



# EMPLOYMENT TRIBUNALS

**Claimant: Mr Michael Livesey**

**Respondent: Heaton Park Garage Limited**

**Heard at: Manchester (by CVP)**

**On: 14<sup>th</sup> March 2023**

**Before: Employment Judge Cline (sitting alone)**

## **Representation**

Claimant: Did not attend

Respondent: Mr Scott Wilkinson (operations manager)

# JUDGMENT

1. The Claimant's claim for unlawful deduction of wages by way of an unpaid bonus is not well-founded and is dismissed.

# REASONS

1. This matter was listed for a one-day hearing by video to determine the Claimant's claim for unlawful deduction of wages by way of an unpaid bonus, which the Claimant's ET1 claim form put at £1,000. The Claimant's initial claim for unfair dismissal had been struck out previously by Employment Judge McDonald (by way of his order dated 27<sup>th</sup> January 2023) in light of the Claimant not having the 2 years' service ordinarily required to bring such a claim and failing to set out any reason whereby the claim should be permitted to continue nonetheless.
2. The Respondent's representative and sole witness, Mr Wilkinson, joined the

10:00am hearing promptly but the Claimant had not connected by 10:15am. He had emailed the Tribunal at approximately 8:40pm the evening prior to the hearing, saying that he could not find the link for the hearing. I was told that the link was sent to him again at the email address used to send that message. Between 10:00am and 11:00am, the Claimant was sent further emails and was called on the telephone number held on record (which simply went to voicemail and a message was left accordingly); he did not respond to either. In the circumstances, I decided that it was in the interests of justice and was proportionate to proceed in the Claimant's absence. I reminded myself that, if there had been a good reason for the Claimant's non-attendance, he would be at liberty to ask for the matter to be re-considered.

3. By way of brief summary, the Claimant's claim arose from an advertisement for a technician role with the Respondent for which he applied successfully and commenced on 28<sup>th</sup> March 2022. He resigned from that position by way of a letter dated 29<sup>th</sup> July 2022 (4 months later), giving one week's notice. The advertisement stated that a signing-on bonus of £1,000 would be payable after 3 months' employment.
4. In reaching my decision, I considered the ET1 claim form, the ET3 response and grounds of response, Mr Wilkinson's witness statement dated 15<sup>th</sup> February 2023, a copy of the Claimant's contract of employment (signed in the Claimant's name) and a copy of his resignation letter of 29<sup>th</sup> July 2022. All of this documentation, aside of course from the ET1, had been provided by the Respondent and the Claimant had not provided a witness statement or any documentation of his own beyond the ET1 itself.
5. The Respondent's position, as set out in the grounds of response, was twofold. First, they accepted that the advertisement suggesting a signing-on bonus after 3 months had been published in error and should have said 6 months. In this regard, it was emphasised that, in his contract, the Claimant was given a probationary period of 6 months and, as such, it would be counter-intuitive for a signing-on bonus to be paid within a shorter period. Second, even if the Respondent were found to be bound by the incorrect advertisement, the Claimant's contract of employment required, at

paragraph 14.1, that he must give one month's notice to terminate his employment. At paragraph 14.3, the contract stated that an "[u]nreasonable failure to provide or work [his] notice period may result in [the Respondent] exercising [their] discretion to withhold any bonus or commission due". Having provided only one week's notice instead of 4, the Respondent asserted, the Claimant was in breach of his contract of employment and, as a result, the Respondent was entitled to withhold any bonus that may have been due to him in any event.

6. Mr Wilkinson confirmed, having taken the affirmation, that the Respondent's position was as set out above. He also confirmed that the Claimant's last day of work had indeed been 5<sup>th</sup> August 2022, as set out in his resignation letter giving one week's notice.
  
7. In light of the above, I considered that it was not necessary to make any findings in respect of the binding nature or otherwise of the 3-month bonus offered in the advertisement. This was because I found there to be significant force in the second argument put forward by the Respondent. It was difficult to conceive of any argument that could be put forward by the Claimant to counter this position and, in the absence of any evidence or documentation having been provided by him in advance of the hearing, I determined that it was appropriate in all the circumstances to dismiss the claim.

Employment Judge **Cline**

Date: 14 March 2023

16 March 2023

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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