



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Azzimmatturo  
**Respondent:** Lets Travel Services Ltd  
**HEARD AT:** Reading **ON:** 11 July 2017  
**BEFORE:** Employment Judge S Jenkins

## REPRESENTATION

**For the Claimant:** In person  
**For the Respondent:** Mr C Golwala (Director)

## JUDGMENT

1. By consent the Respondent is ordered to pay the Claimant the sum of £88.75 by way of reimbursement of expenses.
2. By consent the Respondent is ordered to pay the Claimant the gross sum of £311.55 in respect of outstanding salary for work carried out by the Claimant in the month of January 2017.
3. The Respondent breached the Claimant's contract by failing to pay him the required period of notice, and the Respondent is ordered to pay the Claimant the gross sum of £1,804.95 in respect of that.

## REASONS

### Background

1. The case before me was to consider claims for breach of contract and in respect of deductions from pay arising from the termination of the Claimant's employment by the Respondent on 4 January 2017. I heard

evidence from the Claimant on his own behalf, and considered various documents provided by him. I also heard evidence from Mr Golwala on behalf of the Respondent, and considered an additional document provided by him.

### **Issues and Law**

2. The Claimant pursued three claims. The first related to a claim that he had been paid insufficiently in lieu of notice. The substance of that claim was that his employment had been terminated on 4 January 2017, with a payment in lieu of notice amounting to one week's salary, the precise sum paid being £445.05 gross. The Claimant contended that, by virtue of the expiry of his probation period, he was entitled to one month's notice, whereas the Respondent contended that the probation period had been extended and termination of employment during the probation period required only one week's notice.
3. I therefore had to consider the precise contractual terms with regard to notice, with particular reference to notice within the probation period, and I then needed to consider, from the evidence, whether the probation period had expired or been extended. If the probation had been appropriately extended then, subject to some potential debate over the precise sum of money involved, the payment of one week's notice to the Claimant would have been lawful within the terms of his contract. If, however, the probation period had not been properly extended then the Claimant would have been entitled to receive one month's pay in lieu of notice and would therefore need to be compensated for the balance that had not been paid.
4. The Claimant's second claim related to an assertion that the Respondent had failed to reimburse him for expenses in relation to a business trip he had undertaken to Italy on the Respondent's behalf in November and December 2016. The issue of contention related to payment of mileage expenses for the Claimant's travel from his home to and from the airport at the beginning and end of his business trip. The Respondent contended that its expenses policy required that employees should travel by the most cost effective mode of transport, taking into account journey time and the nature of the journey as well as the monetary costs. The Claimant contended that he had authorised by his manager to travel by car to and from the airport.
5. The particular issue revolved around the fact that the Claimant had been driven by his partner to and from the airports, his outward flight departing from Gatwick and his return flight arriving in Stansted. He had put a claim in for the payment of the expense of the two-way journey on both occasions, but had ultimately, in his claim form before the Tribunal, modified his claim to only one way on each occasion, i.e. the journey he would himself have undertaken had he driven alone.

6. Mr Golwala on the part of the Respondent accepted that it was appropriate to reimburse the Claimant for those journeys, with the payment amounting to £88.75, and I therefore ordered that that sum be paid by consent.
7. The third claim raised by the Claimant related to payment for the number of days he had worked in January 2017. As noted above, his employment was ended with a payment in lieu of notice on 4 January 2017, but the Claimant contended that he had not been paid for the four days in January, although he accepted that the amount due was to be reduced by one day in respect of a day's sickness absence taken in December 2016 in relation to which he had received full payment but where he should not have received any payment.
8. Mr Golwala on the part of the Respondent again accepted that it was appropriate for the Claimant to be paid in respect of the salary that he had not received, which at the rate of £103.85 gross per day led to a sum due of £311.55 gross. I therefore also awarded that that sum be paid by the Respondent to the Claimant by consent.
9. That then left only the issue of the Claimant's notice entitlement to be considered further.

### **Findings**

10. The Claimant was employed by the Respondent with effect from 30 August 2016 as a Contracting Manager. The letter of appointment issued to him shortly after he commenced work noted as follows:-

*"You are contracted as a Contracting Manager in Trip Center (TripCenter.net) Division of the Company for the probation period of 3 (Three) months from the joining date of 30<sup>th</sup> August 2016. The probation period can be extended as per need of the business."*

11. The letter of appointment did not make any reference to the notice entitlement that was to apply, but the Respondent's staff handbook noted that employees were entitled to notice from the company of one week during the probation period, but that after the probation period, and up to five full years' service, there would be an entitlement to one month's notice from the company.
12. The expiry of the probation period was, in the absence of any extension, to take place on 30 November 2016. At that point the Claimant was on his business trip to Italy, that business trip ending on 2 December 2016. The Claimant did however also take a period of annual leave whilst in Italy from 3 December 2016 until 12 December 2016 when he returned to the UK. He then took a day's sickness absence on 13 December 2016 before returning to work on 14 December 2016. The Claimant indicated, and his evidence was not

contested, that he had been in daily business contact with both his line manager, Ms Lesley Marshall, and Mr Golwala whilst on business in Italy at the end of November and beginning of December 2016

13. Mr Golwala provided me with an email sent by Ms Marshall, in January 2017, in which she indicated that she had spoken to the Claimant on his return to the office on 14 December 2016 about the fact that his employment would be extended and that a review would take place in January. By this time Mr Golwala was himself absent on holiday and would not return until the New Year.
14. The Claimant's evidence was that he had no such discussion with Ms Marshall on 14 December 2016 but he did recall a discussion with her a day or two after that during which Ms Marshall said that if he did not hit his targets then Mr Golwala was not going to confirm his probation. The Claimant confirmed in his evidence that he had informed Ms Marshall at that point that his probation had already passed and could not therefore be extended.
15. In the New Year, on 4 January 2017, Mr Golwala and the Claimant met, and Mr Golwala informed the Claimant that he had not passed his probation and therefore that his employment was being terminated with a payment in lieu of notice. The amount of that notice was a matter of contention between Mr Golwala and the Claimant which led to the Claimant's claim.
16. Mr Golwala confirmed in his evidence that he had not had any prior discussion with the Claimant prior to the expiry of the probation period on 30 November 2016. He indicated that his reason for that was that it would have been inappropriate to have had a discussion with an employee who was out of the country on company business. Mr Golwala also confirmed that he was not aware of any discussions that Ms Marshall had had with the Claimant, and noted that the only evidence he could provide of those discussion was the email referred to above in which Ms Marshall recorded that she had had a discussion with the Claimant about his probation period on his return to the office on the 14<sup>th</sup> December 2016. There was no evidence before me of any discussion about the extension of the probation period prior to its expiry on 30 November 2016.

### **Conclusions**

17. The Claimant referred me to a decision of the Employment Appeal Tribunal in the case of Przybylska v Modus Telecom Limited (UKEAT/0566/06/CEA). That case also related to probation periods and, in fact, a probation period and notice provisions which were identical to those in this case. In that case, the particular claimant was absent from work due to holiday at the point of expiry of the probation period and the employment judge considered that it would be appropriate to imply a term into the contract which catered for

extension of the probation period in those circumstances. However, the Employment Appeal Tribunal considered that that was an error in that the terms of the contract were clear and thus were not capable of being amended by way of an implied term.

- 18. In this particular case, I noted the terms of the letter of appointment outlined above and the particular notice entitlements set out in the staff handbook. I noted, as a matter of fact, that the Claimant’s probation period had expired on 30<sup>th</sup> November 2016 and that no contact had been made with the Claimant about extending probation prior to that point. I took into account Mr Golwala’s evidence that his reason for that was that it would have been inappropriate to have had a discussion with an employee out of the country on company business. However, the terms of the Claimant’s contractual position were clear and, in any event, I did not consider that the discussion between the Claimant and Mr Golwala would have needed to reference the fact that his probation period had been failed; it simply needed to alert the Claimant to the fact that, as he was away on business and subsequently on holiday, as was Mr Golwala, his probation period would have to be extended to enable the review to take place at some point in the New Year.
- 19. I also took into account the Claimant’s uncontested evidence that he had been in daily business contact with both Ms Marshall and Mr Golwala whilst on business in Italy at the end of November and beginning of December 2016 and concluded that there would have been ample opportunity for the Respondent to have communicated with him at that time.
- 20. Ultimately therefore, I concluded that the Claimant’s probation period had expired on 30 November 2016 with no extension of that period having been put in place prior to that time. In the circumstances, and implying the Przybylska case, I considered that the Claimant’s notice entitlement at that time was to one month which was a gross sum of £2,250. He had only been paid the gross sum of £445.05, which left a gross sum of £1,804.95 to be paid to him by the Respondent in respect of notice.

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Employment Judge S Jenkins

Date:...21/7/17.....

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS