



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:**  
**BEFORE:**

**LONDON CENTRAL  
EMPLOYMENT JUDGE ELLIOTT (sitting alone)**

**BETWEEN:**

**Mr C Hannington**

**Claimant**

**AND**

**Premier Christian Communications Ltd**

**Respondent**

**ON: 21 June 2019**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Ms C Ibbotson, counsel**

## **JUDGMENT**

The Judgment of the Tribunal is that the claim fails and is dismissed.

## **REASONS**

1. This decision was given orally on 21 June 2019. The respondent requested written reasons.
2. By a claim form presented on 8 February 2019 the claimant Mr Craig Hannington claimed breach of contract and unlawful deductions from wages. The claim was originally for commission and bonus. The respondent denied claim.
3. The claimant worked for the respondent as a telesales executive from 16 November 2017 to 4 December 2018. The respondent is a multimedia organisation, operating on radio, on-line and in magazines. It employs about 80 employees in London and about 100 people in total.
4. A preliminary hearing for case management took place on 2 May 2019 before Employment Judge Hodgson who made an Unless Order that on or before 16:00 the claimant should serve on the tribunal and the respondent full

details of the contract containing the relevant terms about payment of commission, if it was an oral contract, how was involved and the date and circumstances of the agreement, if in writing to identify the contract and the term and to provide a copy or explain why he was unable to do so (paragraph 3.4 of Judge Hodgson's Order).

5. On 3 June 2019 at 14:25 the claimant provided the tribunal with a witness statement. In that statement he set out the facts upon which he relied. He relied on an agreement with Ms Beverly White. Subsequent to the date for compliance the claimant continued to send correspondence to the tribunal stating that he was waiting for information from the recruitment agency.
6. The respondent's position was that the claimant failed to comply with the Unless Order and therefore the claim stood dismissed. At the start of this hearing the respondent did not pursue the point and wished the hearing to proceed.

**Witnesses and documents**

7. There was a small bundle of 71 pages.
8. The tribunal heard from the claimant and from Ms Beverly White, the Group Sales Manager for the respondent.
9. I had a written submission from the respondent to which counsel spoke. I had oral submissions from the claimant. All submission were fully considered even if not expressly referred to below.

Documents from the claimant

10. The claimant wanted to rely on emails with his agency Hays Recruitment who found him the job with the respondent. He had not complied with the terms of the Order of Judge Hodgson in relation to documents the deadline for which was 4pm on 4 June 2019. The claimant said he had sent them to the tribunal and the respondent by about 13 June 2019. This was not on the tribunal record and the respondent did not have copies. The claimant had not brought paper copies to the tribunal, he only had what was on his phone which was not sufficient. Had he brought copies I would have been prepared to grant a short adjournment to allow them to be copied but this was not possible.
11. The respondent was content for the claimant to refer to these emails orally in his evidence. Both parties wished the hearing to proceed.

**The issues for this hearing.**

12. The issue for this hearing was whether the claimant was entitled to be paid commission by the respondent. He confirmed during the hearing that he was not pursuing a claim for a bonus payment.

## Findings of fact

13. The claimant worked for the respondent as a telesales executive from 16 November 2017 to 4 December 2018. He was on a 4 week notice period. He had a written contract of employment under which the respondent had a right to terminate the contract with pay in lieu of notice. The contract was at page 22 of the bundle.
14. The claimant resigned on 22 November 2018 and when he resigned he agreed that his employment would end on Friday 21 December 2018. The claimant had obtained a new role with another company.
15. The contract of employment was at page 22 with his remuneration at clause 6. The claimant's salary was £24,000 per annum. The claimant accepts that his written contract of employment does not make mention of any commission.
16. The claimant relied upon paragraph 5 of Ms White's statement and the commission structure at page 57 of the bundle. That document showed how commission would be calculated for the year ending 30 September 2019.
17. The claimant agreed that the respondent could vary the commission arrangements. The commission structure that applied to him was shown at page 57 of the bundle headed "*Sales Department – Commission Calculation for the year ending 30 September 2019*". It showed the team targets and the individual targets. For October, November and December 2018 the individual targets were respectively £17,000, £19,000 and £18,000.
18. The commission structure also made clear that commission was only paid once £10,000 was "Booked". Ms White's evidence, which I accept and find is that Booked meant paid, with the money received in the respondent's bank account. It was also not in dispute that no commission was paid for any unpaid invoices.
19. The commission document was given to the claimant and all the sales people in the middle of September 2018 by Ms White.
20. The document also said: "*Commission and bonus structure will be reviewed Quarterly*" and it could be changed at the discretion of the respondent. The claimant agreed. He said it was not about changing it, his complaint was about not receiving it.

## The JTB account

21. In about early November 2018 the claimant had some telephone conversations with Ms Fox from the Jamaica Tourist Board (JTB). He asked JTB if they wanted to be a sponsor for the Premier Gospel Awards taking place in May 2019. They had a meeting at the Excel Centre on 7 November 2018 at the World Travel Market. JTB agreed to sponsor the ceremony for £15,000 with activities to form part of that package. The claimant took a

- booking form which Ms Fox signed. The booking form was not in the bundle.
22. The claimant said he had gone through the “bronze sponsorship package” with the JTB for the event. The claimant said on the booking form it said “Bronze Sponsorship Package, Premier Gospel Awards 2019, £15,000”.
  23. The client said to the claimant that this was probably the fastest sales meeting he had ever had. The claimant was asked if the client could have backed out if they wanted to. The claimant said yes, they could back out, but they did not want to, they wanted to go ahead.
  24. The claimant was asked whether it was a contractually binding agreement and he said that it was, although he accepted that the client could back out. He said they might be charged a cancellation fee.
  25. The claimant also accepted that after signing the booking form, more detail would need to be agreed. The client Ms Fox was going away for 2.5 to 3 weeks on business and the claimant agreed to speak to her again at the end of November. They had a conversation about the way the package would work out but this was not put in writing between the claimant and the client.
  26. The next steps were completed by Ms White after the claimant left, she agreed the activities and drew up the Heads Of Agreement with Ms Fox, which was at page 66-71 of the bundle. This was a detailed document setting out what the parties would do and what activities were involved. For the respondent to be paid the respondent said the activities needed to be agreed and invoiced and paid. The contract was signed on 18 December 2018.
  27. The claimant accepted in his closing submission that JTB was not invoiced before he left and he said that this was the fault of others.
  28. On about 15 November 2018 the claimant informed accounts about the JTB booking and he arranged for that to be allocated to his figures for December 2018. This was at page 59 of the bundle. It raised the claimant’s sales for December from £3,917 to £20,326.
  29. The respondent was concerned that the claimant would not honour the terms of his contract of employment during the notice period. Therefore on Tuesday 4 December 2018 the respondent exercised its contractual right to terminate his contract make a payment in lieu of notice. They informed the claimant that they did not require him to work the remainder of his notice period. The claimant agreed that 4 December was his last day of work.
  30. The claimant’s evidence in his witness statement was that he enquired of Ms Claire Southall the Key Relationships Director and line manager of Ms White, as to whether he would be paid commission on any future sales that he might achieve as the deadline for the December issue of the magazine had closed. He said he was told that if he sold any advertising space for January there would be no commission due to him. He said he felt this was unfair but “reluctantly accepted” and said he would carry on his duties as per his

contract.

31. The claimant's evidence was that he was informed on 5 December 2018 that he was put on garden leave and that the respondent did not "*formally activate PILON clause*". He said that as result of this he was not able to take up any other work from 5 to 21 December 2018.
32. I saw an email dated 3 December 2018 (page 35) from Ms Southall copied to Ms White and others, which queried whether the claimant was going to be on garden leave until 21 December. HR representatives were asked to deal with this. At page 36 I saw an HR advisor's letter to the claimant telling him that he was not required to work the remainder of his notice and that he would be paid in lieu, at full pay. I find that this was the respondent activating the pay in lieu of notice clause (contract clause 15.3 bundle page 27).
33. Ms White confirmed to the claimant in an email of 5 December 2018 (page 38) that he was not on garden leave and his employment had ended on 4 December. He was told in that email that there were no restrictions on his future work. If he decided not to work elsewhere during the period, 5-21 December 2018 that was a matter for him. I find that the claimant was not on garden leave, the respondent exercised the right to terminate and pay in lieu of notice and he was told this by Ms White in the email of 5 December.
34. The claimant argued that there was loss of chance for him to pursue the contractual arrangements with JTB.
35. The JTB invoice was not paid until 16 April 2019. I find this based on Ms White's evidence in her statement at paragraph 19.

### **The relevant law**

36. Section 13(1) of the ERA provides an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
37. For a contract claim, what is relevant is the term or terms of the contract between the parties.

### **Conclusions**

38. This is a claim which has to be founded upon a contractual entitlement. For the claimant to succeed, I have to find that he was contractually entitled to receive commission on the JTB matter.
39. I deal firstly with the claimant's point about the recruitment agency telling him that there was a commission structure at the respondent and roughly what those arrangements were. There was a commission structure and the relevant terms were at page 57 of the bundle. Whatever the agency said to

- the claimant, they are not a party to the contract of employment between the claimant and the respondent.
40. It was submitted by the respondent that there was no contractual entitlement to commission because it was discretionary. I find that although the respondent could review and change the terms of its commission structure, the relevant structure at page 57 was in place at the material time and applied contractually to the claimant.
  41. The following question is whether under the terms of that structure, the claimant was entitled to be paid commission.
  42. He secured the provisional booking from JTB, indicating the client's interest. The details were not agreed. No activities were booked and invoiced for December or otherwise. It was Ms White who drew up and entered into the contract with the client on 18 December 2018 (contract page 71).
  43. Although the claimant asked accounts to allocate the £15,000 to his December figures, there was nothing invoiced and paid in December 2018. The respondent therefore informed accounts to change the document which I saw at page 59 to remove the sum of £15,000 which was not the subject of a contract between the respondent and JTB until 18 December and which the claimant accepts had not been invoiced upon, let alone paid.
  44. So far as the claimant's argument that he was hindered in taking matters forward because of being asked to leave on 4 December 2018, my finding is this. The respondent exercised their contractual right to terminate the contract and pay in lieu of notice. The claimant's employment terminated on 4 December 2018. I find he was not on garden leave and was told as much in the email of 5 December 2018 at page 38.
  45. There is no jurisdiction for this tribunal to consider a "loss of chance" claim but even if there was, I find that the respondent acted in accordance with the contract by terminating it and paying in lieu.
  46. This is a matter of applying the terms of the commission scheme on page 57. The claimant had not secured commission of over £10,000 for December 2018. It was not booked, it was not invoiced, it was not paid. He is not contractually entitled to any commission and his claim for unlawful deductions from wages and breach of contract fails and is dismissed.

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**Employment Judge Elliott**  
**Date: 21 June 2019**

Judgment sent to the parties and entered in the Register on: 24 June 2019.  
\_\_\_\_\_ for the Tribunals