



Reserved Judgment

# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Mrs B Boyle

Employee Advisory Resource Ltd

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 10 January 2020

BEFORE: Employment Judge A M Snelson

On hearing the Claimant in person and Mr S Crawford, counsel, on behalf of the Respondents, the Tribunal adjudges that:

- (1) The Tribunal has no jurisdiction to consider the Claimant's claim under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ('the 1994 Order').
- (2) Accordingly, the proceedings are dismissed.

### REASONS

1 These reasons are given in writing pursuant to an oral request by the Claimant at the hearing. In view of the way in which I have decided the case, what follows will be very brief.

2 The Claimant was employed by the Respondents in a senior sales capacity for a period of over 12 years ending on or about 12 April 2019. The employment ended with her resignation on notice, given on or about 14 March 2019.

3 The following matters are common ground:

- (1) The Claimant had an express contractual right to receive a 5% commission on sales generated by her. The relevant document said nothing about *when* commission earned would be paid.
- (2) The Respondents' practice, which was never challenged or queried, was to pay commission in monthly instalments over the year following delivery of its invoice to the customer.

- (3) In the payroll runs for March and April 2019 the Respondents paid to the Claimant commission payments treated as having accrued in accordance with the practice referred to in (2) above ('the practice').
- (4) Before me, the Claimant does not suggest any prior failure to make commission payments in accordance with the practice and accordingly, on the assumption that the practice was in harmony with the Claimant's entitlement, no commission payment was owing to her when her employment ended on or about 14 April 2019 other than what was paid in the April 2019 payroll run, although further payments would have fallen due had the employment continued.

4 The Claimant's claim is for unpaid commission. Relying on a contract of 2012, she says that on termination she should have received all commission payable on sales generated by her, less all commission already paid. Relying on a contract of 2014, the Respondents reply that an express contractual term disentitled her to commission on and after termination of her employment.

5 On their face, the claim and response form presented me with a dispute about (a) the applicable contract; and (b) the meaning and effect of the relevant term(s) governing entitlement to commission on termination. But the claim failed on a separate jurisdictional point, which I canvassed with the parties. The 1994 Order, article 3 gives the Tribunal jurisdiction to consider claims for damages or sums due, largely parallel to the jurisdiction of the courts. One important limitation, however, is that it extends only to claims which "[arise] or [are] outstanding on the termination of the employee's employment" (article 3(c)). On the Claimant's own case, it could not be said that the claim arose or was outstanding on or about 14 April 2019. The only express terms giving a right to commission said nothing about *when* a right to payment arose, and the practice (of paying it by monthly instalments in arrears) had never been challenged, let alone or impugned as infringing her contract. The only legal inference is that, by usage if nothing else, her right to commission payments corresponded with the practice. Accordingly, a claim for commission payments over and above what was payable in accordance with the practice is outside the scope of the 1994 Order.

6 It is not my place to offer advice about the prospects of success of such a claim if brought before the courts (or the timing of such a claim). But I would hope that the Claimant would take specialist advice before embarking on further litigation, especially as in the County Court she *might* be exposed to a costs risk.

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EMPLOYMENT JUDGE SNELSON  
10 January 2020

**Judgment entered in the Register and copies sent to the parties on 14 Jan. 20**

..... for Office of the Tribunals