



EMPLOYMENT TRIBUNALS

Claimant: Mr P Hosch

Respondent: Logicdialog Ltd

Heard at: At Cardiff by CVP

On: 20 April 2023

Before: Judge MM Thomas

Representation

Claimant: Mr M Raffell, Legal Litigator

Respondent: Mr R Jones, Solicitor

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim of breach of contract, or in the alternative, unlawful deduction from wages, is dismissed.
2. The Respondent made an unauthorised deduction from wages by its failure to pay the Claimant in lieu of accrued but untaken holiday leave on termination of employment. The Respondent is ordered to pay to the Claimant the sum of £483.08 being the gross sum due representing one day of holiday leave.

Order

3. Pursuant to Rule 34 of the Employment Tribunal Rules 2013 the Respondent's name is substituted to Logicdialog Ltd.

REASONS

Issues

1. The issues for the Tribunal to determine where whether on the termination of the Claimant's employment
 - (i) he was entitled to a commission payment of £22,401.60 for the month of November

2021;

(ii) as to whether the revenue from the sales made by the CEO, Mr Shepherd, were included within the revenue from sales made by the sales team, for the payment of commission in the Respondent's financial year from September 2021 to end of August 2022 ('FY22'); and

(iii) if he was entitled to outstanding holiday pay amounting to £912.70.

2. I would remind the parties that this document is a record of the decision of the Tribunal, not a record of proceedings.
3. At the end of the hearing, I reserved my decision.

Documents and Witnesses

4. The hearing was by video link, all parties and their representatives attended remotely.
5. A bundle of documents had been provided which ran to 210 pages ('the bundle'). The latter part of the bundle from pages 203 to 210 included documents which had been added to the bundle the day before the hearing however, at the outset, when explored, Mr Jones confirmed that there was no objection from the Respondent with their inclusion.
6. The Tribunal heard oral evidence from the Claimant and one witness on behalf of the Respondent, namely, Mr Paul Shepherd, the CEO of the Respondent. Both witnesses affirmed and adopted the contents of their witness statements as their evidence in chief. The Claimant's statement was undated and ran to 133 paragraphs. Mr Shepherd's statement was dated 17 April 2023 and ran to 70 paragraphs. Both amplified upon their contents in oral evidence.
7. In regard to the bundle and the documents therein, it was requested for me to read as pre-reading in particular, the documents referenced in both witnesses' statements. Other than those documents I was not specifically directed to any other documents for pre- reading.
8. I took time to explain to the parties the format that would be adopted for the hearing. I explained to the Claimant that the burden of proof was upon him to prove his claim to the requisite standard of proof which was, the balance of probabilities, that is, '*more likely than not*', as such, his evidence would be first.

Background

Agreed facts

9. I do not propose to set out in full both parties' accounts as this can be found in the witness statements of both the Claimant and Mr Shepherd. Any further evidence has been fully noted in the record of proceedings.

10. The Respondent is a company which creates chats and voice bots.
11. The Claimant was employed by the Respondent from 20 July 2020 in the role of Chief Commercial Officer (page 47). In that role he was responsible for product strategy and the commercial sales of the Respondent. When he started working for the Respondent he received a contract of employment, signed by him on the 24 May 2020 and by Mr Shepherd, 29 May 2020 (pages 46 -55).
12. Under the terms of the written contract of employment the Claimant's On Target Earnings ('OTE') were £220,000 per annum which consisted of a base salary of £110,000, earned uncapped commission of £55,000 per annum, and £55,000 per annum in earned bonus. The terms for the payment of commission and bonus were:

'We have agreed the following commission and bonus structure;

Uncapped on target commission - tied to company revenue with monthly 3x accelerators. Paid monthly in arrears, only if a minimum of 50% of monthly target is hit. Accelerators are triggered if more than 100% of target is hit.

Bonus - tied to goals agreed quarterly between you and The Company. Example of such goals include but aren't limited to establishing the partner network, frameworks, enabling partners and working with product teams on creating a platform that helps to sell and deliver through partners. Paid quarterly on the last Friday of the month following quarter end.'
13. In August 2021 it was agreed by the parties that the terms for the payment of commission would be reviewed. As such, those terms were revisited and the new and/or varied terms were set out in an email drafted and sent by the Claimant to Mr Shepherd dated 10 September 2021 ('September email') in which was referenced, and annexed, two spreadsheets setting out the '*Commission Plans*'. One spreadsheet was the '*Commission Plan*' for direct sales and the other the '*Commission Plan*' for partner sales ('*Commission Plans*'- pages 74-77).
14. On the 4 November 2021, the Claimant was served with notice of termination providing for three months' notice.
15. In an e-mail dated 3 December 2021 sent to Mr Shepherd, the Claimant set out details of the commission payment due to him arising as a result of the November 2021 sales' target being met, and outlining an estimate of the commission that would be payable as a result of both direct and partner sales' targets being met for the months of December 2021 and January 2022 (page 92).
16. In an e-mail dated 16 December 2021 sent to the Claimant from Mr Shepherd, the Claimant was advised that his employment would terminate on Thursday 16 December

2021 and that he would be paid monies in lieu of notice. Further it stated that the claimed commission for November 2021 was disputed and the reasons as to why. In addition, it stated that no commission payments would be due for the months of December 2021 or January 2022 (pages 92 and 93).

The Claimant's evidence

17. At hearing, the contracts/income that had been achieved or was projected by the Respondent was in general referred to as 'sales' made/ secured / obtained and as such I retain that label for consistency in language when referring to any of the former.
18. The Claimant states that under the commission terms agreed that on termination there was commission due to him as a result of four sales invoiced in November 2021. His evidence was that when sales were invoiced, commission became payable on the next pay date, which was the 17 December 2021.
19. The four contracts referenced were Together Energy, Bristol Energy, Pembrokeshire County Council and Bridgend County Council. The commission payable was calculated on the basis of the Respondent's total revenue from sales, in short, commission was not calculated on the basis of the revenue arising from an individual's or the sales teams' sales, but the total sales of the Company. As such, that included the sales made by Mr Shepherd.
20. The contracts for Together Energy and Bristol Energy were new customers sales, each with a contractual revenue of £25,000 per annum and as such, a monthly recurring revenue ('MRR') of £2500 per month. The Pembrokeshire County Council and Bridgend County Council sales were both renewal contracts with an MRR increase of £915.67 on the former, and £9 on the latter.
21. In relation to the commission payable calculated at £22,401.60, I was referred to the spreadsheet setting out those calculations at pages 190 and 191 of the bundle. In short, on the basis that the MRR for November 2021 was £3288.37, and the actual MRR increase was £5922.67, the Claimant contended that the '*% of targets achieved*' was therefore 257.30% above target. As a result, first, there was payable the commission due on reaching target, and secondly, on the basis of the three-time multiplier accelerator applied when the target was superseded. As such, commission due for reaching target was £3,917.06, and for '*over target*' £18,484.54, in total £22,401.60.
22. In regard to the calculation of commission, the Claimant's evidence was that commission was not calculated on the basis of the month on month ('MoM') cumulative figure but on the basis of the commission earned for the given month. In short, commission was calculated on the basis of the revenue from the Respondent's sales meeting the '*Monthly MRR Increase Goal*' for the specific month, in this case, November 2021. As such, each month's sales were considered in isolation, and commission paid

on the basis that the commission target was met for that month irrespective of whether the '*Monthly MRR Increase Goal*' had been met in the previous months, that was the September and October 2021 goals, or the month's baseline target having been met. The Claimant stated that in the time that he was employed he received one commission payment and that was in December 2020.

23. The Claimant's evidence was that every team member had different commission goals. He identified the sales team to be himself, Mr Shepherd, James Hay and Chris Graves. Further, that when the terms of commission were revisited in August 2021 the '*same framework applied just the goals changed*'. When asked as to why the baseline figure changed every month if commission was not paid on a MoM cumulative basis, he stated that the baseline figure was no more than the '*headline figure in revenue*', and that there were different goals every month. In short, it was the '*goal*' figure that was important '*even if no revenue, if hit target, revenue is due, in practice commission numbers would be adjusted but there was no review between September and November of the numbers*'. Further, that the '*headline targets*', were the Respondent's targets, and not the Claimant's '*personal targets*'.
24. In regard to the outstanding holiday pay, it related to one day of pay. The Claimant took five days' leave to go on holiday. His evidence was that in the course of the holiday he was disturbed on matters relating to the Company that had to be addressed and as such, he was entitled to be paid in respect of the day he had to work.

The Respondent's evidence

25. Mr Shepherd stated that no commission was payable.
26. The Respondent asserted that the commission for November was subject to in the first instance, the Claimant meeting the '*Monthly MRR increase goal*' for also the previous months. In short, in the discussions in August 2021, prior to what was set out in the September email, it had been agreed that the commission structure from September 2021 would be based upon a MoM growth target of 12.5% against which commission would be calculated with the aim to achieve a £1million annual recurring revenue ('ARR') by the end of the financial year. The starting figure as out in the spreadsheet for September 2021, referenced as the '*MRR Month Start*' ('baseline figure'), was, at the time of the September email, £24,105.76, a figure which reflected the Respondent's then revenue/income from existing sales. The Commission Plan was structured on the basis that the Claimant would by revenue from sales achieve a 12.5% growth rate on the baseline figure each month. For September 2021 that 12.5% amounted to a revenue from sales of £3013.22. In short, a revenue of £3013.22 had to be achieved prior to any commission being paid. Thereafter every month, the growth rate for the previous month would be added to that following month's baseline figure. As such, the baseline figure labeled as '*MRR Month Start*' in October with the revenue of £3013.22 increased to £27,118. 98. In October 2021 the '*Monthly MMR Increase Goal*' was £3,389.87, which

then added to the October baseline figure realised a baseline figure or 'MRR Month Start' in November of £30,508.85.

27. The Respondent stated that the Claimant achieved no sales either in September or October 2021 and therefore failed to meet the 'Monthly MMR Increase Goal' for both those months and as such, the baseline figure remained unchanged in November 2021. In short, commission was only payable on the basis of all targets being met, that is, the 'Monthly MMR Increase Goal' and the baseline figure, as such on a MoM cumulative basis not solely on the sales in a singular month.
28. Further, commission was only payable on the sales achieved by the sales team. Although historically, that is until September 2021, commission had been paid on the basis of all sales achieved by the Respondent, which included the sales of Mr Shepherd, those were no longer the terms for its payment. Mr Shepherd's evidence was that that position was made very clear in the August 2021 discussions and was one of the reasons why the terms for the payment of commission were reviewed. Mr Shepherd's evidence was that the Claimant had benefited from commission paid until then from sales made by others. In regard to the commission paid to the Claimant, Mr Shepherd stated that the Claimant had been paid commission on two occasions, first in December 2020, and then in March 2021. The latter payment Mr Shepherd stated was commission paid to the Claimant as a result of sales secured by Mr Shepherd, and the first commission payment had arisen as a result of partner sales. As such, his evidence was that an integral part of the discussions in August 2021 was that commission paid from the September 2021 would only be paid on the basis of sales made by the sales team and would not include any sales made by him.
29. In regard to the holiday pay, it was disputed that money was owing on the basis that the Claimant was on annual leave at the time.

The Law

30. Neither representative referred to any case law albeit Mr Jones in closing made reference to the officious bystander test and the business efficacy test.
31. The officious bystander test derived from **Shirlaw v Southern Foundries (1926) Ltd 1939 2 KB 206, CA**, and affirmed in **Southern Foundries 1926 Ltd v Shirlaw 1940 AC 701** held that a term could be implied in circumstances where *'if while the parties were making their bargain, an officious bystander were to suggest some express provision for it in the agreement, they would testily suppress him with a common "oh, of course"'*. In short, the terms of the agreement were so obvious that it went without saying.
32. In relation to the business efficacy test, it derives from the presumption that the parties to a contract intended by it to create a workable agreement. If, therefore, it is necessary

to imply a term in order to give business efficacy to the contract and make it workable, the courts should be prepared to do so (**Reigate v Union Manufacturing Co (Ramsbottom) Ltd 1918 1 KB 592, CA**). Nevertheless, the test is whether the term is necessary, not simply reasonable, or desirable on the basis that without the term the contract lacks '*commercial or practical coherence*'.

33. In addition, in coming to my decision, I have considered the conduct of the parties in regard to the previous payments of commission, and in particular, the intention of the parties when the contract was varied. In consideration of the latter, I refer to **Protectacoat Firthglow Ltd v Szilagyi (2009) EWCA Civ98, (2009) IRLR 365 and Autoclean v Belcher (2009) EWCA Civ 1046;(2010) IRLR 70** and although both cases evolved as a result of litigation pertaining to employment status nevertheless, I consider both equally important when considering the issues in this claim. As such, drawing upon what was set out within them, I have borne in mind the need of the Tribunal to investigate the true intentions of the parties when entering into the contract, or in this instance, agreeing to the variation in the terms of the commission payment, and as to whether what was written in the September email and annexed to it by way of the Commission Plans, represented those intentions.

The Facts and My Findings

First Issue

34. It was not in issue, that the parties entered into a contract of employment when the Claimant first became employed, and the terms in relation to the payment of commission agreed at that time.
35. Equally, it was not in issue that the parties agreed a variation in the terms relating to the payment of commission in August 2021, which was set out within the September email and attached Commission Plans.
36. In summary, there was no issue as to there being a contract of employment in place, that the payment of commission was a contractual term, or that the terms of the commission payments were varied in August 2021. In relation to the payment of commission, although not directly addressed in the September email, it was not in issue that there was an '*unwritten understanding*' that commission was payable when an invoice was raised. In summary, the issue related to what both the Claimant's and Mr Shepherd's understanding was in relation to the varied terms of commission agreed for the Respondent's financial year FY22.
37. For purposes of reference, I set out the relevant paragraph within the September email specifically in relation to the same.

'below is the summary of the new commission plan Paul and I discussed and have put in place for FY22. I have attached the PDFs for reference - one for partner sales, the other for direct sales.

- *General:*
 - *Total OTE is £110,000.00 per year*
 - *70% or £77,000.00 of OTE make up the commission target for direct sales*
 - *30% or £33,000.00 of OTE make up the commission target for partner sale*
 - *Sales targets are based on MRR increase with a goal of 12.5% MoM growth rate - the overall MRR increase target is split into 70% direct sales and 30% partner sales*
 - *The commission is calculated across all months based on a percentage weight of monthly target MRR increase vs. total MRR increase for FY22. This allows for a gradual increase in line with increasing targets.*
 - *No commission paid if achieved sales are below 50% of target.*
 - *Uncapped commission with 3x accelerators to be applied for sales above 100% of target*
- *Direct Sales:*
 - *Monthly targets and associated commission based on 100% of the target are broken down in the attachment*
"CommissionPlan_PatrickHosch_FY22_DirectSales.pdf"
 - *Team target - Measured on company-wide new MRR revenue, incl. upsell*
- *Partner Sales:*
 - *Monthly targets and associated commission based on 100% of the target are broken down in the attachment*
"CommissionPlan_PatrickHosch_FY22_PartnerSales.pdf"
 - *Individual target - 8x8 deals are being reviewed on a case by case basis'*

38. The starting point is this email and the two spreadsheets attached to it. I was advised that the baseline figure as labelled on the spreadsheets '*MRR Month Start*' changed for September 2021 following the loss of a contract by the Respondent (which was not disputed by Mr Shepherd) and as a result, the baseline figures for each of the months in the FY22 dropped from the figures set out in the spreadsheets (pages 76 and 77), to that as set out in the spreadsheets prepared by the Claimant at page 191. In short, the '*MRR Month Start*' in September dropped to £20,785.76 and as such, the '*Monthly MMR Increase Goal*' became £2598.22. As a result, the '*MRR Month Start*' for October was £23,383.98, with a then '*Monthly MMR Increase Goal*' of £2923.00, and for November a '*MRR Month Start*' of £26,306.98. Again, that these would have been the amended figures following the loss of the contract was not disputed by Mr Shepherd.

39. In the September email it stated as set at above, '*The commission is calculated across all months based on a percentage weight of monthly target MRR increase vs. total MRR increase for FY22. This allows for a gradual increase in line with increasing targets.* I

find that this statement alone identifies that the clear intention was that commission was to be calculated on a MoM cumulative basis.

40. I make this finding in particular for two reasons. First, it refers to commission being calculated '*across all months*', and secondly, payment being '*based on*' the 12.5% monthly MRR increase across the financial year. In short, I cannot identify anywhere within that statement any indication that commission would be payable irrespective of whether either the preceding, or the current month's baseline figure or '*Monthly MRR Increase Goal*' were met. Secondly, the September e-mail refers specifically to the commission being payable '*based on*' the increase in the MRR targets. I accept, as conceded by Mr Shepherd that the language used could have been clearer nevertheless, I am satisfied that what has been set out is sufficient to clearly identify that it was not the intention of the parties at the time the terms for the payment of commission were varied, that it would be paid only on the basis that the '*Monthly MRR Increase Goal*' for a singular month was met. I find that the September email makes it clear that the intention of the parties was that commission was payable only on the basis of each month's baseline figure (that is the '*MRR Month Start*' figure) being met, which could only be met if the previous '*Monthly MRR Increase Goal*' targets were also met.
41. That these were the terms agreed I find were also evidenced in the Commission Plans attached to the September email. Although, it was not challenged that the baseline figure ('*MRR Month Start*' figure) was different to those set out in these spreadsheets, nevertheless, the same commission structure applied.
42. In summary, in relation to the first issue, whether the commission was payable on a MoM cumulative basis, I find that it was. Of significance, I can identify nowhere within the September email an ambiguity that would suggest that the commission was payable on any other basis. In making my finding I have attached significant weight to the Commission Plans that were attached to the email which identified very specifically how the '*Monthly MRR Increase Goal*' was directly linked to the '*MRR Month Start*' (or baseline figure as referred to at hearing), and as such, the percentage and amount of commission that would be payable if the baseline target and monthly MRR goal was met. For these reasons I do not find credible the Claimant's evidence that the baseline figure, that is the '*MRR Month Start*' figure was effectively irrelevant and was only reflective of the Respondent's target. If anything, I find, that it was the contrary. The baseline figure, which has been referred to as the '*headline figure*' by the Claimant, was an integral part to the payment of commission. As such, I find that it is unnecessary to consider either the officious bystander test or the business efficacy test as what was set out within the September e-mail and the attached Commission Plans was sufficiently clear to reflect the intentions of the parties in regard to the payment of commission in the FY22 on a MoM cumulative basis.

Second Issue

43. Turning to the second issue, whether Mr Shepherd's sales were to be included within the sales figure for November 2021, the two sales specifically referenced being the Together Energy and Bristol Energy sales. Two points I would make in relation to this are first, when the sales were invoiced in the November 2021 the value of each contract was £25,000 per annum as such, a MRR of £2500 per month. However, by 16 December 2021 the contract price on both contracts had been reviewed, and the new terms agreed were £15,000 per annum with payments to be made quarterly because of financial problems the client was having. I say *'the client'* because at hearing it was identified to be the one client but with two different energy businesses. Secondly, although the client was invoiced no payment was ever received on behalf of either of these companies as they went into liquidation in early January 2022. It was not in issue that upon an invoice being raised commission was generally paid. Therefore, in principle, Mr Shepherd did not dispute that on these two invoices being raised in November 2021 that commission technically became payable. Nevertheless, he stated that they were a different type of client to their *'typical client base'*, in short, their other clients were *'government bodies funded through the public purse'*, where issues pertaining to the viability of payment did not exist. Equally, Mr Shepherd accepted that nowhere within the Claimant's contract of employment was there any claw back clause for the Company to recoup a commission payment made to an employee in the event of, as happened here, if the companies went into liquidation.
44. Nevertheless, irrespective of what happened to these two companies, Mr Shepherd's assertion was that the Claimant would have had no entitlement to any commission on the revenue from these two sales in any event, as they were sales made by him. In short, the Claimant was only entitled to commission on sales made by the sales team, and he, as CEO, was not part of that team. When he was specifically asked to clarify who was on the sales team, he stated it was the Claimant, James Hay and Chris Graves.
45. Again, when dealing with this issue, there were two opposing accounts. As such, my starting point is again the September e-mail and the attached Commission Plans. As identified by both parties nowhere within the September e-mail does it directly refer to Mr Shepherd's sales being excluded from the total value of sales achieved.
46. Nevertheless, albeit not specifically referenced, there is reference to the *'Team target'*. In short, under the bullet point referring to the Commission Plan for direct sales there is the bullet point which reads *'Team target - measured on company- wide new MRR revenue,incl, upsell'*.
47. Two questions arise on the basis of the latter statement, first, who is identified as the team and secondly, what was meant by *'company- wide new MRR revenue'*.
48. I have found Mr Shepherd a credible witness. In short, his evidence was that the company was not realising the revenue that it should. Mr Shepherd had allowed the Claimant time to *'bed in'* however, after 13 months his view was that the existing

structure for the payment of commission was not working. In short, the sales team '*were not performing*', and in particular, the Claimant '*was not performing*'. Mr Shepherd was unhappy that it was '*his performance triggering commission payments*'. His view was that the Claimant needed to '*generate*' his own sales/clients. As such, I have no reason to doubt the truth of his evidence that as a result it was agreed and understood that commission paid on revenue from sales for the FY22 would flow solely from the sales made by the sales teams, which did not include Mr Shepherd.

49. In making this finding I attach weight to the wording within the September e-mail, in short, the e-mail makes direct reference to '*Team target*' as opposed to on the contrary the Company target. Equally, as identified in closing submissions, at paragraph 5 in the Rider attached to the ET1 the Claimant had stated '*that the sales and specifically renewals were mainly on the Claimant's teams part*'. Again, a statement identifying the sales teams' sales as a separate entity.
50. I also find that this was the position was reiterated by what was thereafter set out in the September email by the words, '*measured on company - wide new MRR revenue.....*'. which reflected the Commission Plans coming into being for the FY22.
51. I do not intend to recite any further of the evidence in relation to this particular issue however, in coming to my conclusion I have considered all the evidence in the round. I find that the sales team did not include Mr Shepherd. As such, in making this finding, I find that the revenue from the sales made by Mr Shepherd did not fall to be included with the revenue from sales made by the sales team for the payment of commission in the FY22.

Holiday pay

52. The holiday pay claim was not included within the schedule of loss provided (pages 44-45) however, the claim for it is maintained and Mr Raffell referred to where it was addressed in the Rider to the ET1 and the Claimant's witness statement. The amount claimed is £912.70.
53. Turning first to the Rider to the ET1, the only paragraphs which make any reference to holiday pay/annual leave are paragraphs 56 and 64. In short, other than stating that the sum of £912.70 remains outstanding it does not identify the reasons as to why. Turning to the Claimant's witness statement, holiday pay is addressed at paragraph 105. On the basis of what is written two sums make up the total sum of £912.70. The first sum of £483.08 representing one day of annual leave still owing. The second sum would appear to be on the basis of what has been paid on termination of the Claimant's employment in respect of untaken leave, with a shortfall identified in that amount of £489.62.

54. I specifically sought clarification from Mr Shepherd in relation to the holiday pay claim. Mr Shepherd's evidence was that in relation to the one day claimed that he accepted it related to one of five days of holiday that the Claimant had booked. In short, on one of those days the Claimant had taken business calls on the part of the Respondent albeit, there was no obligation for him to do so. Mr Shepherd's evidence was that under normal circumstances he would have paid that one day loss as a gesture of goodwill.
55. I am satisfied that the latter statement from Mr Shepherd is sufficient to amount to an acceptance of liability to pay holiday pay for that day as a result of the Claimant having to undertake work for the Respondent on it. As such, I find that the Claimant is due the outstanding sum in relation to that one day of holiday pay amounting to £483.08.
56. In relation to the second sum claimed of £489.62, this sum has not been appropriately particularised. No documentary evidence has been provided to show what payments were made nor indeed, what deductions have been made from those payments. In the absence of any documentary evidence in support the same I find that the second sum of 489.62 is not due and owing.

Substitution of the name of the Respondent

57. An application was made to the Tribunal on 30 March 2023 requesting that the Respondent's name be amended, in short, substituted from its previous name We Build Bots Limited to its new name, Logicdialog Ltd. At the date of the application, considering this pending final hearing, the application was deferred to be addressed at this hearing. I dealt with this matter at the outset of the hearing. No objection was raised to the amendment. As confirmed by Mr Jones the change was limited to purely the Respondent's name nothing further, otherwise the identity of the Respondent remains the same as reflected in that it has retained the same company number and profile.

Conclusion

58. I find the commission payable to the Claimant was on a MoM cumulative basis as set out in the September email and the Commission Plans annexed.
59. As a result of the above finding, the second issue as to whether Mr Shepherd was part of the sales team is almost irrelevant. In short, on the basis of the baseline figures given on the Claimant's spreadsheet, even if I had found Mr Shepherd was part of the sales team, which I have not, what remains of the '*actual MRR increase*' figure of £5922.67 identified (having been applied to the previous two months), when added to the November baseline figure, results in it being only marginally superseded. In brief, the figure carried over falls far short of the November '*Monthly MRR Increase Goal*'.
60. In relation to the second issue, I find that Mr Shepherd was not part of the sales team in the FY22.

61. In regard to the holiday pay, I find that the Claimant is entitled to one day of outstanding holiday pay as a result of working for the Respondent when on annual leave, in total £483.08

Judge MM Thomas
Date 10 May 2023

JUDGMENT SENT TO THE PARTIES ON 12 May 2023

FOR THE TRIBUNAL OFFICE Mr N Roche