EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR J ARNOTT	**AND**	**CUBE CONTENT GOVERNANCE LTD**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 23RD JUNE 2023

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **IN PERSON**

FOR THE RESPONDENT:- **MR T WESTWELL (COUNSEL)**

JUDGMENT

The judgment of the tribunal is that:-

i) The claimant's claims for unlawful deduction from wages and breach of contract in the failure to pay expenses in the sum of £102.55 is well founded and upheld;

ii) The respondent is ordered to pay the claimant the sum of £102.55;

iii) The claimant's further claims for unlawful deduction from wages and/or breach of contract are not well founded and are dismissed.

Reasons

Hearing

1. This case was listed for a short hearing with a time estimate of two hours on the 23rd of June 2023.That proved sufficient to hear the evidence from the claimant and, on behalf of the respondent from Mr Ben Richmond and Mr Barry Sage, and directions were given for both parties to supply written submissions with which they have complied.

Claims

2. By this claim the claimant brings claims of unlawful deduction from wages and/or breach of contract. The claimant had ticked box 9.1 of the ET1/ claim form indicating that he was bringing a claim of discrimination but he has confirmed in today's hearing that it was ticked in error, and there are no claims being brought other than the monetary claims set out below.

3. The four claims being brought are claims for:

i) The unlawful clawback of a £4,000.00 bonus;

ii) The unilateral termination of On-Call payments;

iii) The incorrect calculation of a BYOD payment;

iv) The failure to pay outstanding expenses.

4. Whilst there are some disputes of fact, which are set out in relation to the individual claims, the primary disputes are as to the interpretation of the contract and other documents.

Law

5. The claimant's claims will succeed if and to the extent that any deduction was:

i) In breach of a term of the claimant's contract of employment; and/or was

ii) An unauthorised deduction within the meaning of s13 Employment Rights Act 1996.

6. S13 ERA 1996 provides :

13 Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless–

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker´s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction

7. Specific provisions relating to the individual claims are set out in the discussion of those claims.

Background

8. The respondent is part of the CUBE group of companies. The claimant was employed from the 1st May 2018 as an infrastructure specialist. In this role he assisted with the design, construction, deployment and maintenance of the CUBE IT infrastructure. The claimant entered into a contract of employment dated 30th April 2018; the specific clauses relevant to each of the claims will be set out in the discussion of those claims. On 29th November 2022 he gave notice confirming that his last day of employment would be the 31st December 2022.

9. I will deal with the claims in chronological order.

BYOD

10. The facts in relation to this claim are not in dispute. At the outset of his employment the claimant was provided with £2,000 pounds in order to purchase a laptop, mobile phone and related accessories. The £2,000 was paid gross via his first pay slip, and income tax and national insurance were deducted in the sum of £840.00 pounds. The claimant asserts that this was characterised as a bonus payment in his payslip which is incorrect, as it was in fact a sum paid for the purchase of equipment which was necessary for him to carry out his role, and therefore should have been categorised as expenses. He contends that if correctly categorised it would not be subject to income tax and national insurance, and therefore he is owed £840 (and interest) which has been unlawfully deducted from his salary.

11. Before dealing with the statutory provisions the relevant terms of the claimant's contract of employment are the following clauses:

"10.1 The company shall pay the employee the sum of £2,000 gross (...) in total to purchase a laptop and mobile phone device and related accessories (…) to be used during the appointment (the BYOD payment) and it shall be the employee's responsibility to replace or repair any devices without any further payment from the company.(*My underlining)*

10.2 The BYOD payment should be paid to the employee through the company's normal payroll along with the employees first salary payment

10.7 On termination the employee will retain the devices save that they will irretrievably destroy all company property, including but not limited to, all company software, data and employment IPRs from the devices no later than the termination date and shall allow the company access to the devices for it confirm that the employee has complied with the requirements of this clause 10.7 and compliance with the company's data security policy."

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12. In addition the BYOD policy stated that:

"The new employee will receive a £2,000 one off payment towards their BYO devices in their first pay check on the 28th of the month which will be liable to tax and NI deductions. The employee can spend this contribution how they wish and no receipts are required for proof of purchase of the devices. *(My underlining)*

13. Accordingly the respondent contends that the deduction of tax and National Insurance is specifically provided for at clause 10.1 in that it is expressly said to be paid gross, and that if there is any doubt the BYOD policy expressly refers to deductions for tax and National Insurance (see underlined passages above). The respondent therefore submits that it follows automatically that the deduction was lawful, in that it was expressly provided for in the claimant's contract of employment, irrespective of whether the respondent's interpretation of the statutory provisions was correct or incorrect. .

14. Alternatively the respondent submits that in any event there was a statutory requirement to make the payment subject to tax and National Insurance, and the deduction was necessarily lawful. The factual basis for this it is that:

i) As is set out above there was no requirement for the whole (or any) of the amount to be applied for the purchase of the equipment, nor to provide any receipts for any purchase at all, and if and to the extent that the full amount was not spent on the equipment the employee would necessarily derive a private financial benefit from the payment.

ii) Secondly there was no requirement that the equipment be used exclusively for the purposes of the business;

iii) Thirdly the property was to be retained by the employee on termination of their employment. The ability to retain and use the equipment post-termination is a private benefit. In addition, it clearly could not be known in advance how long any individual employee would remain in employment, and therefore what the residual value of the equipment would be at the date of termination, but clearly this is capable of providing a further private financial benefit.

15. In respect of the deduction of income tax the respondent has set out a detailed analysis of the statutory provisions, but in essence contends that the payment is taxable in the hands of the claimant, and they are required by statute to make the deduction. Specifically in respect of expenses sections 70 and 72 and 336 of the ITEPA 2003 apply. S336 is the most specifically relevant to the issue of expenses and provides:

"336 Deductions for expenses: the general rule

(1) The general rule is that a deduction from earnings is allowed for an amount if-

(a) employee is obliged to incur and pay it as a holder of the employment, and

(b) the amount is incurred wholly exclusively and necessarily in the performance of the duties of the employment.

16. The respondent contends that this exception does not apply for the reasons set out above. The claimant was not obliged to incur any expenditure, and was expressly not required to spend the whole sum allocated on the devices; and was not required to use them exclusively for the purposes of work. It follows automatically that the amount of the payment does not necessarily reflect expenses incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

17. In respect of National Insurance contributions the respondent has set out the relevant provisions of the SSBA 1992 and Reg 9(1) Schedule 3 SS(C)Regs 2001. In summary Reg 9(1) allows for .. “any specific and distinct payment of, or contribution towards, expenses which an employed earner actually incurs in carrying out his employment” to be disregarded.

18. The respondent submits that the exception does not apply, essentially for the same reasons set out above. In addition it submits that as there was no necessary equivalence between the amount paid and the expenses incurred, and that the scheme self-evidently was not constructed to provide any such equivalence, that it was required to deduct NIC contributions. (*See Cheshire Employer and Skills Development v HMRC [2013] STC 2121).*

19. The claimant submits firstly that the payment was mischaracterised as a bonus and should not have been taxed as if it were. Secondly that as a matter of fact the laptop and phone were only used exclusively for work; and that as his employment terminated more than three years after they had been acquired, that they were at the conclusion of his employment of negligible value and he therefore derived no private benefit from them. He contends therefore, that as they were as a matter of fact used exclusively for the purposes of work and as they had no or negligible residual value at the date of termination the payment was not taxable.

20. There are, in my judgement, a number of difficulties for the claimant in asserting that the deduction was unlawful. The first, as set out above, is that, given that the contract and BYOD policy specifically required the deduction, it is expressly the contractual right of the respondent to make it. This is significant, not least because as a claim for unlawful deduction from wages it would be years out of time; and it would, in order to give the tribunal jurisdiction have to be a contractual breach outstanding on termination. Given that it is self-evidently not a contractual breach the claim appears to be bound to be dismissed by whichever route. However as both parties have, as set out above, made submissions as to the substantive merits of the claim I have set out my conclusions below.

21. The second is that even if mischaracterised as a bonus, it is still a payment made to the claimant by his employer which would be taxable unless some exception applies. In respect of this it is notable that the claimant does not contend that as a matter of fact he applied the whole sum to the purchase of the equipment; rather that the equipment he purchased was used wholly and exclusively for the purposes of work, which is not the same thing. In addition in my judgement, the question of whether the payment is taxable must necessarily be judged at the time the payment is made. Unless at that point it can be said that the payment falls within the exception contained in s336 ITEPA 2003 it must, for the reasons given by the respondent, be subject to tax and national insurance at that point. In my judgement, assessed as at that point the respondent was bound to make the deductions for the reasons it has given and the deduction was necessarily lawful.

22. It follows that in my judgement this claim must be dismissed.

<u>On Call Allowance</u>

23. The claimant's initial salary was £56,000 pounds per annum. In addition pursuant to clause 6.1 of the contract of employment but he was required to participate in a 24/7 on call shift pattern from his start date and until the end of June 2019. Up to that point he was entitled to an on call allowance pursuant to clause 7.3 which provided that the employee should receive £100 for each week that they are on the 24/7 on call shift ,and an additional £150 provision to cover scheduled maintenance activities such as releases and changes which then averaged approximately 6 hours per week.

24. On 28th of June 2019 Mr Sage sent the claimant a letter stating:

> *"I'm pleased to inform you that based on your performance an increase of £4000 will be applied to your annual salary from the 1st of July 2019 equating to a new annual basic salary of 60,000 pounds.*
>
> *Additionally, the on-call allowance will be ending from that date and a new on-call rota will be distributed across the larger global team.*
>
> *The changes will be applied to July's payroll and to any related corporate benefits*."

25. From 1st July 2019 the claimant's salary was increased to £60,000, and the on-call allowance ended. The claimant's claim is for £7,250 pounds which is the amount he alleges that he is owed for the on call allowance from the 1st July 2019 to the termination of his employment, on the basis that the contractual variation was a unilateral variation to which he did not agree and which it is void. Firstly he contends from the terms of the letter itself that this is not a case in which the increase in salary is linked to the removal of the on call allowance. The increase in salary is expressly said to be a consequence of his performance, and the removal of the on call allowance is said to be at in addition to that salary increase. He submits therefore that the two are not linked and that the removal of the on call allowance was a unilateral variation of his contractual entitlement

to which he had not agreed, and for which at there was no consideration. The claimant also submits that whilst he accepts and that he did not submit a grievance, and never submitted any objection in writing, that he continued to complain about the removal of the on call allowance throughout the rest of his employment.

26. The respondent submits that in fact the two are linked and that the increase in salary was intended to replace the on call allowance. The claimant was informed in oral discussion at the time as is set out in the witness statement of Mr Sage at paragraph 5.

27. There are two factual issues that arise. The first is whether the claimant was or was not made aware orally at the time that the salary increase and the removal of the on-call payment were linked; and the second is the extent to which the claimant did or did not protest about the imposition of the contractual variation.

28. In respect of the first there is a direct conflict between Mr Sage and the claimant. In respect of the second the claimant relies in particular on an email from Mr Ambrose Neville which confirms that, "I did report the concerns of the team about on-call work, rota and payment on several occasions." The respondent submits that little or no weight should be given to this as the claimant has not called Mr Neville to give evidence, and there is therefore no direct evidence before me as to the nature of, or clarification of, those concerns.

29. As to the first I accept the claimant's submission that if the two were linked the letter is extremely curiously worded, and not only does not make the link, but appears to state clearly that two are not linked. Given that the letter is the only documentary evidence and supports the claimant and not the respondent, on the balance of probabilities I accept the claimant's evidence that he was not informed that there was any link.

30. In respect of the second the email provides some support for the claimant, and I accept that in general terms he made complaints about the application of the on-call rota and/or payment for on call work. However in the absence of them ever being reduced to writing, or Mr Neville being called to give evidence. it is very difficult to assess the precise the nature of the claimant's complaints.

31. However, the resolution of the question of whether the claimant was informed and did in general terms complain about payments for on-call work does not in and of itself resolve the issue. The respondent submits that even if it is wrong that there was specific consideration for the removal of the on-call allowance in the increase in salary, and that in fact the two were not linked that that does not mean that there was no consideration.

32. They rely firstly on GAP Personnel Franchises Ltd v Robinson UKEAT 034/2007 in which HHJ Clark stated "*In my view it is generally accepted law that consideration for a variation in the terms of a contract of employment is mutually provided by the employer continuing to employ the employee and the employee continuing in that employment*."

33. It also relies on the judgement of Elias J in Selectron Scotland Ltd v Roper 2004 IRLR where he held that the fundamental question was whether "*the employee's conduct by continuing to work is only referrable to his having accepted the new terms imposed by*

the employer" and "*That may sometimes be the case. For example if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their conduct after a period of time accepted the change in terms and conditions. If they reject the change they must either to refuse to implement it, or make it plain that by acceding to it they are doing so without prejudice to their contractual rights*" (My underlining)

34. In addition in Abrahall v Nottingham City Council 2018 IRLR 628 Underhill LJ held: "*First and foremost the inference must arise unequivocally. If the conduct of the employee in continuing to work is reasonably capable of a different explanation it cannot be treated as constituting acceptance of the new terms: that is why Elias J in Selectron used the phrase "only referrable to". That is simply an application of ordinary principles of the law of contract (and also of waiver/estoppel). It is not right to infer that an employee has agreed to a significant diminution in his or her rights unless their conduct, viewed objectively clearly eventually evinces the intention to do so. To put it another way the employees should have the benefit of any (reasonable) doubt*." *(My underlining)*

35. The question for me therefore is whether the claimant by his conduct has, "viewed objectively clearly evince(d) an intention" to accept a significant diminution of his contractual rights, and that in assessing that question the claimant must have the benefit of any reasonable doubt.

36. The claimant relies on the contention that he complained, and continued throughout his employment to complain, about the removal of the on-call payments as evidence that he had not evinced an intention to accept the variation.

37. The respondent relies on the following contentions:

    i) In this case the unilateral variation occurred on the 1st July 2019. The claimant continued in the respondent's employment, and continued to carry out on call duties until 31st December 2022, a period of some three and a half years.

    ii) As the claimant accepts, he did not at any point lodge any written complaint or grievance;

    iii) In the circumstances it is not possible to know what the specific nature of the complaints were;

    iv) He did not at any point allege internally, or bring any claim asserting that any deduction was unlawful prior these proceedings;

    v) Whilst he may have complained, he at no point refused to implement the change, i.e. he continued to work the on-call rota despite knowing there would be no specific payment for it for some three and a half years, and does not himself allege that he ever contended that he was doing so without prejudice to his contractual rights.

38. In my judgement the critical passage is that underlined in the Selectron judgment set out above. The claimant did not refuse to implement the change, and so the question is whether he implemented it having made plain that this was without prejudice to his contractual rights. It appears to me firstly that the fact that he continued to work and perform the on-call duties for three and a half years is in and of itself evidence that objectively he had accepted the variation. There is no suggestion that at any point he made it formally clear that he was performing the duty under protest. He did not ever lodge a grievance or put in writing any objection to the removal of the on call allowance. As is set out above I accept his evidence that he complained about it in general terms but even on his evidence there is no suggestion that he ever refused to implement the on-call hours rota without specific payment for it, or that he ever alleged that he was doing so without prejudice to his contractual rights. Even on his evidence the highest that it can be put is that he carried out the duties whilst complaining about doing so.

39. In my judgement, as the passage from Selectron exemplifies, it is necessary either to refuse to carry out the duties, or in some way formally to make it clear that the employee is doing so without prejudice to their contractual rights. To perform the duties for three and a half years whilst at most complaining to the employee's line manager is not, in my judgement sufficient, to hold that objectively he had not agreed to the variation. Indeed, in my judgement to continue to perform the duties for three and a half years is in and of itself the clearest evidence that, looked at objectively, he had accepted the variation.

40. It follows that his claim must also be dismissed.

Unpaid Expenses

41. The respondent does not dispute that the claimant is owed £102.55 which relates to a trip to Cardiff.

42. The dispute relates to travel expenses for three trips to Guildford totalling £68.13.The respondent contends that he is not entitled to be reimbursed as this constituted travel to his normal place of work, which the claimant disputes.

43. The respondent contends that the definition of normal place of work is contained within paragraph 5.1 of the contract of employment: "*The employee's normal place of work is 1 Riverside Court, Douglas Drive, Godalming, Surrey GU7 1JX the office in the Greater London area of any group company from time to time in use or such other place within a reasonable commuting area which the board may reasonably require for the proper performance and exercise of the duties.*" Clause 5.3 provides: "*For the avoidance of doubt any travel expenses incurred by the employee in travelling between their home and their normal place at work shall be borne by the employee."*

44. The respondent contends that after April 2021 the Guildford office became the claimant's normal place of work because it was a place within a reasonable commuting area which the board reasonably required him to attend for the proper performance of the exercise of the duties. They contend that the Guildford office was

5 miles from the Godalming office and was therefore within a reasonable commuting area. Accordingly the expenses claimed for travel to the Guildford office are not recoverable pursuant to clause 5.3 of the contract, as the claimant had no contractual right to them.

45. The claimant contends that in fact by this point he was in fact employed to work from home. As a result of the Covid 19 lockdown he had worked from home for a considerable period, and in closing the Godalming office the respondent had closed his normal place of work. The combination of these two factors meant that his normal place of work was his home and that therefore he was entitled to expenses for travel when required to attend the office in Guildford.

46. The question before me is thus solely whether the Guildford office does or does not fall within the definition of the claimant's normal place of work within clause 5.1 of the the contract. Clause 5.1 defines normal place of work in three different ways:

i) The Godalming office;
ii) The office of any group company in the Greater London area for time to time in use;
iii) Such other place within a reasonable commuting area.

47. In my judgement the difficulty for the claimant is that even he is correct and that there had been a de facto contractual variation which had resulted in his home being substituted for the Godalming office as one definition of his normal place of work (para 46 i) above); I cannot see any basis for concluding that any such variation had removed either of the other definitions at para 46 ii) and iii) above. In my judgement given that the Guildford office was only 5 miles from the Godalming office it was necessarily within reasonable commuting distance, and necessarily falls within the definition of his normal place of work. It follows that in my judgement the respondent is correct that this did not attract travel expenses under the terms of clauses 5.1 and 5.3 of the contract.

48. It follows that this claim is upheld in relation to the admitted claim for £!02.55, but not in relation to the travel expenses.

Bonus Clawback

49. On 28th November 2022 the claimant was paid a pre-tax bonus of £4,000. On 29th November 2022 the claimant gave notice of termination, with the last day of employment being 31st December 2022. On 1st December 2022 he held a Teams meeting with Zoe Browse (Global Corporate Business Partner). It is not in dispute that she informed him that the respondent took the view that he was no longer eligible for the bonus payment and that would need to be repaid. The claimant does dispute that he was told it would be clawed back from his final pay. On the 21st of December 2022 the bonus was recouped by way of a pre tax deduction of £4,000 from the claimant's final pay..

50. The right to a bonus derives from an e-mail sent on the 22nd of October 2022 by Mr Richmond to the respondent's employees including the claimant. In relation to the bonus plan it stated:

"On the recent global calls announcing the investment I discussed the CUBER investment bonus in recognition of this significant milestone for the business, details of the bonus payment are set out below:

1. *You need to have commenced employment with the business no later than end of September 2022.*

2. *You need to be a current and continuing employee in the business up to and including the end of this calendar year.*

3. *For every full year worked up to the end of this calendar year you will receive £1000 up to a maximum of £10,000.*

4. *If you have been employed for less than one full year you will receive £500 subject to commencing employment on or before September 2022.*

5. *If your usual salary is not in GBP the bonus will be converted to your local currency*
6. *The bonus will be paid ahead of Christmas the exact date to be confirmed.*

The above applies to all CUBE full time employees……

51. It is not in dispute that the claimant satisfied all of the eligibility criteria as at the date of the e-mail, and on the 28th November 2022 when the bonus was paid. The dispute is as to whether he continued to be eligible for the bonus by reason of having submitted his resignation giving a termination date of 31st December 2022. They respondent contends that he did not, and that in consequence, that they had the right pursuant to clause 7.10 of his contract of employment to deduct the sum of £4,000 from his final salary payment.

52. Clause 7.10 provides:

"The company may deduct from the salary, or any other sums owed to the employee, any money owed to any group company by the employee included including but not limited to….

b) any debt owed by the employee to the company".

53. The respondent submits that if their interpretation of the right to be paid the bonus is correct the claimant had received a sum to which he had ceased to be entitled, which was therefore a debt owed within the meaning of clause 7.10, and the deduction of that sum was therefore an amount that was authorised that to be deducted from his final pay by virtue of a relevant provision of the workers contract for the purposes of section 13 Employment Rights Act 1996. It was therefore a lawful deduction.

54. The claimant submits that the deduction was unlawful that in that he satisfied all of the criteria for the bonus payment. If that submission is correct there was no debt owed to the respondent and they could not therefore lawfully deduct any amount pursuant to clause 7.10 of the contract. In addition he contends that there was no agreement that it be deducted from his final salary and therefore the manner of the deduction that is unlawful.

55. The first dispute to resolve is therefore whether the claimant continued to be entitled to the bonus up to and including the last day of his employment on the 31st December 2022 I all whether he had ceased to be entitled to it.

56. The respondent accepts that whilst the payment of the bonus was discretionary, that it was not open to it simply to claw it back because the claimant had submitted his resignation unless as a consequence of doing so he no longer met the eligibility criteria set out in the e-mail. It does not dispute that the eligibility criteria must be assessed objectively, and that if the claimant did meet the eligibility criteria that he would be entitled that to receive the bonus payment and that any clawback would therefore necessarily be unlawful.

57. The respondent submits that it is apparent from the e-mail that the payment of the bonus would be made before it could be known whether the employee satisfied all of the criteria, and that it follows automatically that any objective and reasonable interpretation of the e-mail must include the implication that if after the date of the payment the employee ceased to be entitled to the bonus it would necessarily be required to be repaid. If this is correct on any analysis it would be a debt within the meaning of clause 7.10 of the contract of employment. The factual basis for this argument is that point 2) of the e-mail sets out the requirements to be a current and continuing employee up to the end of the calendar year. It is therefore clear that any employee who received a bonus payment in November but who ceased to be either a current or continuing employee on or before the 31st December would owe the respondent the sum paid as a bonus, as he or she would in fact not have satisfied the eligibility criteria.

58. It appears to me that this must be correct and that the crux of this dispute is whether the claimant did or did not remain eligible for the bonus payment. That question turns on the interpretation of the phrase “current and continuing” and whether it effectively encompasses one concept, or two separate concepts.

59. The claimant submits that he was a “current” employee as at 31st December 2022, which falls within the temporal requirement “up to and including the end of this calendar year”. He was also a “continuing” employee in that he continued to be an employee up to the end of the calendar year.

60. The respondent submits that on the claimant’s analysis the words “current” and “continuing” have the same meaning and that anyone satisfying one will automatically and inevitably satisfy the other. It submits that this analysis must be wrong and that each word carries a separate meaning. The respondent agrees with the claimant that he was a “current” employee as at 31st December 2022 as he was still employed. The dispute is as to whether he was a ”continuing” employee. The respondent submits that the word

"continuing" must bear some additional meaning and add something to the bonus eligibility requirements; if it does not it is entirely superfluous. It submits that the added requirement is that the "current" employee will continue to be an employee going forward, i.e. by definition it does not include any employee who has given notice to terminate the contract of employment. In this case the claimant had given notice which expired as at 31st December 2022 and whilst he may still have been a current employee at that date he was not a continuing employee as that was the last day of his employment.

61. In my judgment the respondent is correct in that the word continuing must add something to the eligibility criteria; and it is difficult to conceive of any logical or objective interpretation other than the one they contend for. The requirement to be a continuing employee my judgment requires that as at 31st December 2022 the employee would continue in employment beyond 31st December 2022. As the claimant's employment would not it follows that in my judgment he did not continue to meet the eligibility criteria up to and including 31st December 2022.

62. It follows that in principal the respondent was entitled to claw back the £4,000 pursuant to clause 7.10 of the contract of employment.

63. The claimant's second argument is that there was no agreement to it being deducted from his final payslip and it was therefore unlawful to have deducted it at that point even if in principle it was owed to the respondent. I cannot see any such limitation in clause 7.10 itself and it follows that in my judgement there was no contractual reason why the respondent was not able to claw back the bonus from the claimants final pay.

64. It follows that in my judgement the deduction was a lawful deduction and at this claim must fail.

<u>Remedy</u>

65. In addition to payment of the specific sums sought the claimant seeks:

i) Damages for strain on the claimant's mental health/stress;

ii) A preparation time order/cost order of £2767.50

66. In respect of the first the tribunal has no jurisdiction to make any such award in respect of claims for unlawful deduction from wages/breach of contract.

67. In respect of the second the ordinary rule in the tribunal is that each party bears its own costs unless the case falls within rules 74-79 Employment Tribunal (Constitution and Rules of Procedure) Regs 2013. The claimant has not at present set out any basis for the claim.

Direction

68. If the claimant seeks to pursue the application for a preparation time order/cost order he must set out in writing within 14 days of promulgation of this judgement the basis of the application.

69. If he does so the EJ will give further directions.

Employment Judge Cadney
Dated: 1st August 2023

Copies sent to the parties on 16 August 2023

For the Tribunal Office