



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C McRobbie

**Respondent:** Enghouse Interactive UK Limited

**Heard at:** London South by CVP  
**On:** 13 May 2021

**Before:** Employment Judge Braganza

## Appearances

**For the claimant:** In person  
**For the respondent:** No appearance

## JUDGMENT

1. The Claimant's claim for unauthorised deduction from wages is well founded and succeeds.
2. The Respondent is ordered to pay the Claimant the gross sum of **£1,588** being the amount of the unauthorised deduction from wages properly payable to the Claimant.

## REASONS

3. By a claim form presented on 29 May 2020 the Claimant brought a claim against the Respondent for unauthorised deduction from wages. This concerned the Respondent's failure to pay the Claimant the contractual payment due to her under the Respondent's Management Based Objective (MBO) bonus scheme for the targets the Claimant achieved in the previous October-December 2019 quarter (Q4). The payment of £1,588 fell due to the Claimant on 31 January 2020.

4. The Respondent resisted the claim on the basis that the payment was owed to the Claimant by her previous employer, Eptica UK Ltd.

### **The Hearing**

5. The hearing took place by CVP to which neither party objected.
6. The Claimant attended in person. There was no appearance by the Respondent nor any correspondence asking for an adjournment of the hearing or advising that the Respondent would be unable to attend.
7. The Tribunal satisfied itself that both parties were emailed the Notice of the Hearing for 13 May 2021 and were provided with the log in details for that hearing. The Respondent had sent an email on 12 May 2021, the day before the hearing, acknowledging correspondence from the Tribunal dated 5 May 2021 which provided the details of the hearing on 13 May 2021 and how to join. There was no further communication from the Respondent. The Tribunal considered the Respondent's failure to attend or explain its absence, the evidence that the Respondent had been provided with the Notice of Hearing and that the contact details used by the Tribunal for the Respondent were correct. In those circumstances and given that this claim had been made in May 2020 and concerned a payment that the Claimant claimed had been due to her since January 2020, the Tribunal decided that in all the circumstances of the case, it was in the interests of justice to proceed with the hearing in the Respondent's absence.

### **The Issues**

8. At the outset of the hearing the Claimant confirmed that her claim was limited to the failure to pay her bonus of £1,588. Whilst her claim form had also referred to notice pay, she confirmed that this was no longer pursued. The issues for the Tribunal were therefore (1) whether the bonus payment was properly payable to the Claimant by the Respondent and (2) whether the Respondent had failed to pay it.

### **The Law**

9. Sections 13 to 27B of the Employment Rights Act 1996 ("ERA 1996") set out the statutory basis for a claim of unauthorised deduction from wages.
10. Section 13 of the ERA 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 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.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

11. “Wages” is widely defined. Section 27(1) of the ERA 1996 provides that it includes “any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise”.
12. Where there is a dispute on the facts, in reaching its decision, the Tribunal applied the standard of proof of the balance of probabilities.

## **The Evidence**

13. The Tribunal heard evidence from Mrs McRobbie. The Claimant had also previously submitted certain documents under cover of a letter dated 21 August 2020 addressed to the Respondent and copying in the Tribunal in accordance with the Case Management Order of 30 July 2020.
14. The documents included the following:
  - 14.1 The Claimant's "Target Agreement 2019" confirming that the Claimant had achieved 100% of her targets. This was signed by her manager, Olivier Njamfa, on 9 January 2020 and by the Claimant on 10 January 2020.
  - 14.2 A letter dated 12 February 2020 from Angela Beaumont, the Respondent's HR manager, to the Claimant setting out that the Claimant had been made redundant and that her leaving date had been brought forward to 31 January 2020 from 3 February 2020. It also confirmed that the Claimant had been paid her salary until 31 January 2020 and statutory redundancy payment and would receive payment of her 2019 bonus in that month's pay roll on 26 February 2020.
  - 14.3 Further email exchanges between the parties in which the Claimant repeatedly sought for the matter to be resolved and was informed by the Respondent that she could expect a 'prompt and final resolution'.

### **Findings of fact**

15. The Tribunal found the following facts on the balance of probabilities.
16. The Claimant was employed from 1 July 2010 to 31 January 2020 as a Personal Assistant. She was first employed by a company called Eptica UK Ltd, which was taken over by the Respondent in or around October 2019 and her employment transferred to the Respondent. At the time of her redundancy, the Claimant worked as a Personal Assistant to the CEO.
17. It was a term of the Claimant's contract of employment that she would be paid a basic salary and a bonus based on the completion of certain performance tasks, which were set by her manager, Olivier Njamfa, at the beginning of each year. This incentive bonus was paid to her in the month after each quarter in which she completed her set tasks.
18. Throughout her employment with Eptica and the Respondent, the Claimant performed all her tasks and, in her words, was a "model employee".
19. In or around September/ October 2019 Eptica was acquired by Enghouse Interactive UK Ltd, the Respondent. The Respondent started a re-organisation and the Claimant was told that she was at risk of redundancy. She was informed of this by her manager who confirmed that a process would be followed and that in the meantime she was to continue to work on the tasks set for her. She completed all her tasks.

20. On 3 December 2019 the Claimant's manager, Mr Njamfa, informed the Claimant that she was to be made redundant. The Claimant had continued to work under the same terms as when she was employed by Eptica.
21. On 9 January 2020, as had been the practice previously, her manager signed the MBO Target Achievement 2019 form on the tasks' completion, which the Claimant countersigned. The Tribunal was provided with the signed form. After countersigning, the Claimant would then be paid her bonus the following month. She was due payment of the bonus for the October to December quarter (Q4) on 31 January 2020.
22. On 31 January 2020 the Claimant received her final pay but without the Q4 MBO bonus for her work from October to December 2019.
23. By a letter of 12 February 2020 provided to the Tribunal, the Claimant's HR manager, Angela Beaumont, confirmed in writing to the Claimant that the bonus would be paid to her on 26 February 2020.
24. Thereafter from between the end of January 2020 until 7 April 2020 the Claimant's repeated enquiries about the unpaid MBO bonus went largely unanswered. The Claimant was told that Ms Beaumont was her sole point of contact on this matter. Over the course of the 10 weeks the Claimant sent some 11 emails and left about 5 voicemails, receiving only 4 responses. These were either out of office or to confirm that she would be replied to the following day, which did not happen. The Claimant's emails to Ms Beaumont on other subjects were answered promptly.
25. The Claimant did not receive any outstanding payment on 26 February 2020. To date the bonus remains outstanding.

## **Conclusions**

26. I find that it was a term of the Claimant's contract that if she met her set tasks as determined at the beginning of each year, she would be paid an MBO bonus, which fell due following each quarter.
27. I find that in respect of the work done during the period of October to December 2019 the Claimant met 100% of her tasks, as confirmed by the Target Agreement 2019 form signed by the Claimant and her manager in January 2020.
28. As a result, the Claimant's bonus for Q4 was properly payable to her by the Respondent in the month of January 2020.
29. The Respondent accepted that this payment fell due to the Claimant, as evidenced in the letter from the Respondent's HR manager, Ms Beaumont, on the 12 February 2020. In this letter the Claimant was informed that the bonus remained outstanding and would be paid to her on 26 February 2020.
30. I find that the Respondent delayed payment and that it unlawfully remains outstanding.

31. In the circumstances the outstanding bonus of £1,588 amounts to wages properly payable and due to the Claimant and the Respondent is ordered to pay the Claimant this sum.

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Employment Judge Braganza  
18 May 2021

Sent to the parties on:

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For the Tribunal Office:

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