EMPLOYMENT TRIBUNALS

Claimant: **MR T BOX**

Respondent: **QUANT NETWORK LIMITED**

Heard at: London Central Employment Tribunal (by video (CVP))

On: 8 and 9 October 2020

Before: Employment Judge T Russell (sitting alone)

Representation

Claimant: Mr Crawford (Counsel)

Respondent: Mr Green (Counsel)

Judgement and Reasons

Judgement

1. The Respondent is ordered to pay the Claimant £23,500 by way of compensation/damages for the Claimant's loss arising from the Respondent's breach of contract in failing to fulfil a commitment given and pay over a sign on bonus due to the Claimant on or about 13 April 2019.

2. The Claimant's claims for an unauthorised deduction from wages, in respect of payments due to him by way of QNT tokens and or accrued holiday pay, fail and are dismissed.

The issues

The Claimant's principal claims were for Breach of Contract and or Unauthorised Deduction of Wages based on two areas of dispute between the parties.

1. The non-transfer of 10,000 QNT tokens to the Claimant. The Claimant says they were offered in order to persuade him to sign on as an employee (having previously been a consultant with the Respondent). Without condition and to bridge the gap between the salary he wanted and the salary being offered. The

Respondent admits offering the tokens to the Claimant but only as a future bonus and without contractual commitment as reflected in the absence of reference to the QNT tokens in the Claimant's employment contract of 12 April 2019 . It is not in dispute that the QNT tokens were not transferred before the Claimant was made redundant effective 3 May 2020. In addition to arguing that the tokens did not form part of the Claimant's employment contract (or any collateral contract) the Respondent claims that QNT tokens are not wages within the statutory definition, and that any such claim would be time barred.

2. The second area of dispute arises from an alleged failure to pay holiday pay. In essence , if the booked holiday for the period 1 - 21 April 2019 is to be regarded as vacation , then the Claimant has no claim. And if it was not then he is entitled to some 15 days holiday pay accruing due at the EDT. The reason that this has become a dispute is , in particular, because the Claimant's planned trip to Florida in April 2019 was cancelled due to the pandemic.

FACTUAL BACKGROUND AND NARRATIVE

The holiday dispute can be determined through the finding of facts below and here I just deal with the QNT Tokens issue as a prelude to my findings of fact on that part (the principal part) of the dispute.

Pre employment contract

1. The Respondent is a technology company which has developed a software platform called Overledger . The Claimant worked as a contractor for a few months before becoming a permanent employee in April 2019 .Prior to the Claimant becoming a permanent employee, the parties negotiated as the terms of his remuneration. In an email sent on 12 April 2019 Mr Verdian told the Claimant that , having given the matter a lot of thought :

   "The bottom line is, we're a startup and not a bank and can not match the bank salaries and expectations. Colin and I decided on 130k which was an increase to the original ask. I ok'ed for slightly more to 135k to reflect the work and effort to date. Plus we added the QNT tokens as a sign on. Unfortunately we can't offer any more at this stage."

2. The Claimant wanted £150,000 salary against which the Respondent eventually offered him £135,000 and regarded the QNT tokens as an effort by the Respondent to (effectively) increase the maximum basic salary that they could paid to match the compensation package expected by the Claimant .

3. The Claimant replied to the Respondent's email referred to above saying

   " I appreciate the reasoning and would thus like to accept your offer. Please let me know what the next steps are so that we can get these underway."

4. It is accepted by the parties it was the Respondent , through its chief executive officer Mr Verdian , who raised the possibility of the Claimant receiving 10,000 QNT tokens and that at the time (because the value of these tokens was and remains variable according to e.g the valuation of the business) 10,000 tokens were worth some US$31,000 equivalent then to some £23,500. According to

the Claimant's submissions they went up in value considerably to a high around 11 July 2019 when worth perhaps 5 times or so their April 2019 value before dropping to an amount only slightly higher than they were worth in April 2019 and are , as of today , valued at around 3 times what they worth in April 2019. These estimates did not have to be , and were not , the subject of evidence.

5. It is unclear however why the figure of 10,000 was proposed and Mr Verdian could not adequately explain this. Based on the valuation at the time there is no obvious link between the salary offered of £135,000 and the salary expected of £150,000 given the difference between the two is obviously £15,000 and therefore £8,500 less than the tokens were then worth. However the offer made led to an acceptance by the Claimant of the proposed contract terms.

6. The disagreement between the parties is not about what the tokens were worth (other than as a cash claim for their value now) or could be potentially be worth but about the terms of offer and acceptance. In particular whether there was a binding contract to transfer them over.

7. On the same day (April 12) as the email discussion between the Claimant and the Respondent , indeed almost immediately after the e mail exchange they had, Mr Verdian instructed Celia Harvey the Respondent's COO to

   "draft a standard employment contract (no[t] the exec one) for Toby[the Claimant] for today. Going with the standard terms and a salary of 135K".

   He did not refer to the QNT tokens

8. The Claimant states that when receiving the Contract from Ms. Harvey he was told that the QNT tokens were still part of the offer made and accepted even though not referred to in the employment contract.

The Employment Contract

9. The Contract was signed by both parties The Claimant read it and knew the content . The two most relevant clauses concerning the Claimant's compensation and relevant to his claim for the QNT tokens are these.

   - Clause 6 headed *"Remuneration, Expenses and Deductions"* provided for an annual salary of £135,000 and further provided for a salary review in October. No mention was made, at clause 6 or elsewhere in the contract, to the QNT tokens or any other sign-on payment or bonus.
   - Clause 2.2 of the contract provided:*"You agree that this agreement reflects the complete agreement between the Company and you and that there are no written or oral understandings, promises or agreements related to this Agreement except those contained herein. This agreement constitutes the complete and final agreement by and between the Company and you, and supersede any and all prior and contemporaneous negotiations, representations, understandings, and agreements between the Company and you relating to the matters herein."*

Post Signing the Contract

10. The Claimant was employment for around one further year. There is a dispute as to whether , and if so when , he was told that he would not receive the QNT Tokens. But they were not received by the time of his redundancy.

Evidence

11. I heard oral sworn evidence from the Claimant and Mr Verdian, the CEO of the Respondent. And I also heard helpful submissions from the parties' representatives as to liability on day two of the hearing.

Findings of Fact

12. I accept the Claimant's evidence that Celia Harvey told the Claimant that the offer made and accepted did include the QNT tokens even though they were not included in the express terms of the employment contract. I do so because I have found the Claimant a truthful witness and this was his clear evidence and it explains, in part , why he signed the contract despite the absence of provisions in it relating to the QNT tokens. lso his evidence in this respect was not rebutted by the Respondent.

13. It is hard to know why Mr Verdian instructed Ms Harvey not to include reference to the tokens in the employment contract very soon after agreeing to pay the QNT tokens to the Claimant . But I do find that he misrepresented the position to the Claimant as she did to the extent that she knew or thought the Claimant was not going to be entitled to the tokens by signing the contract of employment.

14. Mr Verdian has stated in his evidence that he wanted to provide a bonus arrangement to incentivise the Claimant to join and contribute as an employee but if this inferred future performance this is strange as there were no conditions as to how and when the bonus (which is how he saw the tokens) would be paid. He had no substantive explanation as to why he says this and there is certainly nothing in writing in the agreed bundle to support his contention. I find the offer of 10,000 QT tokens was an unconditional commitment and was not dependent on the Claimant's performance (which was strong anyway) or on the company's performance (which would inevitably be reflected in the value of the QNT tokens so that was covered that way). All the Claimant needed to do was become an employee and he did

15. I find that the Claimant acted in good faith throughout and genuinely believed that the 10,000 tokens had been promised to him unconditionally .This was a reasonable position for him to take bearing in mind, in particular, the founder and CEO's unqualified assurance that "*we added the QNT tokens as a sign on*". I find that he probably wouldn't have accepted the offer to become an employee without the tokens having been offered. And after he commenced employment there are a number of steps that he took which show that he expected the Respondent to fulfil its promise.

16. I do not find it likely that the Respondent through Mr Verdian disabused him , in an alleged conversation on the London Underground coming back from a meeting at the Bank of England on 15 January 2020 or at all , of the belief

that he was to receive the tokens in addition to his normal salary. The Claimant continued to act as if entitled to the tokens because he thought he was.

17. The Respondent did expect to issue the 10,000 QNT tokens to the Claimant but for the adverse tax implications of doing so , that Mr Verdian found out about in December 2019. I accept it became apparent that there were significant costs and obstacles in issuing the tokens (including tax issues between Switzerland and the UK) and I also find that no QNT shares were ever issued to any employees and, further , that the only ones that were issued had been given to consultants in Switzerland who later became employees. But this does not mean they could not have been issued (they could have been) nor that they were promised without condition (I have found that they were and as a sign-on bonus).

18. The Claimant did get a 3% salary increase effected on 21 January 2020 but this was unrelated to the QNT tokens and , as accepted by Mr Verdian, not " instead of " tokens even though I accept the Claimant was the only employee to have got a salary increase.

19. Holiday. There is no dispute as to the Claimant's contractual entitlement over the holiday year and the disagreement between the parties is straightforward. The Claimant booked a holiday to Florida ,1 April to 21 April, but was unable to go because of restrictions on UK citizens flying into America . His flight was cancelled. A casualty of Covid . Was the Claimant still obliged to take his booked holiday? I find that he was because a) by the time he informed the Respondent of this on 16 March 2020 the Respondent said that it had alternative arrangements in place to cover the Claimant's absence ; b) those plans were made on 6 March and were effected ;c) the Claimant did not cancel the booked holiday by communicating this clearly to the Respondent to the extent he could not change the computer system himself (due to the holiday record being stuck in an "approval pending" mode) ; d) there is no evidence he offered to come back to work for this period or performed any work during this period ; e) even if he had wanted to change his plans the Respondent was entitled under the Claimant's contract of employment , however unfair , to insist he took the dates already chosen and I accept their evidence that they would have done so as a small business needing to avoid sudden vacation changes ; f) for most of this period the Claimant was serving his notice anyway and the Respondent was entitled under his contract to ask him to take his outstanding holiday during this month and g) they would have done if they believed he had had any outstanding vacation due notwithstanding the generic and slightly confusing language used in the letter of dismissal by way of redundancy dealing with accrued holiday .

20. The half a day of pay deducted from the Claimant's pay at the end of his employment was a justified deduction as it reflected the excess holiday taken and was anticipated in his contract of employment as a lawful deduction.

LEGAL FINDINDS

Breach of contract

21. The ultimate aim of interpreting a provision in a contract, is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant: ***Rainy Sky SA v Kookmin Bank*** [2011] UKSC 50.

22. An entire agreement clause in a signed written agreement is usually effective to exclude prior agreements or even misrepresentations if worded to do so (as it was in this case). ***Axa Sun Life Services plc v Campbell Martin Ltd & ors*** [2011] EWCA Civ 133.

23. Such a clause will normally preclude reliance on a collateral contract. As set out by Lightman J in ***The Inntrepreneur Pub Company (GL) v East Crown Limited*** [2002] 2 Lloyd's Rep. 611, at [7]:
"…[an entire agreement clause] constitutes a binding agreement between the parties that the full contractual terms are to be found in the document containing the clause and not elsewhere, and that accordingly any promises or assurances made in the course of the negotiations (which in the absence of such a clause might have effect as a collateral warranty) shall have no contractual force, save insofar as they are reflected and given effect in that document. The operation of the clause is not to render evidence of the collateral warranty inadmissible in evidence as is suggested in Chitty on Contract 28th ed. Vol 1 para 12-102: it is to denude what would otherwise constitute a collateral warranty of legal effect."

24. However even though the contract (unwisely signed by the Claimant) does contain an entire agreement clause the normal rules of interpretation also apply. And given the findings I have made the caselaw referred to above does not prevent me from looking at the oral agreement ,and indeed written collateral agreement , made. And although the entire agreement clause does refer to " representations " as in the *Axa* case this is not , without more, enough to avoid liability for misrepresentations that induce a party to enter into the contract (as happened here) . Nor does the entire agreement clause cover and exclude implied terms.

25. It is clear to me that a) the Claimant was told unequivocally by both the CEO and COO of the Respondent that he was to receive the 10,000 QNT tokens ; b) at the same time as the contract was given to him ; c) he acted on that assurance and continued to act on that assurance and with the ongoing support of the Respondent , throughout his period of employment ;d) he had and was offered no legal advice when signing the contract and trusted in the representations made to him as to the QNT tokens offer; e) although an experienced employee in the financial sector he was not experienced on legal and contractual matters; f) that offer and acceptance , also put into writing, was clear and unambiguous and Mr Verdian on behalf of the Respondent gave no compelling evidence to the contrary and indeed accepted the Claimant felt misled because of the Respondent's actions ; g) the Claimant would not have entered into the contract of employment without

the QNT tokens offer ; h) there is no evidence at all other than the contract of employment wording in support of the Respondent's contention there is no debt due in respect of the QNT tokens and finally i) there is a significant amount of evidence to show that a commitment to 10,000 QNT tokens was made and a liability established but one that was simply not fulfilled.

26. The Claimant signed the contract due to the misrepresentation of the Respondent and the entire agreement clause cannot rescue the resultant breach of contract that took place when the promised tokens were not delivered.

Wages

27. The QNT tokens do not fall within the definition of wages is set out at section 27 of the Employment Rights Act 1996 (**"**ERA**"**). Section 27(1) provides:
"In this part, 'wages', in relation to a worker, means any sums payable to the worker in connection with his employment, including-
(a) Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.
…"
28. Section 27(5) provides:
"For the purposes of this Part any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is-
(a) Of a fixed value expressed in monetary terms, and
(b) Capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things)."

29. QNT tokens as a kind of cryptocurrency do not fall within the statutory definition of wages and so cannot found a claim for unlawful deductions.

30. It is accepted that the definition at s27(1) ERA is widely drafted, and that it includes any fee, bonus or other emolument referable to employment. However, each of the examples at s27(1)(a) to (j) are expressed to be examples of *"sums payable"*, rather than anything of value paid or transferred in respect of employment. Furthermore, s27(5) expressly excludes *"any monetary value attaching to any payment or benefit in kind"* from the definition of wages, subject to defined exceptions.

31. Part II of the ERA therefore draws a distinction between *"sums payable"* on the one hand, and a *"payment or benefit in kind"* on the other. QNT tokens fall

within the latter category and so can only amount to wages if they meet the cumulative requirements of s27(5)(a) and (b):

a. First, QNT tokens are not legal tender. Although a market exists for their sale and trade, they cannot be freely exchanged for goods and services. This would be true even in the case of a true cryptocurrency in very wide usage: in the vast majority of transactions a party could not be compelled to accept them as payment.
b. Second, QNT tokens are not a true cryptocurrency, but are utility tokens. They are not merely assets assigned a value by the parties who trade in them. It is accordingly submitted that a utility token is in effect a voucher, stamp or similar document, used instead of legal tender to effect a specific exchange of goods or services. The tokens therefore fall within the examples of a payment in kind expressly set out as not being wages by s27(5) ERA.

32. Nor do QNT tokens satisfy the requirement of s27(5)(a). It is clear that they do not have a fixed value expressed in monetary terms. Their monetary value is not defined or fixed but rather fluctuates over time according to the market on which they are traded .

33. Accordingly, for all these reasons QNT tokens do not meet the statutory definition of wages and any claim for unlawful deductions in respect of the tokens must fail.

Holiday pay

34. Whether the Claimant's claim is brought under the Working Time Regulations 1998 or as a breach of contract (given that the Claimant had an entitlement to 5 extra days under Clause 7.1 of his contract of employment than the minimum leave of 28 days) it fails . Given the decision that the Claimant was on leave from 1 April to 21 April 2020 as planned (even if not in the USA as planned) it is clear he had no accrued holiday owing at the end of his employment. There is therefore no breach of contract or unauthorised deduction in respect of the accrued holiday claim or the small sum deducted by the Respondent at the end of the Claimant's employment given the excess holiday taken and contractual right to recoup that sum.

Remedy

35. Having heard submissions from the parties' representatives my judgment is that the valuation of the QNT tokens should be assessed as a 12 April 2019 as that is when the Claimant signed his contract and so when both the obligation arose and the breach occurred.

36. The Claimant's breach of contract claim is made under the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994. Which provides a cap on the payment sought is capped at £25,000 (in contrast to the statutory remedy had it been determined there was an unauthorised deduction) by virtue paragraph 10 of the above Order which provides *"An [employment tribunal] shall not in proceedings in respect of a contract claim,*

or in respect of a number of contract claims relating to the same contract, order the payment of an amount exceeding £25,000.".

37. But in any event I find in this case that the appropriate award of damages is below this cap and should be at £23,500 to include interest as events are recent and this was accepted by the Claimant and that this sum as ordered represents the Claimant's compensation for loss of earnings applying the long established case authority of *British Transport Commission v Gourley (1955) HL* and so the Respondent is therefore ordered to pay the Claimant £23,500 in settlement of his claims without deduction of tax.

Employment Judge Timothy Russell

12 October 2020

JUDGEMENT SENT TO THE PARTIES ON

12/10/2020