



Case No. 2301117/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr M Mughal

Respondents: Virgin Media Limited

Heard at: London South (By CVP) **On:** 12 August 2022

Before: Employment Judge Self

Appearances

For the Claimant: In Person

For Respondent : Ms N Webber – Counsel

JUDGMENT

1. The final hearing listed for today is unable to proceed and is postponed as the Claimant has attended on CVP to give evidence from Egypt.
2. The hearing will be re-listed for 11 November 2022 at 2 pm with a time estimate of 2 hours.
3. The Claim for a statutory redundancy payment is dismissed upon withdrawal.

ORDER

1. Unless the Claimant sends to the Respondent and the Tribunal a witness statement relating to the issues in this case by 20 September 2022 his claim shall be dismissed without further Order.
2. If the Respondent wishes to send to the Claimant and the Tribunal a further witness statement, upon clarification by the Claimant of his position as set out

in paragraph 1 of this Order, then that additional statement should be received no later than 4 October 2022.

REASONS

1. The Claimant brought claims for a redundancy payment, notice pay, holiday pay and other payments. The Claim Form is rather opaque in explaining what he is precisely claiming under those heads and it has to be said the Claimant's oral explanations when seeking to precisely identify the issues today cast only a pale light upon matters despite my very best efforts.
2. It was established that the Claimant was paid a contractual redundancy payment in excess of the statutory scheme. There is, it follows, no claim for a statutory redundancy payment and that claim has been dismissed upon withdrawal.
3. The essence of the case is that the Claimant was paid commission on the work that he did. That commission is an element, so the Claimant says of his remuneration and so should be reflected in his contractual redundancy payment, his notice pay, and any outstanding holiday pay. The Claimant's contention is that the Respondent has failed to pay all monies due and owing to him upon his termination because they have failed to calculate his commission according to the applicable Rules. Despite trying the Claimant was not really able to tell me what the correct figures should be and what he is owed. I pointed out to him that the burden of proof was on him to show that he had been underpaid and this inability may prove a problem for his case at the final hearing.
4. **The Issue to be determined is whether pursuant to the Claimant's contract, including the commission scheme to which the Claimant was subject to, was the Claimant paid the correct contractual redundancy payment, the correct notice pay and the correct holiday pay upon termination.**
5. Although relatively simply and shortly stated it did take about an hour to get to that point but I was then told that the Claimant was in Egypt and so pursuant to the **Presidential Guidance – Taking Oral Evidence by Video or Telephone for Persons Located Abroad** and upon no permission being in situ the matter had to be postponed. No TOE referral needs to be made as the Claimant will be back in the UK for any future hearing.
6. The view I have taken is that despite the Claimant failing to set out his case he now has a paginated bundle supplied to him to work from which includes, it appears, the relevant documents that show how figures are calculated. He also has a witness statement from Mr Madden which clearly sets out with reference to the bundle how the payments that were made to the Claimant were calculated. The Claimant should be in a position to draft a witness statement setting out what he wants from this litigation and how those figures are calculated by way of a witness statement. I have made that subject to an

Unless Order because of the Claimant's previous failure to provide a schedule of loss / statement.

7. In fairness to the Respondent, I have permitted them an opportunity to file further witness evidence if so advised.

Employment Judge Self
18 August 2022