



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107046/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 8 February 2024

Employment Judge L Wiseman

10 Ms Anne Symons

Claimant  
In Person

15 McCurrach UK Ltd

Respondent  
Represented by:  
Mr G Hine -  
Solicitor

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to dismiss the claim.

#### REASONS

- 20 1. The claimant brought a claim in respect of the payment of a bonus.
2. The respondent had made an application for strike out. The parties were advised that this would be determined at the start of the hearing. Mr Hine confirmed the application was no longer insisted upon in circumstances where the parties were present and ready to proceed, and it was unlikely any time  
25 would be saved by hearing the application for strike out.
3. The Employment Judge agreed with Mr Hine's position and confirmed the hearing would proceed.
4. The tribunal heard evidence from the claimant and was also referred to a number of jointly produced documents. The tribunal, based on the evidence  
30 before it, made the following findings of fact.

#### Findings of fact

5. The claimant commenced employment with the respondent on 5 September 2022.
6. The letter of offer of employment (page 39) sent to the claimant on 29 July 2022, made reference to a discretionary bonus scheme.
- 5 7. The respondent, in April 2023, introduced a change to the bonus scheme when it included a clause that in order to receive a bonus the employee must still be employed at the time the bonus is paid.
8. The respondent emailed staff asking them to read the bonus confirmation (concerning this change) and reply to confirm they had read and agreed to  
10 the terms of the bonus scheme. Staff were required to reply and accept the terms of the scheme in order to be enrolled in the bonus scheme.
9. The claimant replied by email to her line manager the same day to confirm she had understood and accepted the terms of the bonus confirmation.
10. The claimant earned commission in the period 1 January 2023 to 30 June  
15 2023. The bonus, in accordance with the terms of the bonus scheme, would be paid on 25 August 2023.
11. The claimant gave notice of her resignation from employment in June 2023. The claimant left the employment of the respondent on 14 July 2023.
12. The respondent paid a bonus to all members of staff who had earned it and  
20 who were still in employment with them on 25 August 2023.
13. The claimant had earned a bonus but was not paid it because she was not employed at the time the bonus was paid.

### **Respondent's submissions**

14. Mr Hine submitted the claimant had wrongly described the bonus as part of  
25 her contract. It was not: it was a discretionary scheme offered on an annual basis. There was an amendment to the terms of the bonus scheme, which had been clear and which the claimant had accepted. The claimant, having

left her employment before the 25th August 2023 was not eligible to receive the bonus.

15. Mr Hine acknowledged the claimant's arguments regarding fairness, but submitted this was not a basis upon which the tribunal could interfere with the terms of the bonus scheme.
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16. Mr Hine invited the tribunal to dismiss the claim.

### **Claimant's submissions**

17. Ms Symons submitted the job offer had clearly referred to a 10% bonus and there had been no mention in the letter of offer or the contract of the variation to the bonus scheme. Ms Symons submitted there had been no option but to accept the terms of the variation because if she had not accepted she would not have been enrolled in the bonus scheme.
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18. Ms Symons confirmed she had earned her bonus (and this was not in dispute) but it had not been paid because she had left the business. This did not feel right: in fact, it felt morally wrong.
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### **Discussion and Decision**

19. The tribunal, in considering this matter, noted there was no dispute regarding the facts of the case. The findings of fact set out above were not in dispute. The key issue was the claimant's argument regarding the fairness of what the respondent had done.
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20. The first issue for determination by the tribunal is whether the claimant had a contractual right to be paid a bonus. I decided, and there was no real dispute about this, that the bonus scheme was not part of the claimant's contract of employment. The bonus scheme was a discretionary scheme offered on an annual basis. I concluded, on this basis, that the claimant did not have a contractual right to a bonus and accordingly any claim for breach of contract was dismissed.
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21. The next issue for determination was whether there had been an unauthorised deduction from wages. I had regard to the terms of section 13 of the

Employment Rights Act which provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised by statute or contract or where the worker has previously agreed in writing to the making of the deduction. I acknowledged that the payment of a bonus may form part of the wages payable to an employee.

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22. The question of what wages are properly payable to an employee is key. There was no dispute regarding the fact that in order to qualify for payment of a bonus members of staff had to meet two criteria: firstly, the bonus had to be earned and secondly, the member of staff had to be in the employment of the respondent on the date the bonus was paid. The claimant met the first criterion but did not meet the second criterion. Accordingly, I concluded the bonus was not properly payable to the claimant as part of her wages.

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23. I acknowledged the claimant's principal challenge to what had happened was based on fairness, but the difficulty for the claimant was that she agreed to the variation to the bonus scheme. I acknowledge the claimant would say that she had no choice in the matter, but she was not coerced into agreement.

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24. I concluded the terms of the bonus scheme, which was a discretionary scheme, were that the bonus had to be earned and the employee had to be in employment on the date the bonus was paid. The claimant earned the bonus but did not fulfil the second criterion: she was not in employment on the date it was paid and therefore did not "qualify" for payment of the bonus.

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25. The tribunal decided, for these reasons, to dismiss the claim.

L Wiseman

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**Employment Judge**9 February 2024**Date**

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**Date sent to parties**12 February 2024