



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal  
7th November 2023 (video)

**Claimant:** Alfred Pobi

**Respondent:** IBA Group Limited

## Full merits hearing

**Before:** Judge M Aspinall (sitting alone as an Employment Judge)

**Appearances:** The Claimant did not attend and was not represented  
Ms M A Carter, for the Respondent

## JUDGMENT

1. The claim for unauthorised deduction from wages (in the form of commission) is not well founded and is dismissed.

### Background

2. The Claimant commenced employment with IBA Group Limited on 18 January 2021 as Regional Digital Sales Manager until his employment terminated on 28 February 2022.
3. In January 2022, the Respondent investigated disputed cash withdrawals from the Claimant's company credit card totalling £4,960. The police informed the Respondent that the Claimant had admitted taking the cash. His final salary payment was withheld to repay the withdrawals and no further action was taken by the Respondent or the Police.
4. The Claimant brought a claim against the Respondent for unauthorised deduction of wages regarding the withheld salary. He also claimed unpaid commission of £1,800 in his final pay.
5. By the start of this hearing, only the commission claim remains a live issue; the claim for unauthorised deduction of his withheld salary having been withdrawn by the Claimant.

### The Hearing

6. The Respondent was represented by Ms Mary Carter, HR Advisor. Ms M De Beer attended to give witness evidence for the Respondent should that be called for.
7. The Claimant did not attend despite the Tribunal's efforts to facilitate his participation. My Clerk emailed The Claimant this morning when unable to reach him by phone. The Claimant replied stating he had previously informed the Tribunal he could not attend today for work reasons and had unsuccessfully asked for the hearing to be rescheduled.
8. While I afforded additional time to allow for The Claimant's response, I proceeded with the hearing considering the previous refusal, on 1 November 2023, of his postponement

application and his ongoing non-attendance. The Claimant, in fact, responded to EJ Sudra's refusal of that application by emailing on 1 November to say that, despite the refusal, he would not attend due to work commitments. I acknowledge that email from the Claimant. However, parties cannot simply choose not to participate in legal proceedings when refused an adjournment or postponement, as was the case here.

## **Law**

9. Under section 13 of the Employment Rights Act 1996, an employee has a right not to suffer unauthorised deductions from their wages. The burden lies on The Claimant to prove such deduction.

## **Findings of Fact**

10. On 30 July 2021, The Claimant signed IBA's commission framework which stated (at page 41 of the hearing bundle):

"Payment of commission/bonus earnings is conditional upon the following:  
You are employed on the day of payment.  
You are not working your notice period on the day of payment."

11. The Claimant resigned on 31 January 2022 and his employment ended on 28 February 2022. The relevant quarterly commission payment date was scheduled for 27 April 2022.
12. Therefore, under the express written terms of his employment and the commission agreement, the Claimant was not contractually entitled to commission as he had left IBA Group Limited's employment.
13. There is some evidence of a discretionary promise in February 2022 that commission would be paid on deal money received. However, I do not find this overrode the contractual terms of the written policy signed by The Claimant.
14. Any such commission payment could have only been made as a goodwill gesture, but there was no goodwill in this case due to the circumstances of the Claimant leaving and his conduct over the disputed cash withdrawals.
15. The Claimant made an application to adjourn this hearing which was refused by another Judge. He has not attended today despite having notice.
16. Mr Pobi, as Claimant, bears the burden of proving his unpaid commission claim but has not discharged it.

## **Conclusion**

17. The Claimant has not discharged the burden of proving he was contractually entitled to the commission pursuant to the written company policy he signed, which required ongoing employment at the payment date.
18. While his non-attendance today further weakens the, already scant, evidence in support of his claim, my decision stems fundamentally from the lack of substantive merit in his claim on a contractual basis.

**Judge M Aspinall**  
**Tuesday, 7th November 2023**

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