



EMPLOYMENT TRIBUNALS

Claimant: Miss S Higgins

Respondent: Celos Wines Limited

Heard at: Bristol via video hearing

On: 15 May 2025

Before: Employment Judge G Duncan

Representation

Claimant: In person

Respondent: Mr Xenos, Director

WRITTEN REASONS

Introduction

1. The Claimant, Miss Higgins, brings this claim against the Respondent, Celos Wines Limited. The Claimant worked as a Sales Representative and states that her employment commenced on 1 November 2020 and was terminated on 19 January 2024.
2. The Claimant has represented herself throughout the proceedings. The Respondent has been represented by Mr Panos Xenos, the company director.
3. The matter came before me on the 15 May 2025 for a full merits hearing. The hearing took place via video link.

Procedure

4. The Claimant by way of ET1, received on 25 March 2024, outlines that she worked as a Sales Representative selling wine for the Respondent company. The ET1 details her claims for holiday pay, arrears of pay and pension payments. The Claimant asserts that there was an agreed commission structure with 25% initially to be received for each full case sold and 15% for half cases. The ET1 states that the full case commission was subsequently reduced to 23%. The Claimant asserts that she provided her own customer base when joining the Respondent. She states that the Respondent began cutting her commission and she noticed that there were

errors in the Respondent's calculation. The Claimant states that the shortfall was approximately £300 to £500 per month and the ET1 states that she is owed approximately £4,800. She also states that she is owed for holiday payments and pension payments.

5. The Respondent, in the ET3, disputes the claims pursued by the Claimant. It is asserted that the Claimant's employment ended but that she failed to give notice of her resignation or work her notice period. The ET3 states that a car allowance was included within the agreed commission structure. The Respondent makes various allegations regarding the Claimant's conduct to include that the Claimant refused to leave home to work, was aggressive and that there was a drop in her sales. The ET3 states that Mr Xenos concluded that the Claimant had started working for a different wine company and believed that the Claimant was pursuing a false claim against the Respondent.
6. A notice of hearing was sent to the parties, dated 27 January 2025. Various directions are included within the notice of hearing to include disclosure and statements. The matter was listed for a video hearing on 15 May 2025.
7. In consideration of the claims, I have had regard to the Tribunal file consisting of the ET1, ET3 and various correspondence between the parties. In terms of the evidence relied upon by both parties, the Claimant has drafted a ten-paragraph statement under email dated 9 March 2025. The Claimant also relies upon various emails between the parties, payslips and her spreadsheets relating to the commission she states was payable by the Respondent. The Respondent has circulated a two-page statement, bank transaction details, handwritten calculations, emails between the parties and an employment contract.

Preliminary Issues

8. At the start of the hearing, I clarified the nature of the claims being pursued by the Claimant. It was confirmed that she did not seek to pursue the claim for holiday pay and confirmed that she wished to withdraw this claim. I explained that the claim for holiday pay would be dismissed on withdrawal. In relation to the pension payments, it was confirmed by the Claimant that this had now been resolved by The Pensions Ombudsman. Accordingly, the outstanding issue between the parties was limited to the arrears of pay.

Issues

9. The issues that I must determine are relatively limited given the clarification by the Claimant that she does not pursue her claims for holiday pay and pension payments. In relation to the unauthorised deduction from wages claim, I must firstly consider the terms of the contractual relationship between the parties and, in the context of the commission calculations, determine the amount that is properly payable.

Factual Matrix

10. The Claimant relies upon her statement as referred to above. She states that the outstanding commission is £4,477.38. The Claimant details that she agreed to drop the commission and that Mr Xenos was approaching her customers directly in 2023 in an attempt to avoid making commission payments. The Claimant states that she has been cheated out of her wages and that the spreadsheets demonstrate the unauthorised deductions. The attachments to her statement go to some lengths to explain the commission and deductions to include invoice numbers, net, gross, whether the figure is paid and the commission amount. They include an impressive amount of detail and demonstrate an attention to detail in terms of record keeping.
11. The statement of Mr Xenos outlines the nature of the agreement and focuses on making serious derogatory comments regarding the Claimant's conduct. He makes criticism of sales figures and states that he was suspicious of sales. Mr Xenos makes various allegations that the Claimant approached different companies and that she had a terrible reputation. The statement provided a short breakdown of the figures and various percentages. The handwritten calculations that are attached are extremely hard to follow. The attachments do not properly explain the basis upon which various deductions are seemingly made from the payments made to the Claimant. Mr Xenos' statement focuses on criticising the Claimant in general terms rather than on the issues that I must determine.
12. At the outset of the hearing, I explained to the parties that I had a number of questions that arose from the documentation that had been relied upon. I asked the Claimant how she had come to draft the spreadsheets that were attached to her statement and what they demonstrated. She explained that every month she would get paid and receive a payslip. She would cross-reference her sales with the invoices and calculate the appropriate commission. She informed the Tribunal that during 2022 and 2023 there was no discrepancy but that as time progressed there appeared to be a shortfall. The Claimant states that the spreadsheet would be provided by the Respondent company and that she would then calculate the relevant commissions. She stated that the envelopes would be sent through the post and she proceeded to hold up a number of the envelopes on the video link.
13. In response to the Claimant's answer to my question, Mr Xenos confirmed that the spreadsheet would be sent by the company to the Claimant. This would be a sales report with customer reports and sales. Mr Xenos stated that the Claimant has completed her own commission calculations. The Claimant agreed the position and further explained that the handwritten figures down the side of each entry were included by her. She stated that she refers to each of her orders that she has received from customers. The Claimant stated that she marries up the sales provided to the Respondent at the end of each month.
14. The Respondent stated that there was nothing wrong with his figures. He asserted that various deductions were necessary to include free unauthorised bottles. Mr Xenos stated that the Claimant's figures are incorrect and stated that the figures provided are for sales minus deductions for reduced price wines, for example. Mr Xenos stated that the figures were

calculated on a month-to-month basis and that the salary was calculated so the accountant could make payments.

15. I enquired with the Claimant as to when she first saw the handwritten calculations made by the Respondent. She stated that it was during the proceedings as she was never sent the exact calculations. She again stated that she would get the spreadsheet and she would check those against her own orders. The Claimant stated that she still had written copies of her orders and that all paperwork corresponds to her figures.
16. Mr Xenos explained that the Claimant was well aware of the deductions and that the Claimant seemed to be under the impression that she could simply make deductions and include false orders. He referred to the email correspondence in support of his contention that wine was sent out that was not ordered by customers. He referred to emails, not contained in the bundle, that in his view demonstrate the Claimant was lying. I enquired why the calculations made by the Respondent appeared to have markings to indicate that they were in a writing pad or had otherwise been copied. It was confirmed by Mr Xenos that they were not originals but that they had been copied from his own accounts to ensure that they were clear and legible.
17. In the course of asking the questions that I did, both parties were given ample opportunity to explain their respective positions. I asked both parties to confirm whether they wished to have the opportunity to ask questions in cross-examination or whether they wished to make submissions. Both parties confirmed that they did not have any questions in cross-examination and that brief submissions could supplement the documents that I had considered and the responses to questions that I had already received. The Claimant stated that she felt the payslips were clear and that they prove that the incorrect amount was paid. She stated that the figures add up based upon the commission calculations. Mr Xenos submitted that he had email proof of the lies that he stated that the Claimant had told. He referred to a customer that ordered six bottles of wine but then his daughter rang to say that he had been admitted to hospital so the wine was returned.
18. Having read the documentary evidence, considered the responses to questions and the submissions made by both parties, I proceeded to make findings of fact. It is agreed that the contract of employment is such that the commission was payable in the structure outlined between the parties. In so far as it is necessary, I find on the balance of probabilities that the Claimant is entitled to commission payments subject to the number of bottles sold as specified within the employment contract.
19. The disputed issues in this case relate to the manner in which the commission figure should be calculated. In considering the documentary evidence, I observed the lack of proper explanation regarding the Respondent's asserted deductions for issues such as unauthorised wine or returns – the evidence on this issue was not persuasive. On the contrary, I consider that the Claimant's calculations appeared to be precise in nature and clearly explained with reference to the spreadsheets. The individual breakdown on a monthly basis fits with the figures in the payslips and are subject to detailed calculation. The attention to detail is impressive and, in my view, demonstrate that the Claimant went to great lengths to keep an

accurate record of the payments made. The Respondent's calculations, again, are lacking. It is unclear why Mr Xenos has simply copied out various calculations from another document without providing a full explanation with regard to the basis of the calculations. They appear to represent a form of third hand, rough calculation. It is further not clear how the Respondent states that these alleged deductions and calculations were made available to the Claimant at the time. The Respondent refers to various emails in support but these do not appear in the bundle. Having considered the evidence and submissions in totality, I am persuaded that the Claimant's calculations are more likely to be accurate given the observations that I have made above. I therefore find, on balance, that the Claimant's calculations are accurate. I am not satisfied that any deductions made by the Respondent are adequately supported by the evidence I have considered.

Law

20. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA:

“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.”

21. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.

22. For the purpose of considering whether there was an unauthorised deduction in wages, I must construe the contract to consider the Claimant's entitlement and whether the Respondent adhered to this arrangement. I must determine the amount that is properly payable. I have considered this specifically in the paragraphs above and the findings that I have made.

Conclusions

23. Having made the findings of fact above, I conclude that the Respondent made unauthorised deductions from the Claimant's wages in the sum of £4,477.38.

Employment Judge G Duncan
Date: 22 July 2025

WRITTEN REASONS SENT TO THE PARTIES ON
9 August 2025

Jade Lobb
FOR EMPLOYMENT TRIBUNALS