



EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 12 September 2023

Claimant: Mr Ravi Karimi

Respondent: Orcan Intelligence Limited

Before: Employment Judge E Fowell

Representation:

Claimant In Person

Respondent Mr B Large Of Counsel, Instructed by DC Solicitors LLP

JUDGMENT

1. The claimant did not suffer an unlawful deduction from wages.
2. The claimant's claim in respect of accrued but unpaid annual leave has been paid by the respondent and so is now also dismissed.

REASONS

Introduction

1. These written reasons are provided at the request of the claimant/respondent following oral reasons given earlier today.

2. This is a claim for unlawful deduction from wages, alternatively for breach of contract. Mr Karimi worked for the company for about six months before he left, on 29 November 2022 and the claim concerns outstanding commission payments which he says he was owed. The company says that in breach of an agreement he made disparaging comments about the company which then circulated in the marketplace and so they were entitled to withhold payment. The sum in question is agreed to be £11,500 gross. That is a considerable sum for a young person at the start of his career. Mr Karimi is now 26 but was 25 at the time.

Procedure and evidence

3. I heard evidence from him and from the company's CEO **Error! Reference source not found.**, with whom he agreed the terms of departure. There was also a bundle of about 100 pages. Having considered this evidence and the submissions on each side, I made the following findings of fact.

Findings of Fact

4. Orcan Intelligence Limited is a recruitment agency. It specialises in recruiting what are described as high-end staff in the data, technical and financial sectors across Europe. As usual in recruitment, recruitment consultants such as Mr Karimi are paid a salary together with commission and the commission is earned from placements that are made. Often the candidate will not start with the client company for several months and so it may take some time for those commission payments to come through to the recruitment agency consultant in turn to be paid. Mr Karimi's job title was head of Perm UK so he dealt with permanent recruitment, for which there may be more occasional larger commission payments than with temporary positions.
5. At some point in late 2022 the company carried out a training exercise for its recruiters. It was provided by Ms Katie Dowling who is well known in the industry for her expertise in training recruitment consultants. She has her own agency known as Sharkfin Recruitment. As part of this exercise she carried out a review of the work of each of the consultants at Orcan. Her report on Mr Karimi raised some concerns largely as a result of a relative lack of experience.

6. Following that report Mr Bouvier had a meeting on 4 November 2022. There is a dispute about exactly what was said but the dispute is not material. It is agreed that Mr Bouvier proposed a reduction in Mr Karimi salary of £10,000 per year which he refused so the conversation turned to arrangements for him to leave the business. The dispute is about whether this proposed reduction reflected the financial position of the company and concerns about Mr Karimi's performance. But in any event both parties conducted themselves amicably.

7. Mr Bouvier followed up their discussion on Tuesday 7 November 2022 confirming that his employment was being terminated.

8. [80]

Yes agreed, far from ideal ending but I think at this point in time, it was unfortunately the best business decision. You might not feel that way right now but I reckon you'll be happier in a business that'll leave you be and work the way you know.

9. He agreed that all commission would be paid and then added

Aside of what I have mentioned yesterday regarding the conditions for ORCAN to pay your comms, I'll add one more. Please refrain to call some of the staff member to discuss our conversation, that is not appropriate. By all means, you can keep in touch with people but I do not want you to talk to them (or anyone else for that matter) in a negative way. If I hear anything of the sort, I won't be paying your commissions. Please confirm that you accept these terms.

10. Mr Kerry me did accept those terms, so that was the agreement they had. He was therefore a variation of his contract of employment and there was no longer any question that the commission payments were discretionary. The only caveat was that he not discuss their conversation with members of staff or anyone else in a negative way.

11. Recruitment consultants, like anyone else may go to other recruitment consultants when looking for a job, and that is what Mr Karimi then did. He approached, among others, a Mr Mackie. He may not appreciate Mr Mackie came within the terms of this agreement but shortly after the email exchange referred to above Mr Bouvier became aware of rumours that his company was in financial difficulties. He found out through this Katie Dowling. A client of hers heard this

rumour and she reported it to Mr Bouvier. At the same time she or her client (that is not quite clear which) forwarded an email to Mr Bouvier from Mr Mackie stating

12. [92]

Hope you're well! I have a candidate I wanted to give visibility to. [He then posted Mr Karim's LinkedIn address]

Ravi Karimi-25 years old...

Went to Orcan to build UK Perm however the CEO has today called him in to say the company's financial situation is such that they can't hire, or build his team."

13. Mr Bouvier then contacted Mr Mackie who denied it. Ms Dowling then made her own enquiries and she confirmed to Mr Bouvier that Mr Mackie had been "speccing" i.e. promoting Mr Karimi to everyone in the market saying that they were having financial issues which was why he left.

14. It is clear that Mr Karimi had been speaking to Mr Mackie since he was the recruitment agent who placed him at his next job, which she started on 30 November 2022. His departure from Orcan had to be brought forward to accommodate this.

15. It also appears that another almost immediate consequence was that recruitment consultant then being approached by Mr Mackie to see if they were interested in leaving. Clearly if the company was in financial difficulties that would be an inducement to leave and in turn an opportunity for him to make a fee.

16. Mr Karimi has suggested that this is all speculative, although we also accepted that he may well have mentioned something about the company's finances in one or two of the many interviews which he had over the following couple of weeks. He pointed out that Mr Mackie would have an incentive to promote his candidate and so it was better to blame his previous employer than allow new employers think that there had been performance issues. He also pointed out that information about a company's finances are available via companies house so anyone can access them. There was also the possibility perhaps that Mr Bouvier had manufactured all this.

17. I have to address the facts on the balance of probabilities and it seems to be clear from the wording of the email quoted above that Mr Mackie had spoken to Mr Karimi on the same day of the conversation between Mr Karimi and Mr Bouvier to inform him that the company was having finance issues. It is understandable that he too would not want have it thought that he was underperforming but the only question for me to address is whether or not by doing so there was a breach of the agreement set out by email on 7 November. It seems to me very much more likely than not that in the circumstances, with this detailed information circulating in the marketplace and resulting attempts to headhunt other members of staff at Orcan, that the information came from Mr Karimi. He may well not have appreciated the potential consequences but his age and inexperience and the fact that this money is important to his future cannot outweigh what appears to be a clear breach of the agreement, even if it was done inadvertently.
18. In those circumstances I have to find that there was no breach of contract - on the basis that the original contract of employment was varied by this subsequent agreement - and there was no unlawful deduction from wages on the basis that the amount properly due to Mr Karimi was determined by that agreement
19. Accordingly, the claim must be dismissed.

Employment Judge Fowell

Date 12 September 2023