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# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr David Corbineau**

**Respondent:** **The Hook Group Limited**

**Heard at:** **East London Hearing Centre**

**On:** **23 February 2018**

**Before:** **Employment Judge Brook, Sitting alone**

**Representation**

Claimant: In Person

Respondent: Ms Mona Bayoumi (Counsel)

# JUDGMENT

**The Judgment of the Tribunal is:-**

1. **By consent the Respondent to this action is changed to "The Hook Group Limited" this entity being the new name of the Respondent;**

2. **On admission by the Respondent the dismissal of the Claimant on 30 May 2017 was unfair and the Respondent shall pay the Claimant the total sum of £865.40 by way of basic and compensatory awards to include a 25% uplift on the compensatory element by reason of the Respondent's failure to follow the relevant Acas Code of Practice;**

3. **By admission the Respondent failed to pay the Claimant his statutory entitlement to a payment in lieu of notice and the Respondent shall pay the Claimant the sum of £115.40 in respect of the same;**

4. **There shall be no order for reinstatement.**

5. **The sums due to the Claimant shall be paid by the Respondent without deduction within 28 days.**

# REASONS

1 This matter came before the Tribunal as a claim in unfair dismissal. The Claimant represent himself and the Respondent was represented by Ms Mona Bayoumi of counsel, attended by Ms Rhian Hall her instructing solicitor. The Claimant asserts that he has a further claim against the Respondent arising out of his dismissal in respect of his potentially increased liability to capital gains tax on his shares in the Respondent. However that claim is not before the Tribunal not least because as a claim in contract it would fall foul of the jurisdictional limit of £25,000 and Mr Corbineau has expressly reserved any such claim to the County or High Court where there is no statutory cap on the recovery of contractual damages.

2 There was no claim before the Tribunal to pursuant to the provisions of Sections 1 and 11 of the Employment Rights Act 1996 and I have not been invited to adjudicate on the precise terms and conditions of the contract of employment that existed between the Parties in virtue of the variation to that contract in 2014 under which, as is common ground between the Parties, Mr Corbineau came to receive a reduced monthly payment of £50. Mr Corbineau confined his claims in the Employment Tribunal to unfair dismissal and payment in lieu of notice and it is a feature of these proceedings that the Respondent made pleaded admissions in respect of both claims within its Response. The change of the Respondent's name from HelloU Limited to The Hook Group Limited came about because on 24 October 2017 this entity changed its name. The new name was substituted by consent at the commencement of this Hearing.

## Background

3 This is an unusual case in that prior to his dismissal the Claimant had been employed by the Respondent company for some ten years and in April 2014 his salary was reduced by agreement to the monthly sum of £50 (fifty pounds) and this payment continued until his dismissal some three years later. The reason for this variation was that the then HelloU Limited was a start-up company that in 2014 found itself in financial difficulties which resulted in the dismissal of most of its then staff though not the Claimant. At that time there was a close personal friendship between the Claimant and the now CEO and principal shareholder, Mr Andrew Fidler, and it seems that special provision was made for the Claimant to remain on the company payroll at this nominal monthly salary although he was not called upon to undertake any work. At least one reason for this arrangement appears to have been that whilst the Claimant remained an employee then potentially his liability for capital gains tax was reduced under the special Inland Revenue provisions applicable to start up companies. Mr Corbineau's capital gains tax liability has yet to crystallise and the Respondent Company remains a private company the shares of which are not listed on AIM or the stock market, thus any potential CGT consequences of dismissal, if any, lie in the future. Be that as it may this CGT issue is not a matter for the Employment Tribunal today or indeed at all.

4 Mr Corbineau believes that one of the contractual variations to his employment contract in April 2014 was that he was entitled to return to substantive work and commensurate salary once the Company had overcome its then financial difficulties. It seems that early in 2017 there had been some talk of him returning to substantive work but the Claimant had thought the terms and conditions of that proposed return

unsatisfactory and he remained on the £50 per month arrangement until his employment was terminated. As I have indicated the Tribunal was not called upon to determine the terms and conditions applicable to the contractual variation of April 2014 and I mention the foregoing principally by way of background but also because the Claimant's belief that at some stage he is entitled to return to substantive employment with the Respondent came to have a bearing on the question of reinstatement.

## The Issues

5 There was no agreed list of issues between the Parties but in the light of the Respondent's admissions, all of which were accepted by the Claimant, the Tribunal was only called upon to consider his financial losses flowing from the termination of his employment. These obviously included his monthly payment of £50, the basic award calculated by reference to 10 full years of employment, and the payment in lieu of notice calculated on precisely the same basis. The Respondent made admissions in respect of all these claims and pleaded the sums it acknowledged were due to the Claimant in respect of the same. The Claimant accepted these sums as correct and thus no useful purpose would be served by rehearsing these matters herein precisely because the Respondent made admissions and accepted liability. I raised with the Respondent whether there was a **Polkey v AE Dayton [1988] 3 ALL ER 974** argument whereby the Respondent could seek to argue that the Claimant would have been dismissed in any event had there been a proper procedure and was told by Ms Bayoumi that no such argument was advanced. Furthermore, although it was known that the Claimant had succeeded in mitigating his loss by obtaining alternative employment post his dismissal, the Respondent did not seek to set this off against the compensatory element of the award. Given the admissions and the undisputed calculations the only remaining matter was that of whether the Respondent should be ordered to reinstate the Claimant.

## Reinstatement

6 As I have said this was an unusual case in that for the final few years in which his employment contract remained in place the Claimant was effectively paid a retainer of £50 per month and in this way stayed on the Respondent's payroll though in practice he was not called upon to undertake any work. The Claimant maintains that it was part of the arrangement under which he took £50 per month that he was contractually entitled to require the Respondent to take him back into substantive employment at a commensurate salary when the Respondent was in a financial position to do so. I heard no evidence as to whether the financial position of the Respondent Company had improved but in any event I was not called upon to determine whether there was a contractual provision requiring reinstatement as Mr Corbineau told me that he wished to reserve all such matters, including his potential claim in respect of an increased liability to capital gains tax, to another jurisdiction where if successful his remedy would not be restricted to the Tribunal £25,000 limit on contractual claims. I was therefore only called upon to decide the issue of reinstatement on ordinary principles without regard to any alleged express contractual provision that might have had a bearing on reinstatement.

7 The evidence of Mr Andrew Fidler, the principal shareholder and CEO of the Respondent Company, was twofold. First he recognised that, although he made no admissions to there being such contractual entitlement, if reinstated to his £50 per month position then Mr Corbineau would in early course inevitably request a substantive post on

a commensurate salary. Mr Fidler said that in 2014 one of the reasons why the Claimant would otherwise have been dismissed were it not for the special arrangement made in respect of him, and apparently no other employee at that time, was that his skill sets no longer met the requirement of the Company as it had developed from the early days of start-up. The tasks that the Claimant had undertaken prior to 2014 were now much diminished and those that remained were dispersed and dealt with by various members of the current staff. For his part the Claimant asserted that his skill sets were well-tailored to the requirements of the Respondent and that he could be flexible and accommodate any changes that might have occurred since 2014. He pointed to the fact that he had had been offered a substantive post in 2017, which he had however declined, as evidence that he was regarded as employable by the Respondent. He would seek a substantive post. There thus seemed some basis for considering reinstatement.

8 However, Mr Corbineau made it entirely clear that though Mr Fidler and he had once been very good friends he no longer trusted Mr Fidler and indeed suggested that Mr Fidler had engaged in certain unlawful acts in relation to the company though he was not specific as to what these might have been. For his part Mr Fidler stated that in 2014 he had gone out of his way to protect the Claimant so that he remained on the payroll albeit at £50 per month when others had not been so fortunate. By entering into this arrangement Mr Fidler, and indeed Mr Corbineau, acknowledged that this was thought to preserve Mr Corbineau's favourable capital gains tax position, though it is fair to say that this has never been put to the test. Mr Fidler stated that for various reasons he too no longer had trust and confidence in Mr Corbineau and that the situation had become much worse during the course of last year. It was clear to me that neither thought this situation was likely to change in the near future or at all. Thus, whatever the position on the availability of substantive employment might be, on the issue of trust and confidence each of these individuals held precisely similar views about the other.

9 It is common ground that the Respondent Company is a small start up concern and even though it might be possible for Mr Corbineau to undertake substantive work, either now or in the near future, by reason of the Company's size there is no realistic possibility of him and Mr Fidler not having dealings with each other even if that involved little actual geographical contact. It was tempting to reinstate Mr Corbineau to the status quo anti, that is to say that he merely be reinstated on the payroll at £50 per month but with no requirements for him to undertake any work. However, Mr Corbineau made it clear if reinstated even to that extent then he would seek substantive employment within the Respondent Company. That decision would fall to Mr Fidler to make, certainly he would have a large say in any such decision. That prospect, where each individual had expressed a breakdown in trust and confidence with the other with no obvious prospect of reconciliation, has persuaded me, quite apart from whether there is a substantive role he could take on now or in the near future or whether the Claimant has any contractual right to insist on the same, that it would be inappropriate to order reinstatement. The position might have been otherwise if I had been called upon to determine the precise terms and conditions of the contractual arrangements between the Parties and, for example, I had found that the 2014 variation had effectively amounted to a zero hours contract with a retainer under which no work was expected from the Claimant unless and until he was called upon to perform some suitable role. However, I was not called upon to determine the terms and conditions of the contractual arrangement between the Parties at the time of the 2014 variation and that issue therefore remains at large.

## Consequential Losses

10 One final point needs to be addressed and that is the issue of the Claimant's consequential losses. It appears that there was no Schedule of Loss served by the Claimant in these proceeding though that of course would not prevent him seeking losses that directly flowed from the termination of his employment and were referable to his contact of employment. By way of example had Mr Corbineau the contractual benefit of a motor vehicle, or perhaps health insurance, which he lost by reason of his dismissal then these could have been taken into account. Although Mr Corbineau did not press the point he indicated he had been put to consequential expenditure in terms of air flights between the UK and Australia and similar such ancillary expenditure. In my view such expenditure does not directly relate to the dismissal and are too remote a consequential loss to be recovered within these proceedings for unfair dismissal. The agreed sums by way of a basic award, the loss of income for a twelve-month period following dismissal, the 25% uplift, and the contractual sum in relation to a payment in lieu of notice are all that the Claimant is entitled to recover as financial losses in these proceedings.

**Employment Judge Brook**

**1 March 2018**