



EMPLOYMENT TRIBUNALS

Claimant: Mr M Judge

Respondent: Centrica PLC

HELD AT: Manchester (by CVP) **ON:** 9 November 2020

BEFORE: Employment Judge Ainscough

REPRESENTATION:

Claimant: In person

Respondent: Ms R Levene (Counsel)

JUDGMENT having been sent to the parties on 13 November 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant brought a claim by way of a claim form dated 21 May 2020 for unlawful deduction from wages contrary to section 13 of the Employment Rights Act 1996.
2. The respondent submitted a response on 24 June 2020 denying that there had been any such unlawful deduction.

Issues

3. The issues to be determined were as follows:
 - a. Was there a deduction of wages properly payable?
 - b. If so, what amount of wages should have been paid?
 - c. What amount of wages was actually paid?

- d. Was there a deduction?
- e. If so, was it required or authorised by a statutory provision or a relevant provision of the claimant's contract? or
- f. If so, had the claimant previously agreed in writing to the deduction?

Evidence

4. The parties agreed a bundle totalling 152 pages. I heard evidence from the claimant and from Stephanie Hallett the respondent's Head of Reward.

Relevant Legal Principles

Unlawful Deduction from Wages

1. The unlawful deduction from wages claim was brought under Part II of the Employment Rights Act 1996. Section 13 confers the right not to suffer unauthorised deductions unless:

- “(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision in the worker's contract; or**
- (b) The worker has previously signified in writing his agreement or consent to the making of the deduction.”**

2. A relevant provision in the worker's contract is defined by section 13(2) as:

- “(a) One or more written contractual terms of which the employer has given the worker a copy of 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 the worker in writing on such an occasion.”**

3. A deduction is defined by section 13(3) as follows:

- “(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. Section 27 defines wages, which includes:

- “(a) Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.**
- (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992.”**

5. Section 24 provides that:

“Where any complaint under section 23 is well-founded the Tribunal can make an order that the employer pay to the worker the amount of any deduction in contravention of section 13.”

Relevant Findings of Fact

5. The claimant joined the respondent company in May 2017 and worked as a Level 6 Senior Estimator.

6. The claimant's contract provided that he was eligible to participate in a bonus scheme called the “On Track Incentive Plan” (“OTIP”). The contract also provided the respondent with the right to modify that plan at any time.

7. OTIP was a discretionary bonus scheme in which the respondent could exclude an employee from participation or award. Under the plan the bonus scheme year ran from 1 January each year to 31 December and the bonus was paid in April of the next year.

8. The claimant received a bonus for 2017 in April 2018 and for 2018 in April 2019.

9. Rule 5 of the OTIP plan provided that if an employee voluntarily left employment prior to 1 April, which followed the bonus scheme year, they forfeited the bonus payment.

10. In February 2019 the respondent changed from OTIP to APIP, the “Annual Performance Incentive Plan”.

11. The respondent sent emails in February 2019 to over 8,000 employees via a global email address, notifying them of the change. The relevant rules, of OTIP (discretion, bonus year payment and leaving rules) did not change in the APIP plan.

12. On 7 October 2019 the claimant resigned with three months' notice and his last day of employment was 8 January 2020.

13. In March 2020, after the claimant had started his new employment, he queried his bonus payment with the respondent for the year 2019. On 16 April 2020 the respondent informed the claimant that he had transferred to the APIP scheme and the leaving rule applied.

14. In August 2020 the respondent decided not to pay a bonus to Level 6 employees and instead those employees were offered the share retention scheme. The share retention scheme provided that if the employee was still employed at 31 July 2020 they would receive shares in 2022 and 2023, provided they were still working for the respondent when the shares were issued.

Submissions

Respondent's submissions

15. The respondent submits that the claim is flawed on every level - the claimant had no right under the terms of his contract because, when he left on 8 January 2020, he forfeited that right

16. The respondent contends the claimant has not looked at the scheme in detail and relies on historical payment of his bonus each April.

17. The respondent submits that the terms of the scheme can be varied at the discretion of the respondent. The respondent contends the claimant was notified via a mass email distribution. In the alternative, the respondent submits that if the claimant did not receive that notification, there is still no basis for the claim.

18. The respondent submits that both schemes contain a forfeit clause that the bonus will not be payable if an employee leaves before 1 April.

19. The respondent submits that the claimant would not have received the bonus due to be paid in 2020 because those at Level 6 were offered shares instead. In order to qualify for shares, an employee had to be employed at the end of July 2020 and in 2022 and 2023.

Claimant's submissions

20. The claimant admits that when he joined the respondent in 2017, he signed a contract that allowed the respondent to vary the terms.

21. The claimant does not accept that the respondent could do this without notice.

22. The claimant contends he did not receive any emails informing him of the change to terms. The claimant only became aware of APIP after leaving company.

23. The claimant believes the discretionary share award is connected to his outstanding bonus payment.

Discussion and Conclusions

20. The claimant admits the respondent was entitled to modify the bonus scheme in accordance with the claimant's contract of employment. The respondent did modify the scheme and sent a notification to all employees in February 2019.

21. The claimant left the company on 8 January 2020. In accordance with the APIP rules, which applied to him at the time of his leaving, he was not entitled to payment of the bonus because he was not employed as at 1 April 2020.

22. Even if the claimant could prove that he did not receive notification of the change to the scheme, which he has not, and he remained on the OTIP scheme, the

same leaving rules apply. The claimant was not entitled to a bonus payment on 1 April 2020.

23. The claimant does not qualify for the share retention scheme, paid in lieu of the 2020 bonus, as he was not employed by the respondent on 31 July 2020.

24. A bonus was not properly payable to the claimant and therefore the non-payment does not amount to a deduction for the purposes of the claim.

Employment Judge Ainscough

Date: 12 March 2021

REASONS SENT TO THE PARTIES ON

24 March 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.