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EMPLOYMENT TRIBUNALS

Claimant: Mr A Faulconbridge

Respondents: (1) Chaucer Freight Limited (In Voluntary Creditor's Liquidation)
(2) Chaucer Logistics Limited

Heard at: Colchester Hearing Centre **On:** 24 February 2016

And at: East London Hearing Centre **On:** 7 & 8 December 2016

Before: Employment Judge M Warren

Representation

Claimant: In person

Respondent: Mr Ogg, Counsel on 24 February 2016

Mr B Watson, Consultant on 7 & 8 December 2016

JUDGMENT having been sent to the parties on 12 December 2016 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Background

1 This is a case in which Mr Faulconbridge seeks payment of some wages, expenses and holiday pay, following termination of his employment with the Respondent, who in turn bring a counter claim.

2 The case has something of an unusual and unhappy history, in that the matter listed for three days, came before me sitting in Colchester on 24 February 2016. As I recall, the parties were very unhappy about having to travel to Colchester and it was a case that had already been postponed two times before and then, as luck would have it, I am afraid I was taken ill on the morning of the second day, which meant that the hearing then had to be adjourned. The parties have not been able to come back before me to finish the case until these last two days, 7 and 8 December 2016. To add to that unusual history, there has been a change of representative for the Respondent. Mr Ogg, (Counsel)

appeared for the Respondent on 24 February and Mr Watson has appeared for the Respondent over the last two days. That is particularly odd, given that at the point the case was adjourned, we were in the middle of cross-examination of Mr Faulconbridge. The situation obviously placed Mr Watson in some difficulty, but I think we were able to get through to everybody's satisfaction, with frequent recourse to my notes of evidence from 24 February 2016.

The Issues

3 The issues in this case were identified and clarified by me at the outset of the case back in February and from time to time during the course of the last couple of days, we have gone back and reiterated what these issues are.

4 Mr Faulconbridge makes three claims arising out of his resignation from the Respondent's employment:

- 4.1 Firstly, he seeks pay during his notice period from 19 March through to 19 June. In the alternative, he seeks damages in breach of contract, if I were to find that the Respondent terminated the contract during his notice period.
- 4.2 Secondly, he seeks payment of expenses in the sum of £1,247.92 which he says he claimed from the Respondent in two expense claim forms, in relation to business expenses incurred in January and February 2015. The Respondent said that he is not entitled to what he seeks, for various reasons.
- 4.3 Thirdly, he seeks accrued holiday pay of 10 days in total, in the sum of £1,742.14. The Respondent says he is entitled to 5 days accrued holiday from January through to March and no more. The Respondent's position is that it acknowledges that he is due holiday pay and that it will pay whatever I find is due.

5 The Respondent counterclaims:

- 5.1 Firstly, the Respondent seeks the return of items of property which it says Mr Faulconbridge has retained, and

Secondly, it says that he has diverted revenue, failing to account to the Respondent for revenues received from two shows which he organised, which are referred to as Body Power India and ABP.

Law

6 An employee is entitled to receive notice of termination of a contract of employment, the greater of either that as provided for as a statutory minimum or as provided for in the contract of employment.

7 Under the Employment Rights Act 1996, (ERA) section 86, an employee with less

than 2 year's service is entitled to a minimum of 1 week's notice.

8 If an employer terminates an employee's employment without the required notice, the employee is entitled to pay instead of notice, (pay in lieu of notice) by way of damages, (compensation) for the employers breach of contract.

9 If an employer is in fundamental, (important) breach of a term in a contract of employment, the employee is entitled to resign because of that breach. In such circumstances, as the employer is in breach of contract, the employee is entitled to damages in breach of contract, which will be the financial losses of the employee as a consequence of the breach, to place him in the position he would have been in, had there been no breach.

10 Under sections 13 and 23 of the ERA, an employee is entitled to come to an Employment Tribunal and seek payment from the employer of deductions that have been wrongly made from his wages. That includes non-payment of expenses, reimbursement of which the employee is entitled to.

11 Under the Working Time Regulations 1998, regulations 13 and 13A, a worker is entitled to 28 days annual holiday including public holidays. Under regulation 14, where a worker leaves employment and has not taken all the leave that has accrued due to him at the date he leaves, he is entitled to be paid for the holiday that has accrued due but not been taken.

12 Under the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994, article 3, an Employment Tribunal has jurisdiction to hear a complaint of breach of contract by an employer against an employee, provided that the claim arises or is outstanding on termination of employment. Such complaint may only be for the recovery of damages or other sum. The Employment Tribunal does not have jurisdiction to award other remedies in breach of contract that might be available in the County or High Court.

13 The measure, (assessment) of damages in breach of contract, is to aim to place the aggrieved party in the position that they would have been in had the contract not been broken. The measure of damage for property that is lost or destroyed, is the cost of replacing that property. That means the cost of buying an identical item of property, that is of the same age and in the same condition, as the property which has been lost or destroyed.

Evidence

14 I had witness statements from Mr Faulconbridge himself and for the Respondent, statements from Mr Scott Dunn, (Operations Director) Mr Nicholas Yeatman, (General Manager Exhibition and Events) Ms Aimee Turner, (Accounts Supervisor) Ms Charlotte Collins, (Accounts Clerk) and Mr Darren Roberts, (Warehouse Supervisor). Of the Respondent's witnesses, I only heard evidence from Mr Dunn, Ms Turner and Ms Collins.

15 In terms of documentation, I had a bundle which had been prepared by the Respondents, which originally ran to page number 424, properly paginated and indexed. We added to that bundle on 24 February by agreement, documents which the Claimant

had brought along that morning, which he said had been left out of the bundle, page numbers 425 – 477. I also had before me what we have referred to as a supplemental bundle Mr Faulconbridge had put together. Within this are what are described as exhibits, including a couple of witness statements so described: a letter from Stuart Leyland dated 23 September 2015 and a letter from Wesley Britton dated 16 September 2015.

16 Mr Faulconbridge had brought some more documents to the resumed hearing on 7 December. He had not provided them to the Respondent in advance and I did not allow him to introduce those documents into the bundle, on the basis he had ten months to provide disclosure and he well understood the importance of these things being dealt with in advance, because of his experience back in February.

Facts

Chronology

17 I will begin with a chronological factual framework.

18 Mr Faulconbridges' employment with the Respondent began on 3 December 2015. His job title was General Manager Exhibitions and Events. This was a new role in the Respondent's business and it was to provide logistical support to customers at exhibitions and events.

19 There is a letter of offer of employment at page 41, noteworthy on this is the reference to notice, it states that after he has been employed for more than six months, he is entitled to notice of three months.

20 There is a contract of employment in the bundle which begins at page 54 – 62. It was signed by Mr Faulconbridge on 28 May 2014 and signed Mr Dunn on 16 December 2013. It provides at page 54, that the contract is to be read in conjunction with the company staff handbook for more detailed information. The contract's provisions include:

20.1 At clause 3.1 there is reference to an entitlement to make deductions from pay in the event of loss resulted from negligence, recklessness, dishonesty or breach of company rules and an obligation to pay the costs of replacement for lost company equipment or property.

20.2 Holiday entitlement is stipulated at Clause 7 on page 56, by reference to the staff handbook and similarly, Clause 8 entitlement to expenses is by reference to the staff handbook,

20.3 At Clause 15.1, (page 57 and 58) there is provision for notice which reads, *"the company may terminate your employment by giving the statutory notice period depending on your length of service"*,

20.4 Clause 19.4, (page 59) requires that upon termination, all company property is be returned, it states in terms *"you will return to the company"*.

20.5 There are restrictive covenants as to future conduct post termination at Clause 21, (Page 60).

21 Turning now to the staff handbook, this was signed for by Mr Faulconbridge on 28 May 2014, (page 63). The document he signed to acknowledge receipt, states on it expressly that the handbook formed part of the contract of employment. There are two handbooks in the bundle; the second one is dated July 2014, but the one which has been signed for by Mr Faulconbridge dated September 2012 is at 84, that must be the one which applies in this case:

21.1 At page 104 as to holiday entitlement, the handbook provides that employees are entitled to 20 days holiday in addition to the 8 statutory and public holidays, (so 28 in total, as required by statute). The holiday year is stated to be the calendar year.

21.2 Somewhat bizarrely, at page 90, entitlement to notice is expressed to be one month for an employee who has been employed for more than 13 weeks and less than four years.

22 I note at page 80 that Mr Faulconbridge signed on 11 February 2014, to acknowledge receipt of a mobile phone. The memo which he signed by way of receipt, states on it that should his employment be terminated, the phone must be returned in good condition.

23 Mr Faulconbridge's relationship with Mr Dunn was not good and in particular, they were at odds with each other over the property to which Mr Faulconbridge had moved his part of the operation. The Respondent is primarily based in Raynham. Originally, Mr Faulconbridge was set up in offices near the Birmingham NEC. He moved his operation to rented premises nearer his home. Once Mr Dunn saw those premises on a visit, he was not at all happy. He considered the premises completely unsuitable, for a variety of reasons which do not matter. He instructed Mr Faulconbridge not to pay the rent and to move the operation back out again. Mr Faulconbridge was not happy with that. There were other reasons why their relations were strained, but this is an important one for the purposes of this case.

24 On 19 March 2015, Mr Faulconbridge resigned giving three months notice, page 282 and 283. His notice was to expire on Friday 19 June 2015. He gave three months notice because he thought he was obliged to do so, in view of the offer letter I quoted earlier.

25 In his covering email, Mr Faulconbridge said that he would carry out all duties as required during his notice and keep his resignation confidential from clients and staff. Mr Dunn replied by email thanking Mr Faulconbridge for the attached resignation and asking him to please ensure that all product is loaded from the warehouse the next day as discussed. He was then to attend at Raynham on the following Monday so that an exit strategy can be discussed. The reference to product being loaded is a reference to the company's goods stored at the property to which Mr Faulconbridge had moved and from which Mr Dunn had insisted it should be removed.

26 Mr Faulconbridge replied explaining that actually, on the following Monday he was to be at the Auto Body exhibition, but that he was more than happy to attend at Raynham and suggested Monday 30th instead. He reiterated that all instructions will be carried out as specified.

27 Mr Faulconbridge did not attend the proposed meeting on 30 March 2015, because he was unwell.

28 During March 2015, Mr Faulconbridge organised for the Respondent to provide service at 2 exhibitions;

28.1 Bodypower in Mumbai, India through a business called Translink. I accept the evidence of Mr Faulconbridge that no business for the Respondent was generated by that.

28.2 The second one was called ABP. Mr Faulconbridge accepts that some work was generated by that exhibition and that he did not do the necessary work required to produce invoices that could have been presented to customers for payment.

29 Mr Faulconbridge confirmed to me in cross-examination that his wages were paid on 31 March 2015.

30 The Respondent began to hear rumours that Mr Faulconbridge was setting up in competition, a business to be called something like, "Creative Freight" and that he was approaching the Respondent's customers.

31 An email chain between Mr Faulconbridge and Mr Dunn of 1 April 2015 reads as follows:

31.1 It begins with an email from Mr Falconbridge to Mr Dunn at 7.09, (page 297) asking for a copy of his employment contract.

31.2 Mr Dunn replied at 7.13 to say that the contract will be supplied to him when he comes to Raynham, where he is expected that day, pursuant to an email he had sent the previous day. Mr Dunn said that it would be in Mr Faulconbridge's best interests to attend, as there were a number of issues to be discussed, which may lead to legal action being taken against him for possible fraud.

31.3 Mr Faulconbridge replied at 7.29, (page 302) asking what legal action was being taken against him and why? He reiterated his request for a copy of his contract, stating that as the Respondent was withholding his expenses he was not willing to risk anymore of his personal money, (in travelling) and he therefore suggested they meet in a neutral location. He queried whether the Respondent actually wanted him to carry out any further duties.

31.4 Mr Dunn replied at 7.34 stating to Mr Faulconbridge that he was still employed by the company and he was therefore required to attend meetings

at locations as instructed and that as Mr Faulconbridge had previously failed to attend the earlier meeting at Raynham, (that is that on 30 March) he was now required to attend an investigation meeting on 2 April 2015 and he was asked to bring all company property and documents with him.

31.5 Mr Faulconbridge replied at 7.49 responding that this was the second time he had been threatened with legal action. He again asked what it was that was proposed against him, re-making the point that as expenses were being withheld, he wanted a meeting at a location close to himself and asked again if Mr Dunn wanted him to carry out his daily duties.

31.6 Mr Dunn replied at 7.59 to say that Mr Faulconbridge was fully employed by the company and he was failing to attend the office as scheduled, that all meetings will take place at Raynham, his expenses will be approved for his driving to Raynham and he said that he will forward full details later in the morning but in the meantime, Mr Falconbridge is required to attend the meeting the next day.

31.7 Mr Dunn sent a further email at 7.35 to state simply that he would approve the costs of Mr Faulconbridge driving to Raynham.

32 Mr Faulconbridge did not attend the proposed meeting on 2 April 2015.

33 On 7 April 2015, Mr Faulconbridge sent a long email to Mr Dunn in which he stated:

“Both during my employment and since my resignation there has been a number of incidents that have occurred which are in breach of our contract so I am no longer prepared to work my notice”.

34 He then provided two pages of complaint about the Respondent’s conduct and I will just give headlines by way of indicating what they are about:

- Refusal to pay expenses
- Refusal to pay wages
- Failure to pay suppliers
- Failure to pay staff
- Locked out of system
- Intimidation, threatening behaviour and bullying
- Forced to act against my will

- Defamation of character
- Breach of mutual trust and confidence
- Failing to provide employment contract
- Threat of legal action
- Fraudulent documentation
- Breach of duty of care
- Backdating the invoices

35 On 9 April Mr Dunn replied with a letter which had been drafted for him by the Respondent's legal advisers. This letter states that his employment is to end on 19 June and that whilst he is currently not active in the company, he is still bound by current and post employment obligations and restrictions. It suggests that the Respondent has reason to believe he is in breach of his obligations, in particular by contacting somebody called Rebecca Whitehouse at Bodypower and introducing himself as Creative Logistics, contacting somebody called Ricardo Loperena with regard to on site handling at Bodypower and having contact with several other exhibitors at Bodypower. This letter suggests to Mr Faulconbridge that he is in breach of restrictive covenants and threatens him with legal action if he does not desist.

36 As it happens, on 8 April 2015 Mr Faulconbridge had caused to be drawn up a Memorandum and Articles of Association for a company called Creative Freight, (page 258). That company was incorporated on 9 April 2015, (page 236). Mr Faulconbridge is one of two directors of that new company, registered at Companies House and the registered office are the premises to which Mr Faulconbridge had moved his branch of the Respondent's business, from which Mr Dunn had instructed him to exit.

37 On 15 April 2015, (page 325) Mr Dunn offered to send some people called either Dan, Ali or Pat to collect the company's property from Mr Faulconbridge. He repeated that offer on 20 April, (329) and Mr Faulconbridge replied (page 331) saying "*I am happy to return all property when costs of transport are paid*".

38 On 23 April 2015, Mr Dunn wrote to Mr Faulconbridge. He referred to long periods of silence since the original resignation on 19 March, he said that the Respondent was concerned that Mr Faulconbridge had been contacting exhibitors at Bodypower, describing himself as part of a company called Creative Freight. He referred to Mr Faulconbridge having tendered his resignation and his refusal to attend Raynham and states "*your employment with the company should be deemed as terminated on 7 April 2015 in accordance with your wishes contained in your email of 7 April 2015.*" On the second page of that letter, Mr Dunn stated that payment of pre-approved expenses in accordance with the staff handbook will be made. He stated that they have his January 2015 expenses in hand and await further details as have been requested of him.

39 On 21 July 2015, the First Respondent Chaucer Freight Limited went into voluntary liquidation. It is common ground that rights and obligations under the contract of employment were TUPED across to Chaucer Logistics Limited, the Second Respondent.

Facts on the Expenses Claim

40 There is an element of overlap, but I come now to the facts on the expenses. What the handbook says at page 126 Clause 6.13 is:

“Travel expenses must be authorised in advanced by your director. The company will reimburse authorised travelling costs and other expenses which you incur wholly necessarily and exclusively in the performance of your duties for the company. In order to claim such expenses you should complete an expense claim form and submit it with receipts to your director.”

41 The claim for expenses that is the subject of this litigation, for January 2015, is at page 225 and also in the supplementary bundle at page 30. There is no dispute that the claim form was submitted. Queries were raised by Mr Dunn of what was claimed in an email dated 24 February 2015. I will come to the detail later. Mr Faulconbridge provided some answers, which we see in the supplementary bundle at page 22. He accepted in cross-examination that he had not given Mr Dunn all of the information which had been requested of him, the main point being that he had not provided the full Visit Reports and necessary detail in respect of some of the costs he was claiming for visits that he had made to people. The sum of £223.66 was paid to Mr Faulconbridge in respect of this claim on 28 May, see page 228. So the claim was for £606.34 and £223.66 of that had been paid.

42 As for February's claim, the form is in the supplementary bundle at page 29. The amount claimed is £641.56. The Respondent says that this was not submitted until the solicitor's letter of 22 May 2015 that we see in the supplementary bundle at page 72, where solicitors acting for Mr Faulconbridge wrote to Mr Dunn a two and a half page letter. Item 2 of that letter refers to expenses of £1,247.92 not having been paid and to enclosing two staff expense claim forms. In fact, Mr Dunn's position is that he had not seen the expense claim form until he turned up at the hearing in February and was presented with the Claimant's supplementary bundle. Mr Faulconbridge says that it was submitted to the Respondent, but he is unable to say when. I have already quoted Mr Dunn's letter of 23 April, one would have thought if the February expense claim form had been submitted by then, Mr Dunn would have made reference to it. Equally I should have thought that if a firm of solicitors write and say that certain things are enclosed with their letter and they are not, either the Respondent or their solicitors would have written straight back to say such document had not been enclosed. So, I find as a fact that the February expense claim form was submitted with the solicitor's letter of 22 May 2015, it was not submitted before that and no receipts had been provided by Mr Faulconbridge.

Holiday Pay Claim Facts

43 I have already made reference to the staff handbook; the holiday year is the calendar year. The entitlement to holiday is 20 days plus public holidays.

44 Mr Faulconbridge confirmed that he was paid for and did not have to work public holidays, but no other holiday had been taken by him in the calendar year before his employment terminated.

Counterclaim Facts

45 Dealing first of all with the company property, turning to page 26, where the Respondent's counterclaim appears, it lists the following items:

- (1) Laptop – Dell Inspire on 3521 base
- (2) Microsoft office 2013 software
- (3) Laptop carry case
- (4) Keyboard and mouse
- (5) Mobile phone iPhone 5S
- (6) Two printers HP Laser Jet CP 5225
- (7) Multiple exhibit files for shows
- (8) Individual customer files
- (9) Stationery
- (10) Company fuel card.

46 The counterclaim sets out no figures as to what is claimed. The burden of proof is on the Respondent to prove its claim, including quantum.

47 Mr Faulconbridge said in cross-examination and I accept, he does not have individual customer files.

48 During cross-examination, Mr Faulconbridge accepted that the onus was on him to return the company property. I have already observed that a number of offers were made to arrange for somebody else to go and collect them. That was put to Mr Faulconbridge and during cross-examination, he accepted that he was in breach of contract by retaining the company property.

49 Evidence as to the value of that property was not set out formally in the evidence as presented, but on asking Mr Dunn how much he was claiming he referred me to pages 261 – 263, where there are some copy invoices and he talked me through the figures. At 261 is a price from a website for an HP CP5225 printer at £836.70. He said that Mr Faulconbridge had two of these, one was a year old and the other was six months old. When I explained to him that the Respondent could only recover the value of those

printers of that age and not the replacement costs of a new printer, he suggested that one half of the figure should be applied to the one year old printer and three quarters the figure applied to the six months old printer. I accept however Mr Faulconbridge's evidence that actually, he does not have two of those printers; he has one that was worth about £35 and one that was worth about £100.

50 The second document at page 262 is again a print out from an internet website. It gives a price on an iPhone 5S at £499 new. Mr Dunn suggested to me that a used iPhone 5S would fetch £250, but I accept the figure proposed by Mr Faulconbridge that £200 is more realistic.

51 Lastly, I have at page 263 a price on a laptop of £481. There are annotations thereon by Mr Dunn of the cost of extra items to go with that laptop, such as Microsoft Office installation and set up, keyboard and mouse. I accept the total figure proposed for these items purchased new at £895. Mr Dunn suggests that these combined items of a year's age could be bought for about £750. That is not a figure Mr Faulconbridge disputed and so I accept it.

52 There is no evidence as to the value of the remaining goods listed in the counterclaim and they do not appear to be pursued with any vigour or at all.

53 Turning then to the facts on the retained income, the wording of the counterclaim at paragraph 8 is that "*the Claimant failed to account to the Respondent for revenue received in the course of his employment at Bodypower India and ADP*". At paragraph 9 "*the Claimant set up in competition with the Respondents and acquired revenue at the shows in the course of his own business*". Both claims then, which are put in the alternative, are for diverted monies that the Respondent says Mr Faulconbridge or his company has received.

54 At paragraph 10 of the counterclaim, the claim is quantified as the revenue arising from the shows according to budget figures provided by the Claimant; £500 for Bodypower India and £3,000 for the ADP show. The predicted income, the Respondent says, is set out at page 259, which is a spreadsheet which suggests that there was a budget of income to be received from Bodypower India Translink of £500 and from ABP of £3,000. Mr Faulconbridge is dismissive of those figures, saying they were just figures he gave Mr Dunn because Mr Dunn insisted on having something to put in the budget.

55 I had amongst the documents produced by Mr Faulconbridge at the start of the hearing in February, at page 429, an email from Mr Faulconbridge to somebody called Danny Aiken, setting a quote to provide a service at £395 plus VAT. Mr Faulconbridge accepts that work was accepted and proceeded with, but he did not invoice the customer and he should have. I accept that evidence.

56 At page 452, we have an email from Mr Faulconbridge to Stuart Leyland, setting out a proposed quote of £1510 plus an additional £835 or £995. Mr Faulconbridge's evidence, which I accept, is that was a quote which was not accepted and the work did not proceed.

57 That is all the evidence that the Respondents have to refer to on their diverted

income aspect to the counterclaim. There is no evidence at all that Mr Faulconbridge received the income to his new company or himself, or diverted it to anybody else and I accept Mr Faulconbridge's evidence that he did not.

Conclusions

58 I need to work out figures for Mr Faulconbridge's pay. There a payslip in the bundle which was referred to at some point on 24 February. This shows his monthly salary of £3,750. Multiplied by 12 and divided by 52 would give a gross weekly rate of £865.38 and a daily rate then $\div 5$ of £173.07.

59 I am using gross figures, so any money that might be payable to the Claimant arising out of the judgment which is shortly to follow, would be payable gross, taxable in the hands of Mr Faulconbridge.

Claim for unpaid wages

60 Mr Faulconbridge was paid until 31 March 2015. His employment plainly came to an end on 7 April; up until that point he was working his notice, but on that date he said that he was not going to work anymore, "I am no longer prepared to work my notice". As a matter of law, the Respondent has no choice about whether it accepts that as a resignation or not.

61 If I were to find that Mr Faulconbridge's resignation was as a result of a fundamental breach of contract by the Respondent, his damages in breach of contract, his loss, would be the money that he would have received in wages for the remainder of his notice period, pursuant to his contract. Is that three months, one week, (being the statutory notice period) or one month in accordance with the handbook? I am afraid I am compelled to find that the notice period is one week, because that is the notice period in the contract of employment which Mr Faulconbridge signed on 28 May 2014; he accepted its terms.

62 That means that Mr Faulconbridge's damages are one additional weeks pay from 7 April to 14 April, if it is the case that the Respondent was in breach of contract causing Mr Faulconbridge to resign. That breach of contract might be a breach of the implied term to maintain mutual trust and confidence, or might be a breach of some other fundamental term of the written contract. I am then compelled, reluctant though I am, to go through Mr Faulconbridge's letter of resignation and deal with each of the reasons he offers for his resignation in turn.

Refusal to pay expenses

63 I find that is not correct. Reasonable queries were raised by Mr Dunn of the January expenses and Mr Faulconbridge's reply was unsatisfactory and not in full, as he himself acknowledged in cross-examination.

64 As at the date of resignation on 7 April, the Respondent did not have the February expenses claim.

Refusal to pay wages

65 In cross-examination, Mr Faulconbridge said that this heading in his letter of resignation was a mistake and actually, he intended to refer to the expenses and that he was duplicating the previous point.

Failure to pay suppliers

66 I accept Mr Dunn's evidence that Mr Faulconbridge was not following the Respondent's processes, which is why there had been delays in payment to suppliers.

Failure to pay staff

67 I accept Mr Dunn's evidence that this was as a result of the same problems with their not paying suppliers; self-employed individuals were being retained by Mr Faulconbridge, but he was not following the Respondent's processes, which was leading to delays in payments to such staff.

Being locked out of the system

68 It is correct the Mr Faulconbridge was locked out of the Respondent's IT System. However, this was because it was in receipt of information which suggested that Mr Faulconbridge was setting himself up in competition. It was therefore entitled to take action to protect its own interests and had reasonable and proper cause to block Mr Faulconbridge's access to the system.

Intimidation, threatening behaviour and bullying

69 Mr Dunn had concerns and worries that Mr Faulconbridge was setting himself up in competition with the Respondent. That was making their relationship difficult and I have no doubt that crosswords were spoken and there may indeed have been a threat of dismissal.

Being forced to act against his will

70 Here, Mr Faulconbridge is referring to having been made to feel very uncomfortable about leaving Wood Corner Farm, (the property to which he had moved his part of the Respondent's business) and how embarrassing he found that, in dealing with the landlord. I accept the evidence of Mr Dunn that when he visited the premises, he found them to be entirely unsuitable and that he therefore instructed Mr Faulconbridge, as he was entitled to do, not to pay the rent. There is here a genuine dispute. I do not doubt that Mr Faulconbridge really was embarrassed.

Defamation of Character

71 Mr Faulconbridge's reference to defamation of character is really a reference to his embarrassment and the effect to his reputation, by reason of matters that I have just been through.

72 The next bullet point in his letter is, “mutual trust and confidence” but that is the point I have to come to at the end.

Failing to provide an employment contract

73 We know that the contract was provided at the beginning of his employment, because Mr Faulconbridge signed it, but Mr Faulconbridge’s point is that he asked for a copy latterly and that copy was not provided. Mr Dunn’s response is that a copy of this contract was available to him if he had attended one of the proposed meetings.

Threat of legal action

74 Then there is the threat of legal action. Mr Dunn and the Respondent had reasonable and proper cause to make such threats, given the information that they receiving about Mr Faulconbridge, which was that he was preparing to compete with the Respondent’s business.

Instructed to back date invoices on a number of occasions

75 I accept Mr Dunn’s evidence that this was necessary because Mr Faulconbridge had arranged for work to be done, but did so not using the Respondent’s systems, so that suppliers invoices would arrive and the Respondent would not know what they were for, customers not having been billed so that then arrangements were made for invoices to be raised to those customers and the dates of those invoices backdated to the date work was carried out, in order to try and get payment sooner under the Respondent’s 60 day payment terms. Not an arrangement that I as a customer of the Respondent would have found in any way acceptable, but there you are, that is why they did it.

Mutual Trust and Confidence

76 So I come back then to the question, does all of this amount to a breach of the implied term to maintain mutual trust and confidence? Or indeed, a fundamental breach of any other term of the contract? I do not consider that this amounts to a breach of that or any other term, simply because the Respondent had reasonable and proper cause for the various actions that it had taken as I have described. In so far as it did not do so, those are not matters which on their own could be said to be a breach of the implied term of mutual trust and confidence. It flows from that, the wages to which Mr Faulconbridge is entitled is a week’s wage’s from 7 April when he resigned.

77 The Respondent says that Mr Faulconbridge was not working and so he is not entitled to payment. The legal position is, if an employee is not working and the employer does not want to pay him, the employer had better, (lawfully) terminate the contract, for the employee is entitled to payment so long as the contract subsists.

78 I award wages to Mr Faulconbridge of one week in lieu of notice, that is the sum of £865.38.

79 In respect of January’s expenses, I find that the queries Mr Dunn raised of Mr Faulconbridge were reasonable queries. Mr Faulconbridge did not reply in full to the

queries which were raised and not to Mr Dunn's satisfaction. I have reviewed Mr Dunn's analysis on page 229; he has made a payment of £223.66, it may be pretty mean not to pay for petrol or for car mileage and to insist that somebody catches the train, but it is an instruction that Mr Dunn was entitled to give and which Mr Faulconbridge was obliged to obey, in accordance with 6.13 of the handbook. I find that no further payment is due to Mr Faulconbridge under his January expenses.

80 With regard to February's expenses, one could deal with that quite shortly by saying that the claim was not supported by receipts and therefore no payment is due under the February claim, (the handbook at 6.13 makes it clear that receipts are required). I would go on to say though, that comparing the oral evidence of Mr Faulconbridge and the evidence of Mr Dunn, I found compelling Mr Dunn's explanation as to why he would not accept that the expenses set out at page 29 in respect of the TPI awards and the visit to the O2, are properly payable. I would not therefore have awarded the expenses in any event, based upon Mr Dunn's evidence.

81 As for holiday pay, I ignore bank holidays, so the entitlement that I am looking at is the 20 days contractual. 1 January to 14 June, holiday accrued at 1.66 per month, that is 3 ½ months, amounts to 5.81 days holiday, which I round up to 6. The entitlement is 6 x £173.07 and I therefore award holiday pay of £1,038.42.

82 The total of those two figures then is that the Second Respondent shall pay the Claimant £1,891.80.

83 We turn now to the counterclaim.

84 The claims for the return of the Respondent's property and in respect of the money it said Mr Faulconbridge had diverted, were both outstanding as 7 April 2015. The Employment Tribunal therefore has jurisdiction to consider a breach of contract claim from the Respondent in that regard.

85 Plainly, Mr Faulconbridge was contractually obliged to return the property. He ignored the offers for someone to go and collect the property. As I have said, he accepted in cross-examination that the onus was on him to return the property and he is in breach of contract for not doing so. I observe that he has had ten months since February, when he made those concessions in cross-examination, to make arrangements for the goods to be returned.

86 As to the value of the goods, I have set out in my findings of fact that I accept that the printers retained by Mr Faulconbridge are worth £35 and £100, the laptop is worth £750 and the iPhone is worth £200: the total of those figures is £1,085.

87 I make a damages award that Mr Faulconbridge should pay the Second Respondent the sum of £1,085.

88 I record here that I am providing that such sum is payable to the Second Respondent, not the First Respondent, on the basis that I am informed that the Second Respondent purchased from the Liquidator all of the assets of the First Respondent. I make the point in case it is not understood that the Employment Tribunal's power to deal

with contract claims is that it can award damages only. We do not have any power or jurisdiction to make any orders for property to be returned, or restitution, or anything like that.

89 I have said that I have accepted Mr Faulconbridge's evidence that he did not have any files data.

90 Turning next to the second part of the counterclaim, diverted income. For reasons that I have explained, I have no evidence before me that Mr Faulconbridge received any income, nor that the company he formed received any income, nor that any other third party received any income at his instigation and therefore, in this respect, the Respondent's counterclaim fails. I can quite understand why the Respondent will be very suspicious of the proximity of the ADP and Bodypower India exhibitions in March to the formulation of the Claimant's new company, plus the information it was receiving from others as to what he was up to, but there is no evidence before me that he diverted funds.

91 I now turn to the question of set off. I have made an order that the Respondent pay the Claimant £1,891.80 and that the Claimant is to pay the Respondent £1,085. I set one off against the other, so that the judgment is the Second Respondent pay the Claimant gross without deduction, taxable in the hands of the Claimant £806.80

Employment Judge M Warren

7 March 2017