Case Number: 2213975/2023

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondent**
Mr V Irimia		**Woven By Toyota UK Ltd**

REASONS FOR THE JUDGMENT GIVEN ORALLY ON 26 MARCH 2024

Introduction

1 The Respondent, the UK arm of a multinational corporation with headquarters in the USA, describes its business as the creation of innovative mobility products, technology and services.

2 By a transaction completed on 13 July 2021 ('the Acquisition') the Respondent's parent company purchased certain assets from Lyft Inc, a corporation based in the USA, and its UK subsidiary, Blue Vision Labs UK Ltd ('BVL').

3 Seven days earlier, on 6 July 2021, the Claimant had commenced employment with BVL as a Software Engineer. The parties are agreed that, on the Acquisition, he became the employee of the Respondent. (He says that that happened by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('the TUPE Regulations'); as far as I am aware, the Respondent has nowhere formally admitted that the Acquisition amounted to a 'relevant transfer' engaging those Regulations, but the point appears not to be in dispute.) The employment continued until it was ended by the Claimant's resignation on notice, which was given on 11 August 2023 and expired on 8 September 2023.

4 By his claim form presented on 17 August 2023, the Claimant brought a complaint of unauthorised deductions from wages under the Employment Rights Act 1996, Part II. In box 8.2 of the form he said this (and only this):

> **The company did not pay the equivalent of USD 280,000 which is specified in my contract of employment as a minimum non discretionary annual payment on top of base salary and benefits.**

In box 9.2 he said this (and only this):

> **Since the company did not pay the amount clearly specified by my contract of employment, this is unlawful deduction of wages and I would like them to pay me at least the amount that is due, of USD 280,000.**

In box 15 he added:

> **The company did not respond to my requests for clarification and discussion. … When the company finally gave a response, it didn't make any sense, as they completely ignored the issue that I raised about the contractual obligations and instead chose to refer to their temporary bonus program which had no relevance to my contract of employment.**

5 The Respondent resisted the claim on numerous grounds, contending that it was not properly pleaded but that in any event, on undisputed facts, it was misconceived and unsustainable.

6 The Claimant provided further particularisation of his case in an email of 19 November 2023, which included the following:

> **Now, with regards to the questions raised by the Respondent's legal team. All the questions are related to the amount of USD 280k which the Respondent failed to pay on June the 8th, as required and promised. On June 8th the Respondent also communicated the annual compensation for the next period and there was a big drop compared with the compensation level agreed when I was hired. There was also a big economic loss relative to the acquisition date, against the TUPE agreement.**
>
> **My level of cash annual compensation was decided just before the acquisition. The Respondent did not ask the London employees to sign new contracts and they guaranteed that there will be no adverse economic impact to the employees following the acquisition (as reflected in the TUPE document). As such, their move to withhold more than 50% of my cash compensation amounts to unlawful deduction of wages.**
>
> **Most of the people in the Lyft London Team (possibly everybody) had a big part of their compensation paid in Lyft stock. The amount was different for different people, mentioned in their contracts as minimum rather than absolute amounts and non-discretionary, as also clearly stated in the employment contracts. Having a big part of compensation paid in liquid stock is a usual practice for US-based technology companies. This amount was never disputed and always paid in full, as required, at "checkin" time (annual communication of total compensation for the next period). This clearly established an expectation from the employees that this amount was a guaranteed part of their annual compensation, due to be paid annually at checkin time.**
>
> **… Given that the Respondent announced the Make Whole Bonus (MWB) before the acquisition, the employees accepted that this is how the Respondent chose to meet their contractual obligations for the first two years and that the Respondent will, without doubt, continue to do so after the MWB's expiration, via an equivalent scheme.**
>
> **…**
>
> **a. The USD 280,000 entitlement is clearly specified in the employment contract.**
> **b. The amount should have been paid on June 8th, at check-in time.**
> **c. This was a minimum and non-discretionary amount.**
> **d. … The MWB was lowered in value in the second year but a retention bonus appeared, which made up for the difference. This reassured the London employees that the Respondent is committed to meeting their obligations, possibly via alternative but equivalent in value approaches.**

7 At a preliminary hearing for case management held on 27 November 2023 Employment Judge Shukla directed that a public preliminary hearing be held to determine two matters.

(1) Whether the Claimant's claim constituted a claim for 'wages' within the meaning of the Employment Rights Act 1996, s27.

(2) The Respondent's applications for (a) a striking-out order on the basis the claim had no reasonable prospects of success; or (b) a deposit order on the basis the claim had little reasonable prospects of success.

The judge also recorded the key issues in the case, in these terms:

> **37.1 When the claimant was employed by BVL, he was entitled to at least $280,000 worth of shares/ share options (which the claimant says were publicly traded and as good as cash) on or around 8 June each year, whether under his contract of employment or otherwise;**
>
> **37.2 Whether either as a result of the transfer process, and/or statements made by BVL before the transfer, and/or statements or practices of the respondent after the transfer, a sum of $280,000 was payable to the claimant by the respondent, under his contract of employment or otherwise, on or around 8 June 2023;**
>
> **37.3 If such a sum was payable, was there a failure to pay the claimant on or around 8 June 2023.**
>
> **37.4 Was that failure an unlawful deduction of wages.**

8 The public preliminary hearing came before me on 26 March this year by CVP, with one sitting day allocated. The Claimant, who has no legal training, represented himself concisely and with good grace. The Respondent had the advantage of being represented by Mr Nawbatt KC. The hearing had been conscientiously prepared. I was presented with a bundle of 225 pages, a 'witness statement' in the Claimant's name (which was more in the nature of an outline argument), Mr Nawbatt's written submissions and accompanying chronology dated 18 March 2024, and an authorities bundle. Having heard helpful submissions from both sides[1] and taken time for deliberation, I gave an oral judgment with brief reasons striking out the claim.

9 These reasons are now given in writing pursuant to an oral request made by the Claimant at the hearing.

The Essential Facts

10 In view of the way in which the Claimant's case was put (to which I will return), the facts which it is necessary for me to record are few.

11 The 'Key Terms' of the Claimant's contract with BVL stipulated, under 'Remuneration', that he was entitled to receive a salary of £125,000 per annum.

[1] It was rightly agreed that I should decide the issues before me on the submissions of the parties and that it would not be appropriate to receive any oral evidence.

12 Separately, at cl 6.5, the contract stated:

> **The Company may in its absolute discretion pay you a bonus (including a starting or relocation bonus) of such amount, at such intervals and subject to such conditions as the Company may in its absolute discretion determine to be notified to you from time to time. Any bonus payment to you shall be purely discretionary and shall not form part of your contractual remuneration under this Agreement. If the Company makes a bonus payment to you, it shall not be obliged to make subsequent bonus payments. The Company may alter the terms of any bonus targets or withdraw them altogether at any time without prior notice. You shall in any event have no right to a bonus or a time-apportioned bonus if: (a) you have not been employed throughout the whole of the relevant financial year of the Company; or (b) your Employment terminates for any reason or you are under notice of termination (whether given by you or the Company) at or before the date when a bonus might otherwise have been payable. Any bonus payments shall not be pensionable.**

13 Attached to his contract of employment with BVL, but not forming part of it, the Claimant received a document entitled, 'Notice of Restricted Stock Units Offered by Lyft, Inc' (hereafter, 'Notice of RSUs'), which stated:

> **Once you have executed the employment contract with Blue Vision Labs UK Limited, a subsidiary of Lyft, Inc., and herein referred to as "Lyft U.K.," and your employment commences, as a separate matter to your employment and subject to the approval by Lyft Inc.'s Board of Directors or its authorised committee or delegate (the "Board"):**
>
> **a. Lyft, Inc. will grant you restricted stock units covering shares of Lyft, Inc.'s Class A Common Stock (the "RSUs") with a grant date value of approximately $280,000 (the "Base Equity Value" and the grant, the "Base Equity Grant"). The number of RSUs associated with your Base Equity Grant shall be calculated by dividing the Base Equity Value by the 20-day trailing average closing price of a share of Lyft's Class A Common Stock, ending on the last trading day preceding the Monday of the week in which your employment with Lyft U.K. commences, rounded down to the nearest whole RSU, as determined by the Board. Twenty-five percent (25%) of the total number of RSUs associated with your Base Equity Grant shall vest on the first quarterly vesting date (set at February 20, May 20, August 20 and November 20 of each year, the "Quarterly Vesting Date") that occurs after you complete your first three (3) months of continuous service with Lyft U.K. and, thereafter, twenty-five percent (25%) of the total number of RSUs covered by the Base Equity Grant shall vest on each of the subsequent three Quarterly Vesting Dates, in all cases, subject to your continuous service with Lyft, Inc. or its subsidiaries or affiliates (collectively, "Lyft") from the grant date through the applicable Quarterly Vesting Date.**
>
> **b. Subject to the approval by the Board, the Company shall grant you RSUs with a grant value of approximately USD $31,000 (the "Sign-on Grant Value" and the grant, the "Sign-on Grant"). The number of RSUs associated with your Sign-on Grant shall be calculated by dividing the Sign-on Grant Value by the 20-day trailing average closing price of a share of the Company's Class A Common Stock, ending on the last trading day preceding the Monday of the week of your Start Date, rounded down to the nearest whole RSU, as determined by the Board. Fifty percent (50%) of the total number of RSUs associated with your Sign-on Grant shall vest on the first Quarterly Vesting Date that occurs after you complete your first three (3) months of continuous service and, thereafter, the remaining fifty percent (50%) of the total number of RSUs associated with the Sign-on Grant shall vest on the subsequent Quarterly Vesting Date, in all cases, subject to your continuous service with Lyft from the grant date through the applicable Quarterly Vesting Date.**

> **c. In connection with Lyft's annual review process (a "Check-In") and subject to your continued employment in good standing with Lyft U.K. through the applicable Check-In, you will be eligible to receive a grant of RSUs with a grant date value equal to the Base Equity Value (approximately $280,000), subject to any upward adjustments made by Lyft, Inc. in its sole discretion as part of the applicable Check-In (each grant, an "Annual Grant"), subject to the terms and conditions as provided on Attachment I attached hereto and, solely with respect to the first Check-in that you participate in, proration as necessary to align with Lyft's Check-In process.**
>
> **The RSUs subject to the equity grant(s) (if any) and their associated settlement shall be further subject to the terms and conditions of Lyft, Inc.'s 2019 Incentive Award Plan Sub-Plan for UK Employees (as may be amended by the Board) or its successor, being a sub-plan of Lyft, Inc.'s 2019 Incentive Award Plan (as may be amended by the Board) or its successor (together, the "Plan") and the applicable form of RSU agreement approved by the Board (collectively, the "Equity Agreements") from time to time. The final terms of the equity grant(s) (if any) will be set forth in the applicable Equity Agreements to be provided to you shortly following the applicable grant date and will be determined by the Board in its discretion.**
>
> **No right to a grant of any RSUs described in this Agreement is earned or accrued unless and until such time that the grant of RSUs actually is approved by the Board (in its discretion) and granted. No right to receive stock under any RSU is earned or accrued until the RSU vests, and the grant of an RSU does not confer any right to continued vesting or employment.**
>
> **Lyft and the Board reserve the right to amend, modify, or change any Lyft equity compensation terms described in this notice. …**
>
> **Please note that the Equity Agreements and any award of RSUs, are governed by U.S. law and any claims thereunder will be governed by and construed in accordance with the laws of the State of California, regardless of the law that might be applied under principles of conflict of laws. Any claims thereunder must be brought in United States Federal District Court for the Northern District of California.**
>
> **For avoidance of doubt, although the Plan was established and is maintained by Lyft, Inc., your employer is Lyft U.K. and not Lyft, Inc. You will become eligible to participate in the Plan and receive RSUs as a benefit of your status as an employee of Lyft U.K.**

14 On the Acquisition, the Respondent replaced the BVL remuneration package with a new set of entitlements comprising five elements: base salary, annual bonus, 'Make Whole Cash Bonus' ('MWB') for 2021-2022, MWB for 2022-2023, and a 'New Hire Option Grant. I will refer to these as the 'post-Acquisition arrangements'. As the Claimant has accepted, the Respondent made it very clear that the MWB payments were to cover the first two years post-Acquisition only, and no commitment was made in relation to the period thereafter, although he maintains that representations were made on behalf of the Respondent around the time of the Acquisition to the effect that new arrangements would be implemented after the two MWB years which would secure for employees 'equivalent' levels of 'liquidity'.

15 The post-Acquisition arrangements included provision for surprisingly precise MWB cash payments of £231,011 for the first year and £215,386 for the second. Both payments were duly made in quarterly instalments, in accordance with the terms agreed. Total bonus compensation paid to the Claimant for each of the two years was different and in both years it exceeded $280,000.

16 On 8 June 2023 the Claimant was made aware that the Respondent had no plans to pay MWB bonuses for the year 2023-2024, or to introduce a new scheme offering similar benefits.

17 In July 2023 the Claimant received his final instalment of MWB compensation.

18 On 13 July 2023 the Claimant presented a grievance, complaining that the Respondent's stance as at 8 June 2023 placed it in breach of his contract of employment, under which he was entitled to an annual bonus of $280,000. On 9 August 2023 he was made aware that his grievance had not succeeded. As I have mentioned, he gave notice on 11 August and his employment terminated on 8 September 2023. On 20 November 2023 he was informed that his appeal against the grievance outcome had been rejected.

The Applicable Law

Unauthorised deductions from wages

19 As I have said, the claim is brought under the 1996 Act. The section numbers mentioned below refer to that Act.

20 By s13(1) an employer is prohibited from making deductions from a worker's wages, subject to two exceptions (neither of which is applicable here).

21 The concept of a deduction is dealt with in s13(3), as follows:

> **Where the total amount of wages paid any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.**

22 'Wages' are defined in s27(1) in, so far as material, these terms:

> **(a) any fee, bonus, commission, holiday pay for other emolument preferable to his employment whether payable under his contract or otherwise …**

By s27(3), it is provided that, where any 'payment in the nature of a non-contractual bonus' is made to a worker, it is to be treated as 'wages' payable to him on the date on which the payment is made.

23 High authority establishes three fundamental principles relating to the statutory protection of wages scheme. The first is that a sum by way of wages is only 'properly payable' under s13(3) if it is owing by virtue of some legal obligation, whether under contract or, for example, pursuant to some statutory rule or requirement (see *New Century Cleaning Co Ltd v Church* [2000] IRLR 27 CA). The second is that the jurisdiction extends only to claims amenable to precise quantification (see *Coors Brewers Ltd v Adcock* [2007] IRLR 440 HL). The third is

that any non-payment of wages amounts to a deduction from wages (see *Delaney v Staples* [1991] IRLR 112 HL).

24 The significance of s27(3) is that it attaches to a non-contractual bonus the character of 'wages' (which, for want of a legal obligation to pay it, it would otherwise not have), but a claim to recover such a bonus as an unauthorised deduction would nonetheless fall outside the protection of Part II of the Act unless it was for a specified amount (*Coors Brewers*, para 49, *per* Wall LJ).

The power to make striking-out orders

25 By the Employment Tribunals Rules of Procedure 2013, rule 37, the Tribunal may strike out claims or responses in a variety of circumstances. These include where the pleading 'has no reasonable prospect of success' (r37(1)(a)).

26 The higher courts have frequently made the point that the power to strike out is exceptional and must be exercised only in the clearest of cases (see *eg Ezsias v North Glamorgan NHS Trust* [2007] ICR 1126 CA).

The Rival Cases

27 The written submissions of Mr Nawbatt (which were developed in some detail orally) can largely be left to speak for themselves. In bare summary, he contended that the claim was fatally flawed and could not succeed, for three main reasons.

(1) It failed to identify any relevant *legal obligation* on the Respondent to pay the sum claimed (or any sum). Otherwise put, the claim was not for money 'properly payable' by the Respondent to the Claimant (s13(3)).

(2) Even if there had been room for a finding of a relevant legal obligation, it would not have been within the scope of the protection invoked because it could not have amounted to an obligation to pay a *quantifiable sum* (*Coors Brewers*).

(3) Even if the Claimant could have prevailed on the first two points, he would have been doomed to fail since, on the most favourable view of his case, no obligation to pay any relevant sum could conceivably have arisen on or before the 'occasion' of the alleged deduction from his wages (s13(3)), variously put by him as 8 June 2023 or some unspecified date in July 2023. Rather, under the terms of the documents on which he relied, any entitlement to payment could not even theoretically have arisen, and accordingly no 'deduction' could have occurred, until the first (notional) vesting date of his third year of employment, by which time (under the terms of the same documents) he would have been disqualified from receiving any payment owing to the fact that he had, on 11 August 2023, given notice to terminate his employment.[2]

[2] Mr Nawbatt may also have made the point that, on this footing, the claim form (issued on 17 August 2023) would have been premature and, as such, incompetent.

28 As I understood them, the Claimant's main contentions were as follows.

(1) By operation of the TUPE Regulations 2006, the Respondent inherited a continuing legal obligation on the part of BVL to pay to him (in addition to his salary) a bonus of at least $280,000 annually, subject only to his performance being satisfactory (which was not in question) and his remaining 'in good standing' (also not in question), and that the Respondent's failure to pay that sum (or perhaps to make the necessary grant) on 8 June 2023 or, at the very latest 31 July 2023 amounted to an unauthorised deduction from his wages.

(2) The Respondent's second argument was invalid because (a) the Claimant was entitled to treat the $280,000 figure as a ceiling and waive any right to receive a higher sum; and (b) in any event, any specific number of RSUs would, on the date of vesting if not before, have a precise monetary value.

(3) The Respondent's third argument was invalid because the Claimant's rights were infringed when he was made aware, in June (or the latest July) 2023, that it did not intend thereafter to honour its obligations (as he sees them) to pay bonuses owing to him. The fact that any payment pursuant to those terms would not have been due until later is immaterial. Moreover, the fact that the Claimant gave notice to terminate his employment on 11 August 2023, and that his employment duly terminated on 8 September 2023 is not material to his claim. It was precisely because the Respondent had breached its obligations (as he sees them) that he resigned.

29 Mr Nawbatt was concerned that there appeared to be some ambiguity in the Claimant's position and urged me to be wary of any attempt by him to put forward a new case. In particular, he understood that, in his 'witness statement', the Claimant was seeking to argue that the post-Acquisition arrangements had given rise to a continuing entitlement in and after July 2023 to receive a bonus at a comparable level. Before me, the Claimant firmly denied basing his *legal* argument on the post-Acquisition arrangements. Indeed, he went so far as to say that those arrangements were 'irrelevant'[3] and readily accepted that the MWB payments had been expressly limited to the two years immediately following the Acquisition. But (as I understood him) he did rely on the post-Acquisition arrangements as *evidential support* for his claim that he had had a continuing legal right, pursuant to the TUPE Regulations, to be paid by way of annual bonus a sum comparable to what would have been paid under the BVL contract read with the Notice of RSUs. He maintained that the payments under the post-Acquisition arrangements, taken with representations made on behalf of the Respondent at the time of the Acquisition, showed that the Respondent was mindful of its obligations under the TUPE Regulations and its conduct had created an 'expectation' that the 'target equity amount' under the BVL/Lyft Inc. terms would be 'honoured' over the first two years post-Acquisition and that thereafter a package providing an 'equivalent' level of 'liquidity' would be created. I will call this his subsidiary argument.

[3] Although the fact that he pressed no claim in respect of the years from 2021-2023 appears to imply acceptance of the relevance of the MWB payments, at least in the limited sense that they had satisfied his rights in respect of that two-year period.

Conclusions

30 is convenient to set out my conclusions by addressing in order Mr Nawbatt's central challenges to the claims.

Does the claim rest on a legal obligation?

31 As I have noted, the claim posits an obligation upon the Respondent which is said to arise under the Claimant's contract with BVL. But the argument faces the immediate and insurmountable problem that no contract imposed any obligation on BVL to award a bonus of any kind to the Claimant. Cl 6.5 of the contract of employment reserved to BVL a *discretionary power* to award a bonus in such sum(s) and on such terms as it might communicate to him from time to time, but a decision *not* to exercise such a power, whether or not open to challenge as a breach of contract, cannot amount to an unauthorised deduction. (The position is of course different in the case of a refusal to pay a discretionary bonus which has been declared, which brings s13(3) into play, but that is not this case.) Moreover and in any event, BVL never adopted, let alone communicated to the Claimant, *any* bonus scheme, of the sort envisaged by cl 6.5 or otherwise. In my view it would be simply impossible to spell out of the language of cl 6.5 any legal obligation on BVL to pay any form of bonus to the Claimant.

32 It is not necessary to consider the quite separate question whether *Lyft Inc.* was at any material time subject to any legal obligation to pay a bonus to the Claimant by virtue of the Notice of RSUs. There are at least two compelling reasons for this. First, the Claimant brings no claim against that corporation in these proceedings (nor could he, since his claim is (necessarily) for money said to be owed to a worker by his employer, and it is common ground that he was never a worker of Lyft Inc).[4] Second, he rightly did not put forward the argument (for which there would have been no legal or evidential basis) that any legal obligation upon Lyft Inc in his favour under the Notice of RSUs (notwithstanding its discretionary language) had somehow transferred to the Respondent.

33 For these reasons, it is very clear to me that the Claimant cannot prevail in seeking to rely on the TUPE Regulations to fix the Respondent with a relevant legal obligation in his favour. To state the obvious, those Regulations cannot operate to provide an employee with the benefit of an obligation greater than that owed to him by the transferor at the moment of transfer.

34 The Claimant's subsidiary argument goes nowhere to solving the problem of the absence of a legal obligation. His reliance on the TUPE Regulations fails because BVL was never under any legal obligation to pay him a bonus. The subsidiary argument does not and cannot affect that reality.

[4] As Mr Nawbatt pointed out, there is also provision at the end of the Notice of RSUs which stipulates that the Equity Agreements are to be construed in accordance with the law of the State of California and any disputes litigated in the courts of that State but, in the circumstances, it would not be proportionate to go any further down the blind alley of an inquiry into the legal relationship (if any) between the Claimant and Lyft Inc.

35 For the avoidance of any doubt, I decline to treat the subsidiary argument as seeking to launch a brand new legal claim, to the effect that the Respondent made representations in 2021 concerning possible bonus arrangements to take effect in and after 2023, giving rise to a (somehow legally enforceable) 'expectation' that a new scheme would be created providing for 'equivalent liquidity' to that which would have been afforded by the RSUs. I have two reasons. The first is that, as I have already said, the Claimant was very clear that he did not put his case that way. His only legal claim was that based on the TUPE Regulations. The second is that a claim so put would have been doomed to failure anyway. A statement that engenders a hope or expectation (I neither say nor imply that any was made) cannot be equated to a legally binding promise. Accordingly, the (imaginary) brand new case would fail for want of any legal obligation being shown.

Is the claim for a quantifiable sum?

36 The claim is manifestly not for a quantifiable sum. On the documents, the Claimant's case can only be that he was the beneficiary of an obligation to grant RSUs with an 'approximate' annual value at the date of grant of $280,000. There is no warrant for his device of attaching a value of *exactly* $280,000 to the benefit, when the relevant document explicitly (and necessarily) offers an approximation. Nor can he convert an estimate into an exact value by the expedient of forgoing any excess over the minimum desired sum. Moreover, his argument is misconceived on the further ground that it ignores the requirement for the deduction to be quantifiable *when it is made*. That is to say, when the sum claimed became 'properly payable' but was not paid. As explained below in relation to Mr Nawbatt's third point, that date must be treated as having fallen on 20 November 2023 (alternatively, on Mr Nawbatt's argument, in October 2023). It follows that his best claim (which, almost certainly impermissibly, treats shares as cash) is for the market value on the relevant date (20 November 2023 or some date between 1 and 31 October 2023) of 25% of the (unascertainable, rounded-down) number of RSUs notionally granted (in its discretion) by the Lyft Inc Board on 8 June 2023. To state the obvious, that is not a sum which is amenable to precise quantification.

37 Self-evidently, the subsidiary argument cannot rescue a claim premised on the false proposition that the Notice of RSUs conveyed an assurance of a precisely quantifiable bonus. To the contrary, it loses its way entirely and ends up with a vague plea for 'equivalent liquidity'.

Was the sum claimed (or any sum) 'properly payable' on/before 8 June 2023 or (at the very latest) 31 July 2023?

38 The question is framed as it is to allow for the fact that the Claimant maintains that the 'occasion' on which the alleged deduction from his wages occurred fell on 8 June 2023 or (at the latest) on some unspecified date in July 2023. The logic behind the latter of the alternative dates is elusive; the former rests on his contention that his right to claim arose on the communication to him of the fact that the Respondent would not be paying him a bonus in line with the BVL terms once the MWB payments had come to an end.

39 The problem with the Claimant's argument (however put) is that the 'occasion' on which an unauthorised deduction from wages is made is the date of the deduction or non-payment. That date cannot be earlier than the date on which the relevant sum was 'properly payable' (see the 1996 Act, s13(3)). Even if the BVL terms had been capable of giving rise to a legal obligation upon the Respondent to pay a quantifiable sum, no such obligation could in principle have arisen until, at the earliest, 20 November 2023, the (notional) vesting date for the first 25% of the (notional) 2023-2024 RSUs. In my view, this result is compelled by the core logic of the Claimant's case, which holds that, from the Acquisition onwards, he enjoyed an uninterrupted right to all the benefits of his BVL terms including those provided for under the Notice of RSUs, and that the post-Acquisition arrangements did not displace those rights or vary them in any way.[5] To spell it out, if there was a deduction from his wages, it happened on 20 November 2023. By then, he had given notice to terminate his employment and, had the BVL terms applied, that fact would have disqualified him from receiving any RSU award. Accordingly, there could have been no contractual entitlement on the date of the notional deduction to receive any bonus payment.[6]

40 The corollary of the above reasoning is that the claim must fail also on the ground that it was presented prematurely: if (contrary to my view) any right to complain under the 1996 Act, Part II arose, it arose after the date on which proceedings were commenced, 17 August 2023.

Overall conclusion

41 For the reasons stated, I find that Mr Nawbatt's three central submissions are all well-founded.

42 For completeness, I would add that Mr Nawbatt was also plainly right that, even if the Respondent failed on all three of its main grounds of defence, the best possible outcome for the Claimant was an award calculated as 25% of the (notional) 2023-2024 RSUs, rather than the 100% figure for which he contended.

Disposal and Postscript

43 For the reasons stated, I am quite satisfied that the claim has no, and certainly no reasonable, prospect of success. In the circumstances, it could serve no purpose to allow it to continue to trial. For the avoidance of doubt, this is not an instance in which an unpromising case when fully examined through evidence and argument at trial might stand a realistic prospect of improving. The material facts and applicable law are not in dispute and, in my judgment, a trial could only end in

[5] My reasoning departs slightly from Mr Nawbatt's at this point. He says that the relevant date would have fallen in October 2023, which would have been the month in which the first quarterly payment of a 2023-2024 MWB cycle would have fallen due, had the Respondent created one based on the model of the MWBs for the first two years post-Acquisition. I respectfully favour my analysis because I see it as being faithful to the case which the Claimant advances, namely that the post-Acquisition arrangements did nothing to change the underlying obligations, derived from his contract with BVL and the Notice of RSUs, owed to him by the Respondent on and after the Acquisition by operation of the TUPE Regulations.

[6] My conclusion does not turn on my small disagreement with Mr Nawbatt: if he is right and the (notional) deduction took place in October 2023, the same result inevitably follows.

defeat for the Claimant. Accordingly, the Respondent has comfortably cleared the high hurdle of establishing that the unusual measure of a striking-out order is appropriate and in keeping with the overriding objective.[7]

44 Finally, I should stress that my ruling is narrow in scope. I have decided that the claim under the 1996 Act, Part II is untenable and must be struck out. I should not be treated as implying any wider view concerning the Claimant's underlying sense of grievance or whether, in another forum, any different form of redress might be available to him.

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EMPLOYMENT JUDGE SNELSON

12 April 2024

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Reasons entered in the Register and copies sent to the parties on: 24 April2024……

..... for Office of the Tribunals

[7] See the Employment Tribunals Rules of Procedure 2013, r2.