



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Whitland  
**Respondent:** Pathways Care Group Limited  
**Heard at:** East London Hearing Centre  
**On:** 26 October 2022  
**Before:** Employment Judge F Allen

## **Representation**

**Claimant:** In person  
**Respondent:** Alex Leonhardt Counsel instructed by ESP Law Limited

# RESERVED JUDGMENT

1. **By consent the name of the Respondent is substituted from Pathways Care Group to Pathways Care Group Limited.**
2. **The Claimant's claim to be entitled to an end of year bonus for the financial year 2021/2022 fails and the claim is dismissed.**

# REASONS

## **Preliminary matters**

1. The ET1 (claim form) names the Respondent as Pathways Care Group. In the ET3 (response form) the Respondent says that the correct name for the Respondent should be Pathways Care Group Limited as this is the legal entity which employed the Claimant.
2. It was agreed by both parties that the name of the Respondent should be substituted from Pathways Care Group to Pathways Care Group Limited pursuant to Rule 34 of The Employment Tribunals Rules of Procedure 2013 (as amended).

## **Introduction**

3. There was no dispute that the Claimant began working for the Respondent, a private limited company that provides specialist care and education services for children and vulnerable adults, on 21 September 2016.
4. On 12 May 2022 the Claimant resigned setting out that she would work her notice period. The Respondent processed her resignation, and her employment was terminated with effect from 10 June 2022.
5. On 25 June 2022 early conciliation was started and an ACAS certificate issued on 27 June 2022.

## **Claimant's case**

6. The Claimant made a claim to the Employment Tribunal on 10 July 2022. The Claimant's claim is that she met the criteria for a bonus as set out in the Management Bonus Scheme (Scheme) and should be paid this bonus for the tax year ending March 2022.
7. Although the Respondent says that the bonus is discretionary the Claimant's position is that the word discretionary is very vague and there is no definition or explanation as to when a bonus would be paid. The Claimant says she left the company due to personal circumstances and was not, for example, dismissed due to gross misconduct.

## **Respondent's case**

8. The Respondent's position is that the yearly bonus Scheme is expressly non-contractual with payment being discretionary. The Claimant had resigned before the final financial calculation for the bonus was made and before payment of the bonus was due. There was no breach of contract or unauthorised deduction of wages in terms of section 13 of the Employment Rights Act 1996.

## **Hearing**

### *Documents*

9. I checked the documents with the parties. The documents I had were:
  - Hearing bundle of 103 pages
  - Statement of John Godden signed and dated 21 October 2022 and consisting of 27 paragraphs.
  - Cases of *Clark v Nomura International PLC* [2000] IRLR 767 and *Pendragon Plc v Jackson (No 2)* EAT/108/97.
10. No other documents were relied on by either party.

### *Issue*

11. The issue for me to determine is whether the Claimant has a legally enforceable entitlement to receive an end of year bonus for the tax year ending March 2022.

12. The Respondent accepts that if a bonus is payable to the Claimant for the tax year ending March 2022, then the amount is £4182.00.

*Evidence*

13. I heard evidence, on oath, from both the Claimant Mrs Whitland and John Godden (Chief Executive Officer of Saludem Group of which Pathways Care Group Limited is an entity) on behalf of the Respondent.
14. I then, with the agreement of both parties, heard submissions from Mr Leonhardt on behalf of the Respondent first and then Mrs Whitland responded. Mr Leonhardt had nothing further to add after Mrs Whitland had made her submissions.

**The Law**

15. Section 13 of the Employment Rights Act 1996 provides:

“13 Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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.”

16. Section 27 of the Employment Rights Act 1996 provides:

“27 Meaning of “wages” etc

(1) 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”

## **Findings and conclusions**

*Is there a legally enforceable right to the bonus*

17. I find that the Claimant has no legally enforceable right to be paid the bonus for the following reasons.
18. From 15 October 2019 the Claimant worked for the Respondent as a Home Manager. The Claimant’s written employment contract signed and dated by the Claimant on 16 October 2019 does not provide for an entitlement to a bonus or an entitlement to participate in a discretionary or non-contractual bonus scheme.
19. There have been two amendments to the Employment Contract dated 16 October 2019, on 1 April 2021 and 8 September 2021. Neither amendment makes any reference to any entitlement to a bonus or an entitlement to participate in a discretionary or non-contractual bonus scheme.
20. There is no term of the employment contract that incorporates the Scheme and I find that the bonus is not payable under the contract of employment.
21. I find that the Scheme itself does not constitute a legally binding contract between the parties. The details of the Scheme are set out in a written document called Management Bonus Scheme. This written document specifically states that the Scheme is for a non-contractual bonus and, given these express words, as found in the case of *Pendragon Plc v Mr J Jackson* [1998] WL 35320290 where a bonus plan contains the express words that it is “non-contractual” then there is no intention to create legal relations.
22. I further find that to imply a right or entitlement to the bonus would be inconsistent with the express terms of the Scheme and with the Scheme itself.
23. The Management Bonus Scheme document which sets out the criteria for a bonus of up to 20% of base salary which would be awarded should a manager hit the applicable targets with the applicable targets relating to external quality inspections, internal quality audits, financial performance, staffing performance, training and annual leave management, was not sent to the Claimant but is a document that is sent to regional managers for them to use during supervision meetings.
24. The Claimant’s knowledge of the criteria is gleaned from the progress reports that she received. In respect of the Scheme for 2020/2021, the Claimant received three progress reports on 1 September 2021, 3 November 2021 and 2 March 2022. The progress reports do not provide for any right or entitlement to be paid a bonus but set out the criteria under the Management Bonus Scheme together with the Claimant’s progress in relation to the Scheme and the current projected and potential bonus calculation.

25. There is no guaranteed amount payable under the Scheme and the bonus must be earned. The final calculations do not happen until after the end of the tax year with any payments to employees made in June/July. The Claimant was aware, before she resigned, that she would not be paid the bonus. On 5 April 2022 the Claimant sent an email to Verity Rojas (People Team Coordinator) and John Godden (Chief Executive Officer) explaining that due to challenging personal circumstances she may need to leave the Respondent's employment and asking whether her yearly bonus would be affected if she resigned prior to the final financial year calculation. The Claimant followed this email up on 12 April 2022, sending a further email to John Godden asking whether her yearly bonus would be affected if she resigned before the payment date.
26. On 12 April 2022 John Goddard responded informing the Claimant that her yearly bonus would be affected and stating that: "The rules are that if you resign before the bonus is payable then you would not be eligible for the discretionary payment". This email also set out that the Respondent would be happy to have a conversation about flexible working.
27. There is only one dispute in the evidence, which is whether the Claimant responded to this email of the 12 April 2022. The Respondent's position is that this email was not responded to, and the Claimant did not query or challenge the statement in this email from John Goddard that if the Claimant resigned before the bonus is payable, she would not receive it. The Claimant says she did respond saying she would be happy to have a conversation but never received a response. I do not accept that the Claimant did respond to this email from John Goddard on 12 April 2022. The Claimant says she is unable to produce it to the Tribunal because she has no access to her work emails but the evidence of John Goddard, which I accept, is that the Respondent has done a thorough search of emails around that time and can find no record in the system of any email response from the Claimant.
28. Additionally, the Claimant does not say that, having received no response, she made any attempt to follow this up. Additionally, the evidence of the Claimant is that she responded about having a conversation in respect of flexible working and not in respect of challenging the statement John Goddard made about the nonpayment of a bonus if the Claimant resigned before that bonus was payable.
29. The Scheme is entirely under John Goddard's discretion, and I accept the evidence of John Godden that one of the key rationales for the Scheme is to incentivise managers to stay in the Respondent's employment. If a manager resigns before the bonus is paid, then it is inconsistent with this rationale to then pay the manager the bonus. Although the Scheme is to reward efforts made during the previous financial year it is also about remaining in the Respondent's employment.
30. I find that there is no contractual right to a bonus or even to participate in a bonus scheme and the Respondent is under no legally enforceable obligation to make any payment to the Claimant under her contract of employment (as amended) or the Scheme.

**Case No: 3204161/2022**

31. For the reasons set out above the Claimant's claim fails for breach of contract whether based on her employment contract or on the Scheme itself and the bonus does not form part of the wages properly payable to her on the termination of her employment.

**Employment Judge F Allen  
Date 14 November 2022**