



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs Michelle Nicholson

AND

**Respondent**

Orbinox UK Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY**

**ON**

16 August 2024

**By Cloud Video Platform (CVP)**

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Mr Robert Walker, Managing Director

### JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim for accrued but unpaid holiday pay is well-founded, and the respondent is ordered to pay the claimant the gross sum of £340.00; and
2. The claimant's claim for breach of contract is not well-founded, and it is hereby dismissed.

### RESERVED REASONS

1. In this case the claimant Mrs Michelle Nicholson brings monetary claims for breach of contract and accrued but unpaid holiday pay against her ex-employer Orbinox UK Limited. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
3. I have heard from the claimant. I have heard from Mr Robert Walker for the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The respondent company Orbinox UK Ltd is a distributor of industrial valves with about 14 employees in the UK. It is a subsidiary company of a larger Spanish organisation. The claimant was employed as the respondent's Finance Manager from 24 August 2023 until 7 December 2023.
6. The respondent's Managing Director is Mr Robert Walker from whom I have heard. He wrote to the claimant to offer her employment in these terms: "Further to our recent meeting we are pleased to offer you the position of "Finance Manager" to commence employment on Thursday, 24 August 2023 at 9 am. This role will report to the Managing Director Robert Walker. Your working week at Orbinox will be 21 hours per week with flexibility of working days/times as agreed ... Your salary will be £20 per hour to be reviewed after three months service ... Your holiday entitlement will be 25 days per annum plus eight bank holidays, pro rata for your working hours giving you 25 ½ days holiday per year. This will be adjusted for your actual starting date. We operate on "holiday hours" whereby holiday days will be converted to hours. This will be explained to you on starting .... You will be subject to a three month probation period. Upon completion of your probation period, you will be eligible for the company discretionary bonus scheme, which if paid will pay you an additional 15% of your salary. More information will be provided when you start. All other Orbinox standard Employment Terms and Conditions will apply ..."
7. The reasons for the termination of the claimant's employment are not relevant for this claim, but in short, the claimant asserts that she was treated abusively and unreasonably, whereas the respondent asserts that her performance was unsatisfactory. In any event the claimant's employment was terminated summarily following a meeting between the claimant and Mr Walker on 7 December 2023. This was confirmed by email on the same day from Mr Walker to the claimant which stated: "I am writing to confirm termination of your employment with Orbinox UK Ltd as of today 7 December. Your salary will be paid until the end of December 2023. As discussed, can you please arrange for return of the company laptop."
8. The claimant had commenced employment on a salary of about £2,093 per month gross, but along with other members of staff she was awarded a 15% pay increase backdated to 1 October 2023. The parties agree that her monthly gross salary as at December 2023 was £2,366.00
9. The first claim is for accrued but unpaid holiday pay. Following discussion between the parties at this hearing, they helpfully agreed that the claimant was owed two days' accrued holiday pay as at the date of her dismissal, and they further agreed that this equated to £340.00 gross.
10. In addition, the claimant asserts she was promised a bonus from Mr Walker based on either 10% or possibly 15% of her basic salary. Based on three months' pay at £2,093.00 this amounts to £6,279.00, which at 10% is a further £628.00. She asserts that the liability to pay this bonus is included under Accruals in the respondent's accounts. I have seen the respondent's Notes to the Financial Statements for the year ended 30 September 2023 where there is an amount under "Accruals and deferred income" of £98,815, but no further information is given, and there is no specific reference to the payment of bonus nor the amount to which the claimant might arguably be entitled.
11. The respondent disputes that any bonus is payable. This is because the offer letter clearly states that any bonus would only apply after completion of the three months' probationary period, and in any event is expressed to be discretionary. There was only a two-week period between the expiry of the three months' probationary period and the claimant's dismissal, and the respondent has declined to exercise its discretion to pay any bonus.
12. Having established the above facts, I now apply the law.
13. The claimant claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year.

14. The claimant also brings a claim for breach of contract which is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"), and as required the claim was outstanding on the termination of employment.
15. It is agreed between the parties that the claimant is owed two days' accrued holiday pay and that this equates to £340.00. The claimant's claim is therefore well-founded and the respondent is ordered to pay the claimant the gross sum of £340.00.
16. In my judgment the claimant has no right to an additional bonus payment. The claimant's offer letter makes it clear that any bonus would only apply after the end of the probationary period, and in any event it is discretionary. The respondent decided not to exercise its discretion to pay any amount of bonus. This claim is not well-founded, and it is hereby dismissed.

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Employment Judge N J Roper  
Dated 16 August 2024

Judgment sent to Parties on  
2<sup>nd</sup> October 2024

Phoebe Hancock  
For the Employment Tribunal