



EMPLOYMENT TRIBUNAL

Claimant: Anthony Devine
Respondent: Flint Office Space Ltd

**Before: Employment Judge Corrigan
(Sitting Alone)**

Representation

Claimant: Ms E Skinner, Counsel
Respondent: Mr L Wilson, Counsel

HEARD at London South by video **On: 9 October 2025**
& 17 November 2025

Reserved judgment

1. The claimant's complaint of unlawful deduction of wages is well-founded.
2. The respondent is ordered to pay the tax and National Insurance due on the outstanding commission of £8150.96 and then to pay direct to the claimant any net balance (if any) due from that sum after the respondent has recouped the £5000 which was overpaid direct to the claimant's bank account.

Reasons

3. The case was initially listed for a short final hearing on 9 October 2025 which unfortunately started late. The claimant's representative requested an adjournment but I refused on the basis it was better to make use of the time and go part-heard for further disclosure if necessary rather than re-list

- completely on a future date. I did commence the hearing and heard evidence on that date. However there was insufficient time and there was outstanding disclosure and so the hearing was postponed to 17 November 2025. I ordered disclosure in respect of the documents identified in my order of 10 October 2025 in relation to the projects on which the claimant claims commission. No further requests were made in respect of further disclosure at the outset of the resumed hearing.
4. Due to the way the bundle is paginated I have preferred to refer to electronic page numbers here.
 5. At the resumed hearing I heard further evidence and heard submissions but there was insufficient time for deliberation and a decision so I reserved my decision.
 6. I heard evidence from the claimant and from Mr Jamie Fackerell of the respondent. There was an agreed bundle which was added to between the hearings. The final bundle was 242 electronic pages including the index. There were also two additional letters from the claimant. The figures claimed by the claimant were amended at the outset of the second hearing, with no objection from the respondent.
 7. The parties had set out an extensive list of issues. I have addressed these issues in the way I consider proportionate below. Essentially the issues are whether the claimant was entitled to any further commission payments (claimed either as an unlawful deduction of wages claim or contract claim arising at the termination of employment); whether he had outstanding accrued holiday pay and whether there are any time limit issues in respect of these claims. If the claim is treated as a contract claim, did it arise on termination of employment.

Facts

8. The claimant was employed by the respondent from 10 July 2023 until 3 May 2024 as a Senior Contracts Manager. The Respondent's business is the refurbishment of office spaces.
9. The claimant's contract stated in respect of remuneration that:

"remuneration paid to the Employee for the services rendered by the Employee as required by this Agreement will consist of a salary of £82,000 per year plus a commission according to the following commission formula:
10% of any betterment of baseline project Gross Profit.

This remuneration will be payable upon the completion of each project and only when the project is closed and agreed both financially and to the client's satisfaction."
10. The contract does not say the sum depends on the amount of work done by the claimant or that he is only entitled to 10% of the betterment he personally generates nor whether his commission depends on whether any other colleagues also contributed. There is no formula for splitting the commission between colleagues. Although the claimant accepts he is only entitled to commission on a project he worked on.

11. I find the contractual agreement was that the claimant was entitled to 10% of any betterment of the profit on a project over and above the baseline (estimated) profit at the start. This was not dependent on his specific contribution to this, as long as he had worked on the project.
12. The claimant had very little involvement in the pre-contracts stage which was covered by his colleague, who likewise had a minor role in the construction phase which was the claimant's responsibility. His colleague was entitled to commission calculated on a different basis which, from his emails, appears to have included 1% of the projected profit at the start.
13. The relevant projects are set out in the table on electronic page 142 (E1).
14. The claimant has produced documentation which the respondent does not recognise but which the claimant says were costs value reports which were reports used at Friday financial meetings between himself and the Head of Finance. They are very similar to the summary reports produced by the respondent referred to below. At most they were interim internal documents but not final reports on the projects. They are not dated and there is no confirmation of the client's agreement. Some of the projects continued to incur expenses after the claimant left so his documents cannot be the most up to date. The starting projected gross profit figures are not all accurate as compared to those provided on the respondent's documents, although some are. I accept the respondent's case that these are not evidence of the betterment by the end of the project.
15. The respondent has provided Sub-Contractors Final Account summaries (see for example F3, electronic page 147) and project details (see for example F4 electronic page 148) for most of the projects. They have also provided an internal adjudication sheet for most of the projects. See for example F2 (electronic page 145). The grey box on the adjudication sheets shows the projected profit for the project. This is the baseline figure. The commission due to the claimant was the difference between the actual profit totals shown on the sub-contractors final account summaries/project details and the projected profit in the grey box on the internal adjudication sheet. I find the respondent's documentation more reliable save for any exceptions below. I note that the claimant's colleague's emails have different estimated profits and final profits but I have used the figures in the actual documentation provided by the respondent. The figures are not always the same as those in the table on page 142.
16. There are differences between the final account summary and the project details in some cases for example the total costs on the summary for Wendy Wu was £401,017.32 whereas the total on the project details is £400,808.99. The difference is small in this case. The claimant's representative criticises the respondent for picking and choosing the higher number each time but I consider I can only find the profit to be the difference between the sum charged to the client and the highest figure for the costs. There has not been any detailed analysis of why there is a difference, such that I could find on the balance of probability that one number is more accurate than the other, or certain costs on the project details were not in fact incurred, so I cannot find that it is more likely than not that the correct costs figure is the lower figure.

Quite the contrary I find that on the balance of probability the correct figure is the lower figure (no matter which record it appears in).

17. The respondent does not say they rely on any records about what betterment of the profit is the result of a particular member of staff's contribution.

18. I therefore find the relevant figures for each project are as follows:

Project	Projected profit from internal adjudication sheet	Actual profit	Betterment	Commission due	Amount paid	Amount outstanding
Blue Crest	£13,336.26	£405.87	£0	£0		£0
Bolt Court	£71,896.20 (p163)	£16,967.60	£0	£0		£0
Quality House	£32,966.77	£28,295.99	£0	£0		£0
Ithaca	£92,973.21	£154,213.95	£61,240.74	£6,124.07	£3350	£2774.07
Wendy Wu	£110,065.08 (p145)	£179,731.68 (p146)	£69,666.60	£6,966.66	£2010.55	£4956.66
Jaipur Rugs	£17,701.20 (p184)	£0 (made a loss)	£0	£0		£0
Kalmars	Insufficient evidence	Insufficient evidence	Insufficient evidence	Insufficient evidence		£0
Ligentia	£3,733.50	£3260	£0	£0		£0
MAN Group	Insufficient evidence	Insufficient evidence	Insufficient evidence	Insufficient evidence		£0
Metanoia	£13,583.08	£28,981.01	£15,397.93	£1539.79	£1417.69	£122.10
£2946.04						
RTP Global	£31,781.54	£30,249.93	£0	£0		£0
Sequel	£28,545.67	£31,527	£2981.33	£298.13	0	£298.13
Spire	£3,796.00	£3,217.99	£0	£0		£0

19. The claimant was paid what was considered at the time to be 50% of 10% of the betterment on the Wendy Wu and Ithaca projects on 31 December 2023. The respondent says this was done on the basis his colleague referred to above had also worked on them. There are emails with the colleague at the time stating this. The claimant denies agreeing to this. I accept he did not. I note that at the time (2 December 2023 p72) he requested full payment of one project and only 50% of the other, requesting that the balance be paid after settlement of the project accounts. He and his colleague were not using the same or precise figures either. I also note that expenses were being added in respect of the Ithaca project until June 2024 (it remained in the defects liability period until 24 May 2024) and in respect of Wendy Wu costs were added until

- 30 November 2023 (it remained in defect liability period until 6 April 2024). I accept his case he had worked on both contracts, which was evidently the respondent's view at the time in the emails on page 64. Payment of 10% of the betterment was therefore due to the claimant. His colleague also understands that he (the colleague) should get 10% for those projects he worked on. The claimant's contract says nothing about splitting 10% and of course they could both be due 10%, still leaving the respondent with 80%. I have taken account of the fact that the claimant wrote on 30 April 2024 stating he had been told on 25 April 2024 that 50% of his commission had been paid in December. He referred to having not been given a reason why the remainder was not paid and requested the payment. There is no written evidence from the respondent of an agreement with the claimant that he would accept half of the commission.
20. The sum of £1417.69 was paid for the Metanoia project on 31 May 2024 but it is however accepted by the respondent that there is a small amount of commission still due on the Metanoia project.
21. With respect to Spire it appears the customer ultimately paid less than the agreed sum, affecting the profit and whether there was betterment. However there is nothing in the contract to suggest that the claimant should still get commission in these circumstances.
22. With respect to Sequel and the fact the project was ongoing, there is nothing in the contract to say the claimant would only get the commission if he was in employment by the end of the project. In fact note 3 on the claimant's final account when he left employment stated that "any betterment commission due against unfinished projects will be met 3 months after completion to client's satisfaction" (electronic page 87). This was also set out in the letter to him on electronic page 89-90, which stated: "Any commission due for unfinished projects that generate % increase against tarding figure as per agreement will be paid when complete to client satisfaction." There was no mention there of any kind of deduction of commission to reflect that the claimant would not be seeing these projects through to completion himself, and any work that presumably was to be done by others in his place.
23. With respect to Ligentia there is a significant difference between the Sub-contractors summary and the Project details in the costs of the project. The difference is an entry labelled Prelims for £1900. I received no evidence as to what that was to suggest that was not a genuine invoice/cost on that project.
24. With respect to Kalmars I do not have the documentation evidencing the figures the respondent has put in the table on page 142, to justify that that project made a loss. However, I have also said that the claimant's evidence is not reliable. Therefore there is no evidence before me that a commission payment is due on that project.
25. With respect to the MAN project, the claimant was involved in a discrete part of a much larger project. He was involved doing the toilets for the gymnasium. It appears his documentation relates only to that part of the project whereas the respondent's documentation relates to the much larger project. There is no projected profit documentation provided and the respondent says three different sections were priced individually and then

- merged. The individual documentation for these sections has not been disclosed, only the overall project (without the estimated profit). I cannot see the documentary basis for the projected profit in the respondent's table on page 142 of £23,172.74. I have said the claimant's documentation is not reliable but his figures for the profit are less than this. The respondent's profit figures are for the three sections combined. I find there is no reliable information with respect to this project overall, or the claimant's project within it, on which I could conclude commission was due.
26. The claimant requested and took annual leave on 16 and 19 February 2024.
27. There is an email in the bundle dated 15 February 2024 (sent at 7.46pm) from the claimant to colleagues confirming that intention. There is also an earlier text message saying similar. The claimant has produced (on 6 October 2025 just before the first hearing) an email dated 16 February (p124) suggesting that Mr Fackerell had rung him the night before and told him he could not take the leave as it was not on the system. The respondent has no record of the email and this is disputed by Mr Fackerell. The respondent's position is that this email is fraudulent and was not in fact sent at the time. The claimant did not mention being told he could not take leave in his claim, rather he said that he had not had any response to his request and so he decided not to take it (which is inconsistent with the email to colleagues late on 15 February 2024).
28. He sets out in the email on 16 February 2024 what he was planning to do that date (head over to a site (Clutha House) and then try to request a survey). He said he had not had anything special planned with his leave.
29. The respondent has produced emails sent from the claimant's work email address to his personal email address with pictures of a new puppy that had been collected from Birkenhead sent at 5.48pm on 16 February 2024. There is evidence of work being done by the claimant on 19 February 2024 in relation to requesting the survey. He had had a phone conversation as per the email on page 134 and had written that email. He had then forwarded the reply to finance at the respondent at 1.22 pm. The reply from the Head of Finance was "I didn't think you were working today- after long weekend". The claimant did not contradict the long weekend in his reply and sent a photo of the puppy saying he was trying to fit some e-mails in "between this fellas naps and toilet breaks". In that interaction the claimant referred to the puppy being subdued after a long drive back from Birkenhead on the 16 February 2024 (the day his email suggests he was planning to go to Cluthu House). The claimant disputed that he himself had travelled to Birkenhead, saying his wife had gone alone.
30. Overall I prefer the evidence of the respondent that the claimant had booked the leave but find that he did a small amount of work on 19 February 2024 whilst on leave. Whether or not he himself was in Birkenhead during Friday 16 February he did not correct the reference to his being on leave or having had a long weekend in the email chain on 19 February 2024.
31. I find overall his email on 16 February 2024 is inconsistent with other documentation, including his claim for, and has been disclosed late.
32. I have considered whether sending brief emails could be considered to negate the leave booked. If it had been at the employer's instigation then an

- employee could in my view request to re-arrange the leave. However, here, it was not at the employer's instigation and it is immediately queried by the respondent. The claimant did not request that his record be amended at the time. I find he was voluntarily sending a few emails and made a call on a day he had booked as leave and at the time did not consider that negated the fact he was on annual leave that day.
33. The claimant was overpaid £5000 direct to his bank account in error following the end of his employment which is not disputed by the claimant and it is accepted it should be deducted from any award.
34. The claimant approached ACAS on 9 May 2024 and the certificate was issued on 20 June 2024. His claim was submitted on 15 July 2025.

Conclusions

35. The claimant did not receive his full share of the commission for Wendy Wu and Ithaca. The totals still due are set out in the table above and I calculate to be £2774.07 and £4956.66. If payments were due 3 months after the projects completed to the client satisfaction it may be that they could have legitimately been made up to the end of the employment, or later. I note that sums were being added to the Ithaca project details until at least June 2024. However, to the degree that the respondent deliberately only made payments on the basis of 50% there was a deduction of wages on 31 December 2023.
36. £122.10 remains outstanding in respect of the Metanoia project and £298.13 was due for the work on Sequel. The deduction for Metanoia occurred on 31 May 2024 as by that time all the information was available to the respondent (no expenses have been incurred since then so there is no explanation for the underpayment on that date). Sequel came due on a later date.
37. There was no betterment or the betterment has not been found likely on the balance of probabilities (in the absence of sufficient evidence) on the remainder of the projects.
38. The total commission still due to the claimant is therefore £8,150.96 subject to deductions for tax and National Insurance. The respondent will need to calculate the net amount due.
39. The respondent has overpaid the claimant £5000 to his bank account so this should be deducted from any net payments due to the claimant (and not from the gross sums due).
40. There is therefore a series of deductions in respect of underpaid commission, beginning on 31 December 2023 and continuing after the end of employment and in respect of Sequel possibly extending beyond the claim form. The respondent has not raised an issue in respect of jurisdiction in respect of commission that could have been due on a date after the claim form. Any such underpayment would be part of the ongoing series.
41. As some of the failures to pay likely did arise after the end of the contract they are better dealt with as unlawful deductions from wages rather than a breach of contract arising or outstanding at termination of the employment.

42. Based on the findings of fact above the claimant took leave on the contested dates and no holiday pay is outstanding.

Approved by
Employment Judge Corrigan

6 March 2026