



EMPLOYMENT TRIBUNALS

Claimant: Mr R Gordon

Respondent: PSR Solutions Ltd

Heard at: London Central **On:** 7 September 2020

Before: Employment Judge Khan (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr D Stephenson, Counsel

JUDGMENT

The claim is struck out.

REASONS

1. By a claim form presented on 11 May 2020 the claimant brought a claim for breach of contract. His complaint is that in failing to pay him commission for revenue generated in January 2020 in the net equivalent of £15,800 gross the respondent breached an implied term of his contract. The respondent resisted this claim.
2. This case was listed for a full merits hearing. It was conducted as a remote public hearing, using the cloud video platform (CVP) under rule 46.
3. In accordance with rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.
4. The parties were able to hear what the tribunal heard.
5. The respondent produced a bundle of 109 pages. It also provided a witness statement for James Saunders, its Managing Director. The claimant had not provided a witness statement which was explained by the fact that standard case management directions had not been sent out to the parties. I proposed to give the claimant the opportunity to give evidence in chief orally under oath.
6. Before hearing the evidence it was necessary for the claimant to clarify the basis of the claim being brought. I put the claimant on notice that I was

considering striking out his claim. This was because the claimant was unable to explain in clear terms the implied term which he said the respondent had breached nor was this patent. There was also a lack of clarity as to the method by which the claimant had calculated the sum he claimed which was not apparent from the documents I was taken to by both parties. Mindful that the claimant was a litigant in person I ensured he was given several opportunities to articulate his case.

7. The claimant accepted that his employment ended on 20 March 2020. He also accepted that under the express terms of his contract: (1) payment of commission was paid two months in arrears; (2) any commission for which he was eligible was paid together with his basic salary on the last Friday of each month; (3) commission was not payable to him if he ceased to be employed by the respondent on a relevant payment date. The claimant therefore accepted that under the express terms of his contract he was only entitled to payment of any commission generated in January 2020 if he was still employed by the respondent on 27 March 2020.
8. The claimant did not say that these express terms had been wrongly applied. He instead contended that the respondent had breached an implied term of his contract although he was unable to articulate what this term was.
9. Mindful that the claimant was a litigant in person, I referred the parties to Brand v Compro Computer Services Ltd [2015] IRLR 196, CA, which was not a case which dealt with an implied term but with the construction of express contractual terms governing the payment of commission. Having invited submissions from both parties, I was satisfied that this was distinguishable from the present case in which the express terms relating to the payment of commission were unambiguous and the parties agreed what they meant, and how they were to be applied; and unlike Mr Brand who had been summarily dismissed by reason of redundancy and had therefore had his employment terminated in circumstances outside his control, the claimant had given notice on a date of his choosing in circumstances in which he had secured new employment. The claimant therefore chose when to resign on a date when he knew, or ought reasonably to have known (because of the unambiguous terms in his contract), that he would not be eligible to receive any commission payments based on revenue generated in January 2020.
10. For these reasons, I was satisfied that there was no reasonable prospect of the claim succeeding and it was struck out under rule 37.

Employment Judge Khan

07/09/2020

JUDGMENT SENT TO THE PARTIES ON

.08/09/2020

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FOR THE TRIBUNAL OFFICE - Olu