



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimants**

**Respondents**

**AND**

1. Mr PM Rogers
2. Mrs K Rogers

1. Project Viva Limited (In Admin.)
2. Secretary of State for BIS
3. Pixel West Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Birmingham      **ON** 4, 5, 6, 7, 11 and 12 December 2017  
(on 11 December Judge only)

**EMPLOYMENT JUDGE** Dimbylow

### Representation

**For the claimants:** Mr C Winwood, Lay Representative

**For the 1<sup>st</sup> respondent:** Not present or represented

**For the 2<sup>nd</sup> respondent:** Not present or represented

**For the 3<sup>rd</sup> respondent:** Mr J McCracken, Counsel

## JUDGMENT

**The judgment of the tribunal is that:**

1. With the consent of the 3<sup>rd</sup> respondent, the claims by the 1<sup>st</sup> claimant for damages for breach of contract over: (1) expenses and (2) a damaged gazebo are dismissed upon withdrawal by him.
2. The 1<sup>st</sup> claimant was unfairly dismissed by the 1<sup>st</sup> respondent. I order the 1<sup>st</sup> respondent to pay compensation to him in the sum of £9,928.49. This sum is made up as follows:

A basic award: £2,137.50

A compensatory award for loss of earnings from 1 September 2015 to 2 November 2015 (9 weeks x £810.11): £7,290.99 (net)

Compensation for loss of statutory employment rights: £500.00

Recoupment of benefits applies as the 1<sup>st</sup> claimant was in receipt of JSA, and a notice in relation thereto is attached, together with an annex to the judgment.

3. The 2<sup>nd</sup> claimant was unfairly dismissed by the 1<sup>st</sup> respondent. I order the 1<sup>st</sup> respondent to pay compensation to her in the sum of £5,077.20. This sum is made up as follows:

A basic award: £2,137.50

A compensatory award for loss of earnings from 1 October 2015 to 2 November 2015 (4.6 weeks x £530.37): £2,439.70 (net)

Compensation for loss of statutory employment rights: £500.00

Recoupment of benefits applies as the 2<sup>nd</sup> claimant was in receipt of JSA, and a notice in relation thereto is attached, together with an annex to the judgment.

4. The claim for damages by both claimants for failure by the 1<sup>st</sup> respondent to give notice or make a payment in lieu of notice is not well-founded, fails and is dismissed. Both claimants were given notice exceeding the statutory notice to which they were entitled.
5. I declare that the 1<sup>st</sup> respondent made unlawful deductions from the claimants' wages, by its failure to pay the claimants for holidays accrued but not taken. I order the 1<sup>st</sup> respondent to pay compensation to the 1<sup>st</sup> claimant for 13.5 days in the sum of £3,115.39 (gross) and the 2<sup>nd</sup> claimant for 15 days in the sum of £2,077.95 (gross).
6. The 1<sup>st</sup> respondent failed to provide a written statement of main terms and conditions of employment to either claimant. I order the 1<sup>st</sup> respondent to pay compensation of 2 weeks gross salary (2 x the capped figure of £475.00 per week) of £950.00 to each claimant.
7. I declare that the sole or principal reason for the dismissal of both claimants was not the business transfer between the 1<sup>st</sup> and 3<sup>rd</sup> respondents, and therefore the claims for automatic unfair dismissal pursuant to Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 are not well-founded, fail and are dismissed.
8. I declare that there was no TUPE transfer of either of the claimants' contracts of employment from the 1<sup>st</sup> to the 3<sup>rd</sup> respondents; and all other claims against the 3<sup>rd</sup> respondent are not well-founded, fail and are dismissed.
9. I declare that the 2<sup>nd</sup> respondent has met his statutory obligations to both claimants; they were unable to demonstrate that any further monies were

Case Numbers: 1300027/2016 & 1300028/2016

due and payable to them from him, and therefore all the claims against the 2<sup>nd</sup> respondent are dismissed.

Note: Reasons for the judgement having been given orally at the hearing, written reasons will also be provided as soon as conveniently possible as a request was made by the claimants at the hearing.

Employment Judge Dimbylow  
13 December 2017