



EMPLOYMENT TRIBUNALS

Claimant: Robert Crutchley

Respondent: Ice Telecommunications Ltd

Heard at: Birmingham

On: 6,7,8th September 2021

Before: Employment Judge Steward

Representation

Claimant: In person

Respondent: Mr Grimes (Solicitor)

JUDGMENT

The decision of the Tribunal is:

1. The claim for Unauthorised Deduction of Wages Fails.

REASONS

2. The matter was listed between the 6th and 10th September 2021 at the West Midlands employment tribunal before employment Judge Steward. Mr Crutchley appeared in person and the respondent was represented by Mr Grimes Solicitor.
3. On the morning of the first day I raised with both parties an initial issue with respect to jurisdiction. The claim for unauthorised deduction from wages represents commission payments from the 7th of April 2020 until the 21st of December 2020 totalling some £25,433.59.
4. The claimant signed a contract of employment dated the 8th of October 2018 and a deed of introduction and sale of goodwill dated the 17th of October 2018.

5. The detail of the commission payments are set out in the deed of introduction and sale of goodwill. There is no mention of the scheme of commission payments in the contract of employment. The deed of introduction and the sale of goodwill is between Ice Telecommunications Ltd Robert Crutchley and Talking Telecoms UK Ltd.
6. It is a deed which makes clear that Mr Crutchley owned the entire issued share capital of Talking Telecoms Ltd. Talking Telecoms Ltd owned the goodwill of the business and Mr Crutchley owned the database and intellectual property use by Talking Telecoms in the business.
7. Ice telecommunications wanted to be introduced to customers on the database and we were willing to provide Mr Crutchley with a commission on the terms of the deed if customers purchase services from Ice Telecommunications. The commission was to be paid over a three year period from the date of the commencement. It is clear that the contract of employment and the deed of introduction sale of goodwill are completely separate agreements. Neither document refers to the other or is qualified by the other in anyway.
8. Section 230(3) Employment Rights Act 1996 gives the definition of a worker.

In this act worker means an individual who has entered or worked under

(a) a contract of employment or

(B) any other contract where the express or implied and (if it is express) whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer or any profession or business undertaking carried on by the individual and any reference to a workers contract shall be construed accordingly.

9. The deed is not a contract of employment. The commission arrangement was in place at the time the deed was signed. The prospective customer was a person or business entity on the customer list. Under S.230(3)(b) it is difficult to see how the claimant was performing personally any work or service given the commission arrangement was already in place. For the purpose of the deed of introduction the claimant does not meet the criteria for worker under the Employment Rights act 1996. Therefore his claim does not come under the ambit of S.13(1) of the act.
10. Wages are defined in S.27(1) of the Employment Rights Act 1996 as “any sums payable to the worker in connection with his employment”
11. Under the terms of the contract of employment the claimant is an employee. However the commission is established in the deed of introduction sale of goodwill. In my view the commission is not wages for the purposes of the definition at S.27(1) as it is not earned in the course of

his employment or under the subsisting contract of employment. At the point of termination of the deed and the contract there was no definitive sum attributable to the commission.

12. The performance of the duties under the contract have nothing to do with the commission payable under the deed. The commission was still payable as part of the deed even if the claimant failed to take his employment under the contract. Therefore the commission payable in the deed cannot be said to be wages as defined by S.27(1).
13. Consequently, the claim for commission is dismissed as the tribunal has no jurisdiction to hear it.

Employment Judge Employment Judge Steward

Date 7th September 2021