



EMPLOYMENT TRIBUNALS

Claimant: Ioan Petrescu
Respondent: Gastro Pubs Ltd
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 14 January 2021
Before: Employment Judge Housego

Representation
Claimant: In person
Respondent: Charlie Wood, Solicitor

JUDGMENT

1. **The claim for unfair dismissal is dismissed.**
2. **The claim for a bonus is dismissed.**

REASONS

1. Mr Petrescu worked for the Respondent from 21 November 2018 to 10 July 2020, when he was dismissed, and he was paid the correct amount of 1 week's pay in lieu of notice. The Respondent is a chain of pubs, owned by Stephen Hutton.
2. Mr Petrescu claims that his dismissal was unfair. He advanced no reason that would allow him to bring a claim for unfair dismissal with less than the necessary 2 years' service¹. Accordingly the Employment Tribunal does not have jurisdiction to hear the claim, and it must be dismissed.
3. The Claimant's contract of employment contained provision for a bonus². This is expressed to be discretionary, not contractual. The bonus scheme

¹ S108(1) of the Employment Rights Act 1996

² at Clause 7

for the financial year 2019/2020³ was also stated to be a discretionary payment, and would not be paid to anyone not in employment.

4. The Claimant claims that he met the targets, of which there were two, for drinks sales and for labour targets. The Respondent accepts that he met that for drinks but narrowly failed to meet that for labour. For the reasons which follow the Claimant would not succeed in his claim whether or not the targets were met.
5. The Claimant was General Manager of the place at which he worked. The salary of the Claimant was £34,000 a year. His maximum bonus was £4,000 a year. The bonus would be a supplement to his income, not the basis of it.
6. Mr Petrescu said that it was unfair not to get the bonus, when if targets were not met there could be dismissal. The Respondent says that the Covid-19 lockdown starting in late March 2020, and the effect of restrictions since then, has had a severe effect on the finances of the business, such that not only has no-one in the whole company been paid a bonus, but that there have been pay cuts as well. Mr Petrescu accepted that this was the case. He did not challenge the evidence of Mr Hutton, or of Rob Reber, who was his manager, and who dismissed him. Mr Petrescu was not dismissed for any reason connected with financial targets.
7. The case law is set out in Cantor Fitzgerald International v Horkulak [2004] EWCA Civ 1287 and in Brogden & Anor v Investec Bank Plc [2014] EWHC 2785 (Comm).
8. The decision not to pay Mr Petrescu a discretionary bonus cannot be said to be arbitrary or capricious. Given the challenges to the hospitality industry it would have been remarkable had a discretionary bonus been paid to someone who had left the employment of the Respondent when no-one continuing in employment was paid one.
9. Accordingly the claim for a bonus payment must also be dismissed.

**Employment Judge Housego
Date: 14 January 2021**

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