EMPLOYMENT TRIBUNALS

Claimant: Mr D Ahern

Respondent: Brand Finance plc

Heard at: London Central (by CVP) **On:** 7 August 2025

Before: Employment Judge Moyler

REPRESENTATION:

Claimant: In person

Respondent: Mr A Leonhardt, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

Bonus claim

1. The Tribunal does not have jurisdiction to consider whether the non-payment of a bonus on 26th June 2024 constituted an unauthorised deduction from wages contrary to s.13 of the Employment Rights Act 1996.

2. The Tribunal similarly does not have jurisdiction under the Employment Tribunal Extension of Jurisdiction (England & Wales) Order 1994 to consider whether the non-payment of a bonus on 26th June 2024 constituted a breach of the Claimant's employment contract.

3. This complaint is therefore dismissed.

Unpaid "freelance" fees: claim out of time

4. The complaint of unauthorised deduction from wages in respect of a second contract with a subsidiary firm was not presented within the applicable time limit. It was reasonably practicable to do so.

5. This complaint is therefore dismissed.

REASONS

Introduction

6. This hearing was listed as a full merits hearing to determine the complaints brought by Mr Ahern in relation to:

    a. the non-payment of a bonus in respect of the financial year 2022 to 2023; and

    b. unpaid "freelance" fees from a subsidiary company, after his employment had ended.

7. The claimant brings these complaints as unlawful deductions from wages claims contrary to s.13 of the Employment Rights Act 1996.

8. In the alternative, he pleads the bonus complaint as a breach of contract pursuant to article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ("the 1994 Order").

9. The Claimant contends that he is entitled to be paid a bonus for the financial year 2022-2023, which were paid to eligible staff in June 2024, after he left the Respondent's employ. He says that the contract of employment does not require him to be employed at the date of payment of bonuses in order to be eligible.

10. In relation to the outstanding freelance fees, the Claimant says that he agreed to provide 19 days' work for Brand Finance South Africa, a wholly-owned and controlled subsidiary of the Respondent, for the completion of a project on which he had been previously working. He was required to invoice for payment at the rate of R10,000 per day. In the event, he worked for 22 days and claims that he is therefore owed pay for 3 additional days.

11. The Respondent's position is that there was no contractual entitlement to the bonus and no intention to pay the bonus had been communicated to the claimant

prior to his resignation. As the Claimant had resigned before any bonuses were paid, he was no longer eligible for the bonus, which are used to incentivise existing staff. He was not considered for a bonus at all, therefore they did not calculate what would be owing to him using the same, or similar formulae as applied to the Claimant's former colleagues.

12. In relation to the outstanding fees, the Respondent says that the claim is brought against the wrong entity as the Respondent was not party to that contract and that as the work was "the subject of a contract between two limited companies, neither of which are parties to these proceedings", it should be dismissed. As the work relates to a subsidiary company, the Respondent states that it has no real knowledge of the work undertaken by the Claimant.

Application to dismiss

13. The Respondent made an application at the start of the hearing that the question of the Tribunal's jurisdiction to hear these claims should be determined as a preliminary issue prior to the hearing of evidence. This was predicated on the fact that the central facts are undisputed but do give rise to concerns that the Tribunal lacks jurisdiction entirely to consider any of the complaints made. The Respondent argued that it would be contrary to the interests of justice to hear in full a claim that the Tribunal lacks jurisdiction to determine; doing so would, in fact, be wasteful in terms of time, costs and the emotional cost to witnesses.

14. In response to this, the Claimant asserted that the Tribunal does have jurisdiction to hear his unauthorised deduction from wages claims and that findings of fact would be needed in order to determine whether the Respondent's application succeeds, in which case it would be more appropriate and a better use of time to proceed with the full merits hearing. The Claimant reminded me that EJ Khan had already refused the Respondent the opportunity to make an application for these claims to be dismissed at the hearing of 13 January 2025, at which his other claims for libel and emotional distress were struck out and all claims against a second respondent, Mr David Haigh, were similarly dismissed. EJ Khan on that occasion decided not to entertain the Respondent's submissions in respect of timing and jurisdiction because the Claimant had only been put on full notice of the application at 9.30am on the morning of the hearing. In the circumstances, EJ Khan concluded that it would be contrary to the overriding objective of dealing with cases justly and fairly to hear the application with such short notice, particularly given the Claimant was unrepresented.

15. In light of the core factual matrix in this matter being undisputed and the Claimant having been put on notice almost 6 months earlier as to the nature of the

application being made, I considered it appropriate to hear the parties' arguments in full on the question of jurisdiction at this stage of the proceedings, having already read the witness statements of the Claimant and Mr Richard Haigh for the Respondent, along with an agreed bundle of documents.

16. Having heard the parties' submissions in full, I gave an oral judgment having taken time to deliberate. However, as a result of technical issues and an unstable internet connection, the Claimant sought written reasons in order to fully understand the decisions reached in respect of these claims.

Agreed facts

17. The central facts in this case were largely, if not fully, undisputed. In particular, the following facts were agreed.

18. The Claimant commenced work with the Respondent on 14 March 2016, latterly under a contract of employment dated 22 June 2021.

19. That contract of employment included the following clauses:

> *"3.4 You may be entitled to receive discretionary new business conversion bonuses based on Net Revenues you are deemed responsible for converting on behalf of Brand Finance Pic. Responsibility for conversion of Net Revenue will be assessed in relation to four equally weighted criteria, any of which you may contribute to as follows:*
>
> *3.4.1 Origination of the lead*
>
> *3.4.2 Qualification of the brief*
>
> *3.4.3 Writing the proposal*
>
> *3.4.4 Converting the work*
>
> *Discretionary bonuses may be shared (with other consultants or staff members) if the client is converted as part of a new business team effort. The Managing Director of Brand Finance plc will in his or her absolute discretion determine the amount of any new business conversion bonuses, their division between one or more recipient and the timing of payment.*
>
> *3.5 Net Revenues means all sales and other income received by the Company (including time-based fees, contingent fees, commissions receivable, project related expenses and costs chargeable to third parties, mark-ups,*

discounts, profit shares and miscellaneous income of all kinds) less third party costs directly related to the generation of such sales and other income (including third party time-based and contingent fees, third party conversions payable, third party market research and production costs incurred) and third party project related expenses and costs (including travel, accommodation and other out of pocket expenses) and excluding any value added or sales taxes.

3.6 Discretionary conversion bonuses shall be payable only upon receipt of payment from the client. If the client fails to pay any proportion (or all) Net Revenues - all bonuses due will be reduced in proportion to the non-payment percentage.

3.7 Conversion bonuses will only be calculated on the initial 12 (twelve) months of Net Revenues from each new business client. This will be calculated on the work billed and completed in the first 12 (twelve) months."

20. On 15 November 2023, the Claimant resigned his employment by email, following which he worked a notice period. His employment terminated with effect from 15 March 2024.

21. Immediately thereafter, from mid-March until the end of May 2024, the Claimant worked, on a freelance basis, on a specific project run by the South African subsidiary of the Respondent that he had been involved with during his employment. This engagement had been agreed to between the parties prior to his employment terminating and the work was carried out personally by the Claimant. He invoiced for 19 days in respect of this work, through a company called Congruence Consulting Limited; the final invoice being dated 3 June 2024. However, he worked a total of 22 days on this project and contends that he should have been paid for these additional 3 days, albeit that he did not invoice for them.

22. On 26 June 2024, the Respondent paid bonuses in respect of the financial year 2022-2023 to those staff still employed by them. They did not pay a bonus to the Claimant, who was informed of this on 10 August 2024 by WhatsApp message from Richard Haigh, Managing Director, in response to a message from the Claimant the day beforehand asking whether his bonus "would be honoured".

23. Following this, between 10 August 2024 and 15 September 2024, the Claimant tried to resolve his concerns regarding the non-payment of a bonus informally with the Respondent, which culminated in an email exchange between himself and the CEO, David Haigh, that categorically stated that no bonus would be paid to him.

24. The Claimant entered into early conciliation with ACAS six weeks later, on 28 October 2024. Following the conclusion of this process on 1 November 2024, he presented an ET1 claim form to the Employment Tribunal on 6 November 2024.

Submissions on jurisdiction and time limits

25. The Respondent submitted that the Tribunal has no jurisdiction to consider the bonus claim for the following reasons:

    a. Firstly, that it is properly characterised as a breach of contract claim that falls outside the jurisdiction granted to the Tribunal by the 1994 Order; and

    b. Secondly, that the claim was brought out of time and that time ought not to be extended.

26. The Respondent referred to the case of ***Coors Brewers Ltd v Adcock [2007] EWCA Civ 19****,* in which it was held that the claims in question were for the loss of chance of receiving bonus payments, had the employer put in place a replacement share scheme of which the claimants met the contractual requirements. The employer had not done so, arguably in breach of contract, but the claimants were unable to quantify that breach and required the tribunal to do so. Wall LJ concluded that the inability to quantify the breach "*renders the claim one for damages for breach of contract, as opposed to a quantifiable claim for unlawful deduction of wages*". The claims should therefore have been brought in the County Court as the Employment Tribunal lacked jurisdiction to hear them. Part II of the 1996 Act was designed to deal only with straightforward cases where an employee could point to a quantified loss. An unauthorised deduction of wages claim "cannot be used as the vehicle to advance claims for damages for breach of contract, consequent, for example, upon the non-exercise or allegedly capricious exercise of a contractual discretion*"* (***Allsop v Christiani & Nielsen Ltd (in administration) UKEAT 0241/11***).

27. Accordingly, the Respondent asked that I find this complaint is properly a breach of contract claim one that falls outside of the jurisdiction of the Employment Tribunal as set out in the 1994 Order. That jurisdiction is limited to claims that arose on, or had arisen by, the termination of employment; here the Respondent did not declare bonuses until after the Claimant had left their employ. Furthermore, the claim is out of time as time runs from the date on which the Claimant's employment terminated, which was 15 June 2024.

28. In response, the Claimant argued that the sum deducted was a performance bonus that was paid historically to him and, in respect of the 2022/2023 financial year, was paid to his colleagues of the same title who had met their performance targets.

He asked for at least the same percentage as those former colleagues and submitted that this was very easily ascertainable. The Claimant told the Tribunal that Mr Haigh had confirmed that the bonus calculation was "based upon a lot of factors" but that in emails the Respondent had confirmed that had the Claimant remained in the Respondent's employ he would have been paid a bonus of 15% of his salary. As such, he considers the bonus is quantifiable and is therefore properly payable as wages within the scope of Part II of the 1996 Act. He accepts that the bonus is a discretionary one but suggested that custom and practice was such that it constituted a guarantee, notwithstanding the express wording in his contract of employment. He claimed in his schedule of loss a sum of 20% of his annual salary based on his previous year's bonus award. The Claimant's position is that it was clearly a case of a quantifiable and clear amount owing under the contract of employment and it is for the Tribunal to decide whether the sum owed should be 15% of his salary or 20%.

29. In relation to the timing issue, the Claimant explained that once he became aware of the non-payment of the 2022/2023 bonus, he tried to resolve the issue directly with the Company and, only once he had exhausted that avenue did he contact Acas. He stated that he presented the claim within 3 months of finding out that the bonus had been paid to others but not to him.

30. The Respondent further submitted that the Tribunal has no jurisdiction to consider the fees claim for the following reasons:

    a. Firstly, that the Respondent was the wrong entity and, in any event, the relationship was one between two limited companies on a self-employed basis.

    b. Secondly, that the claim was brought out of time and that time ought not to be extended.

31. In response, the Claimant stated that the first time he became aware that he would not be paid for the extra three days was on 15 September 2024 and therefore time should run from that date.

Discussion

Bonus claim

32. The Respondent asserts that the tribunal lacks jurisdiction to hear the bonus claim as an unlawful deduction from wages claim on the grounds that the discretionary nature of the bonus is such that the amount is not properly payable as wages – that the Claimant was unable to properly quantify his loss based on the contract

alone and required the tribunal to do so. The Respondent argues that this inability to point to a clear sum owing under the contract of employment renders the claim one for damages for breach of contract rather than an unauthorised deduction of wages.

33. It is accepted between the parties that the Respondent had not announced an intention to pay a specific sum, nor announced the terms on which bonuses for the financial year 2022/2023 would be awarded, to the Claimant prior to his employment terminating. This was because the Respondent had not made a decision to award bonuses for this financial year until after the Claimant had left.

34. The Claimant is unable to say what he should have been paid under his contract of employment for that financial year without the Respondent deciding the terms on which bonuses would be awarded.

35. The Respondent argues that the Claimant can only bring a claim for an unauthorised deduction from wages if either the bonus had been agreed to and communicated to the Claimant as owing in respect of a quantified sum, or was otherwise quantifiable under the terms of the contract in isolation.

36. In this case, neither of those positions apply.

37. The bonus is a discretionary one. The contract indicates criteria on which it would fall to be calculated but whether a bonus is declared, the value of that bonus and the timing of when that bonus falls to be paid remains in the sole discretion of the Respondent.

38. The fact that the bonus is discretionary and that the amount had not been calculated and confirmed to the Claimant as owing during his employment is not disputed by the Claimant. He does, however, state that the Tribunal has jurisdiction to hear his claim on the basis of custom and practice – that he had always received bonuses before, calculated as a percentage of his salary at the relevant time, and that it is within the Tribunal's jurisdiction to decide how much he was owed on this occasion by choosing between what he alleges is owing (20%) and what the Respondent states in email correspondence would have been owing to him had he not resigned (15%). The Claimant categorises the bonus as being owed to him as a "deferred payment".

39. The Claimant's analysis is tempting but it is, to my mind, a superficial one that glosses over the difficulty highlighted by the Respondent. The issue is not whether the Tribunal could, today, make findings of fact that would determine the calculation of the bonus that would be owed to him had the Respondent decided he was eligible to receive one; the question is whether the bonus sum itself is

recoverable as an unauthorised deduction from wages at all. If it is not, it would have to be, instead, recoverable as damages for breach of contract – as, essentially, a "loss of chance" claim as the Claimant was not included in the bonus calculation exercise for the financial year 2022/2023 – he says he should have been and the Respondent therefore acted irrationally or capriciously in its handling of bonuses.

40. In the absence of a factual assertion from the Respondent to the Claimant as to the amount of bonus that he would receive, there has been no exercise of discretion in the Claimant's favour regarding a 2022/2023 bonus. Without this, given that there is no entitlement under the contract of employment to a bonus at all, much less an entitlement to a specifically quantifiable sum, this claim cannot be brought as an unauthorised deduction from wages contrary to s.13 of the Employment Rights Act 1996. The Claimant's characterisation of this as a deferred payment that constitutes "wages" is not legally correct.

41. The contract only gave the Respondent a discretion to pay a bonus to the Claimant and without that discretion being exercised in his favour, the amount and timing of that bonus had not been decided. The Claimant therefore cannot rely on an unauthorised deduction from wages claim as it was not properly payable under the contract. The claimant's claim is essentially one of a failure to exercise a discretion in his favour, which would therefore properly fall to be determined as a breach of contract claim.

42. However, this presents difficulties for the Claimant as the decision to award bonuses for the 2022/2023 financial year was not taken until after he left employment. Payment of these bonuses was not made until June 2024.

43. The jurisdiction of the tribunal under the 1994 Order is limited to breaches of contract that arise from, or are outstanding at, the termination of employment. In March 2024, when his employment terminated, the bonus was not outstanding, nor did its payment arise upon the termination of his employment. Accordingly, it is not within the Tribunal's jurisdiction to hear this complaint as a breach of contract.

44. It therefore does not fall to me to determine whether the claim was brought in time, either under the 1996 Act or the 1994 Order. However, had I been required to do so, it is clear to me that the date on which the Claimant alleges payment of a bonus should have been made to him was 26 June 2024. As such, the primary limitation period under both causes of action would have expired on 25 September 2024.

45. The Claimant did not, however, know that bonuses had been paid on this date until 10 August 2024, nor could he reasonably have been expected to have known this.

Having explored with the Respondent his concerns about the non-payment of bonuses, he was, however, firmly aware by 15 September 2024 that the Respondent had no intention of awarding him a bonus. It would, therefore, have been reasonably possible for him to present a claim within the time limit.

46. That being said, I might have been persuaded that it would not have been reasonably practicable for him to have presented a claim by 25 September 2024 with some cogent evidence from the Claimant to support this. I would not, however, have been persuaded that the Claimant subsequently presented his claim "within such further period as the tribunal considers reasonable" as required under article 7(3)(c) of the 1994 Order.

47. The Claimant waited a further six weeks to approach Acas after finding out that the Respondent was not prepared to change its position – in relation to a bonus that had not been paid to him on 26 June 2024, four months earlier. I remind myself that there is a strong public interest in claims being brought promptly and that the Tribunal must bear this in mind when assessing objectively whether a late claim has been presented within a reasonable time period.

48. In this case, the only reason given was that the Claimant was trying to resolve the matter informally, and then formally as a grievance, with the Respondent. This does not negate the obligation on the Claimant to both present his claim in time and, in cases where that is not reasonably practicable, to act promptly. The Claimant did not act promptly and did not present his claim within a reasonable period.

49. I therefore would not have concluded that the Claimant should benefit from an extension of the time limit in these circumstances. Indeed, it appeared to me that the reason for the claim being presented so late was that the Claimant was under a misapprehension that the time limit for his claim ran from the date on which he found out that the bonus had not been paid. The case law is clear that misunderstandings like these do not by themselves reach the high threshold required to extend time limits.

"Freelance" fees

50. In respect of the "freelance" fees claim, which I remind myself was in relation to work carried out on behalf of a subsidiary company after the termination of the Claimant's employment with the Respondent, this gives rise to a number of jurisdictional questions, including whether the Respondent is the correct legal entity against which to present the claim.

51. However, it is also right that any such claim would need to be brought as an unlawful deduction from wages claim under Part II of the Employment Rights Act

1996 in order for the Tribunal to hear it, given that the parties agree that the Claimant was not an employee of the Respondent (or the subsidiary company) in respect of this work (and therefore there it cannot constitute a breach of contract claim).

52. I note that the Claimant was undertaking work personally for the South African subsidiary company and that the Respondent approved, or was required to "sign off" him undertaking this work with that subsidiary. Employment status is not always straightforward and it would not be impossible, when analysing the nature of the agreement in practice between the parties, to find that the Claimant was, at the relevant time, a worker entitled to bring an unauthorised deduction from wages claim for unpaid fees.

53. Accordingly, I first considered whether the claim was in time – if it was, I would have heard evidence from the parties as to the nature of the relationship and considered who the correct respondent to the claim should be. However, I concluded instead is that this claim is out of time.

54. Time runs from the date on which payment should have been made – and a claim must be brought within 3 months from that date, unless it is not reasonably practicable to do so.

55. In this case, the Claimant ceased working on the South African project in June or early July 2024. The claim was not presented until 6 November 2024, some 4 months later. It appears clear from the papers that the Claimant was primarily pursuing the bonus and I note the messages from the Claimant himself to the Managing Director of the South African company that he was "not fussed" about the extra hours he had worked, stating that these were not very many in fact and that he was not working the hours beyond May 2024 that warranted invoicing for. Indeed, he had not invoiced for these additional hours, seeming to accept that he had contracted for 19 days' work and therefore invoicing for 19 days' pay.

56. While it is difficult to reconcile the non-payment of monies in respect of fees not invoiced for, under an arrangement whereby the Claimant was required to invoice in order to be paid, the fees in question were in relation to work undertaken in June or early July 2024 and payment should therefore have been made by the end of July 2024 at the latest; yet the claim was not presented until 6 November 2024.

57. This is outside the primary time limit of 3 months. It was reasonably practicable for the Claimant to bring this claim sooner as he was aware at all times that he had not been paid for these additional days and the requirement to bring his claim promptly was not met.

58. Accordingly, the Claimant's complaints are dismissed in full.

59. Additionally, however, although this matter was not argued before me in full, it is clear from the papers that these claims would inevitably have failed had a full hearing taken place, for the following reasons:

    a. The entitlement to bonus under contract is discretionary and there was no variation to that contract during the Claimant's employment;

    b. Indeed, the Claimant himself admitted by email dated 15 September 2025 that "I agree legally I don't qualify for any bonus";

    c. When looking at the contract to see when and how payment should be made, the only terms state that these are at the sole discretion of the Managing Director of the Respondent;

    d. The Respondent has absolute discretion as to the amount and timing of any bonus, and, indeed, whether any such bonus should be awarded at all. There are no other provisions or documentation binding the Managing Director's hand; therefore if no decision was made to award the Claimant a bonus then no sum was properly payable under the contract of employment;

    e. No decision to pay bonuses for the financial year 2022-2023 had been made by the time that the Claimant's employment terminated in March 2024;

    f. There was no contractual term that meant that the Claimant continued to be entitled to a bonus payment under the contract of employment which had terminated and by which he was no longer bound;

    g. Even if there were, it is impossible for the amount of the bonus to be calculated from the contractual terms and neither the Claimant nor the Tribunal would be able to state how much was owed nor how we calculate the sum allegedly owing;

    h. In the event, no bonus was owing under the contract as it was up to the Respondent to decide whether to award a bonus to the Claimant and, if so, how much that should be and when it should be paid. The Respondent's decision on that point was simply not to award a bonus to the Claimant at all as he had left;

    i. In relation to the "freelance" fees, the Claimant never invoiced for the three additional days and it appears that it was the Managing Director of the South

African subsidiary who encouraged him to put forward a request for payment in respect of this work above and beyond that to which the parties agreed. The Claimant himself admitted to not working very much after May 2024, stating that he was "not fussed" about payment for it. It was the Respondent who initially offered him the opportunity to invoice for these days during the parties' attempts to resolve the Claimant's dissatisfaction regarding his lack of bonus; albeit that that offer was subsequently retracted and, in any event, the Claimant has never invoiced for that work, according to the bundle of documents and the respective witness statements. This is all presuming that the Claimant overcame the hurdles required to establish that the Respondent was the correct legal entity against which to bring a wages claim in respect of this work and, additionally, presuming that the Tribunal was persuaded that the Claimant met the legal test for being a worker, neither of which are certain.

Employment Judge Moyler
7 August 2025

Judgment sent to the parties on:
18 September 2025
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For the Tribunal:
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