



EMPLOYMENT TRIBUNALS

Claimant: Mr C Earlam
Respondent: Croner Group Limited

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
By video

On: 3 October 2025

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person

For the respondent: Mr McFarlane, Solicitor-Advocate.

JUDGMENT

UPON hearing from the claimant in person and Mr McFarlane, Solicitor Advocate instructed by Irlam Law

IT IS THE TRIBUNAL'S JUDGMENT THAT

1. The claimant's claim for notice pay fails and is dismissed,
2. The claimant's claim for commission fails and is dismissed,
3. The claimant's claim for consequential financial losses arising from the failure to pay notice pay and/or commission fails and is dismissed.

REASONS

4. Mr Earlam was a business manager employed from 5 February 2024 to 31 March 2025 when Croner dismissed him. The reason for dismissal is not relevant. He claims £1,500 or thereabout being a shortfall in notice pay, a commission payment of £2,500 or so for commission that should have been paid in April 2025 and consequential financial losses of £4,750 or thereabouts for mortgage arrears. The words commission and bonus appear to be used interchangeably in the documents. No issue turns on this. The respondents deny his claims saying that under the contract and commission scheme they do not owe money.
5. The hearing has proceeded by video link. I heard evidence from the claimant in person and Mr Venables for the respondent, regional sales

manager and Mr Earlam's line manager. There was a bundle of 84 pages and the claimant relied on his claim, and an application to amend (which had been accepted) as his witness statement. He provided the top left corner of his mortgage statement as proof of arrears. Each made submissions. I have taken all this into account. I am satisfied this was a fair hearing. No party suggested otherwise.

6. In my view this claim comes down to contractual interpretation. The test is what the contract would mean to the reasonable person with knowledge of the factual matrix at the time. There is no suggestion they do not reflect the true contractual agreement between the parties.

7. The contract on pay says as follows.

REMUNERATION

Your salary is currently £30,000 per annum payable monthly by credit transfer as detailed on your pay statement. In your first year of employment your salary will be proportionate to the amount of time left in the year. In addition to your basic salary, you have the benefit of a performance related commission scheme, payable monthly in arrears and a quarterly performance related bonus scheme. Full details of these are given separately. **Commission/bonus payments will only be made providing you are in our employment on the last day of the month when the commission becomes payable.** This is your contractual pay date which is the last working day of the month regardless if the company chooses to pay early.

8. I conclude that the only reasonable interpretation is that these are cumulative conditions that set out a condition precedent to entitlement: A commission becomes legally owed to an employee only if (a) it becomes payable in a given month and (b) on the last day of that month he is still an employee.

9. Normal pay date is the end of the month. That is when pay is due.

10. The commission scheme says:

B. BONUS AND INCENTIVE SCHEMES

In addition to the above commission structure Business Managers may be entitled from time to time to enter into various bonus or incentive schemes with details in relation to qualification and payment being issued separately. **These bonus and incentive schemes are discretionary** and operate from time to time as determined by the company's Directors and are subject to regular review.

C. EMPLOYEES LEAVING THE COMPANY

(i) If the contract of employment is terminated either by the company through dismissal or by the Business Manager through resignation, then special rules apply in relation to commission and any bonus or incentive payments that might otherwise have been payable.

(ii) Commission payments on new business are only paid if the Business Manager is in the employment of the company at the end of

the calendar month when the commission payment would normally become payable. ...

(iii) It is therefore an express contractual condition that an employee has no claim whatsoever on any commission payments that would otherwise have been generated and paid, if they are not in employment on the date when they would normally have been paid, being at the end of the month following 25% (or 15% with five year contracts) of the fee being received.

iv) Employees in employment at the end of the calendar month when commission and bonus payments would normally be payable, but under a period of notice, whether by dismissal or by resignation will be entitled to the appropriate commission payments payable at the end of each complete calendar month in question that falls within such a notice period if the Business Manager's last day of employment with the company falls on or after the last day of the appropriate month.

11. I conclude these do not detract from the contract. Clause (i) confirms that those whose employment is ending fall into special terms. Clause (ii) reiterates the cumulative conditions precedent in the contract. Clause (iii) emphasises these conditions. If the commission becomes payable in month X then then must still be employed at the end of month X on payday to receive the commission.
12. The law is clear that in relation to a discretionary bonus or commission scheme there is no entitlement to a commission or bonus by way of a claim for unauthorised deductions of wages until the employer has decided to pay it. As for contractual principles, it is only a breach of contract if a discretion is exercised arbitrarily or capriciously, sometimes described as no reasonable employer in the respondent's situation would have exercised their discretion as the respondent did. I consider there is no evidence that there is any arbitrary or capricious conduct by Croner here. Therefore it comes down to contractual interpretation to decide if Mr Earlam fulfilled the criteria for payment.
13. On 31 March 2025 (normal pay date) Croner paid to the claimant outstanding bonus of £788.15. The fact is he was not employed at the end of April. So any commission that would have accrued to Mr Earlam in April onwards would not be payable because he was no longer an employee and could not fulfil the second part of the condition. Therefore whether the commission of £2,500 would have become payable in April 2025 (if indeed that is the correct figure – it is not agreed), he did not meet the condition of being an employee and so payment is not owed.
14. Mr Earlam points to the fact payments are in arrears. In my view the reasonable interpretation is that this refers only to the fact that payments are made for commission earned by that point and earnings for work done. It does not detract from the cumulative requirement to qualify for payment.
15. In simple terms he did not fulfil the terms entitling him to payment. Therefore a legal entitlement to commission has not arisen. The claim must fail.
16. The contract also provides:

PROBATIONARY PERIOD

You join us on an initial probationary period of 6 months.

During this period your work performance and general suitability will be assessed and, if it is satisfactory, your employment will continue. However, if your work performance is not up to the required standard, or you are considered to be generally unsuitable, we may either take remedial action (which may include the extension of your probationary period) or terminate your employment at any time. **You will receive written confirmation that your probationary period has been passed and you should not consider your probationary period passed until you have received this confirmation.** We reserve the right not to apply our full contractual capability and disciplinary procedures during your probationary period.

17. In my view whatever the issues about Mr Earlam's probationary period, the terms create a condition precedent in the highlighted words. There was never any written confirmation that the probation period had been passed. The condition to end it was never satisfied.
18. On notice, the contract provides:
NOTICE OF TERMINATION TO BE GIVEN BY EMPLOYER
During Probationary Period – 1 week
From end of Probationary Period up but less than 5 years'
service – 4 weeks
19. Because Croner never gave Mr Earlam notice to end the probation period, the contractual terms provided only for one week's notice because he remained in the probationary period. Mr Earlam says that this is contrary to Croner's advice to clients and contrary to employment law. I disagree on the latter. So far notice periods are concerned, there is no probation period concept. I cannot comment on Croner's advice to clients, but of course that is not a statement of legal authority and cannot influence the contract between the parties. Mr Earlam also argued Croner has forgotten to do the probation assessment. The respondent disagrees with this. I need not decide this because in my view it does not alter the legal situation.
20. Therefore under the contract I am satisfied the claimant was only entitled to 1 weeks' notice. He was paid 1 weeks' notice pay as the contract provided.
21. I turn to test this against statutory minima. The **Employment Rights Act 1996 section 86** provides that Mr Earlam was entitled to 1 weeks' notice because he had been employed for less than 2 years.
22. The claim therefore for notice pay must fail because he has been paid what he is owed.
23. There was some evidence about Mr Earlam's performance. I consider this irrelevant to the issues. I therefore make no finding of fact about his performance or abilities.
24. It follows that his claim for consequential losses must also fail because Croner have paid to him what he owed.

25. Finally the respondent has made an ex gratia payment equal to the difference between one week and one month's notice. They have deducted tax and national insurance. They have assured the Tribunal they will generate a payslip to evidence this and send it to Mr Earlam for his records.

Approved by:

Employment Judge Adkinson

Dated: 03 October 2025

Sent to the parties on

...11 November 2025.....

For the Employment Tribunal

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Notes

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