



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104239/2024**

**Held via Cloud Video Platform (CVP) in Glasgow on 3 June 2024**

5 **Employment Judge McCluskey**

**Mr Chris Chambers**

**Claimant  
In Person**

10 **Rippling UK Limited**

**Respondent  
Represented by:  
Mr C Davies -  
Counsel**

15 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that:

1. The complaints of unauthorised deductions from wages and/or breach of contract are not well founded and are dismissed.
2. The complaint under section 24(2) Employment Rights Act 1996 for  
20 compensation for financial loss attributable to the matter complained of is not well founded and is dismissed.

### **REASONS**

#### **Introduction & Issues**

1. The claimant brings complaints of unauthorised deduction from wages and/or  
25 breach of contract in respect of the sum of £1,398.69 which he asserts is due to him. He also brings a complaint for financial loss under section 24(2) Employment Rights Act 1996. The complaints are resisted by the respondent.
2. There was a joint file of productions extending to 108 pages. The claimant lodged an additional document at the outset of the hearing which was  
30 numbered page 109. The parties were informed that I would only read the documents to which I was referred during evidence.

3. The claimant gave evidence on his own behalf. Mr Jose Rodriguez, Sales Compensation Manager gave evidence on behalf of the respondent. Each of the claimant and Mr Rodriguez spent about an hour giving evidence, including cross examination.

5 **Findings in fact**

4. This judgment does not seek to address every point upon which the parties have disagreed. It only deals with the points which are relevant to the issues the Tribunal must consider to decide if the claim succeeds or fails. If I have not mentioned a particular point, it does not mean that I have overlooked it. It is simply because it is not relevant to the issues. Any references to page numbers are to the paginated file of productions provided to me.  
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5. The respondent provides a workforce management platform for other businesses. The claimant commenced employment with the respondent on 10 July 2023. He was employed as a salesperson. His job title was Account Executive (AE), Accountant Channel. His employment ended on 9 January 2024.  
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6. The claimant entered into a written contract with the respondent dated 26 June 2023 (the Employment Contract). Clause 6 of the Employment Contract provided that the claimant's annual salary was £60,000.
7. In addition, the claimant was eligible for monthly guaranteed commission for the first four complete months of his employment. As the claimant started part way through July 2023, the claimant was eligible for monthly guaranteed commission for August, September, October and November 2023. The guaranteed commission amount was £3,333.34 per month.  
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8. The claimant agreed the monthly guaranteed commission arrangement with Mr Matt Donaldson, Senior Director in June 2023 prior to entering into the Employment Contract. The claimant asked Mr Donaldson for the guaranteed commission for the four-month period to be included in the employment contract he was to receive. Mr Donaldson emailed the claimant on 22 June  
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2023 and said it could not be included in an employment contract, but that Mr Donaldson was confirming the guaranteed commission arrangement for the four months in that email. Mr Rodriguez was not involved in any of the negotiations with the claimant about his terms and conditions of employment or his commission payments.

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9. At the time of agreeing the guaranteed commission arrangements with Mr Donaldson for the four months, the claimant did not expect to receive any further commission for that period.

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10. The respondent paid commission to eligible staff one month in arrears. For example, the claimant's guaranteed commission for August 2023 was due to be paid with his salary at the end of September 2023.

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11. There was a delay with payment of the £3,333.34 monthly guaranteed commission to the claimant for August (due end September 2023) and for October (due end November 2023). Payment was made by the respondent on both occasions, although late. On preparation for this hearing, the respondent realised that it had underpaid the guaranteed commission due to the claimant by £41.67 for monthly guaranteed commission for August 2023 and for October 2023, resulting in an underpayment of £83.34 total (subject to deductions required by law). The respondent has confirmed that this sum will be paid and asked for the claimant's bank account details to do so. The claimant has provided these details.

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12. The delay in payment of the monthly guaranteed commission for October (due end November 2023) arose through an administrative error. The claimant received an initial payment of £1,398.69 at the end of November 2023. He then received a true up payment of £1,892.98 on 12 December 2023, intending to bring the total guaranteed commission for October 2023 to £3,333.34. In fact, there was an underpayment of £41.67 for that month, which the respondent has confirmed it will now pay, as above.

13. The monthly guaranteed commission for each of the full months of August, September, October and November 2023 was due to the claimant irrespective of whether he made any sales in the month. If he did make any sales in those months he was not entitled to the guaranteed monthly commission and  
5 commission as percentage of sales achieved, in addition. He was only entitled to the guaranteed monthly commission. The administrative error with commission for October 2023 arose because his commission was initially processed as a percentage of sales achieved in October 2023, which was lower than his guaranteed monthly commission for October 2023. This was  
10 rectified by the respondent with the true up payment on 12 December 2023.
14. At some point the claimant asked Mr Rodriguez to clarify what the £1,398.69 payment at the end of November 2023 was for. This conversation took place on Slack, a platform used by the respondent for communication between staff members. Mr Rodriguez receives around 50 – 150 Slack messages per day  
15 from the respondent's staff. There was initially confusion on the part of Mr Rodriguez about the claimant's commission arrangement. It was not a usual arrangement to have guaranteed commission for a period. Mr Rodriguez had not negotiated the claimant's terms of employment or his commission arrangements. Mr Rodriguez did not have authority to negotiate any changes  
20 to the claimant's terms of employment or his commission arrangements. At the time of the Slack communication Mr Rodriguez was unable to clarify to the claimant what the payment was for. There was no agreement by Mr Rodriguez that the sum of £1,398.69 would be paid again in January 2024.
15. The payment was clarified by the respondent on 12 December 2023 when  
25 they realised there had been an administrative error and a true up payment of £1,892.98 was made, intending to bring the total guaranteed commission for October 2023 to £3,333.34.
16. The respondent operates a company policy where all Slack conversations are automatically deleted after a certain time. The Slack conversation between

the claimant and Mr Rodriguez had been automatically deleted and was unavailable.

### Observations on the evidence

- 5 17. I have only made findings of fact in relation to matters which are relevant to the legal issues to be decided.
18. The standard of proof is on balance of probabilities. This means that if I consider that, on the evidence, the occurrence of an event was more likely than not, then I am satisfied that the event in fact occurred.
- 10 19. There was a conflict in the evidence about what Mr Rodriguez had said to the claimant on Slack about the payment of £1,398.69 made to the claimant at the end of November 2023. The claimant's evidence was that Mr Rodriguez had told him that the same sum would be paid to him again at the end of January 2024, that the sum was due because of a deal he had closed in October 2023 and that the sum was due in addition to his guaranteed commission payment for October 2023. The claimant was unable to say when this conversation had taken place. The sum of £1,398.69 was the sum claimed by the claimant in this case, based on what he said he had been told by Mr Rodriguez.
- 15 20. The claimant's evidence in cross examination was that at the time of agreeing the guaranteed commission arrangement with Mr Donaldson for the four months, he did not expect to receive any more commission for that period. The claimant also said in cross examination that he was not seeking to renegotiate the terms of his commission arrangements with Mr Rodriguez but was trying to clarify what the £1,398.69 payment was for.
- 20 21. Mr Rodriguez denied having said that he would receive the £1,398.69 payment again in January 2024. He said that he could remember having Slack conversations with the claimant, but he did not tell the claimant the sum of £1,398.69 would be paid again in January 2024. There had initially been confusion on his part about the claimant's commission arrangements and he
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was unable to clarify what the payment was for. Nor did have authority to renegotiate employment terms or commission arrangements with the claimant.

22. Having heard from both the claimant and Mr Rodriguez I am satisfied that there was no agreement by Mr Rodriguez that the sum of £1,398.69 would be paid again in January 2024. I find that as a fact. This did not accord with the guaranteed commission arrangement entered into between the claimant and Mr Donaldson or how the guaranteed commission arrangements were in fact paid over the four-month period. I accepted Mr Rodriguez evidence that he was unable to clarify on the Slack conversation what the payment was for and that he did not have authority to renegotiate terms of the commission arrangement. This is consistent with the fact that he had not been involved in any of the negotiation with the claimant about commission arrangements or other employment terms when he had joined the respondent's employment.

15 **Relevant law**

23. Section 13 Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
- 20 24. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
25. The Tribunal was given the power to hear breach of contract complaints by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994..
- 25 26. Section 24(2) ERA provides that where a Tribunal makes a declaration under subsection 24(1) ERA that a complaint of unlawful deduction from wages is well founded, it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the Tribunal considers appropriate in all the circumstances to compensate the

worker for any financial loss sustained by him which is attributable to the matter complained of.

### Discussion and decision

27. Having heard the claimant's evidence it became apparent that his complaint of unlawful deduction from wages and/or breach of contract was based solely on what he asserts Mr Rodriguez told him on a Slack conversation on an unspecified date. The claimant asserts that he asked Mr Rodriguez to clarify what the payment of £1,398.69 was for, which was showing on his end November 2023 payslip. He asserts that Mr Rodriguez told him that it was commission for sales made in October 2023 and that sum would be paid again to him in January 2024.
28. This did not accord with the claimant's own evidence about the commission arrangements he had entered into with Mr Donaldson, prior to commencement of his employment, for commission earned in the first four full months of employment. Nor did it accord with the claimant's evidence that he was not seeking to renegotiate commission arrangements with Mr Rodriguez when he contacted him by Slack but rather to ask Mr Rodriguez to clarify what the payment was for.
29. Mr Rodriguez said that there had been confusion on his part initially about the claimant's commission arrangements as it was not usual for an employee to receive guaranteed commission. Mr Rodriguez said that he could remember Slack conversations with the claimant, but he did not tell the claimant the sum of £1,398.69 would be paid again in January 2024. He was unable to clarify what the payment was for during the Slack conversations. Nor did he have authority to renegotiate employment terms or commission arrangements with the claimant. The nature of the payment of the £1,398.69 at the end of November 2023 was subsequently clarified to the claimant when he received the true up payment on 12 December 2023 for the guaranteed commission for October 2023. For these reasons I am satisfied that the claimant has not shown that he was entitled to be paid £1,398.69 again in January 2024, such

that he succeeds in a complaint of unlawful deduction from wages or breach of contract for that sum. These complaints are accordingly dismissed.

30. The claimant also asserted that he was due compensation as a result of late payment of two of the guaranteed commission payments. No complaint was made by the claimant of unlawful deduction from wages in respect of the guaranteed commission payments. Accordingly, the Tribunal does not have jurisdiction to consider financial loss for late payment of those sums. In any event the claimant did not produce evidence from which I could conclude that he had suffered financial loss at the relevant time. Additionally, I have found that the complaint of unlawful deduction from wages in the sum of £1,398.69 is not well founded. The Tribunal does not therefore have jurisdiction to consider compensation for financial loss for that sum. These complaints are accordingly dismissed.

**Employment Judge: J McCluskey**  
**Date of Judgment: 05 June 2024**  
**Entered in register: 07 June 2024**  
**and copied to parties**

## NOTES

### **Public access to employment Tribunal decisions**

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>



