



EMPLOYMENT TRIBUNALS

Claimant: Mr A Cowle

Respondent: Air Plants Dust Extraction Ltd

Heard: by CVP **On:** 20 September 2024

Before: Employment Judge Ayre

Representation

Claimant: In person

Respondent: Mrs Toni Robinson, HR Director

RESERVED JUDGMENT

1. The respondent made an unauthorised deduction from the claimant's wages of £120. The respondent is ordered to pay £120 to the claimant.

REASONS

Background

1. On the 18th July 2022 the claimant issued this claim in the Employment Tribunal following a period of early conciliation that started on 20 June 2022 and ended on 22 June 2022. The claim is for unpaid commission.
2. In the claim form the claimant says that he was employed by the respondent from 2 June 2012 until 31 May 2022 as an Area Sales Manager, and that he is entitled to unpaid commission. He alleges that the respondent did not pay him commission at 3% on sales totalling £289,000, resulting in him being entitled to additional

commission of £8,760. In an email sent to the Tribunal on 16 August 2024 the claimant confirmed that he was claiming commission of £8,760.

3. The respondent defends the claim. It says that the claimant was employed as an Area Sales Engineer from 17 June 2014 until 5 May 2022.

The hearing

4. I heard evidence from the claimant and, on behalf of the respondent, from Christopher Smith, Non-Executive Director.
5. The respondent had prepared a bundle of documents running to 46 pages, and also submitted a copy of the claimant's offer letter.
6. At the start of the hearing the claimant told the Tribunal that the amount he was claiming was £8,760, which he says should have been paid to him in May 2022. During the course of giving evidence however the claimant, when asked why he was entitled to that sum and how he had calculated it, replied that the figure was based on what he thought was due to him. He stated that he could not be sure how much he was owed, and that the figure given was an estimate.
7. The claimant asked for time to review the documents in the bundle to calculate how much commission was due. The hearing was adjourned to give him time to go through the bundle. After the adjournment the claimant said that he now calculated he was entitled to commission of £5,503.98.
8. The respondent conceded, during the hearing, that the claimant is entitled to additional commission of £120 as an error had been made in the calculation of commission, for which the respondent apologised.

The issues

9. The issues that the Tribunal had to determine were as follows:
 1. How much commission was the claimant entitled to be paid on the termination of his employment?
 2. How much commission did the respondent pay to the claimant on the termination of his employment?
 3. Did the respondent make an unauthorised deduction from the claimant's wages and/or breach the claimant's contract of employment by not paying him all of the commission to which he was entitled?

Findings of fact

10. The claimant was employed by the respondent as an Area Sales Engineer. His employment started in June 2014 and ended on 5 May 2022. On 5 April 2022 the claimant resigned from his employment giving one month's notice. He was placed on garden leave during his notice period as he was leaving to join a competitor.
11. Prior to starting work at the respondent, the claimant was sent an offer letter which set out some of the main terms of the claimant's employment. It included the following:

"The salary for the position is a £24,500 basic plus commission of 3% on all "paid" sales.

Turnover commissions are adjusted for any unpaid invoices quarterly in arrears (but are bought back at next reconciliation if subsequently paid".
12. The claimant was entitled to be paid 3% commission on the value of his sales. Commission was paid when an invoice was issued to the customer, and if, for any reason, the customer did not pay the invoice, a Credit Note would be issued and the commission payment would be deducted from future commission payments. The claimant was paid monthly and commission payments were included in his monthly pay.
13. Commission was calculated on a cumulative basis, starting at the beginning of the respondent's financial year, on 1 October.
14. It is common practice for several invoices to be issued to a customer during the life of a contract. Typically a first invoice will be raised at the start of the contract for the customer to pay a deposit, a second invoice when the goods are ready for dispatch, and a final invoice when the job is completed.
15. As Area Sales Engineer the claimant was expected, as well as securing new contracts, to oversee the issuing of materials required for the contract and the completion of the work. Where a project has started but not been completed when an employee leaves the respondent's employment, a reduction is applied to the employee's commission, to reflect the fact that the remaining workforce will need to complete the work.
16. The respondent produced a spreadsheet showing the calculation of commission due to the claimant during the last financial year of his employment, namely from 1 October 2021 to 5 May 2022. Mr Smith explained the spreadsheet to the Tribunal in his evidence. He told the Tribunal that, based on the spreadsheet and taking account of total sales achieved by the claimant, and making deductions for invoices which had not been paid, and for work that had not been completed when the claimant's employment terminated, the total value of commission due to the claimant was £10,560.
17. The claimant was paid commission of £1,978 in December 2021, £1,943 in January 2022, £1,419 in February 2022, £1,369 in March 2022, £238 in April 2022 and £3,613

in May 2022, giving a total of commission paid during the last financial year of the claimant's employment of £10,560.

18. Mr Smith accepted in evidence that there was an error in the spreadsheet produced by the respondent. An invoice of £4,000 had not been included in the spreadsheet. Commission of £120 is due on that invoice and has not been paid to the claimant.

The Law

Breach of contract

19. Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 provides that:

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if

–

- (a) The claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
- (b) The claim is not one to which article 5 applies; and*
- (c) The claim arises or is outstanding on the termination of the employee's employment.*

20. This provision gives employment tribunals the power to hear claims for damages for breach of a contract of employment or any other contract connected with the employment.

21. Section 13 of the Employment Rights Act 1996 states that:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract,*
or
- (b) The worker has previously signified in writing his agreement or consent to the making of the deduction...*

(3) Where the total amount of wages paid on 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. Section 23 of the Employment Rights Act 1996 gives workers the right to make a complaint about unauthorised deductions from wages to an Employment Tribunal and section 24 provides that where an Employment Tribunal finds a complaint to be well-founded “*it shall make a declaration to that effect and shall order the employer – (a) To pay to the worker the amount of any deduction made in contravention of section 13*”. By virtue of section 24(2) the Tribunal may also order the employer “*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.*”

Conclusions

23. The claimant’s claim has evolved over time. He initially claimed commission of £8,760 but did not provide any plausible explanation as to how he had calculated that sum and he accepted that it was an estimate. During his evidence to the Tribunal the claimant changed the amount claimed to £5,503.98. He then suggested that commission had been paid to others on sales that he had secured. In essence, he alleged that after he left the respondent’s employment other engineers had taken over the contracts that he had been previously responsible for and been paid commission on those contracts. The claimant suggested that was an unfair practice, because he had brought the work in.

24. The claimant did not produce any evidence to support his claim. In contrast, the respondent’s evidence was clear and credible, and backed up by a spreadsheet produced by the respondent’s former head of finance. Moreover, Mr Smith, to his credit, volunteered that he had noticed that an invoice worth £120 in commission to the claimant had not been included in the spreadsheet, and offered to pay that sum to the claimant. There was no evidence before me to suggest that the respondent was seeking to ‘hide’ any commission payments from the claimant.

25. I accept the respondent’s evidence. I find that the claimant was paid all of the commission to which he was entitled, with the exception of £120. I am satisfied that the terms of the commission scheme that were applied in practice were that when employees leave the respondent’s employment no further commission payments are made in respect of invoices issued after they left on contracts they had worked on or secured before the termination of their employment.

26. I therefore find that:

1. The respondent was entitled to be paid £10,680 commission (£10,560 plus £120) for the financial year leading up to the termination of his employment;
2. The claimant was only paid £10,560 commission during that period; and
3. the respondent made an unlawful deduction from the claimant’s wages in the sum of £120.

27. The respondent is ordered to pay the sum of £120 to the claimant.

Employment Judge Ayre

Date: 3 October 2024