



EMPLOYMENT TRIBUNALS

Claimant: Mr. J Young

Respondent : Sunderland Association Football Club Ltd.

Heard at: Newcastle CFCTC by CVP **On:** 4th of July 2024

Before: Employment Judge Gowland

Representation

Claimant: In person

Respondent : Mr P Kerfoot Counsel

REASONS

1. Introduction

1.1 By an ET1 presented on the 20th of February 2024 the Claimant complained of:

- a) an unauthorised deduction from wages under section 13 of the ERA regarding a non-payment of a bonus.
- b) A breach of contract relating to non-payment of a bonus.

1.2 The case was heard in person on the 4th of July 2024. Both the Claimant and Respondent attended and the Respondent was legally represented.

1.3 The Claimant was employed as Head of Analysis & Data by the Respondent until his employment ended on 15th October 2023. The ACAS certificate was received and issued on the 22nd January 2024.

1.4 The claim concerns whether or not the Claimant is entitled to receive a bonus payment calculated at £25000.00 in relation to player development.

1.5 The bonus was made up of three separate payments, one of £5000 and two of £10,000.

1.6 The bonus was triggered when an eligible player made 15 appearances in the senior/first team.

2. The Complaints and Issues

2.1 The Claimant complains that he was not paid this bonus despite meeting the contractual requirements that were set out in an offer letter from the Respondent dated 17th of March 2021.

2.2 The issues for the Tribunal to determine were:

- a) Whether the Claimant brought his claim in time.
- b) If the Claimant was not in time, whether it was reasonably practicable for him to bring the matter in time.
- c) If it was not reasonably practicable to present a claim form within the applicable time limits was the claim form presented within such further period as was reasonable
- d) Whether there was an unlawful deduction from wages under s.13 of the ERA 1996 in respect of the contractual bonus payment.
- e) Whether there was a breach of contract in relation to the non-payment of the bonus.

3. Agreed Matters

3.1 The Claimant was employed by the Respondent.

4. Matters not agreed

4.1 The end date of the Claimant's employment. The Respondent says this was the 13th of October 2023.

4.2 The eligibility for the contractual bonus.

4.3 The Respondent says that this was not payable for players who were signed directly for the first team/senior team and only applied to players signed for the academy who developed and became first team players.

4.4 The Claimant says that the bonus applied to all young players signed regardless as to whether they were signed for the academy or the first team.

5. Time limits

Deduction from wages

5.1 The Claimant says that the relevant date when the deduction was made is the date of his last pay slip in October 2023.

5.2 The Respondent relies upon the case of **ARORA v ROCKWELL**

AUTOMATION LTD UKEAT/0097/06/ZT, and says that the relevant date of any deduction would either be the pay slip from which a bonus was not paid or the date of the contractual obligation to pay.

- 5.3 The relevant three players made the required number of appearances at various dates. The relevant dates to consider for the three players are December 2021, March 2023 and April 2023.
- 5.4 There was evidence in the bundle that confirmed that the Claimant first raised the matter of bonuses in December 2022 and received responses from the Respondent in January and February 2023 that the bonus criteria had not been met.
- 5.5 On the balance of probabilities the relevant date for payment of any applicable bonuses would have been in the wages paid the month after the relevant player met the relevant criteria.
- 5.6 In this case that means that bonuses, if they were due, would have been paid in January 2022, April 2023 and May 2023.
- 5.7 The Claimant's claim of unauthorised deduction from wages is therefore out of time subject to the reasonable practicability test.

Breach of contract

- 5.8 The Tribunal did not have clear evidence as to the effective date of termination of the contract of employment and therefore utilised the date of termination submitted by the Claimant of the 15th of October 2023.
- 5.9 The ACAS certificate was received and issued on the 22nd January 2024.
- 5.10 The ET1 was presented on the 20th of February 2024.
- 5.11 A Claimant for a breach of contract claim has three months from the effective date of termination which can be extended by a period of one month by way of obtaining an ACAS certificate.
- 5.12 Taking into account the early conciliation extension, the Claimant had until the 15th of February 2024 to issue the ET1.
- 5.13 The Claim for breach of contract is therefore out of time subject to the reasonable practicability test.

6. Reasonable Practicability

- 6.1 The Claimant did have access to legal advice as evidenced by a letter of

claim sent to the Respondent on the 9th of February 2024.

6.2 The Claimant confirmed that he became aware of the three month time limit at some stage but thought that this ran from the date of his last pay slip.

6.3 The Claimant had a one month old baby at the time in question but gave no evidence that there were any issues caused by his family situation beyond those that are normally encountered by new parents.

6.4 The Claimant gave no other evidence of any circumstances that affected his ability to issue the ET1 within the relevant time period.

6.5 It was therefore reasonably practicable for the Claimant to have submitted his claims within the relevant time limit and the Tribunal heard no evidence that would allow an extension of the relevant time limits in this case in relation to either the deduction from wages claim or the breach of contract claim.

6.6 In conclusion, the Claimant's claim of unauthorised deduction from wages and breach of contract are out of time and the Employment Tribunal has no jurisdiction to hear the claims.

Employment Judge Gowland

Date: 27th July 2024

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