



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr N McLellan

**Respondent:** K Lowe Enterprises Limited

**Heard at:** North Shields                      **On:** 11 September 2018

**Before:** Employment Judge

***Representation:***

**Claimant:** In person

**Respondent:** Mr K Lowe (owner and managing director of respondent company)

## REASONS

- 1 The claimant represented himself. Mr Kieran Lowe, owner and manager of the respondent company, represented the respondent. The claimant gave evidence on his own behalf and Mr Lowe gave evidence on behalf of the respondent. The Tribunal put together a bundle of documents from the documents brought to the Tribunal by the parties.
- 2 The law which the Tribunal considered was section 13(3) of the Employment Rights Act 1996:-

“(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion”.

The Tribunal also considered Article 3 of the Employment Tribunals Extension of Jurisdiction Order 1994:-

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum or for a sum due –

(c) the claim arises or is outstanding on the termination of the employee’s employment”.

- 3 The claims and issues which the Tribunal had to determine was whether or not the respondent was in breach of contract and whether any notice pay was due and owing to the claimant. Secondly, whether or not the respondent had made any unlawful deduction from the claimant’s wages, in particular whether the sum of £1,000 had been deducted from the claimant’s last wage slip.
- 4 The respondent is a small business managed and owned by Mr Kieran Lowe. The business is involved in energy consultancy. The claimant worked for a number similar types of businesses since 2016, businesses with which Mr Lowe was also involved in running. The claimant said that one of Mr Lowe’s former businesses, a company called You Compare, hit a problem when it effectively ceased trading as employees had not had their national insurance or tax paid.
- 5 When the claimant left that company he said he contacted HMRC and re-joined another company unrelated to any business activities of Mr Lowe. He was told that by HMRC that there was no record of his employment with You Compare Limited.
- 6 The claimant joined North East Solutions Limited in April 2017. Mr Lowe was involved in that business but was not a director. One of the directors was his partner, Lindsey Williams. Mr Lowe was involved in managing that business and to a degree involved in the managing and controlling of finances of the business although for a period of time it was also managed by a Mr Michael Maughan who was the other director involved.
- 7 The claimant said that, whilst working for North East Solutions Limited, some of the business deals were diverted to the respondent company. Mr Lowe said that about 20% of the business was being diverted to the respondent company. He said that Michael Maughan, the director of North East Solutions Limited, was emptying the company’s bank accounts and had a gambling addiction.
- 8 Both parties agreed that a deal was done with a client for business of around £26,000. The deal was done for the benefit of the respondent company. Mr Lowe said in evidence to the Tribunal that the deal was completed in December 2017 but not finalised until March 2018. He said that monies for deals that were diverted to the respondent company and the monies owed, like commission, were sent back to North East Solutions Limited. However, by that stage, all of the employees of North East Solutions Limited had transferred to the respondent company from early February 2018.
- 9 On 2 February 2018 the claimant joined the respondent company. He transferred, like the other employees from North East Solutions Limited, when the other company ran into difficulties.

- 10 The claimant signed a statement of terms and conditions of employment. The salient clauses of that contract relate to remuneration where it is stated that his rate of pay is £22,000 per annum. It states that he will be paid monthly by BACS into his bank account in arrears on the 10<sup>th</sup> of each month or if the 10<sup>th</sup> falls on a weekend then it would be paid the first working day after the 10<sup>th</sup>. It goes on to indicate that, "The Company reserves the right to terminate or amend the commission and bonus agreement where these are paid or to exclude you from participation in any commission or bonus arrangement without giving any reason at any time". It also states, "You will not be entitled to receive any commission which falls due for payment after the termination of your employment (whether by resignation or dismissal), even if the sale was completed by you during your employment".
- 11 There was also a clause relating to deductions from wages. It states that, "If an employee owes the company any money as a result of any loan or overpayment that the company should be entitled to deduct the amount from payment or final payment of wages and it indicates that such deductions may include but are not limited to an overpayment of or an advancement on wages, bonus, commission or expenses whether made by mistake or otherwise".
- 12 There is also a provision with regard to notice. It states that, "The notice period the company must give is one week's notice if the employee has been employed by the company continuously for one month or more but for less than two years".
- 13 Attached to the contract of employment was a commission's brief which states that, "10% bonus will be paid to any agent that achieves over £10,000 in a single calendar month". There are further provisions about the bonus provisions in that agreement at page 11 of the bundle which states that commissions can be reviewed at any time with appropriate notice given.
- 14 The claimant was in fact absent for the first couple of days of his employment.
- 15 On 15 February 2018 Mr Lowe informed the employees in a public house that the business was not able to continue. He said in evidence to the Tribunal that he was not able to keep all the employees but that he decided he would keep some of them which included the claimant. Then subsequently he told those employees, including the claimant, that he was going to keep them.
- 16 On that same day he signed a confirmation confirming in writing that he would pay the claimant and he would receive a payment on 10 March of £1,680 minus any HMRC obligations such as tax and national insurance. That was signed by Mr Lowe on behalf of the respondent and by the claimant. The document is at page 19 of the bundle and underneath in handwriting it says, "Part of this agreement isn't valid unless a signed non-disclosure agreement is signed by both parties", and it is then signed by Mr Lowe. The claimant says that that handwritten note was at the bottom of the document. Mr Lowe was unable to explain in evidence what "part" meant other than it actually meant the whole of the agreement. A non-disclosure agreement was in fact provided to the parties

as Mr Lowe said that an ex-employee of North East Solutions then went back to another company set up by the other director of North East Solutions.

- 17 In evidence before the Tribunal Mr Lowe accepted that the sum indicated on that document was effectively the claimant's gross and monthly salary for that period plus any deductions. Mr Lowe also said in evidence that in fact the £26,000 deal was actually a smaller amount than anticipated and in the region of the region of £5,000.
- 18 On that same day, 15 February 2018, Mr Lowe gave the claimant £1,000 in cash. The claimant said that that was commission/bonus for the £26,000 deal. He says that that was a commission advance for what should have been a commission of £2,600 on that deal. Mr Lowe said in evidence that the £1,000 was an advance on wages. No documents have been produced in relation to that £1,000.
- 19 In early March 2018 the respondent effectively told the claimant that there was no more work for him. The claimant says that he was told this on a Sunday, at the beginning of March. The respondent says that he was not able to recall the exact date that he told the claimant that he had no more work for him but he confirmed that it was at the beginning of March.
- 20 In the ET1 the claimant indicated that the date of termination of his employment was 5 March. The respondent in their ET3 agreed that date was correct.
- 21 On 10 March the claimant was issued with a payslip, which is at page 14 of the bundle. The payslip indicates that the claimant will be paid the sum of £1,462.75. It sets out his pay and the deductions for tax and national insurance. It also refers to holiday pay and makes an adjustment for, what Mr Lowe indicated in evidence was, the three days sickness at the beginning of the claimant's employment.
- 22 On 12 March 2018 Mr Lowe through his mother's bank account paid the claimant the sum of £350. Then on 13 March the respondent paid the claimant the sum of £112.75. The claimant was not paid any notice pay.
- 23 The claimant submitted that he was due notice pay of a week and that he was also due wages of £1,000 which had been deducted from his salary. He relies principally on the payslip. The respondent submitted that the claimant was not due any notice pay. He submitted that the claimant had not worked for a month. He also submitted that the claimant was not due any commission of £1,000 as that commission related to the other company and that in any event he could deduct that money from the claimant under the contract of employment.
- 24 The Tribunal concludes that the claimant's complaint of breach of contract (notice pay) is well founded and the claimant is awarded the gross sum of £423.07.
- 25 He is awarded this sum for the following reasons: The claimant's employment commenced on 2 February 2018 as is noted in his signed statement of terms and conditions of employment which was prepared by the respondent. His

employment ended on Sunday, 4 March. Both of the parties agreed in the ET forms that the termination date was 5 March. Accordingly, the claimant worked more than one month and is therefore, under the terms of his contract, entitled to one week's notice pay.

- 26 Secondly the claimant's complaint of unlawful deduction from wages is also well-founded and the claimant is awarded the sum of £1,000.
- 27 The Tribunal prefers the claimant's evidence and accepts that this payment was a payment of a bonus/commission. The Tribunal has noted that if, as is suggested by the respondent, it was an advance on wages then it would have been noted as a deduction from the claimant's wages in his payslip. Indeed, it is noted that the respondent did make other deductions for other sums from the claimant's wages on the payslip sent to the claimant. Accordingly, the claimant's evidence is supported by the documentary evidence.
- 26 Further there is also a written agreement made between the parties on 15 February indicating that the claimant would be effectively paid his month's wages. In that document there is no reference or condition indicating that deductions of £1,000 would be made from that money. The agreement was made on the same day the money was paid to the claimant.
- 27 Accordingly, for those reasons, the claimant's complaint of unlawful deduction from wages is well founded.

---

**EMPLOYMENT JUDGE MARTIN**

**REASONS SIGNED BY EMPLOYMENT  
JUDGE ON  
15 October 2018**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.