



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Cowin; Mr A Page; Mr J Swires v

NISA Retail Ltd

Heard at: Leeds by CVP

On: 10th of August 2021

Before: Employment Judge O'Neill

Appearance:

For the Claimant: Mr Cowin on behalf of himself and the other claimants.

For the Respondent: Mr Middleton (solicitor with Hill Dickinson).

JUDGMENT

The claims in contract made under the Employment Tribunal Extension of Jurisdiction (E&W) Order 1994 and /or the claim for unauthorised deduction from wages (failure to pay bonus properly payable) fail and are dismissed.

REASONS

Claims

1. The claims are for failure to pay a bonus payment. They are made as a claim in contract under Employment Tribunal Extension of Jurisdiction (E&W) Order 1994. Alternatively, they are made as an unauthorised deduction from wages (failure to pay sums properly payable) under part II of the Employment Rights Act 1996.

Evidence

Witnesses.

2. Mr Cowin gave evidence. The other claimants did not appear. He produced no witness statement but answered questions from me, made a verbal statement, adopted the ET1 grounds and answered questions in cross examination from Mr Middleton.
3. Ms Paige Cahill - HR Officer with the respondent ('people partner') produced a witness statement and was tendered for cross examination but Mr Cowin did not ask any questions of her and accepted her statement as factually correct.

Documents

4. We had before us a bundle of documents paginated and indexed. The bundle included the claimants' statements of terms and conditions and the 2020 bonus scheme rules.

Findings

5. Mr Cowin and the other two claimants were made redundant. The effective date of termination was 18 December 2020. They were paid pay in lieu of notice. They have made no claim regarding the fairness of their dismissal or the process or the consultation leading to it.
6. This was a redundancy exercise across the respondent company in which a number of dismissals took place on 18 December 2020. Although the claimant asserted that by making him and his colleagues redundant on that date the respondent avoided paying them a bonus (which was undoubtedly true) he concedes that there were other economic and structural reasons for making the dismissals before the year-end. I find that the dismissal date was not chosen in bad faith to defeat a potential bonus claim.
7. The Service Agreements of the claimants (statement of terms and conditions) make no reference to the bonus scheme as an element of contractual pay, or at all.
8. The rules of the bonus scheme for 2020 were set out in the bundle and refer on no less than nine occasions to it being a discretionary scheme.
9. Mr Cowin tells me that he was entitled to 3 months notice, I do not know the notice period of Mr Swires, Mr Page was entitled to 6 months notice. The contract of employment provides for the payment of pay in lieu of notice and each claimant accepted PILON and have made no unfair dismissal or wrongful dismissal claim.
10. Under the rules of the scheme entitlement to bonus is only triggered if the employee remained in employment as at the date the bonus is paid out. In this case the bonus was paid out in May 2021 and none of the claimants were then in employment.
11. Mr Cowin tells me that it is not unusual for the bonus to be paid out some months after the year-end and a date in May was not unusual, the bonus payments being made after the accounts are finalised and audited. In the circumstances I find that there is no suggestion of bad faith and that the payout date in May was not chosen to defeat a bonus claim.
12. In the circumstances, the claimant are unable to show their entitlement to bonus under the rules of the scheme, even if it was a contractual entitlement they were not in employment on the trigger date.
13. This is not a situation where, but for a wrongful or unfair dismissal, a bonus would have been paid. In this case the dismissal was neither unfair nor wrongful.
14. The claimants worked hard during the Covid year to contribute to the record profits of the respondent. They understandably feel very hard done by in missing out on the bonus but unfortunately for them, under the black letter of the scheme they simply failed to qualify for the bonus.

Conclusions

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15. The claimants have failed to show a contractual entitlement to a bonus for the year ending 31 December 2021 and the claims fail and are dismissed.

10 August 2021

Employment Judge O'Neill