

The Tribunal concludes that the answer to that question is yes.

The Tribunal finds that as a manager in the business Ms Matthews was clearly entitled – and had actual authority – to make management decisions on behalf of the Respondent which included decisions on who to recruit into the business and to discuss the terms upon which those employees are recruited. That is supported in the Tribunal's view by the email from Ms Matthews to Ms Devoil dated 1 October 2018 and there is no sense that she does not have control of those negotiations and of the recruitment of the Claimant, simply asking HR to get the necessary paper work together.

The Tribunal concludes that had this been a case in which she had offered the Claimant a guaranteed bonus of £1,000 this matter would have been signed through and the case would not have been brought to the Tribunal. In fact whilst she did not have actual authority to agree the payments of £2,000, by virtue of her actual authority to have such discussions with the Claimant and manage the business as she did, the Tribunal concludes that the second condition is met.

**c. Was the Claimant induced by such representations?**

In the Tribunal's view, it is quite clear Ms Matthews email about the bonus induced the Claimant as that issue was so important to him

30. For the above reasons, the claim succeeds and the Respondent is ordered to pay the outstanding £1,000 on or before 16 October 2019.

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Employment Judge Hyams-Parish  
16 October 2019

