EMPLOYMENT TRIBUNALS

Claimant:		Respondent:
Mr Paul Nokes	v	Fidessa Trading UK Limited

Heard at: Reading On: 4 February 2020

Before: Employment Judge Hawksworth (sitting alone)

Appearances For the Claimant: In person
For the Respondent: Mr B Roy (solicitor)

RESERVED JUDGMENT

1. The claimant's complaint of unauthorised deduction from wages is wellfounded and succeeds. The non-payment of the final quarter of the claimant's profit share bonus for 2018 was an unauthorised deduction from the claimant's wages by the respondent.

2. The claimant is awarded the sum of £90,834.

REASONS

Claim, hearing and evidence

1. The claimant was employed by the respondent from 1 October 1990 to 13 May 2019. He was the respondent's buy-side Chief Executive Officer.

2. The claimant's claim form was presented on 26 July 2019 after a period of ACAS early conciliation from 13 June 2019 to 18 June 2019. The claimant complained of non-payment of the final quarter of his profit share bonus for 2018.

3. The respondent's ET3 was presented on 18 September 2019. The respondent defends the claim.

4. The hearing took place on 4 February 2020. At the hearing I heard evidence from the claimant. The respondent had prepared a hearing bundle with 140 pages. Page references in this judgment are to that bundle. The claimant produced additional documents at the hearing, these were labelled PN1, PN2 and PN3. The respondent did not object to their inclusion in the bundle.

Issue to be decided

5. The issue to be decided by me is whether the claimant is entitled to be paid the last quarterly payment of his profit share bonus for 2018.

6. At the hearing the respondent raised the question of whether the claim has been brought as a complaint of breach of contract or unauthorised deduction from wages. Complaints of breach of contract in the employment tribunal are subject to a maximum limit on compensation of £25,000. There is no limit on awards for unauthorised deduction from wages.

7. The claimant is unrepresented and was at the time he presented his claim. He did not say in his claim form whether his complaint was of breach of contract or unauthorised deduction from wages. He ticked the box in section 8.2 of the claim form which said, 'I am owed other payments.' He said in the attachment to his claim form, 'The last quarterly payment
(amount £90,834) of this bonus has been withheld.'

8. In his claim, the claimant used language to explain his complaint ('withheld') which suggested a complaint of unauthorised deduction from wages, and he made clear that the payment he was seeking exceeded the maximum which could be awarded if the complaint were brought as a breach of contract claim. Also, the claimant's grievance referred to 'unlawful deduction of wages' (page 115). For these reasons, I have decided that the claimant's complaint has been brought as a complaint of unauthorised deduction from wages.

Findings of fact

9. The claimant was employed by the respondent from 1 October 1990 to 13 May 2019. At the time his employment with the respondent ended, he was the buy-side Chief Executive Officer, reporting to the respondent's board.

<u>The claimant's terms and conditions</u>

10. The claimant's terms and conditions were set out in an employment contract signed by the parties on 11 September 1996 (pages 42 to 54).

11. Clause 5 of the claimant's employment contract was headed
'Remuneration'. It read:

> "5.1 The Company shall pay to the Executive a salary at the annual rate of £40,000 per annum payable monthly in equal instalments on or by the 15th day of each month and which said salary shall be seemed [sic] to accrue from day to day. The Board will review the Executive's salary annually.
>
> 5.2 The Executive shall also be entitled to receive further remuneration by way of a bonus scheme as calculated in accordance with, and subject to, Schedule 1 attached hereto. The bonus scheme will be reviewed and may be amended by the Board from time to time."

12. Schedule 1 read:

> "The Executive will be eligible to receive a profit share bonus each year.
>
> The details of the bonus scheme and percentages payable may be amended from time to time at the discretion of the board.
>
> In the event of a dispute as to the amount or validity of any bonus payment, the Executive may raise the matter with the Board and in such event, the Board's decision shall be final."

13. The claimant was informed at the beginning of each financial year what his remuneration including profit share bonus for the calendar year would be. The bonus was paid in quarterly instalments in arrears.

14. The claimant received a bonus calculated as a percentage of profits and paid quarterly in arrears for 10 years prior to 2018.

15. The respondent's HR handbook was introduced on 27 January 2014. Section 3 of the handbook was called 'HR Policies'. Section 3.3 was a paragraph about bonuses (page 85) which said:

> "If you are eligible for a bonus, this will be detailed in your contract. Any bonus is paid at the company's entire discretion. Bonus payments are discretionary based on personal and company performance. … Details of any bonus arrangement may be amended from time to time at the discretion of the company. Discretionary bonus payments are made subject to both company and personal performance. … In the event of a dispute as to the amount of any bonus, you may raise the matter with the board of Fidessa Group Holdings Limited and in such an event, the Board's decision shall be final. Eligibility for a bonus shall be conditional on your being employed by the company and not under notice at the time of payment."

16. The claimant said that paragraph 3.3 of the Staff Handbook did not apply to his bonus. I accept the claimant's evidence on this point for the following reasons:

16.1. Around 1200 of the respondent's staff received bonuses which were linked to personal and company performance;
16.2. The bonuses which are the subject of paragraph 3.3 are referred to as bonuses 'based on personal and company performance' and 'subject to both company and personal performance';
16.3. Senior managers including the claimant had a separate bonus structure, a profit share bonus linked to operating profit with no personal performance element;
16.4. The handbook was introduced on 27 January 2014, 17 years after the claimant's remuneration terms were set out in his contract of employment. I heard no evidence that the claimant was notified that paragraph 3.3 constituted an amendment to his contract of employment. It cannot be said (as the respondent said in its appeal outcome letter at page 128) that the claimant's bonus 'is and was always subject to' the policy set out in the Staff Handbook, when the claimant's contract pre-dated the handbook by 17 years. I heard no evidence of any policy which preceded the Staff Handbook;
16.5. On 30 May 2019 when the respondent replied to a request from the claimant for copies of documents with full details of his bonus scheme, the respondent did not refer to paragraph 3.3 of the Staff Handbook (page 122).

17. For these reasons, I find that the policy set out in paragraph 3.3 of the Staff Handbook relates to personal performance bonuses which applied to the bulk of the respondent's staff, not to the claimant's bonus which was a senior manager's profit share bonus.

The claimant's 2018 profit share bonus arrangements

18. The respondent's Remuneration Committee made recommendations for directors' pay for the calendar year 2018. These recommendations were set out in a document dated 1 May 2018 (pages 123 to 125).

19. The Remuneration Committee's recommendations for 2018 for the claimant were included in a table headed 'Operating Board Directors' (page 125). The document said, 'The table below shows the proposed remuneration for the members of the operating board'. (The names of and details for other directors in the table were redacted in the copy in the bundle.) For the claimant, the details in the table were as follows:

UK	Base	Bonus %	Discretionary	Bonus Total	Other	DAB	OTE	Increase
Paul Nokes	£330k	0.47%		£200.2k		£30k	£560,220	0.1%

20. Base referred to base salary.

21. The claimant's recommended bonus percentage was 0.47%. As explained in the general notes (page 123), this was a percentage of internal operating profit. The target operating profit for the year was £42.6m.

22. The column headed 'discretionary' was blank.

23. The next column headed 'Bonus total' (£200.2k) was the figure for the claimant's on-target bonus for the year 2018, ie the bonus which would be paid if the internal operating profit target was met. However, the claimant's bonus was not capped, and if target internal operating profit was exceeded, then a bonus higher than the OTE bonus (but still based on 0.47% of operating profit) would be awarded.

24. The column headed DAB is not relevant to the claimant's claim as this payment was not in dispute.

25. The column headed 'OTE' or 'on-target earnings' for 2018 showed that the recommendation for the claimant's total remuneration was £560,220.

26. The notes to the Remuneration Committee's recommendations (page 124) included the following:

> "Advisors have confirmed that both the pro-rating of bonuses … in a 'good leaver' scenario and the conversation to a cash bonus of any DAB entitlement are considered post-acquisition events, and as such we would need to notify the acquirer of this approach…Additionally, if an individual is to be paid a pro-rated bonus, then it has been recommended that it be paid at the time bonuses are usually paid.
>
> A 'good leaver' payment shall only be made if that staff member leaves Fidessa for any reason other than resignation, gross misconduct or dismissal for cause."

27. The Remuneration Committee's recommendations were ratified at a meeting on 5 July 2018 (page 135).

28. The respondent was going through an acquisition process at around this time. In August 2018 the respondent was acquired by ION Group and was taken into private ownership.

29. The claimant was not a member of the Remuneration Committee. He was not given a copy of the recommendations document. He was given details of his remuneration package in an undated memo from the respondent's Chief Executive Officer Chris Aspinwall (document PN3). This stated:

> "Re: 2018 Package.

Following review by the remuneration committee, this note confirms your package effective from 1st January 2017. Your on target earnings (OTE) are:

Base:	£330,000
Bonus:	£200,220
DABP:	£30,000
Total	£560,220

30. The notes to document PN3 read:

"1. The bonus element is based on 0.47% of internal operating profit (as defined below) and is based on a target operating profit of £42.6M.

[Note 2 explained how internal operating profit would be calculated.]

3. All other terms remain as per original package."

31. I find that this document set out the claimant's remuneration package for 2018 and that the date of 1st January 2017 in the first sentence was a typographical error. The date was meant to read 1st January 2018. I make this finding because the memo is headed '2018 package' and the salary and benefit figures, the percentage for calculation of the bonus and the target operating profit figure are all the same as the Remuneration Committee's figures for 2018 (pages 123 to 125). Also, in the claimant's grievance appeal, the respondent confirmed that this document set out the claimant's compensation package for 2018 (page 128).

32. I find that the undated memo was provided to the claimant in mid-2018. I make this finding because of the chronology of the decisions of the Remuneration Committee which were made in May 2018
(recommendation) and July 2018 (ratification).

Payment of the claimant's 2018 bonus

33. The claimant received three of the four quarterly instalments of his profit share bonus for 2018. The payments were made in May 2018, August 2018 and November 2018. He was due to receive the final quarterly bonus payment in February 2019.

34. On 10 February 2019 following a discussion with the respondent's new owner, the claimant decided that the time had come for him to resign. He set this out in an email (document PN1). On 13 February 2019 the claimant wrote to Domhnall McCormack (Chief Operating Officer) with his formal resignation (page 111). He gave three months' notice. Taking into account outstanding holiday, the claimant's last day in the office was to be 3 May 2019. The claimant emailed the

respondent's Chief HR Officer Wayne Coomey on 13 February 2019 with a copy of his resignation letter (page 112).

35. On 13 February 2019 the respondent sent an email to all staff saying that, because of the need to integrate and harmonise processes and systems following the acquisition, it would not be possible to pay variable compensation payments for 2018 in February 2019, and it looked likely that they would be delayed to April 2019 (page 114). The claimant was aware of this delay prior to the email being sent, and had input into the drafting of the email.

36. The respondent did not pay staff their variable compensation payments (including the final quarter of the claimant's profit share bonus for 2018) in February 2019.

37. In April 2019 the final quarter of the claimant's 2018 profit share bonus was calculated by the respondent's finance department as £90,834. The respondent had exceeded its internal operating profit target, so the claimant's quarterly profit share bonus was more than a quarter of the total bonus figure based on on-target earnings in the Remuneration Committee's recommendations. The respondent did not challenge the claimant's evidence about the amount or the calculation of the final quarter of his profit share bonus.

38. In April 2019 payment of variable compensation for all staff was delayed again because of ongoing administrative issues.

39. On 2 May 2019 the claimant was told by Mr McCormack that his profit share bonus would only be paid if he agreed to extend his employment until the end of 2019.

<u>The claimant's grievance and the end of his employment</u>

40. On 3 May 2019 the claimant started a formal grievance complaint about the non-payment of the final quarter of his bonus. He described his complaint as 'unlawful deduction of wages' (page 115).

41. At the hearing before me the respondent suggested that the claimant's complaint about his bonus should have been made to the respondent's board, as provided for in Schedule 1, rather than as a formal grievance. I accept the claimant's evidence that there was some uncertainty about the composition of the board at this time following the acquisition. In any event, if the respondent thought that the claimant's complaint should not have been brought as a grievance, it could have said so to the claimant and directed him to what it considered to be the appropriate procedure. However, the respondent did not do this; it dealt with both the claimant's grievance and appeal under the grievance procedure without any suggestion that the claimant was not following the correct procedure.

42. The claimant's resignation took effect on 13 May 2019.

43. An internal grievance hearing was held on 14 May 2019 with Mr McCormack and Mr Coomey.

44. On 15 May 2019 the majority of the respondent's staff received the variable compensation payments which had been delayed from February 2019.

45. On 20 May 2019 the claimant was sent a letter by Mr McCormack with the outcome of the grievance complaint (pages 116 to 117). The letter enclosed an extract from the Remuneration Committee's 2018 recommendations; this was the first time that the claimant had seen this document.

46. The claimant's grievance was not upheld. The respondent said that he was not a 'good leaver' as defined in the Remuneration Committee's recommendations for 2018, and that he was not entitled to any additional discretionary payments including the Q4 2018 Management Bonus. Mr McCormack said it was standard practice at Fidessa not to pay bonus to any employee who is under notice, bonuses are discretionary, and the company could change or amend the payment amount, depending on performance, and the timing of bonus if required by the business.

47. On 28 May 2019 the claimant wrote to Mr Coomey to ask for further documents regarding his package and conditions (page 119). He asked for full details of his bonus scheme. The respondent replied on 30 May 2019 (page 122). The respondent referred to the claimant's contract of employment and enclosed a copy of the Remuneration Committee's recommendations for 2018 (page 123 to 125). The respondent did not refer to paragraph 3.3 of the staff handbook.

48. On 6 June 2019 the claimant appealed against the grievance outcome (pages 126 to 127). The appeal hearing was held on 27 June 2019 by Ashley Woods with Nathan Tunbridge (HR Manager) in attendance to assist and minute the meeting.

49. On 12 July 2019 the claimant received the written outcome of his appeal (pages 128 to 129). His appeal was not successful. Mr Woods said that the claimant's compensation package was set out in the memo titled 'Re: 2018 Package' (document PN3). He also said that this document included the maximum amount of the claimant's bonus; the suggestion that the claimant's profit share bonus was subject to a maximum limit was not made before me. Mr Woods also said that the bonus available to the claimant 'is and was always' subject to the policy set out in the employee handbook, that any bonus was paid at the company's discretion and that the claimant was not entitled to a 'good leaver' payment.

The law

Deductions from wages

50. Section 13 of the Employment Rights Act 1996 provides:

"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 term 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; …
3) Where the total amount of wages paid on any occasion by the 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."

51. The definition of wages for the purpose of section 13 includes any bonus referable to employment, whether payable under the contract of employment or otherwise (section 27(1)(a) of the Employment Rights Act 1996).

52. In Khatri v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA [2010] IRLR 715, the Court of Appeal considered a question of construction of a bonus clause in an employment contract. The Court of Appeal confirmed that questions of construction fall to be decided by how the words would be understood by a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation they were in at the time of the contract.

53. In the Khatri case, the employee's bonus clause included wording giving the employer 'the right to review or remove this formula-linked bonus arrangement at any time'. The employer said that the right to review/remove the arrangement meant that the bonus was discretionary. The Court of Appeal rejected this argument, concluding that the bonus clause reflected the language of entitlement (in wording such as 'you will also be eligible', 'the bonus due', and 'all payments due to you') and that it was not rational to read it as suggesting that a right to review meant that the whole entitlement could potentially be removed. The Court of Appeal added that if an employer intends to reward an employee by purely discretionary bonuses, 'they should say so openly…If you are to give with one hand and take away with the other, you must make that clear'.

54. In Small and ors v Boots Company plc and anor EAT 0248/08, the EAT highlighted that a bonus scheme can have both contractual and discretionary aspects. A discretion can apply to the whole scheme or to one or more aspect of

the scheme such as the mechanism for calculating the bonus or the amount of the bonus. All the relevant circumstances, including a practice of making payments over a number of years, will be relevant to deciding whether a discretion is to be construed as having some contractual elements.

55. A discretionary bonus may become contractual at some stage in the process. In Chequepoint (UK) Ltd v Radwan [2000] WL 1480055 CA, the employer ran a discretionary bonus scheme and agreed to notify the employee of the terms of any such scheme. The Court of Appeal held that once the terms of the bonus scheme had been notified, the employee became contractually entitled to the bonus until the employer gave notice that the scheme had been changed or withdrawn.

56. Noble Enterprises Ltd v Lieberum EAT 67/98 is another case where a discretionary bonus became contractual after the scheme was notified. The EAT upheld an employment tribunal's decision that an employee who resigned had a contractual right to a bonus for the previous year. Although the employer had a discretion whether to operate the bonus scheme from year to year, the employer's discretion was limited once the bonus year began. The EAT held that if an employer wishes to deprive an employee of the benefit of a bonus payment which he or she would otherwise earn through extra effort, then the employer must make its intentions clear in advance of the work being done.

57. A contractual entitlement may also arise once the employer has exercised its discretion in favour of granting a bonus. After the exercise of discretion, the employer is under a legal obligation to pay the bonus in accordance with the terms of the scheme, unless the terms are altered and notice of the alteration is given (Farrell Matthews and Weir v Hansen 2005 ICR 509, EAT. In Tradition Securities and Futures SA v Mouradian 2009 EWCA Civ 60, CA, the Court of Appeal upheld an employment tribunal's decision that once a bonus had been declared, there was a quantifiable sum which the employee was legally entitled to receive.

58. Employers who wish to exclude entitlement to a bonus must express the exclusion in clear terms and communicate it to their employees. In Rutherford v Seymour Pierce Ltd 2010 IRLR 606, QBD, the employee was summarily dismissed for 'poor performance'. In the last year of his employment, the employee received bonus payments for the first three quarters, but, when he was dismissed, the employer did not pay him any bonus in respect of the fourth quarter. The employer argued that the bonus scheme contained an implied term that the employee was not eligible for a bonus payment if he was either under notice of termination or not employed at the time when payment became due. The High Court disagreed and held that there was no need to imply such a term into the contract of employment. It was not necessary for the satisfactory operation of the contract and would be 'manifestly unreasonable' since it would allow an employer to dismiss an employee the day before a bonus payment was due in order to avoid that payment.

59. Under section 24 of the Employment Rights Act 1996, where a tribunal finds a complaint of unauthorised deduction from wages well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker the amount of any deduction made in contravention of section 13.

Conclusions

60. I have applied these legal principles to my findings of fact in relation to the issue for determination to reach my conclusions.

61. There was no dispute that the claimant was an employee of the respondent, and was therefore a worker for the purposes of section 13 of the Employment Rights Act.

62. A bonus referable to employment and payable under the contract of employment or otherwise constitutes 'wages' for the purpose of section 13 (by virtue of section 27(1)(a)).

63. I need to consider whether the wages paid to the claimant on any occasion by the respondent were less than the total amount of wages properly payable to him on that occasion. If they were, there will have been a deduction from the claimant's wages.

64. To determine what was properly payable to the claimant, I need to consider the relevant terms of the claimant's contract to establish what the claimant was contractually or legally entitled to receive by way of wages and in particular what the claimant was entitled to receive by way of profit share bonus. This is a question of construction of the claimant's contract.

Was the claimant contractually entitled to a bonus?

65. I have concluded that the claimant's contract included a contractual entitlement to a profit share bonus, with a right reserved to the respondent to review the terms of the scheme. In particular the respondent had a right to review the percentage profit share to which the claimant was entitled. This is how the words of the claimant's contract would be understood by a reasonable person with all the background knowledge which would reasonably have been available to the parties in their situation at the time the contract was entered into.

66. I reach this conclusion because the claimant's bonus scheme was contained in his contract of employment, and was clearly part of his remuneration structure. Clause 5.2 and schedule 1 of the contract of employment use language which reflects entitlement. Clause 5.2 says 'The Executive shall also be entitled to receive further remuneration by way of a bonus', and schedule 1 says 'The Executive will be eligible to receive a profit share bonus each year' (emphasis added). The terms of the claimant's contract of employment are clear that he was entitled to receive a profit share bonus each year. The contract does not give the respondent any discretion not to pay the claimant in a particular year. The claimant received a profit share bonus for the last 10 years. I have also taken into account that there was a column headed 'discretionary' in the Remuneration Committee's recommendations, and that this was left blank in the claimant's case.

67. The contract does permit the respondent to amend the details of the scheme and the percentage payable. This is set out in clause 5.2 ('the bonus scheme will be reviewed and may be amended by the Board from time to time') and schedule 1 ('The details of the bonus scheme and percentages payable may be amended from

time to time at the discretion of the board'). However, this right to review does not make the whole profit share scheme 'discretionary'. The contract sets out in clear unambiguous terms that the claimant has a contractual entitlement to a profit share bonus each year.

68. I have found that the HR policy set out in paragraph 3.3 of the Staff Handbook (which refers to bonuses as discretionary) did not apply to the claimant.

What were the terms of the scheme in 2018?

69. In 2018, the respondent's Remuneration Committee reviewed the details of the bonus scheme and formulated recommendations for the terms which would apply to the claimant for 2018. It decided the percentage of profit share to which the claimant would be entitled, and the basis on which that percentage would be calculated (by reference to internal operating profit).

70. The claimant was notified of the details of the 2018 bonus scheme in mid2018 when he was provided with the memo from Mr Aspinwall. I conclude that Mr Aspinwall's memo set out the contractual terms of the 2018 profit share scheme as it applied to the claimant. As the claimant was not provided with a copy of the Remuneration Committee's recommendation document, that document did not form part of the contractual terms which applied to the claimant.

71. Once the respondent had decided the terms of the scheme for 2018 and notified them to the claimant, the claimant had a contractual entitlement to be paid a profit share bonus in accordance with the 2018 scheme. After the claimant was notified of the scheme in mid-2018, the respondent did not exercise the right to review the scheme again or notify the claimant of any changes to the scheme.

72. The claimant was paid the first 3 quarterly payments of his profit share bonus (in May, August and November 2018).

73. The claimant's final quarterly profit share bonus had been quantified. The respondent's finance department calculated the amount of the claimant's last quarterly payment and notified him of it. The respondent did not suggest that the last quarterly payment had been wrongly calculated.

74. I have concluded that the claimant had a contractual entitlement to receive a profit share bonus each year, and that after he was notified of the details of the 2018 scheme and there was no change to that scheme, he had a contractual entitlement to a profit share bonus for 2018 paid in accordance with the scheme as notified. He was entitled to the sum calculated by the respondent.

Was there an exclusion from entitlement because of the claimant's resignation?

75. The respondent argued that the last quarter of the claimant's bonus was not payable because the claimant resigned in February 2019 and had left the respondent's employment two days before bonuses were paid.

76. There was no express provision in the claimant's contract which excluded him from eligibility for the bonus if he was under notice or not working for the respondent at the time of payment. In its response to the claimant's grievance, the respondent said that it was 'standard practice' not to pay bonus to any employee who is under notice. I heard no evidence about this and I have not made any finding that there was any implied term to this effect.

77. In support of its submission that the claimant's resignation removed his entitlement to the final quarter of his profit share bonus, the respondent relied on the 'good leaver' wording in the Remuneration Committee recommendations, and on clause 3.3 of the Staff Handbook.

78. I note first that the fact that the claimant was not employed by the respondent at the time the profit share bonus was paid was because the respondent delayed payment of variable compensation from February 2019 to April 2019 and then to May 2019. Had the final quarterly payment been paid as expected in February (or after the first period of delay, in April) the claimant would still have been employed at the time of payment.

79. I also note that the claimant had worked the full year in respect of which the 2018 profit share bonus was payable. He had earned the full bonus.

80. I have then considered the two documents relied on by the respondent in support of its submission that the claimant was excluded from entitlement to the final profit share bonus because it was paid after he had left the respondent. I have concluded that the wording in the Remuneration Committee recommendations document did not exclude payment of the claimant's final bonus payment for two reasons:

    80.1. First, the claimant had not been told that he would have to be in post and not working out his notice in order to qualify for a bonus and it was not part of the contractual terms of the 2018 scheme which applied to the claimant. He was not provided with a copy of the recommendations document until 20 May 2019, after he had left the respondent's employment. The memo he was given which notified him of the detail of the 2018 profit share bonus scheme did not set out any exclusions to payment of the bonus, or any 'good leaver' provisions. If there were to be any exclusion from entitlement to the 2018 bonus, this should have been made clear to the claimant and he should have been notified of it when he was notified of the 2018 scheme, not some months after the end of the period to which the bonus related.

80.2. Second, and in any event, the good leaver provision in the Remuneration Committee recommendations document is only referred to in the context of 'pro-rating of bonuses' and 'conversion to cash of any DAB entitlement'. Neither of these situations apply to the claimant's claim. As the claimant had worked the full calendar year in 2018, he was seeking a part payment of the full year's bonus, not a pro-rated payment. He had worked the full year in respect of which the 2018 profit share bonus was paid. It was not a question of whether he should be paid a pro-rated bonus for leaving mid-way through the bonus (calendar) year. Even if the Remuneration Committee recommendations were part of the contractual scheme applicable to the claimant, he was not in the situation in which the 'good leaver' provision in that document would be relevant.

81. For the reasons set out above in my findings of fact, I have found that clause 3.3 of the HR bonus policy in the Staff Handbook did not apply to the profit share bonus to which the respondent's senior managers including the claimant were entitled. It only applied to the personal performance linked bonuses.

82. I have concluded that neither the claimant's contract of employment nor any other document which was part of the terms of the claimant's profit share bonus scheme contained any express or implied clause which excluded the claimant's entitlement to the last quarter of the profit share bonus for 2018 because of his resignation.

Summary

83. I have concluded that the claimant was entitled under the terms of his contract of employment and the 2018 profit share bonus scheme to be paid the final quarter of his profit share bonus for 2018.

84. The non-payment of the claimant's profit share bonus was a deduction from his wages. The deduction was not required or authorised by a statutory provision, a relevant provision of the claimant's contract or a written agreement by the claimant. It was therefore an unauthorised deduction from the claimant's wages.

85. The final quarter of the claimant's profit share bonus should have been paid to the claimant on 15 May 2019. The claimant notified Acas for early conciliation on 13 June 2019 and presented his claim on 26 July 2019. His complaint has been brought within the three-month time limit in section 23 of the Employment Rights Act.

86. For these reasons, the claimant's complaint of unauthorised deduction from wages is well founded and succeeds.

87. The respondent is ordered to pay the claimant the outstanding part of the profit share bonus which is £90,834. I have found that this is the amount of the deduction

that was made; there is no discretion under section 24 for me to order a lower amount (as the respondent invited me to do).

88. I apologise to the parties for the delay in this reserved judgment; the delay was contributed to by the change in working arrangements required as a result of the coronavirus measures.

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Employment Judge Hawksworth

Date: 14 April 2020

Sent to the parties on: 22 April 2020

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For the Tribunals Office