



EMPLOYMENT TRIBUNALS

Claimant: Mr S Carter

Respondent: Metartec Limited

Heard at: Watford (by CVP)

On: 25 November 2024

Before: Employment Judge MJ Smith

REPRESENTATION:

Claimant: In person

Respondent: Ms S Harty (Counsel)

JUDGMENT having been sent to the parties on 4 January 2025 and reasons having been requested in accordance with Rule 60 of the Rules of Procedure 2024, the following reasons are provided:

REASONS

1. The Claimant was employed by Metartec Limited as a Sales Manager. He started his employment on 1 February 2023 and his employment was terminated on 7 September 2023.
2. Having gone through early conciliation via ACAS between 29 November 2023 and 1 December 2023, on 1 December 2023 the claimant presented a claim for unauthorised deduction of wages to the Tribunal.
3. The proceedings were served by the Tribunal on the respondent in the usual way and it filed a response denying the claims.

4. The Claimant gave oral evidence as did Mr Ray Hall for the Respondent.
5. The Claimant had started working for the Respondent as a sub-contractor on 4 July 2022. This came to an end on 31 January 2023 as a result of the Claimant commencing full time employment with the Respondent. Both parties agree that as a sub-contractor the Claimant was not entitled to receive sales commission payments.
6. There was a contract of employment between the Claimant and Respondent. The terms of the contract included an express term as to the nature of the commission to which the Claimant was entitled in his role as Sales Manager. This term was set out in the Principal Statement of Terms which was issued and signed by the Claimant on 30 January 2023.
7. The term stated that a commission on sales would be paid to the Claimant if the gross profit margin exceeded twenty-five per cent of the invoiced sales order against final costs to the company. The commission would be between three and five percent of the amount over twenty-five percent and was to be paid at a rate at the discretion of the Respondent.
8. The commission was only paid on sales invoices raised during the period of employment. This was set out in the Respondent's Employee Handbook a copy of which was made available on the company intranet.
9. The Claimant secured seven projects by the time of his resignation four of which had completed and been invoiced to the clients. The Claimant was paid 5 per cent commission on the invoiced sales value amounting to £2,095.79.
10. The Claimant claims that he is entitled to sales commission on sales which were sourced during his period of employment but which were invoiced after the termination of his employment. He claims that his contribution to the business, the sourcing of sales and the maintenance of relationships were integral to the sales which were invoiced after the termination of his employment.
11. The Respondent relies on the terms of the contract and states that no further commission payments are due to the Claimant. A copy of the Employee Handbook was provided to all parties at the hearing.
12. The Claimant claims that he does not recall the Employee Handbook being provided to him at his induction with the Respondent or at any time subsequently. As such the Claimant claims that the Employee Handbook does not represent the terms of the contract.

13. The Respondent disputes this and states that the Employee Handbook was provided at the Claimant's induction on 2 February 2023 and is available on the company intranet site. The Respondent further states that had the Claimant been unable to locate the Employee Handbook he could have requested to see it at any time and would either have been directed to the intranet site or provided with a hard copy upon request.
14. The Employee Handbook was provided at the hearing. There was no objection from the Claimant to the introduction of the handbook as evidence. The late evidence was allowed in under rule 41 Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which states that the Tribunal can regulate its own procedure and must conduct the hearing in a manner it considers just. The Employee Handbook provided assistance to the Tribunal in determining what terms formed a part of the contract and enabled the Tribunal to deal with the case fairly and justly in accordance with the overriding objective in Rule 2.
15. It was clear from the bundle that the Claimant had an induction on 2 February 2023. Within that document there is evidence that the 'Staff Handbook' was provided to the Claimant. The Claimant signed and dated the induction document. I find that the Claimant did receive the Handbook.
16. I therefore find the terms in relation to the payment of commission set out within the Handbook were provided to the Claimant and he was either aware of them or should have been aware of them during the period of his employment.
17. In particular Term 4.3 setting out the 'policy regarding bonus and/or commission' which states that payment of any commission is at 'the absolute discretion of the Company'. It further states that the Claimant 'will not be eligible for any bonus and/or commission payment if payment falls due after your date of termination'.
18. The Claimant was only due a commission on invoiced sales which were realised during the course of his employment. The Claimant cannot claim for commission on sales obtained but not invoiced before the termination of his employment. The Claimant does not claim that there were any other unauthorised deductions.
19. The Respondent produced evidence that there were four projects which were invoiced prior to the termination of the Claimant's employment. All sums due on these projects were paid to the Claimant at a rate commensurate with the amount against budget set out in the contract. There were three projects which were invoiced after the termination of the Claimant's employment.

20. The Claimant has been paid all commission due to him at the termination of his employment. The commission paid was paid at the rate set out in the contract and there is no further commission due. The Claimant was unable to show that the commission payments were less than required in the terms of the contract.

21. In these circumstances I find that the claim for unlawful deduction of wages is not well-founded. The Respondent does not owe any further payment to the Claimant.

**Approved by
Employment Judge MJ Smith
5 February 2025**

Judgment sent to the parties on:
17/2/2025

For the Tribunal:
N Gotecha

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/