



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr R Lartey

Advanced Business Software & Solutions
Limited

HELD AT Birmingham by CVP

ON 22nd February 2021

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: No appearance

JUDGMENT

The claimant's claim for breach of contract is well founded and succeeds. The respondent is ordered to pay the claimant the sum of £400 gross in respect of his bonus for the financial year April 2019 to March 2020.

REASONS

Background

1. By a claim form presented to the Tribunal on 9th November 2020 the claimant brought a claim for breach of contract in respect of a bonus payable for the financial year April 2019 to March 2020 which should have been paid to him in March/April 2020 but which was delayed as a result of the global COVID-19 pandemic .
2. The respondent is an information technology consultancy.

3. The respondent is did not file a Response to the claim. As such, the respondent was advised by the Tribunal that it would only be allowed to participate in the hearing today to the extent permitted by the Employment Judge. In the event, no appearance was made by the respondent.
4. The “Code V” in the heading indicates that this has been a remote hearing which has not been objected to by the parties. The form of remote hearing was via CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Evidence and document

5. I heard evidence from the claimant.
6. The claimant also presented a bundle of some 34 pages.

Issues

7. The issue for the Tribunal to consider was is the claimant entitled to a bonus payment in respect of the financial year 2019/2020?

Facts

8. I make the following findings of fact :
9. The claimant commenced his employment with the Respondent on 28th August 2018. He was employed as a Service Desk Analyst.
10. The claimant read out to me clause 6 of his contract of employment with the respondent which states:

“You may from time to time, at the discretion of the Company, be entitled to participate in a Company and/or personal performance related bonus scheme. Bonus payments are entirely at the Company’s discretion and any scheme in which you are invited to participate will be notified to you separately.

You will be enrolled in the Company bonus scheme. This is a discretionary scheme and the Company reserves the right to amend or withdraw any part of this plan with appropriate notice. Bonus rules are in place and these will be detailed in a separate bonus letter which will be sent to you”.

11. The claimant does not recall whether a separate bonus letter was sent to him.

12. In 2019 the claimant received a bonus payment of £400 for the financial year 2018 to 2019. The claimant states that the bonus for the financial year 2019 to 2020 is also £400.

13. On 28th May 2020 the respondent sent an internal communications to all staff members relating to coronavirus which included an update on Reward and Recognitions. In respect of the Annual Bonus the internal communications stated:

“Annual bonus

We will soon be able to make a positive announcement regarding your bonus payments. However, we want to have more confidence in our half year position before we make that commitment to you. What that means is that right now there is nervousness around the impact of the virus on our business during quarter one and how that will translate in our revenues in quarter two and, in turn, impact our cashflow which is essential to us remaining stable.

We anticipate being able to share a more solid plan with you at the end of June”.

14. On 11th June 2020 the respondent sent a further internal communications to all staff members which included an update on Reward and Recognitions. In respect of the Annual Bonus the internal communications stated:

“Annual bonus payments

As mentioned in previous briefings, we have deferred our annual bonus payments. This was one of the first mitigation measures we put in place to protect the cash flow of our business. Bonus payments relating to last year’s performance are not considered discretionary as they have already been earned. In the early part of our second half-year, our cash position is expected to stabilise and, therefore, we will be in a position to confirm the payroll date for bonus pay”

15. On 13th August 2020 the respondent sent a further internal communications to all staff members which once again included an update on the bonus. The communications stated:

“FY20

The bonus payments due to be made for last year were held back over concerns about the impact of the coronavirus on our cash flow. We will be making bonus payments to staff for FY20 and the payment date will be confirmed in the September Business Briefing. For those impacted by redundancy, they will receive their FY20 bonus as a part of their final settlement if confirmed as redundant”.

16. The claimant employed terminated on 31st August 2020.
17. The claimant asserts that he was informed by HR that he was ineligible for a payment as he was leaving the respondent's employ before the date of payment of the bonus.

Applicable law

18. Article 3 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, SI 1994/1623 provides:

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or a sum due, in respect of personal injury) if –

- (a) the claim is one to which section 13(1) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force would have jurisdiction to hear and determine;*
- (b) the claim is not one to which article 5 applies;*
- (c) the claim arises or is outstanding on the termination of the employee's employment.”*

19. The exclusions set out in article 5 are not applicable to these circumstances. As such, I am satisfied that the Tribunal has jurisdiction to hear the claimant's claim.
20. The maximum amount of damages that may be awarded under the Order is £25,000.

Submissions

21. The claimant asserts that by reason of the communication sent to him on 11th June 2020 the bonus for the financial year 2019/2020 has ceased to be discretionary and is contractual as it relates to past performance and has therefore already been earned.

Conclusions

22. In reaching my conclusions I have considered all the evidence I have heard and considered documents to which I have been referred. I have also considered the oral submissions made by the claimant.
23. I am satisfied from the evidence before me and, in particular, the communication issued by the respondent on 11th June 2020 that the claimant has a contractual entitlement to receive a bonus payment in

respect of the financial year 2020 as such bonus relates to the claimant's performance in 2019 which has already been earned. I have seen no evidence to suggest (nor does the 11th June 2020 communication made this clear) that in order to be eligible for such payment an employee must be in the respondent's employment as at the payment date.

24. As such the claimant's claim for breach of contract succeeds and the respondent is ordered to pay the claimant a bonus payment of £400 gross for the financial year 2019/2020.

Employment Judge Choudry
22 February 2021