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# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Visser  
**Respondent:** Media 10 Limited  
**Heard at:** East London Hearing Centre  
**On:** 10 September 2018  
**Before:** Employment Judge Brown

## Representation

**Claimant:** Ms G Spencer-Jones (representative)  
**Respondent:** Mr Stephen Blackie

# JUDGMENT

The judgment of the Tribunal is that:

1. The Respondent made unlawful deduction from the Claimant's wages when it failed to pay the Claimant commission regarding the Ribadao deal, but the Respondent did not make any other unlawful deductions from the Claimant's wages.
2. The Respondent shall pay the Claimant the agreed sum of £86.10 on account of its unlawful deductions from wages.

# REASONS

1 The Claimant brings complaints of unlawful deductions from wages against the Respondent, her former employer, by a claim form dated 20 June 2018. The Claimant contended that she was owed commission in respect of four clients: an unknown client; Ribadao Designs Limited; Fritz Landolt; and Formica Limited, but that the Respondent had failed to pay her the commission.

2 The parties agreed the issues at the outset of the hearing and they were as follows:

- 2.1 How did the Respondent's commission structure operate? What event had to occur in order for the Claimant to be entitled to commission? Was the operation of the commission scheme for the month of May 2018 affected by the Claimant's anticipated employment termination date of 30 May 2018?
- 2.2 Did the Claimant bring in a client in early May 2018 which is neither reflected in the commission report print out that was sent to the Claimant nor in the commission claim that the Claimant did not complete?
- 2.3 Was Ribadao brought in for the purposes of the commission scheme during the month of May 2018?
- 2.4 Can the Claimant claim enhanced commission in respect of the Fritz Landolt deal?
- 2.5 Did the Claimant bring in two contracts in the Formica Limited deal and was that deal concluded on 24 May 2018?
- 2.6 What was the value of commission owed to the Claimant?

3 It was agreed that the Claimant was paid commission under a commission structure and that the relevant commission structures were set out at pages 29 – 30 and 31 – 32 of the bundle. The Claimant was paid 2% commission if she achieved her sales target and 4% commission on any sales achieved above that target.

4 The parties agreed that the Claimant was entitled to be paid the commission in respect of one Ribadao deal. The Claimant had been paid commission in respect of the Fritz Landolt deal, but she claimed to be entitled to 4% commission, because she said that she had brought in deals from Formica Limited, which had taken her above her sales target for the relevant month.

5 The Claimant was employed under a contract of employment which stated, "We also operate a discretionary uncapped On-Target Commission Scheme which enables you to earn commission in addition to your annual salary. Commission during the probationary period is payable at the company's discretion."

6 The contract stated that the Claimant's employment commenced on 20 January 2017 and that her probationary period was at three months in duration. At the end of the contract of employment, the contract said, "The company reserves the right to make reasonable minor changes to any of your terms of employment. Such minor changes will be notified to you by way of general notice to all employees and will take effect immediately. At least one month's written notice will be given to you of any proposed significant changes which may be given by way of an individual notice or general notice to all employees. You will be deemed to have accepted such a change unless you notify the company of any objection in writing before the expiry of the one month period."

7 The Claimant resigned from her employment, giving one month's notice, in April 2018. On 14 May 2018 the Claimant indicated to the Respondent that she wished not to have to work out the rest of her notice, but to leave immediately. On 14 May 2018 Jane Musgrove, Human Resources Director, wrote to the Claimant saying:

*".. Further to your discussion with Stephen Blackie and Dee Lacey on 14 May 2018 I can confirm the following details... (1) As agreed your last working day is 14 May 2018... The remainder of your notice period will be paid in lieu of notice, you will therefore be paid up until 30 May 2018... (3) Commission please ensure that your final commission claim is submitted on or before close of business on 30 May 2018. As agreed you will be paid commission on the deals that you have made which come in during your notice period. This agreement is subject to the client paying their invoice as per company policy and we will inform you of the status accordingly."*

8 There was a dispute between the parties as to the event which was required in order to generate entitlement to commission payments. The Respondent contended that, in order to become entitled to be paid commission, the Claimant had to have secured a signed contract from a relevant client. In submissions, the Claimant disputed this and said that a concluded contract was enough, but that this did not have to be reflected in a signed contract. In evidence to the Employment Tribunal, the Claimant said that commission was paid on signed contracts. In re-examination, she was asked how commission was claimed, once a deal had been agreed in an email. She responded that, once the client had selected a stand, that was a "green flag" and a deal was "in the bag." She said that, then, "You send out a contract immediately. I would send a contract out and it would come back signed and it would form part of the commission claim."

9 Mr Stephen Blackie, Sales Director, gave evidence for the Respondent. He explained that a signed contract from a client was required for a salesperson to be able to claim commission, and that this was industry standard.

10 I accepted what was, in fact, both the Respondent's and the Claimant's evidence: that a signed contract from a client was required in order for commission to be paid. It seemed to me that that accorded with ordinary contractual principles and was practical also, in that there is no contract until the parties have offered and accepted the same terms. A proposal is not enough. It would be in accordance with normal business practice for there to be contractual terms set out by way of an offer and for those terms to be accepted by an authorised signatory of a client company.

11 The Claimant pointed to an email of 24 May 2018, which she said contained a concluded agreement. That email was at p43 of the Bundle. The email, from the client Formica Limited, asked questions about a proposed agreement, including, "Please can you confirm the dimensions of both stands and provided quotation? I do not think we should be looking at more than 80 meters square across both stands." It seemed to me quite clear that the email was not a concluded contract, but formed part of pre contractual negotiations.

12 I have decided that a concluded contract was what was required in order for commission to be paid. The Formica Limited contracts were not signed until 31 May 2018, for example, Bundle page 136. This was after the Claimant's notice period expired

and her contract ended. She was not entitled to be paid commission because those contracts were not concluded during her notice period.

13 In so far as it needed to be decided, I agreed with the Claimant that it was not part of her contractual terms that a deposit also needed to be paid in order for commission to be earned. The employment contract and the terms of commission did not require a deposit to be paid in order for commission to be earned. While the employment contract reserved the ability of the Respondent to change its terms by written notice, the contract stated that one month's notice in writing would be given to the Claimant of a major change in her terms. A month's written notice was not given of a requirement for a deposit to be paid before commission could be claimed. That did not change my ultimate conclusion with regard to Formica Limited, which was that the relevant contracts were not concluded until after the Claimant had left employment and that, therefore, she was not entitled to receive commission in respect of Formica.

14 That being so, the Claimant's claim to be entitled to 4% commission did not succeed because it was contingent on the success of Formica claim.

15 The Claimant contended that she had secured a further deal in either April or May 2018 in respect of an unknown client, for which she should have been paid commission. She was unable to specify the name of the client. Mr Blackie showed me the print out of the relevant computer records for May and April 2018; those do not show that there was any additional concluded agreement for which the Claimant was entitled to be paid commission. Mr Blackie said that he did not have administrator rights over that report. He simply printed it out and satisfied himself that there was no other concluded deal for which commission was to be paid. I accepted Mr Blackie's evidence that, if there had been a concluded deal, he would have paid the appropriate commission to the Claimant.

16 The Claimant said that disclosure had not been provided by the Respondent. I considered that the relevant disclosure had been provided in the form of this computer printout. The Claimant said that she had requested all records, including audio recordings, of all her activities in the relevant month. I considered that, in the context of a small value claim, that was an unreasonable and unduly onerous request for disclosure. In any event, I accepted the truth of what Mr Blackie said and I found, on the evidence, that there was no other concluded deal for which the Claimant was entitled to commission.

17 Therefore, the only additional commission that the Claimant was entitled to be paid was in respect of the Ribadao Designs Limited contract, for which the Respondent agreed that she should be paid. The Respondent has failed to pay that sum to date and, thereby, has made unlawful deductions from the Claimant's wages. I ordered the Respondent to pay the Claimant the agreed sum of £86.10, in respect of Ribadao Designs commission.

Employment Judge Brown

14 September 2018