



EMPLOYMENT TRIBUNALS

Claimant

Mr M Kidd

v

Respondent

Univar Europe Limited

Heard at: Sheffield (by CVP)

On: 31 August 2022

Before: Employment Judge A James

Representation

For the Claimant: In person

For the Respondent: Mr Paul Welton, lay representative

JUDGMENT

- (1) The respondent made an unauthorised deduction from the claimant's wages on 25 April 2022 of £559.76.
- (2) The respondent is ordered to pay £559.76 to the claimant.

REASONS

The issues

1. The sole issue before the Tribunal is whether the respondent was entitled to deduct the bonus of £559.76, which it had paid to the claimant on 25 March 2022, from the claimant's final salary on 25 April 2022? If not, the claimant is entitled to be (re)paid that amount.

The proceedings

2. The claim form was issued on 14 June 2022, following a period of Acas early conciliation between 7 and 19 May 2022.
3. The response form was submitted on 12 July 2022. This hearing was listed. An agreed bundle of relevant documents was helpfully prepared by the parties, consisting of 32 pages.
4. At the outset of the hearing, the claimant accepted that the correct name of the respondent is that set out in the heading above, Univar Europe Limited. The

following facts were agreed with the parties at the beginning of the hearing. Live witness evidence was not required.

Findings of fact

5. The claimant was employed by the respondent between 23 July 2018 and 22 April 2022 as an MDM EMEA Data Steward.

6. The claimant's contract of employment states at Clause 5.2:

The company may at any time deduct any sums which you owe to the company from your salary or from any other payments due to be made to you by the company. Such deductions include but are not limited to, any overpayments, loans or advances made to you by the company.

7. The terms also state at Clause 7.1:

During your employment the company may in its absolute discretion decide to pay you, in addition to the salary, bonuses of such amounts (if any) at such times subject to such conditions as the company may in its sole discretion decide. For the avoidance of doubt it is agreed that you shall have no contractual right to a bonus payment under this clause.

8. The 2021 bonus scheme was announced on 19 May 2021. The bonus scheme rules state:

- *Any bonus payment will be made in March 2022. Regular updates will be communicated showing how our performance has had an effect on our cumulative results.*
- *The employee must be employed as at March 2022 and not have submitted his/her resignation. Consideration will be given to retirees and redundancies leaving the business between January 2022 and March 2022.*

9. On 25 March 2022, the respondent paid to the claimant the bonus sum of £559.76, for his performance in 2021. The payment was made as part of the claimant's wage for that month.

10. The claimant handed in his notice on 28 March 2022, after the March wage had been paid to him. The respondent subsequently deducted the same amount from the claimant's final wage on 25 April 2022.

Relevant Law and Conclusion on the Issue

11. Section 13 of the Employment Rights Act 1996 gives workers the right not to have deductions made from their wages, unless the deduction is authorised by, amongst other things, a term of their contract. In this case I am satisfied that the deduction was not authorised.

12. Bullet point 2 of the Bonus Scheme Rules 2021 confirms that the bonus payment 'will be made in March'. It was indeed paid, on 25 March 2022, in the usual pay run, as part of the claimant's wage for that month.

13. The crucial question for this Tribunal, is what do the words 'as at March 2022' mean in the third bullet point? Those words do not, in the Tribunal's judgment, have the same meaning as words such as 'during March'; or 'for the whole of March'; or the words 'in March' (compare bullet point 2). Normally, when the

words 'as at' are used, a specific date is given, eg, 'as at 1 March 2022'; or 'as at 31 March 2022'.

14. In the Tribunal's judgment, the words 'as at March 2022' are not the same as, and nor do they have the same meaning as 'during the whole of March 2022'. At best, the words used are ambiguous. Given that ambiguity, an employee would, in the Tribunal's judgment, reasonably understand those words to mean that, after payment of the bonus, they could hand in their resignation at any time - even in March. It would have been simple for the respondent to put the matter beyond doubt by stating, e.g. 'as at 31 March 2022'; and adding at the end of the first sentence of bullet point three the words, 'before that date'.
15. Given the ambiguity, and applying the *contra preferentum* rule, the ambiguity should be resolved in the claimant's favour. 'As at March' meant 'the beginning of March'. The respondent was not therefore entitled to deduct the payment of the bonus made to the claimant on 25 March 2022 from his final salary in April 2022.
16. Alternatively, it was an implied term of the Bonus Scheme Rules that the employee was not to have submitted his/her resignation by the time the bonus was paid. The claimant had not and was therefore entitled to the bonus. Once paid, it could not be recovered, whether from the claimant's wages or at all, since it was not a sum owed to the respondent.
17. On either interpretation, there was an unauthorised deduction of £559.76 and the respondent is ordered to pay to the claimant the sum of £559.76.

Employment Judge A James
North East Region

Dated: 31 August 2022

Sent to the parties on:

2 September 2022

For the Tribunals Office

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