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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr C Swords

and

Respondent

Mastermind Group
Ltd

Held by audio video on 18 September 2020

Representation

Claimant:

Mr S Swords, Father

Respondent:

Mr M Eastwood,
Director

Employment Judge Kurrein

JUDGMENT

- 1 The Claimant is not entitled to any further payment.

REASONS

- 1 This Judgment should be read in conjunction with the Judgment of EJ Harrington following the hearing of 1 July 2020, when she set down this hearing to consider the Claimant's entitlement to an award in respect of commission and pension payments.
- 2 That Judgment awarded the Claimant the following sums:-
 - 2.1 £1,161.11 gross in respect of arrears of wages and notice pay; and
 - 2.2 £528.00 gross in respect of accrued but untaken holiday pay.
- 3 It has always been my understanding that if a Judgment for wages and similar payments is expressed in gross figures it will be properly discharged by payment of the relevant sums net of tax and national insurance, provided that those sums are properly accounted for to HMRC.
- 4 Following that Judgment the Respondent created a payslip dated 25 November 2019, some two weeks after the Claimant EDT, in which it calculated that the Claimant was entitled to:-

- 4.1 Basic Pay £1,095.78 gross
- 4.2 Commission £641.68 gross
- 4.3 Holiday pay £505.75 gross

5 After deducting income tax of £240.20 and national insurance of £182.90, and an overpayment of £500, which the Claimant admitted receiving, it showed him as being due £1,320.11.

6 The Claimant accepts he was paid the precise sum on 27 August 2020.

7 On that basis I calculate that this was an underpayment of what was due to him under the Judgment of:-

- 7.1 Wages £1,161.11 – £1,095.78 = £65.33; and
- 7.2 Holiday pay £528.00 - £505.75 = £22.25

The total shortfall being £87.58.

8 However, the Respondent then made the following payments to the Claimant:-

- 8.1 £329.00 on 12 August 2020; and
- 8.2 £40.00 on 17 September 2020;

9 That amounts to a possible overpayment of £241.42, but those payments also total the gross Judgment figure.

10 The Claimant has a duty to mitigate his loss and, in my view, is required to make an application for a tax refund, which may result in an even greater overpayment.

11 The matter was before me today to consider whether the Claimant had been entitled to commission and/or pension payments.

12 I accepted that the Claimant was not entitled to pension payments because, with less than 3 months service, he had not been enrolled in a pension scheme.

13 I accepted that he was entitled to commission of £641.68 gross. However that was fully accounted for in the payments made to him since the Judgment of EJ Harrington (shown in the payslip dated 25 November 2019) not least by the admitted overpayment of £500 being accounted for.

14 In the above circumstances I have concluded that the Claimant is not entitled to any further Judgment. He is trying to have his cake and eat it.

Employment Judge Kurrein
Dated: 18 September 2020

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