



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Sampaio

**Respondents:** Marvin Architectural UK Ltd

**Heard at:** Watford (via Cloud Video Platform)

**On:** 3 October 2022

**Before:** Employment Judge Caiden

## Representation

Claimant: In person

Respondent: No appearance

# JUDGMENT

1. As no response to the Claimant has been received, in time or otherwise, judgment is issued against the Respondent under Rule 21. The Claimant's claims of failure to pay outstanding declared bonus (unlawful deduction of wages or breach of contract), outstanding holiday pay upon termination, and non-payment of final salary succeed.
2. The Claimant is awarded the sum of £3,449.35 (net) for the unlawful deduction of wages in not paying his final salary payment and this sum includes the outstanding holiday pay upon termination, salary and car allowance.
3. The Claimant is awarded the sum of £10,000 (gross) for the failure to pay the balance of the outstanding bonus money owed. As this sum is gross, the Claimant is responsible for any income tax or employee national insurance contributions which may become due.

## CVP hearing

The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46.

The parties were able to hear what the Tribunal heard and see the witnesses as seen by the Tribunal. The participants were told that it was an offence to record the proceedings.

The Tribunal was satisfied that none of the witnesses from whom evidence was heard was being coached or assisted by any unseen third party while giving their evidence.

# REASONS

## A) Introduction

1. By an ET1 presented on 18 February 2022, the Claimant claimed against the Respondent that he:
  - 1.1. had not received the balance of outstanding bonus pay money, two agreed instalments not having been paid (a claim of unlawful deduction of wages or breach of contract);
  - 1.2. had not received his final salary (a claim of unlawful deduction of wages);
  - 1.3. holiday pay (a claim for payment in lieu of outstanding holiday).
2. The ET1 also suggested that there was financial hardship caused by the non-payment. At the commencement of the hearing the Claimant confirmed with the Tribunal that he did not have any evidence for these sums to hand and that he was not pursuing any such amounts from the Tribunal. He was only seeking the sums owed for the three matters set out above.
3. The Respondent never provided any response. On 3 July 2022, the Respondent was provided with a "No Response Received" notice which stated that "*judgment may now be issued*" owing to the lack of response. Despite this no correspondence or response was received from the Respondent. Moreover, the Respondent who was provided notice of today's hearing did not attend.
4. At the commencement of the hearing, the Tribunal confirmed that it had received some documents from the Claimant but that there were likely to be further areas that needed clarification (one such area was the final payslip which the Claimant was able to provide by way of emailed documentation). The Claimant took an affirmation, and the Tribunal was satisfied that the answers given to its enquiries were truthful.
5. The Tribunal explained to the Claimant that the Respondent had a right to receive the judgment and the reasons.

## B) Findings of fact

6. The Claimant commenced employment with the Respondent on the 1 January 2018 and gave notice to terminate on 24 January 2022. He worked this period of notice.
7. Throughout the Claimant's employment he was a Regional Sales Manager.
8. The Respondent operated a bonus scheme, and an email of 3 June 2019 from Jerry Xuereb (Sales Manager) set out that if £750,000 sales had been achieved a bonus of £15,000 was payable "*to be paid in equal instalments over Four months (Feb-May) following year end and subject to continued employment*". The Claimant made hit this target and so in 2020 expected to receive £15,000.

9. In February 2020 and March 2020, the Claimant received £2,500 each month for his bonus. The Tribunal enquired why it was £2,500 as that was less than £15,000. The Claimant explained that some of it may be tax but he was expecting more and although it was stated as being 'equal' instalments he was led to believe greater amounts would be paid in the next two months. The Tribunal accepts this evidence and finds that greater sums would be paid and that the bonus payment would be subject to taxation.
10. The Covid-19 pandemic led to the workforce being furloughed and an agreement to delay bonus payments until return. However, upon return the Claimant was not paid the sums and chased for this. This situation remained until he left employment. The Tribunal find that the sums of £10,000 gross, subject to tax and national insurance, is outstanding.
11. At the end of his employment, the Claimant received a final payslip that stated a net pay of "3,449.35". This included sums for "A Leave Accrued", "Salary", and "Car Allowance" and made deduction for tax and national insurance. Notwithstanding a payslip, the Claimant never received these sums in his bank account. In his ET1 he stated "*On the 28 January 2022, I received my final payslip which included my holiday pay. The company accountant, Mandeep Kaur, informed me that I would be paid however to date, I have not received my final salary or holiday pay*".
12. The Claimant confirmed to the Tribunal he had never been paid during his evidence and also that the sums set out in the payslip were what he said he was owed, he accepted the holiday pay, salary and car allowance as all being correct. The Tribunal finds that the Claimant has not been paid the £3,449.35 that he should have been and that this includes the holiday payment of £1,307.69 (gross).

**B) Conclusions and analysis**

13. Given the above, the Claimant is owed £10,000 gross for the outstanding balance of the bonus payment (this being £15,000 minus the received £5,000). However, as that sum is gross, the Claimant is responsible for any income tax or employee national insurance contributions which may become due.
14. Equally, given the above, the Claimant is owed the sum of £3,449.35 net which is the money set out in his final salary payslip. This includes, as set out above, the outstanding holiday pay accrued but untaken at the time of termination.

Employment Judge Caiden  
3 October 2022

JUDGMENT AND REASONS

17/10/2022

SENT TO PARTIES ON.....

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