



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs E Twigge

**Respondents:** 1. Sentinel Intelligence Limited (in Administration)  
2. F Harding (Macclesfield) Limited  
3. Secretary of State for Business, Energy and Industrial Strategy

**HELD AT:** Manchester **ON:** 13 November 2017

**BEFORE:** Employment Judge Humble

## REPRESENTATION:

**Claimant:** Mr Small, Counsel  
**Respondents:** Not in attendance

**JUDGMENT** having been sent to the parties on 27 November 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant was represented by Mr Small of Counsel and the claimant gave evidence on her own behalf. The respondents were not represented. No submissions or evidence was submitted by the first or second respondent and no response form had been filed by them. The third respondent had submitted a response form together with documentary evidence in support of its case, and the Tribunal had reference to those documents.

2. The claimant had prepared a bundle of documents which comprised 461 pages although the Tribunal were referred to only a limited number of those documents. The claimant's evidence in chief was presented by reference to a written statement.

### The Issues

3. The Tribunal took some time to identify the issues in the case. There was a claim for unfair dismissal. The claimant's case was that the respondent had failed to pay her wages, either in a timely manner or at all, over a period of a year or more and that this amounted to a breach of the implied term of mutual trust and

confidence as a consequence of which she resigned from her employment on 14 November 2016. The claimant also claimed unauthorised deduction from wages in respect of the respondent's failure to pay wages from 15 August 2016 to 14 November 2016, and a failure to pay accrued holiday pay upon the termination of her employment.

4. There was a further claim for wrongful dismissal. The claimant's case was that she was constructively unfairly dismissed and therefore lost the opportunity to obtain her notice pay. She sought 12 weeks' statutory notice pay.

5. This was a case which had caused much confusion in respect of the correct identity of the respondent or respondents. By the time of the hearing the claimant was able to confirm that the correct respondent was the first respondent, Sentinel Intelligence Limited (in Administration). This was a company registered under company number 07873891. While the claimant was working for the first respondent it was known as F Harding (Macclesfield) Limited but, on or about 30 November 2016 it changed its name to Sentinel Intelligence Limited. The first respondent subsequently went into administration on 8 March 2017.

6. There was a separate company registered under company number 10477284 also with the name Sentinel Intelligence Limited (the second respondent) which was incorporated on 14 November 2016 and which, within a short time of incorporation, changed its name to F Harding (Macclesfield) Limited. At the hearing the claimant was able to confirm that the second respondent had no involvement with her employment, and in fact it appeared to be dormant. Therefore, the claims against the second respondent were dismissed.

7. To add to the confusion there was another company, Harding Yarns Limited, which had previously been added as a respondent to the proceedings but was later dismissed from the proceedings by way of a judgment dated 10 October 2017 following a withdrawal by the claimant.

8. The third respondent was the Secretary of State and it's case was that Harding Yarns Limited took over the assets, goodwill and employees of the first respondent on about 4 April 2017 and therefore there was a transfer of undertakings from the first respondent to that company.

9. It appears there was commonality of ownership between the three companies which were involved at various times in these proceedings, although the Tribunal was not referred to the precise make up of the individuals involved with the respective companies. We refer to these matters further below.

### **Findings of Fact**

The Employment Tribunal made the following findings of fact on the balance of probabilities (the Tribunal did not make findings of fact on all of the evidence put before it, but only in respect of those matters which were material to the issues in dispute):

10. The claimant commenced work for the first respondent, now known as Sentinel Intelligence Limited (in Administration) on 5 September 2002. Hereafter

where the Tribunal makes reference to “the respondent” it will be a reference to the first respondent only.

11. The claimant was a loyal and hardworking employee. She was employed on a salary of £25,800 gross and it was a term of her contract that she would be paid in arrears on the 15<sup>th</sup> of each month. On 15 July 2015 she was not paid in full but rather in piecemeal instalments over the course of the following month. This practice carried on for some time and by 15 July 2016 the piecemeal payments had fallen into some arrears. The claimant's pay for July 2016 was not paid until September 2016, and her wages for August were only paid between 16 September and 28 October 2016. The claimant did not receive any pay at all in the months of September and October 2016.

12. The claimant had up to this point continued to work without complaint, but she now felt compelled to raise the issue with the directors. When she raised the matter with Mr Harding she was not given any indication when she would be paid, and instead was issued with an email which was reproduced at page 210 of the bundle. This stated (inter alia):

*“I can rely on your discretion not to discuss any of these topics with anyone else in the company. It would be very unhelpful if you discussed any of what we did with anyone else. Discussing payment issues with any other staff would prove very unhelpful. As agreed your salary will be caught up when funds permit.”*

13. The claimant in fact had not in fact reached any agreement to that effect and the email from Mr Harding, and the earlier conversation with him, caused her some considerable distress. She did not know at that point when, or if, she would be paid and felt unable to remain at work. The claimant's health was adversely affected and she was signed off work by her General Practitioner on 31 October 2016 suffering from an acute stress reaction.

14. On 25 October 2016 the claimant's daughter emailed Mr Harding outlining the stress caused to the claimant by the failure to pay her wages, and said (inter alia): *“Following yesterday's conversation everything finally came to a head. [The claimant] felt she had no other option but to go home. After weeks of stress and anxiety this was the best option for her and her health.”*

15. Mr Harding responded on 28 October 2016 in a letter which among other things stated:

*“Trading conditions have proved very difficult this year, of which [the claimant] I'm sure would agree. Rachel and myself have taken considerable pay cuts over the years and we are still owed many months' salary from earlier this year but we don't get any gratitude from anyone for these sacrifices. All the staff are behind with their salary as we felt that this was only fair to everyone concerned. We had agreed at our meeting last week that all salary arrears would be caught up when sales turnover allows. We are still rather confused as to what [the claimant] is seeking.”*

16. The claimant was upset upon receiving that email, particularly at the reference by Mr Harding of a “*lack of gratitude*” in respect of his own apparent pay cuts. The claimant had worked without pay for two months following a year of late and piecemeal payments and still no proper indication was given as to when payment would be made. Instead, Mr Harding professed to be “*confused*” at what the claimant was seeking when it was obvious that she was simply seeking to be paid for the work she had carried out.

17. On 4 November 2016 a letter was sent on the claimant's behalf by a solicitor (pages 215-216). This required that the claimant's outstanding pay should be paid in full by 14 November 2016 failing which the claimant would have no alternative other than to regard herself as constructively dismissed. The respondent did not discharge the full amount due by 14 November 2016 and the claimant regarded herself as dismissed from that date. She later notified ACAS of her claims and subsequently brought these proceedings.

18. The Tribunal accepted that the claimant's employment terminated with effect from 14 November 2016 pursuant to the respondent's failure to meet the conditions set out in the letter from her solicitor of 4 November 2016.

## Conclusions

19. The respondent repeatedly paid the claimant late and in piecemeal sums between July 2015 and July 2016. Between 15 August 2016 and 14 November 2016 the respondent failed to pay the claimant at all. This was a breach of an express term of the claimant's contract of employment: the most fundamental term of any contract of employment which is that payment shall be made in return for services rendered. While a breach of this express term was not pleaded, it was not in the event needed since the Tribunal also held that the failure to make payment amounted to a breach of the implied term of mutual trust and confidence. The respondent appeared to take the claimant's loyalty and hard work for granted, which was evidenced by the content of the email of 28 October 2016. In that email, rather than offer any apology for the fact the claimant had been repeatedly paid late for 12 months and had then worked for two months without pay, instead appeared to complain of a lack of gratitude and professed to be confused at what the claimant was seeking.

20. The claimant's resignation, which took effect on 14 November 2016, was a response to the respondent's repudiatory breach and she was therefore constructively dismissed. There was no potentially fair reason for the dismissal advanced by the respondent, who did not appear or file a response, and it therefore follows that the claimant was unfairly dismissed.

21. The Tribunal held that the claimant was also wrongfully dismissed. The respondent's breach of contract was a repudiatory breach which entitled the claimant to recover her consequential loss. Those losses were limited to the sum she would have received had she had the opportunity to work her notice, in this case 12 weeks' notice pay.

22. The Tribunal held that the respondent made unauthorised deductions from the claimant's pay for the period 15 August 2016 to 14 November 2016. The Tribunal

accepted the claimant's evidence she had accrued 26.25 days' holiday up to the date of termination of her employment, and that she had taken 20 days of annual leave. The claimant was therefore entitled to 6.25 days.

23. The claim for a failure to provide written statement of particulars was not pursued and is therefore dismissed.

24. The submission of the third respondent, the Secretary of State, that there was a TUPE transfer from the first respondent to Harding Yarns Limited on 4 April 2017 was not relevant since it was held that the claimant's employment terminated on 14 November 2016 while she was still employed by the first respondent. The confusion around that point requires some further explanation.

25. On 8 March 2017 the claimant received a letter from the administrator of the first respondent advising her that the first respondent was in administration and inviting her to make a claim for wages, holiday pay and redundancy pay from the Secretary of State. It appears that the claimant was still listed at that point as an employee of the first respondent and that this information had been passed to the administrator by the first respondent.

26. On 31 March 2017 the claimant contacted the administrator and spoke with a Mrs Lever and explained that she had not worked for the first respondent since 14 November 2016. Nevertheless, the claimant understood from the conversation with Mrs Lever that she could still apply for the redundancy payment since she was still listed as an employee. The claimant therefore submitted an RP1 form to the Secretary of State which is reproduced at pages 224-229 of the bundle.

27. The Tribunal accepted the claimant's evidence that there was a genuine misunderstanding between her and the administrator which resulted in the claimant seeking to recover her redundancy payment at that point. This was reflected in a letter from the administrator at page 364G of the bundle. It was these events which led the Secretary of State to rely upon a TUPE transfer from the first respondent to Harding Yarns on 4 April 2017 as part of its defence to the claimant's case, and which in turn led to the claimant, on advice, to apply to add Harding Yarns Limited to the proceedings with the aim of protecting the claimant's position should Harding Yarns Limited be found to be liable. On further consideration the claim against Harding Yarns Limited was withdrawn and dismissed.

28. Turning to the issue of compensation, the Tribunal accepted the figures put forward by the claimant, which were summarised at pages 202-203 of the bundle. In respect of the basic award, the claimant had 14 years' service and was aged 73 at the effective date of termination. Her gross weekly rate was £496.15.  $14 \text{ years} @ £479 \times 1.5 = £10,059$ .

29. In respect of the compensatory award the Tribunal accepted the claimant's claim for a total of 52 weeks' loss of earnings at £400.46 net which gave a net figure of £20,823.92. The claimant had earnings from new employment which were offset against that sum which amounted in total to £9,230.40. There was a further award for loss of statutory rights at £400 and the total compensatory award was therefore £11,993.52.

30. The award for wrongful dismissal was 12 weeks' notice pay at the net figure of £400.46 which comes to £4,805. The claimant did, however, receive a net income during the notice period of £461.52 which gives a total figure of £4,344.

31. In respect of the unauthorised deduction from wages, loss of earnings from 15 August 2016 to 14 November 2016 was £496.15 at 13 weeks, a gross figure of £6,449.85. There was an offset of £465.20 in respect of monies which were paid by the respondent giving a total figure of £5,984.75 for the loss of earnings. Holiday pay was 6.25 days at a gross figure of £99.23 giving a total of £620.19.

32. Accordingly, the first respondent is ordered to pay the claimant an unfair dismissal award of £22,052.52 of which £10,059 constitutes the basic award; a wrongful dismissal award in respect of notice pay in the sum of £4,344 net; and an award for unauthorised deductions from wages in the sum of £6,604.94 gross.

33. The order for payment is against the first respondent, which is in administration, and it is likely therefore that the claimant will seek to recover those payments, save for the compensatory unfair dismissal award, from the third respondent, the Secretary of State.

34. It is noted that payments have already been made by the Secretary of State to the claimant. The Tribunal has made no deduction for any payments already made since that is not a matter for the Tribunal at this stage; no doubt the Secretary of State will give credit for any sums already made in respect of any payments which it might now be required to make. The Tribunal expects that that matter can be resolved by the parties without further recourse to the Employment Tribunal.

Employment Judge Humble

Date: 8<sup>th</sup> December 2017

REASONS SENT TO THE PARTIES ON  
11 December 2017

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FOR THE TRIBUNAL OFFICE