



EMPLOYMENT TRIBUNALS

Claimant: Mr Christopher Heapy

Respondent: Verisure Service UK Limited

Heard at: Leeds

On: 24 March 2022

Before: Employment Judge Jones

REPRESENTATION:

Claimant: In person (accompanied by his father)

Respondent: Miss R Owusu-Agyei, Counsel

JUDGMENT having been sent to the parties on 28 March 2022 and written reasons having been requested by the claimant on 17 March 2022, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

Introduction

1. This is a claim by the claimant for unauthorised deductions from wages and/or damages for breach of contract as against his former employer, Verisure Services UK Limited.
2. The claim concerns a sum the claimant says was owing by way of basic pay for each month of his employment. The claimant was employed from 4 May 2021 until 1 October 2021 as a security consultant.

Evidence and Witnesses

3. I have heard evidence from the claimant and also from Mr Wayne Cosway, who is the Branch Manager for Leeds and Hull of the respondent.

The Facts

4. The claimant saw an advert for the post which included a paragraph, "*In addition to a basic salary and uncapped commission the sales Executive will receive a favourable benefits package including a company car with fuel...*".

5. The claimant attended a job interview in mid-April with Mr Cosway. There was a discussion about the company, the sales targets and rewards each month. This included reference to a publication which I have seen in respect of remuneration. It does not assist with the difficulty which I have to resolve in this case.

6. The claimant attended for training on the first day of his employment, on 4 May 2021. He and four others, who were described as “newbies”, were inducted by Mr Lodge. Mr Lodge informed them during that training that nobody received basic pay plus commission. He illustrated how the remuneration structure would work. In cross examination the claimant put it in this way: “*He said that he was told that if he had earned £2,000 commission under the commission scheme he would just be paid the £2,000 not the £1,351 which would disappear. He would not receive £3,351*”. In his witness statement the claimant said that this was news to him because he had understood the position to be that he would receive commission on top of that basic pay. He queried the matter later with Mr Cosway, who confirmed what Mr Lodge had said. He said it was brushed aside.

7. The claimant commenced his employment and his pay was calculated by reference to what Mr Lodge had said, and I have seen calculations on commission sheets which express the remuneration in that way.

8. The claimant’s payslips, on the other hand, are (to say the least) confusing. The example which I was taken to in the evidence was that of 4 August 2021. It included a sum for basic pay, £1,351, and then it included all the different commission and bonus payments but deducted what it described as a “threshold target”; that threshold target was the same sum as the basic pay, £1,351. It left a balance of £3,435.

9. In the document in the bundle in which the commission is calculated for that month, the computation is made by way of the total amount generated by way of commission which was £3,435. It has written beneath it “*minimum guaranteed payment*” of £1,351 which is deducted to leave commission of £2,083.65. The way in which that is set out is different to the payslip. From the payslip it looks as though there has been a deliberate deduction of the basic pay.

The Law

10. This is a claim brought by way of a complaint for unauthorised deductions under section 23 and 13 of the Employment Rights Act 1996. Section 13 provides:

“An employer shall not make a deduction from the wages of a worker employed by him unless the deduction is required or authorised to be made by way of a statutory provision or relevant provision of the worker’s contract, or the worker has previously signed in writing his agreement or consent to the making of the deduction.”

11. Section 13(3) provides:

“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 purpose of this part as a deduction made by the employer from the worker’s wages on that occasion.”

12. In respect of breach of contract, the question is whether the respondent is in breach of a contractual term, and in order to determine whether the respondent is in breach of a contractual term it is necessary for the Tribunal to construe and give effect to the terms of the contract which were entered into by the parties.

13. In construing the terms of a contract, the Tribunal or court must determine what was the objective intention of the parties when they entered into that contract. A critical part of that will usually be the document which is stated to encapsulate the terms of the contract, the written terms, but it is not necessarily the case that the written terms will reflect the objective intention of the parties. It may be necessary for the Tribunal to consider whether there is other evidence by way of discussions or other documentation which may inform it as to what the true intentions of the parties were if they were not accurately reflected in the written document expressed as the terms and conditions.

Analysis of the facts as against the law

14. I deal firstly with a submission of counsel for the respondent as to how I should approach this case because of an expression in the terms and conditions that commission was non contractual.

15. The parties entered into a written agreement on 21 April 2021, paragraph 6 of which provides, under the heading "*Fixed Salary (Basic Salary)*":

"The employee shall be paid a gross base salary set out in schedule 1 which shall accrue from day-to-day and be payable monthly between the first and the fifth day of each month directly into the employee's bank or building society account."

16. Paragraph 7 provides:

"Variable Salary (Commissions)

7.1 In addition to a base salary the employee will be paid on a commissions basis as set out in the company's commission scheme as amended from time to time."

17. Paragraph 7.2 provides:

"Commission is non contractual and the current commission scheme may be amended or withdrawn at any time as noted by the company."

18. It is agreed that schedule 1 includes the basic salary of £16,216.20 annually or £1,351.53 per month.

19. Counsel for the respondent submitted that the words "non contractual" had the effect of meaning that the commission scheme and payment under it were not enforceable in the sense that the contract only entitled the claimant in law to his basic salary.

20. I do not construe the contract in that way. I look at all the circumstances when I have to determine the objective intention of the parties, which includes the materials the respondent produced as well as the written terms and conditions. I have already

referred to the advert to which the claimant applied which refers to a basic salary and uncapped commission. In addition there are the documentary brochures provided by the respondent summarising in pictorial form and associated narrative a high salary with uncapped commissions *“to earn as much as I want”*.

21. In addition, I have regard to what Mr Lodge said at the training day and what Mr Cosway said in the introductory meeting. I have no doubt from all of the evidence that it was understood that this remuneration would not only be of a basic salary but also with commission. I read the words at 7.2 against that context. What they mean is that the commission is not guaranteed. The scheme under which commission is paid may be amended or withdrawn, but reading that sentence as a whole it means that as long as the scheme is in existence and an employee has worked in reliance upon the terms of the scheme as explained to him, he is entitled to enforce that scheme and be paid in accordance with it. I do not accept the submission that as it was non contractual the commission was not due under the contract and that the claimant’s legal or contractual entitlement was restricted to his basic salary.

22. Has there been an unauthorised deduction from wage? To answer that question I must determine what was properly payable. I do not consider myself assisted by scrutinising the wage slip and the deduction of a sum called ‘threshold’. Section 13(3) specifically includes the assessment after deductions so in order to decide what was properly payable I have to return to the question as to what were the terms of this contract. What was the objective intention of the parties?

23. I am satisfied that the words of section 6 and section 7 of the contract mean that in addition to a base salary the employee would be paid on a commissions basis as set out in the company’s commission scheme as amended from time to time. That does not state that the claimant would always receive in excess of his basic salary all commission earned. The contract expressly connects remuneration to the commission scheme. To understand what the entitlement was requires a determination of how that was expressed in the commission scheme in operation at the time.

24. The document headed *“Commission Scheme for Newbie”* applied to new employees. Although there were two sequential schemes which applied to the claimant, that is not material for the purpose of this decision. This scheme sets out, under a pictorial example, the rate of each bonus per sale (of which there are a variety), and at the top of the scheme is a heading *“Guaranteed salary and additional benefits – Min guaranteed £1,351.35”*, to which there is attached an asterisk which refers to that being in the first four months of employment. That is of limited assistance.

25. In contrast, a slide which I was told the claimant was shown at an induction day, although he did not recall seeing it, stated:

“Your commission and bonuses are generated from your sales and performance. Once the generated commission and bonus total overtakes the guaranteed salary then you begin to earn on top of your salary and the sky is the limit.”

26. I also have regard to the document to which I have referred in which the claimant's monthly commissions were calculated, which included reference to the total commission generated deducted the basic salary sum, leaving total commission owing as the net figure of the total generated less the basic pay.

27. When the claimant signed the contract he did not know the terms of the commission scheme. He had not seen them in writing. The advert and the publications did nothing more than say he would be entitled to a basic salary and commission. They did not inform the claimant the basis upon which that commission would be calculated.

28. I find the scheme gave the entitlement to commission as stated by the respondent. I reach that view because of the slide, which I am satisfied was shown to the claimant on the induction day and made it clear that commissions would only begin to be paid once they exceeded the basic pay, and the explanation and example given by Mr Lodge at the induction. The claimant has given evidence, very frankly, about what Mr Lodge told him, and when he queried it with the company he was told that this was correct.

29. These were not mutually exclusive sums. The respondent was entitled under the contract to create a commission scheme which began at a given trigger point and provided entitled to only such amounts as then exceeded it. In this case the trigger point was when commissions exceeded basic salary. It is of course possible that the respondent could have had a different commission scheme without a trigger point but with bonuses of a lower sum with the consequence that the overall level of remuneration might have been lower. The terms of the contract enabled the scheme to be amended or withdrawn.

30. The claimant's case rests upon an interpretation of the commission scheme which he cannot establish. There is nothing I have seen to suggest the respondent had not expressed commission entitlement as such sums generated above the level of basic salary. There is no documentation or discussion which can be identified which states all commission raised and basic salary were to be aggregated.

31. In those circumstances I construe the contract as entitling the claimant to only such sums in commission as exceeded his basic pay and I am satisfied he has been paid in accordance with the terms of the contract. In those circumstances I dismiss the claims for breach of contract because he was paid in accordance with its terms. I dismiss the claim for unauthorised deductions from wages because he received the sums properly payable.

32. In preparing these reasons, it was noticed that the Judgment sent to the parties referred to a preliminary hearing. It was a final hearing. Nothing turns upon this, but if either party wishes the Tribunal to issue a certificate of correction, a Judgment without that reference shall be issued.

Employment Judge D N Jones

Date: 11 April 2022