Case Number: 3323966/2016

EMPLOYMENT TRIBUNALS

Claimant	v	**Respondent**
Mr Cemal Yucetas		Ersan & Co Solicitors Limited

Heard at: Watford **On**: 24 April 2017

Before: Employment Judge Wyeth

Representation

For the Claimant: Ms L Millin (counsel)
For the Respondent: Mr R Lees (counsel)

JUDGMENT

1. The claimant's claim to a bonus payment is well founded and the respondent is ordered to pay the claimant the agreed gross sum of £13,830.50.

2. The claimant's claim to one week's pay for the period from 29 April to 6 May 2016 is well founded and the respondent is further ordered to pay the claimant the net sum of £290.00.

3. On the basis that the claimant has succeeded in his complaints, by agreement the respondent is further ordered to pay the claimant the sum of £390.00 in respect of the tribunal fees paid.

REASONS

The complaints

1. By a claim form presented on 28 July 2016, the claimant complained that the respondent had failed to pay him: a) his last week's pay for the period 29 April 2016 to 6 May 2016 (following his notice of resignation on 29 April 2016); and b) a bonus to which he was entitled under the terms of his contract for the respondent's financial year ending 30 April 2016. Both complaints were pursued by the claimant as breaches of contract or unauthorised deductions

from wages in breach of Part II of the Employment Rights Act 1996 ("ERA") in the alternative. The respondent defended those claims.

The issues

2. Having identified the claims, the parties agreed at the outset of the hearing that the issues for this tribunal to determine in respect of those claims were as follows:

3. *Contractual bonus*

   3.1 What were the applicable terms of the employment contract relating to the contractual bonus and was the claimant entitled to receive a bonus under those terms?

   There was no dispute between the parties that the claimant had met the target to be eligible for a bonus in principle and that the amount of the bonus that would be payable was £13,830.50. The respondent maintained, however, that the terms of the employment contract with the claimant were such that the claimant was only entitled to receive the bonus if he was employed and not under notice by the end of June in any financial year. The claimant disputes that any such term ever formed part of terms of the agreement between him and the respondent.

   After seeking clarification from Ms Millin, she accepted that this same issue was applicable in respect of this claim pursued in the alternative under Part II ERA (unauthorised deduction of wages).

4. *Failure to pay one week's pay*

   4.1 Was the claimant entitled to be paid for the period from 29 April 2016 (the date of his resignation) to 6 May 2016?

   The claimant says he was willing to work for that week but was permitted to leave. The respondent denies that he was permitted to leave early and left without working his full notice period of one week.

   Again, it was agreed that regardless of whether this complaint was being pursued as the breach of contract claim or the unauthorised deduction of wages claim in the alternative, both complaints stood or fell on this same issue.

Evidence and procedure

5. Unfortunately the parties had been unable to agree a single joint bundle. As a consequence, I had before me two bundles, one from the respondent and the other from the claimant. There was nothing in the respondent's bundle that was not contained in the claimant's bundle save for a copy of the version of the purported contract annexed to the ET3 with Ms Ersan's signature on page 10 of that document (p124 of the respondent's bundle). The claimant's bundle consisted of 191 pages. Despite the existence of two separate

bundles, I was not referred to, nor did I consider as part of this case, any document that either party had not seen prior to the hearing. Simply for ease of reference, page numbers stated herein correspond with those in the claimant's bundle unless stated otherwise.

6. Unconventionally, the witness statements of each of the witnesses were contained as numbered pages within the bundle. This was not particularly helpful procedurally, not least because documents in the bundle were not in chronological order but were inserted in the form of exhibits to those statements. Nevertheless, all those involved were able to navigate around the bundles during the hearing without any problems arising.

7. I heard evidence from witnesses for each of the parties in the following order: Mr Yucetas (the claimant), Mr Turus (for the claimant), Mr Polat (for the claimant) and Ms Ersan (for the respondent). At the close of the evidence, I heard submissions on behalf of both parties. Ms Millin relied on written outline submissions which she expanded upon orally and Mr Lees made oral submissions.

8. Due to time constraints it was necessary for me to reserve my decision. I am grateful to the parties for agreeing that subject to my determination on liability, the amount of bonus due to the claimant was £13,830.50 gross and that respondent should be liable for the tribunal fees of £390 paid by the claimant if the claimant was successful in his complaints. Furthermore, there was no dispute that the claimant was not paid one week's pay and the claimant was claiming £290 net pay for that period. For the avoidance of doubt, the figure of £290 must be grossed up and the gross figure paid to the claimant by the respondent. The claimant must then account to the revenue for the tax on that amount. Accordingly, there was no need for any further remedy hearing.

Findings of fact

9. The respondent was established as a company in 2008 and is a law firm specializing in personal injury matters. Its Managing Director is Ms Serpil Ersan, a solicitor admitted to the Roll in October 2001. The claimant commenced employment with the respondent on a part time basis in April 2014 as a paralegal.

10. There is some confusion as to the claimant's exact start date. The claimant indicated it to be 13 April in his ET1. The respondent claims its records "indicate" that his start date was 9 April. Nothing material rests on this save for the fact that it is illustrative of how lax the respondent was in formalising and documenting the employment contract and any applicable terms that existed with the claimant.

11. I observe at this stage that there were various versions of the draft contracts that appeared as evidence in the bundle before me none of which contain reference to the claimant's start date as 9 or 13 April 2014. The version dated 15 May 2015 on p81 (in "exhibit SE1") leaves this detail blank, unsurprisingly because this is the template contract sent to all employees of the respondent. The version dated 21 May 2015 on p93 (in "exhibit SE2", which appears to be the same version as the one exhibited to the ET3) refers to "Your employment

commenced on August 2014" under the heading "**Commencement of Employment**". There is then a further version dated 26 May 2015 on p55 (in "exhibit CY4") that refers again to "August 2014" as the date employment commenced. This last version was the one emailed to the claimant by Ms Ersan on 4 May 2016 described by her as "paralegal contract template for information". I should add that the version dated 21 May 2015 appeared in the respondent's bundle of documents at p115 of that bundle. The only apparent difference is that the copy in the respondent's bundle had what appears to be Ms Ersan's signature on the penultimate page (10) and a date of "22/5/2015" written in under her printed name. This is the only version to contain a signature on behalf of the respondent. Notably, the final page of that version (p11 of the document) had "DRAFT" watermarked across it in large letters. The space for the claimant's signature remains blank. Indeed, none of the versions of the contracts in the bundles before me (referred to above) were signed by the claimant.

12. It seems that the version dated 21 May 2015 with Ms Ersan's signature on it was provided to the claimant around that time, as the claimant emailed a copy to the respondent on 22 September 2016 as part of the disclosure process (p114 of the respondent's bundle).

13. The respondent accepted in evidence that no written contract was provided to the claimant prior to May 2015 and that the claimant was employed by way of an oral contract in April 2014. I accept the claimant's evidence that it was agreed at the outset of his employment that the claimant would be entitled to a bonus of 5 per cent of the amount by which the claimant's profit costs exceeded six times his gross income during the period of 1 May 2014 to 30 April 2015. I also accept his evidence that the respondent agreed to pay the bonus as a lump sum as soon as possible thereafter (either in the May or June salary payment) following that bonus year ending. Likewise, I accept his evidence that it was never a term or condition of his employment that the bonus accrued during that time would not be paid or payable if the claimant was under notice to terminate his contract. Given that the bonus formed a substantial part of the claimant's remuneration package, I consider it wholly improbable that the claimant would have ever contemplated agreeing to such a condition forming part of the terms of his employment with the respondent. I find as fact that the terms of the contract between the claimant and the respondent in respect of eligibility for a bonus payment did not include any such condition (hereinafter referred to as "the Notice Condition").

14. I reject the evidence of Ms Ersan that the claimant's terms of employment were "*based on the standard terms of [the respondent's] paralegal contract*" insofar as she seeks to assert that such standard terms included the Notice Condition. On her own evidence, Ms Ersan relies upon a template draft contract that she emailed to all staff on 15 May 2015 (referred to above), over a year after the claimant commenced employment with the respondent and after the 2014/15 bonus year had ended. Furthermore, the evidence before me was that the bonus payments for 2015 were made in one lump sum payment at the end of May 2015 consistent with the claimant's position as to the agreed terms and not by way of five monthly instalments as asserted by the respondent.

15. At some point in May 2015, Ms Ersan had a meeting with the paralegals employed by the respondent to discuss, amongst other things, the bonus arrangement between them. None of the witnesses could be specific about precisely when that meeting took place. Indeed, no notes of the meeting (handwritten or typed) have been produced.

16. I find on the balance of probability, that the meeting took place before Ms Ersan emailed the template draft contract to staff on 15 May 2015 not least because the claimant did not recall receiving that document prior to the meeting and Mr Polat (another former employee of the respondent) was adamant in cross examination that the document was not available at the meeting and believed it may have been emailed after the meeting. Indeed, Mr Polat gave evidence that one of the matters raised at the meeting by him and others was the fact that employees had not been provided with any written contract of employment and that a document reflecting their terms of employment needed to be provided.

17. Likewise, Mr Turus also denied in cross examination that the template draft contract emailed on 15 May 2015 formed the basis of negotiating changes to the bonus. Likewise, he denied being given a written contract other than when he first started working for the respondent in 2009.

18. Mr Turus was clear in his oral evidence that the discussion at that meeting in early May 2015 was limited to agreeing a change to the key bonus terms from 5 per cent to 10 per cent of profit costs exceeding 5 rather than 6 times gross salary and that the bonus should be paid as one lump sum and not by way of five monthly instalments (which had been suggested at the meeting). He was also clear that the agreement reached at that meeting varying the bonus terms did not include any condition as to employees being ineligible for payment of the bonus if they were under notice to terminate at any particular time. That is consistent with the claimant's evidence.

19. I prefer the evidence on behalf of the claimant to that of the respondent on this disputed matter. I am satisfied that the respondent did reach agreement orally with the claimant (and others) that he would be entitled to a bonus of 10 per cent of profit costs exceeding 5 times his gross salary for the period between 1 May 2015 and 30 April 2016. More importantly, I am satisfied that it was never a term of that agreement that the bonus would only be payable if the claimant was not under notice of termination at the end of that period or 31 June (which, of course, does not exist as a date in any event). I am satisfied that the terms of the agreement were such that the claimant would be eligible to receive his bonus on the basis that his profit costs exceeded five times his gross annual income as at the end of the financial year being 30 April and that there were no further conditions attached prohibiting him from receiving his bonus if he was under notice. The respondent produced no documentary evidence of what was discussed and agreed at that meeting or even evidence to demonstrate when the meeting was held. Given her role as solicitor and employer, it is rather extraordinary that neither Ms Ersan nor anyone else on the respondent's behalf was able to produce some note or record of precisely what was discussed and agreed in support of the respondent's current assertion.

20. As I have found above, the claimant and his witnesses disputed receiving the template document that Ms Ersan maintained she emailed to all staff on 15 May 2015. Even if that document was sent to them, it is evident that it was only ever a template that was not intended to reflect the actual terms agreed between the parties. Furthermore, it would seem that she gave the content very little attention to detail given that the wording of the part headed "**Bonus Scheme**" was wrong by any objective reading. The terms of the template stated:

    "*The bonus will be paid by 5 instalments on or before 31st September. You not* [sic] *be eligible to receive a bonus unless you are employed by the Company and are under notice* [sic] *of termination of employment (whether the notice is given by you or the Company) on the date the bonus is payable."*

    Need it be said, as a matter of common sense it could not have been the intention of the parties for the claimant to be under notice of termination before being eligible to receive any bonus due. I am satisfied that this did not reflect the terms that had been agreed with the claimant (and others) at the meeting in May 2015.

21. The claimant accepted that, on or around 22 May 2015, he received a revised version of a draft contract dated 21 May 2015. The claimant refused to sign that document because, as I have found above, it did not properly reflect the agreed terms between the parties. It had never been agreed that the bonus would only be payable if the claimant was employed and not under notice of termination at the end of the bonus period or subsequently prior to payment being received. Notably, no one from the respondent's management, including Ms Ersan, pursued him thereafter about not signing the draft.

22. Furthermore, it is apparent that despite her legal training and role as a qualified solicitor, Ms Ersan paid no real attention to the wording of the terms that were in that draft contract. The terms of the Bonus Scheme section of the subsequent draft were stated as follows:

    "*You are entitled to participate in the Company's Bonus Scheme.*

    A bonus will become payable if the profit costs paid on your files during the firm's financial year, currently 1st May to 30th April, exceed five times your gross income.

    The gross bonus payable will be 10% of the amount by which your profit costs exceed six [sic] *times of your gross income.*

    The bonus will be paid on or before 31st June [sic]*. You will not be eligible to receive a bonus unless you are employed by the Company and are under notice of termination of employment* [sic] *(whether the notice is given by you or the Company) on the date the bonus is payable.*

    If on any case dealt by [sic] *you for the firm incur a loss due to any negligence attributable to you, that loss shall be deducted from the bonus payment.*

    The Company reserves the right to vary the amount of bonus paid or to modify or withdraw the Bonus Scheme at any time without compensation.

Further details of the Bonus Scheme are available from your line manager."

23. Again, that draft contained the obvious error that existed in the initial template dated 15 May 2015 requiring the claimant to be under notice of termination to be eligible for his bonus. Need it be said, the reference to 10% of six times the claimant's gross income was clearly incorrect and not what was agreed and the reference to 31 June was erroneous. Given those glaring errors and inconsistencies, it is wholly unconvincing that Ms Ersan could be satisfied that this document truly reflected the terms agreed between her (on behalf of the respondent) and the claimant. I simply do not accept her evidence that this document reflected the terms agreed. As such, the claimant was fully entitled not to sign it.

24. In accordance with the agreement reached by the parties at the meeting in May 2015, the claimant was entitled to be paid a bonus of 10 per cent of any amount by which his profit costs had exceeded five times his gross income by the end of the financial year being 30 April without any further conditions attached (specifically the Notice Condition). The subsequent draft contracts produced to the claimant did not properly reflect what was agreed.

25. In March 2016 the claimant moved to the Edmonton office and began working full time. Again, none of this was documented and that significant variation of contract was agreed orally.

26. On 29 April 2016, the claimant emailed Ms Ersan (copying it to his Manager, Mr Yazgun) giving notice to terminate his employment. In his email he states:

"*I am writing to you to inform that I decide to leave my position/job. Please accept this email as my formal notice/resignation. I can stay for a week if you require if otherwise not state I can leave today.*

…"

The claimant was giving a week's notice as he was contractually obliged to do under s86 ERA and was not resigning with immediate effect. He clearly intended to attend work during that period or stay away if the respondent preferred him to.

27. Ms Ersan accepted in her evidence (paragraph 20) that she agreed with Mr Yazgun that the claimant could leave before the end of his formal notice period once he had prepared a list of all of his files with a short note about each. Accordingly, the claimant sent Ms Ersan a further email attaching a list of his files later that afternoon. The claimant understood that he was not required to attend work for the remainder of his notice period following this list being produced and sent an email in Turkish to colleagues at 6.07pm indicating that he was leaving that day and bidding them farewell.

28. Upon seeing that email Ms Ersan did not challenge the claimant about not returning to work during the remainder of his notice period despite her assertion that he had not properly completed the task she had required of him. According to her evidence at paragraph 24 she "*just decided to let it be".* It was within her gift to insist that the claimant attend work for the remainder of

his notice period but she made a conscious decision not to require him to do so.

29. Despite the respondent agreeing to the claimant not attending work for the remainder of his notice period and not challenging him or requiring him to return after 29 April 2016, Mr Yazgun emailed the claimant on 3 May in response to his notice of resignation claiming that the claimant had terminated his employment with immediate effect and rejecting the claimant's request for his bonus because "*an employee must be employed by the firm until 31 May in the same year to which the bonus applies to be eligible for a bonus for that year*."

30. It seems that Mr Yazgun had no proper understanding of what the terms were regarding entitlement to the bonus despite being a manager for the respondent who would have undoubtedly discussed such matters with the Managing Director, Ms Ersan. The date of 31 May purported by Mr Yazgun did not come from any of the draft contracts or templates referred to above. This additional confusion further satisfies me that on the balance of probabilities the terms agreed were those advanced by the claimant and his witnesses and not those asserted by the respondent.

31. For completeness the claimant responded on 4 May 2016 to Mr Yazgun's email the previous day denying that he left employment with immediate effect and maintaining he left by consent. He also made reference to the "*draft employment contract*" denying that it referred to the need to be employed on 31 May to be eligible for his bonus payment, which was presumably reference to the document he had received from Ms Ersan around 22 May 2015 that he had refused to sign because he did not agree its terms.

32. There was some further communication between the claimant and the respondent thereafter that is not material to what I have to determine.

33. The parties agreed that if the respondent was liable to pay the bonus, the amount due to the claimant was £13,830.50. This is on the basis that the claimant's annual gross income for 2015/6 was £6,339 and his profit costs for the same year were circa £170,000. £170,000 less five times £6,339 (£31,695) is £138,305 of which the claimant would be entitled to 10 per cent. Notably this is over twice the claimant's annual gross income and yet further anecdotal evidence that the claimant would not have agreed to such a large proportion of his remuneration package being forfeited in the manner suggested by the respondent.

34. It was not disputed that the claimant's net week's pay was £290. Accordingly this was to be the sum awarded (subject to grossing up) if he was entitled to receive pay for his period of notice.

The Law

35. Under section 3 of the Employment Tribunals Act 1996, together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623), specifically Article 3 of the 1994 Order, the tribunal has jurisdiction to hear contractual claims that arise or are outstanding on the

termination of an employee's employment. The claim must be one that a civil court in England or Wales would have jurisdiction to determine. There are various restrictions on the types of contractual claim that this tribunal can determine, none of which are relevant in this dispute.

36. Express contractual terms can be oral or written. If the contract is wholly oral, and there is a dispute as to what the terms of the contract actually are, determining those terms is a question of fact for this tribunal. If express terms are wholly in writing then determining what they mean is a matter of interpreting the document containing them, subject to two exceptions. Firstly, where a party argues that the written agreement mistakenly fails to reflect an oral agreement and there is clear evidence of an earlier oral agreement on different terms to those included in written form, then it is necessary to identify the correct terms that were actually agreed between the parties. Secondly, a written agreement may have been replaced or revoked by a subsequent agreement.

37. In so far as it may be relevant, in accordance with Lord Hoffmann in ***Investors Compensation Scheme Ltd v West Bromwich Building Socitey (No. 1)*** [1998] 1 WLR 896, HL, a written contract should be interpreted not according to the subjective view of either party, but in line with the meaning it would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract being entered. Context and background can be taken into account to establish the proper meaning of the words in a contract but pre-contractual negotiations cannot. The use of evidence drawn from sources other than any contractual documentation itself is appropriate as an aid to interpreting express terms only in as much as it assists in discerning what the actual intention of the parties was when they signed up to those terms. Furthermore, the tribunal is not entitled to draw upon surrounding evidence at the time the contract was entered in order to create the bargain between the parties itself. The tribunal must not imply a term into a contract based on an assessment of what it thinks would be a fair bargain.

38. Need it be said, a variation to a contractual agreement, whether oral or written, cannot be unilaterally imposed by one party upon the other and must be agreed between the parties (unless there is unequivocal language in the agreement that entitles one party to vary the terms unilaterally). The basic legal position is that the terms of an employment contract are determined at its formation and forceful evidence is required to establish that the terms have been lawfully varied.

39. In some circumstances, an agreement to vary the terms may be implied from the conduct of the parties. There may be a question as to whether an employee has acquiesced in any unilateral variation imposed by an employer where they continue in employment after an employer purports to vary the terms. In accordance with the long standing case of ***Jones v Associated Tunnelling Co Ltd*** [1981] IRLR 477 EAT, implying an agreement to a variation of contract is a course which should be adopted with great caution. In accordance with the guidance in that case, where a variation relates to a matter which has immediate practical application (such as a pay decrease) and the employee continues to work without objection, then it is likely that he or she has impliedly agreed to that variation. On the other hand, where a

variation has no immediate practical effect, the position will not be the same. That decision and guidance has been applied in subsequent cases such as *Aparau v Iceland Frozen Foods plc* [1996] IRLR 199 EAT. Likewise in *Solectron Scotland Ltd v Roper and ors* [2004] IRLR 4 EAT, Elias J (as he then was) referred to the guidance in *Jones* and indicated at paragraph 30 that "*the fundamental question is this: is the employee's conduct by continuing to work, only referable to his having accepted the new terms imposed by the employer? ….sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract continuing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct.*"

40. For completeness, terms can be implied in to a contract if: a) the term is necessary for business efficacy; or b) it is the normal custom and practice to include such a term; or c) the term is so obvious that the parties must have intended it.

41. Part II of the ERA contains the statutory prohibition on deductions from wages. The general prohibition on deductions is set out in s13(1) ERA, which states that "*An employer shall not make a deduction from wages of a worker employed by him."* The remainder of that section clarifies that the prohibition does not include deductions authorised by statute or contract or where the worker has previously agreed in writing to the making of the deduction.

42. Section 13(3) ERA provides as follows:

> "Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

43. In this instance, determining what is "properly payable" to the claimant involves resolving the dispute over what the claimant was contractually entitled to receive by way of wages relevant to the claim being pursued. In accordance with s27(1)(a) ERA, wages includes any bonus payable. Wages do not include a payment in lieu of notice (*Delaney v Staples (t/a De Montfort Recruitment)* [1992] ICR, 483, HL).

Conclusions

44. In accordance with the findings of fact above, the claimant and respondent entered an oral contract of employment commencing in April 2014. It was an express term of the contract that the claimant would receive a bonus of 5 per cent of the amount by which the claimant's profit costs exceeded six times his gross income during the period of 1 May 2014 to 30 April 2015. The bonus would be paid as a lump sum as soon as possible thereafter (either in the May or June salary payment) following that bonus year ending. It was never a term or condition of his employment that the bonus accrued during that time would not be paid or payable if the claimant was under notice to terminate his contract. In May 2015, the parties reached an oral agreement to vary the terms of the bonus. It was expressly agreed that the claimant would receive a

bonus of 10 per cent of the amount by which the claimant's profit costs exceeded five times his gross income during the period of 1 May 2015 to 30 April 2016. Similar to the previous financial year, the bonus would be paid as a lump sum as soon as possible thereafter (either in May or June). Again, it was never a term of the agreed variation that the bonus accrued would not be paid or payable if the claimant was under notice to terminate his contract.

45. Having reached an express oral agreement as to the new bonus terms, Ms Ersan, on behalf of the respondent, sought to impose separate new conditions about eligibility for the bonus by way of a unilateral variation in the form of issuing a draft contract that did not properly reflect the agreed terms. The claimant objected to the new written terms that Ms Ersan sought to impose upon him because they did not reflect what had been agreed. Consequently he did not sign and return that 'draft contract'.

46. Applying the law to the facts, the written terms contained in the draft contract issued to the claimant on 21 May 2015 did not reflect the true express agreement between the parties and amounted to an attempt by Ms Ersan to unilaterally vary the agreed terms by imposing certain conditions (including the Notice Condition) on the claimant's eligibility for his bonus. The claimant objected to the respondent's attempt to unilaterally vary the bonus terms agreed and varied for the financial year commencing May 2015 onwards.

47. The attempted unilateral variation by Ms Ersan had no immediate practical effect. The claimant continuing in employment was not 'only referable' to his having accepted the changes sought to be imposed by the respondent. Indeed, the claimant had elected not to sign and return the draft contract precisely because he was unwilling to accept the conditional terms being subsequently imposed. Need it be said, there is no other basis for implying the conditional written terms in to the agreement between the parties. The Notice Condition is not necessary in order to give the contract business efficacy. Nor is it so obvious that the parties must have intended it. It was certainly not normal custom and practice. Indeed, the bonus applicable for the previous financial year was not subject to any such Notice Condition. Accordingly the terms of the agreement remain those agreed at the May 2015 meeting and not those appearing in the subsequent draft contract and the claimant is entitled to be paid the bonus due regardless of whether he was under notice of termination or not.

48. Having determined that the respondent is contractually obliged to pay the claimant the bonus due, it stands to reason that this amount falls within the definition of wages "properly payable" under Part II of the ERA and that the unauthorised deduction of wages claim regarding the bonus sought, succeeds in the alternative.

49. Likewise the claimant is entitled to be paid his last week's pay both contractually and in accordance with Part II of the ERA. On the facts found above, the claimant's employment did not end immediately upon him giving notice to terminate his contract on 29 April 2016. The claimant was obliged to give the respondent one week's notice, which he did. The respondent subsequently agreed that the claimant did not need to attend work during the expiry of that notice period which expired on 6 May 2016. It was within the gift of the respondent to decide whether the claimant worked or not during that

period but the claimant was nevertheless entitled to be paid for that week. There was no agreement that he would only be permitted to remain away from work if he forfeited his pay for that period.

50. Even if I am wrong in my conclusion that the claimant's employment did not end until the expiry of his notice on 6 May 2016, this has no impact upon his contractual entitlement to his bonus. As is evident from my findings of fact, it was never a condition of his employment that he had to be employed as at 30 April 2016 to be eligible for his bonus. The only requirement was to exceed the agreed target set. Once he had done that at any point in the year he was entitled to receive his bonus. Again, there is no reason to imply a term in to the employment contract requiring him to still be employed as at the end of the financial year to be eligible for any bonus.

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Employment Judge Wyeth
Date: 8 July 2017

Sent to the parties on:

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For the Secretary to the Tribunals