



EMPLOYMENT TRIBUNALS

Claimants: 1. Mr D Denton
2. Mr A Gilligan
3. Miss M Toolan

Respondent: Govdata Limited

HELD AT: Liverpool **ON:** 5 March 2018
13 March 2018
(in Chambers)

BEFORE: Employment Judge Shotter

REPRESENTATION:

Claimants: Mr J Searle, Counsel
Respondent: Mr A Famutimi, Consultant

JUDGMENT

The judgment of the Tribunal is as follows:

David Denton – Case No: 2405186/2016

1. The claimant suffered an unlawful deduction of wages for the period 1 July 2016 to 22 July 2016 inclusive in the agreed sum of £2,324.00 net, and the respondent is ordered to pay to the claimant compensation in the sum of £2324.00.
2. The claimant suffered an unlawful deduction of wages in respect of childcare vouchers for the month of June 2016 in the agreed sum of £124.00 and the respondent is ordered to pay to the claimant compensation in the sum of £124.00.

3. The claimant's claim for accrued unpaid expenses during his employment in the sum of £1,020.50 is well-founded, and the respondent is ordered to pay to the claimant £1,020.50.

4. The claimant's wrongful dismissal claim for notice pay is dismissed upon withdrawal.

5. The claimant's claim for childcare vouchers payable in the month of July 2016 is dismissed upon withdrawal.

6. The claimant's claim for unpaid pension contributions in the month of July is well-founded, and the respondent is ordered to pay to the claimant employer contributions in the agreed sum of £22.

Mr A Gilligan – Case No: 2405189/2016

7. The claimant's claim for wrongful dismissal is well-founded, and the respondent is ordered to pay to the claimant one week's contractual pay in the sum of £338.14 net.

8. The claimant's claim for unpaid expenses is well-founded, and the respondent is ordered to pay to the claimant unpaid expenses in the sum of £25.01.

9. The claimant's claim for holiday pay is dismissed upon withdrawal.

Miss M Toolan – Case No: 2405191/2016

10. The claimant's claim for wrongful dismissal is well-founded, and by consent the respondent is ordered to pay to the claimant £518.60 by way of unpaid notice.

11. The claimant's claim for accrued unpaid holiday pay is well-founded, and the respondent is ordered to pay to the claimant the agreed sum of £518.60 net.

12. The claimant's claim for pension contributions is not well-founded and is dismissed.

13. The claimant was provided with a statement of terms and conditions of employment in accordance with section 1 of the Employment Rights Act 1996 as amended.

REASONS

1. By a claim form received 22 November 2016 (ACAS early conciliation certificate dated 22 September 2016) the first claimant, David Denton (DOB 19 May 1969, whose continuous employment was 1 December 2015 to 19 August 2016) brought claims for notice pay, holiday pay, arrears of pay and other payments. In addition, five claimants also brought similar claims, including Mr Gilligan and Miss Toolan.

2. In the particulars of claim at paragraph 3 it was pleaded that each claimant, with the exception of the first claimant, being David Denton, was given a staff handbook on commencing their employment with the respondent. The claimants rely on the staff handbook as a contractual document. It was therefore pleaded that Maria Toolan was given a staff handbook.

3. The respondent disputed the claimants' claims and having been granted an extension of time to submit the ET3 it was finally submitted on 17 January 2017, the original date of submission being 22 December 2016. In short, the respondent had time to prepare its defence, and it is notable that the following was pleaded –

- (1) With reference to David Denton, it was maintained his expenses were fabricated and he was not entitled to claim wages. It was denied David Denton had worked the hours he claimed, and alleged he “purposely” took business from the respondent whilst employed and paid by the respondent, with the intention to put the respondent out of business.
- (2) With reference to Andrew Gilligan, it was maintained he had been “fired” for gross misconduct and “under the legal principle ex tupti causa non oritur centric” was entitled to no money as he was working against the respondent and under criminal investigation for fraud concerning apprenticeship claims from ex employees. It was also alleged that after his employment finished Andrew Gilligan fraudulently signed into business bank accounts.
- (3) With reference to Marie Toolan, it was denied she was entitled to her claim. Gross misconduct was alleged and involvement to cause harm and loss to the respondent with the intention of putting it out of business.

4. During the course of this action the claimants submitted Schedules of Loss. In respect of Marie Toolan's Schedule of Loss it is notable in respect of pension contributions they were described them as “negligible,” Marie Toolan maintaining the respondent had failed to pay into employer contributions for two months seeking zero damages. There is no claim that the respondent failed to provide her with a statement of terms and conditions of employment in accordance with section 1 of the Employment Rights Act 1996.

5. This is a liability hearing which followed the preliminary hearing held on 6 December 2017 when various judgments were made. At the preliminary hearing the issues concerning the individual claimants were clarified as follows –

Mr Denton

- (1) Whether or not the respondent was entitled contractually not to pay Mr Denton his notice pay i.e. was he in fundamental breach of contract as a result of act(s) of gross misconduct..
- (2) With reference to the claim for expenses, were they incurred during the course of the claimant's business dealings on behalf of the

respondent? If so, were they properly incurred? If so, is Mr Denton contractually entitled to reimbursement of some or all the expenses he is claiming?

- (3) The childcare voucher claim was resolved during the course of the parties giving evidence, and there is no need for the Tribunal to address the issues in relation to the childcare vouchers salary sacrifice scheme.
- (4) With reference to the claim for pension contributions, the claimant's unlawful deduction of wages claim for July's salary having been conceded towards the end of the evidence given on behalf of the respondent, there is no need to deal with the unlawful deduction of wages issue, pension contribution and the childcare voucher salary sacrifice for the month of July.

Andrew Gilligan

- (5) With reference to Andrew Gilligan's claim for expenses in the sum of £50, the issues are identical to those set out in relation to David Denton's claim for expenses as above.
- (6) With reference to the wrongful dismissal claim, the issues are identical to those set out above in relation to David Denton. The key issue is whether the respondent was entitled to dismiss Andrew Gilligan without notice by reason of his alleged fraudulent behaviour.
- (7) Finally, with reference to the bank charges, the issue is whether or not those charges were a result of the respondent's failure to pay Andrew Gilligan and whether the losses are attributable to the action taken by the respondent.

Marie Toolan

- (8) With reference to Marie Toolan there is no need for the Tribunal to deal with the unpaid holiday due, given the respondent's concession that Miss Toolan was owed £518.60 net. There was also no requirement for the Tribunal to deal with the wrongful dismissal claim, given the respondent's concession that the claimant was owed £518.60 net by way of unpaid notice.
- (9) With reference to the pension claim, the issue appears to be whether or not the claimant applied to take part in the respondent's pension scheme and if so, is there outstanding pension contributions payable by the respondent?
- (10) With reference to the respondent's alleged failure to provide Marie Toolan with a statement of terms and conditions of employment, the issue is a straightforward one – was she provided with a statement of terms and conditions of employment or not?

Evidence

6. The Tribunal heard oral evidence from the claimants on their own account, and considered the written witness statements. With reference to Marie Toolan it noted at paragraph 3 of the written statement that she confirmed a staff handbook had been provided, but not a contract of employment. The Tribunal did not find Marie Toolan a credible witness on the issue as to whether or not a statement of terms and conditions of employment had been provided. The contemporaneous documentation did not assist the Tribunal who accepted Miss Toolan was not a signatory to the form allegedly comprising the last page of a statement of terms and conditions of employment. The Tribunal did however accept the witness evidence of Marie Toolan that she had been sent an email with a PDF document which she took to include details of company benefits, but did not read. On the balance of probabilities, the Tribunal found in favour of the respondent that a statement of terms and conditions of employment had been provided to Marie Toolan which she did not read and thus did not appreciate that they had been sent.

7. With reference to the evidence of David Denton, the Tribunal preferred his evidence to that of Christian Hugo when it came to the conflicts in the evidence as to whether or not the expenses claimed had been incurred. Mr Denton relied upon evidence which linked his individual expenses claim with his diary, calendar entries, emails and receipts. On the question of expenses Mr Hugo was contradictory and disingenuous. He gave oral evidence that the respondent had a company handbook that dealt with expenses, stating they were “slap bang” in the middle of the Company Handbook, but when he was taken to them by Mr Searle, acting on behalf of Mr Denton, the policy was nowhere to be seen. When this was pointed out to him his reaction was “let’s move on”. Mr Hugo maintained that Mr Gilligan dealt with “every bit of train travel” booking and yet this was never put to Mr Gilligan or David Denton in cross examination. There was no dispute by the respondent that David Denton’s expenses mathematical calculation was totalled correctly; the issue lay with the individual amounts claimed, which Mr Hugo argued, were unjustifiable.

8. Turning to the individual expenses, Mr Hugo did not dispute the mathematics of the total claimed, and he accepted that he had attended meetings with the claimant and others i.e. the meeting in Solihull which gave rise to the train ticket claim of £202.10 and the mileage of £35.

9. In response to expenses claims being put to him, Mr Hugo’s answer was had the claimant “bothered following the procedure I’d have paid out train tickets and petrol. Duplicitous, play fair, you’d have got paid”. He alleged the claimant had a “façade of honesty, was deeply Machiavellian and very calculating”.

10. It appears that Mr Hugo disputed the amounts claimed i.e. the payment to the notary public was properly incurred, but Mr Hugo could have got it cheaper elsewhere in a different part of the country. He would have paid £50 travel, not £200. He would not have paid for a taxi, he would have arranged for the claimant to have been picked up. In relation to the issue of the taxi, during cross examination by Mr Searle Mr Hugo referred to counsel as a “barmpot”, maintaining it would have been cheaper to “pick up the claimant” than for him to get a taxi. In short, Mr Hugo’s

evidence was most unsatisfactory, and the Tribunal preferred on the balance of probabilities that of David Denton, to the effect that the expenses had been properly and reasonably incurred, and were payable by the respondent.

11. Turning to Andrew Gilligan, the Tribunal found Mr Gilligan to be a credible witness and preferred his evidence to that of Mr Hugo on the question of gross misconduct. The Tribunal has dealt with this below in its findings of fact. With reference to the claim for expenses, the Tribunal accepted on the balance of probabilities the claimant's evidence that he had incurred a cost on behalf of the respondent when he purchased a cable from Maplin, and the invoice together with his expenses claim was with the company. On the balance of probabilities the Tribunal preferred the evidence of Kelly Hugo as to whether the claimant was owed £25 cash or not, accepting that she had paid him £30 cash after he had placed a personal item advertising a housekeeper. Kelly Hugo's evidence on this issue, which was that she had paid £30 as opposed to £28, was believable, and it may be that Mr Gilligan had forgotten when the repayment was made. The Tribunal also accepted, on the balance of probabilities, Andrew Gilligan, incurred overdraft bank charges supported by his bank statements, directly as a result of not being paid salary due and owing from 1 to 28 September 2016.

12. The Tribunal was referred to two bundles of documents, together with the witness statements. It also took into account oral submissions presented by the parties, which the Tribunal does not intend to repeat, but has attempted to incorporate the points made within the body of this Judgment with Reasons.

13. With reference to those witnesses who were not called but who provided witness statements, namely Christine Gilligan and Adam Hobson on behalf of Andrew Gilligan, as their evidence could not be tested on cross examination and had little relevance to the issues to be decided by the Tribunal, it was given no weight.

The Facts

14. The respondent is a company providing market intelligence reporting services to public sector business. Christian Hugo is the Managing Director and CEO, and Kelly Hugo, his wife, the Commercial Director.

15. David Denton worked for the respondent as an employee between 1 December 2015 and 19 August 2016 in the role of Director of Operations and Service Delivery. Contrary to Mr Hugo's oral evidence, Mr Denton did not start work in June 2016. Christian Hugo maintained "he didn't start in December, he started in June 2016, and he was a consultant for six months" further undermining his credibility.

16. David Denton had previously worked for the respondent under a contract through his own company, Denton IT Consultancy Limited, from June 2015 to November 2015, and it was whilst working under that contract Christian Hugo offered him a full-time position that commenced on 1 December 2015. Christian Hugo was well aware that the claimant did not commence his employment in June 2016, and the Tribunal found he was an inaccurate historian in relation to this and other evidence given during the liability hearing.

17. David Denton was based from home, and this gave rise to Kelly Hugo's belief from 1 December 2015 (she conceded that David Denton was an employee as of this date) that he did not work a sufficient number of hours. David Denton's evidence is to the contrary. He referenced working late into the evening. There were no timesheets or any agreement that he work a set number of hours during the working day. This is by the way, save for Kelly Hugo's evidence which resulted in the respondent conceding an unlawful deduction of wages had taken place, in that it was her belief David Denton worked an insufficient number of hours from December 2015 and that is why he was not paid in June 2016, because he was claiming wages to which he was not entitled due to the fact that he had been overpaid from December.

18. It was conceded the respondent should have paid David Denton £2,324.00 net, employer's pension contributions of £22 and childcare vouchers for June 2016 in the sum of £124.00. The Tribunal gave judgment accordingly, noting that the concession concerning the unlawful deduction of wages was made late in the afternoon. It would have been clear to the respondent, had they addressed their minds properly to the issues in this case, and that there was no defence to the unlawful deduction of wages.

19. Andrew Gilligan commenced his employment with the respondent as Senior Administrator on 1 December 2015, and then Finance Manager from 1 May 2016 until his resignation on 28 September 2016. Andrew Gilligan assisted David Denton, and he was responsible for a number of matters, including HR, finance, recruitment and had access to the respondent's bank account as part of his duties. The Tribunal did not find Andrew Gilligan's accessing the respondent's accounts/computer during this notice period, could reasonably have amount to gross misconduct as maintained by Mr Hugo.

20. Marie Toolan worked for the respondent from 16 May 2016 as marketing Manager until she was dismissed on 28 July 2016 without notice or holiday pay.

21. Marie Toolan was sent a letter dated 26 April 2016 by Kelly Pendrill, Commercial Director, confirming the offer, setting out the remuneration package and working hours. The letter referred to "terms and conditions of your employment will be provided in the formal employment contract that you will be asked to sign upon taking up your duties".

22. The Tribunal were taken to a document on page 35B alleging signed by Marie Toolan, which she denied. There is an undistinguishable signature made on 17 May 2016 above that of Andrew Gilligan, who cannot recall the claimant signing the document. On the balance of probabilities, having considered other signatures made by Marie Toolan set out within the bundle, the Tribunal accepted her evidence that the signature was not hers. However, this did not assist Marie Toolan on the issue as to whether or not she was provided with a statement of terms and conditions of employment given her evidence that she was emailed a Company Handbook, which the claimants all accept had contractual effect.

23. The Tribunal finds it is sufficient for the respondent to have emailed Marie Toolan with the Company Handbook in a PDF format, and the fact that Miss Toolan

decided not to read the document is irrelevant. She had been provided with what was essentially a statement of terms and conditions of employment.

24. Some time after she commenced her employment, Marie Toolan discussed with Christian Hugo the possibility of joining the respondent's pension. She did not make a formal application, nothing was put in place. Marie Toolan did not make pension contributions herself, and nor did the respondent. Accordingly, there is no evidence on which the Tribunal could find in Marie Toolan's favour, the burden being on her to establish that the respondent's pension contributions were due and owing, and she has failed to discharge that burden.

25. The Staff Handbook on the first page states as follows:

"This document forms a major part of your contract of employment and as such you should be fully aware of the contents and their relevance to your employment by Govdata Limited. By signing the statement of main terms of employment you are undertaking to be bound by the terms contained within..."

26. The staff handbook does not provide a procedure for claiming expenses. It does, however, provide a disciplinary and grievance procedure which appears to comply with the ACAS Code of Practice. For example, at paragraph 4.2 it is stated, "No disciplinary action shall be taken against an employee until a careful investigation has been made", and at paragraph 5 there is a right to appeal. At paragraph 3, disciplinary procedure notes for guidance, there is reference to gross misconduct being "serious acts of insubordination". At 2.4 there is a reference to "at every stage in the procedure the employee will be informed of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made". This procedure is relevant as there was a total lack of process when it came to the disciplinary allegations raised as set out below.

27. During his employment with the respondent David Denton incurred a number of work related expenses set out within a spreadsheet in the agreed bundle, which the Tribunal does not intend to repeat. The Tribunal found on the balance of probabilities that it preferred David Denton's evidence compared to that of Christian Hugo, to the effect that Christian Hugo had confirmed he would reimburse the claimant and his wife for his travel costs in attending the office Christmas party on 18 and 19 December 2015. It is undisputed the Christmas party took place, and the claimant travelled to it (although Christian Hugo has attempted to argue that the claimant should not be paid as he went to see relatives in Liverpool). The receipt reveals a journey, Basingstoke to Manchester Piccadilly, at the cost of £207.20. The train cost was properly payable by the respondent incurred during the course of business (albeit to a Christmas party) and is legitimate given that only half of the expense has been claimed, that relating to David Denton's wife's travel.

28. On 21 January 2016 David Denton incurred car mileage travel costs at 40 pence per mile, incurred when he met a prospective G-Cloud collaborator with Christian Hugo.

29. The claimant's claims for travel to Warrington Head Office for three days including three taxi fares to and from stations and a train fare, all evidenced by receipts, were incurred. There is no dispute that the claimant travelled to Head Office from Basingstoke train station from 1 to 3 February 2016. The same point applies to the claimant travelling on 4 February 2016 by train for a meeting with Christian Hugo at the Adam Smith Institute, evidencing a taxi receipt and train journey receipt for this trip. It is not disputed that the meeting took place, attended by the claimant, and thus he would have had to travel.

30. On 23 March 2016 the claimant incurred notary public fees, postage fees and car mileage. It is not disputed a certificate was sent to America by the claimant: the dispute is the cost of the notary public fees and the postage. The claimant clarified that the postage was high owing to the need to expedite the sending of the documentation. The notary public fees amounted to £95 with postage of £52. The notary public fees, postage fees and car mileage were properly and reasonably incurred by David Denton during the course of his employment and so the Tribunal found.

31. The claimant attended the respondent's Head Office for three days between 4 and 6 April 2016, incurring train travel and taxi fares evidenced in receipts set out within the bundle. The train fare cost £202.10 and it is not credible that the claimant could have travelled at £50 as alleged by Christian Hugo, and no proof of this was adduced Christian Hugo relying on his less than credible evidence..

32. The claimant travelled by train on 29 April 2016 for a client meeting that undisputedly took place. The train receipt and taxi receipt of £202.10 and £12 respectively were incurred during the proper course of business.

33. On 17 May 2016 the claimant drove to a client meeting in Farnborough, a 38 mile return journey at a cost of 40 pence per mile. It was not disputed that this meeting took place.

34. Finally, between 24 and 26 May 2016 David Denton travelled by train and taxi to Warrington Office and then on to the Cheshire Wirral Partnership NHS Foundation Trust, staying at Christian Hugo's property during the visit, to which he travelled by taxi. It is not disputed that the meeting took place, and nor is it disputed David Denton stayed at Mr and Mrs Hugo's home, What is in dispute is the amounts claimed, and there was no evidence before the Tribunal to show that these were unreasonable. In short, the respondent's issue with David Denton claiming his expenses is with the fact that he never submitted them before his resignation. In his written statement Christian Hugo confirmed that had he submitted the expenses, they would have been rejected in contrast to his oral evidence in which he stated that they would have been paid, albeit different amounts i.e. a £50 train fare instead of £202.

35. It is not disputed the claimant had a number of conversations with Christian Hugo and Andrew Gilligan about his expenses, and the Tribunal prefers David Denton's evidence to that of Christian Hugo in that he was told in March and April 2016 "cash flow was tight" and he agreed to hold off submitting the expenses until things improved". It is also not disputed that Andrew Gilligan, as Finance Manager,

advised David Denton to put the claim in straightaway and he would action it, and yet no claim was in place. The Tribunal accepts David Denton's evidence that he was busy, then he was ill, and it was not financially pressing for him to submit the expenses claim.

36. David Denton was provided with a contract of employment six months after starting as a full-time employee on 15 June 2016.

37. For a number of reasons, which the Tribunal does not intend to go into, David Denton spoke with Christian Hugo on 21 July 2016 concerning his resignation. David Denton had a difficult relationship with Christian Hugo, who he found to be aggressive, and he resigned in writing on 22 July 2016 offering to work his notice until 19 August. David Denton was not paid his final salary, and there were allegations of alleged misconduct including theft and criminal activity.

38. Andrew Gilligan was aware that Marie Toolan and David Denton had left the respondent's employment and the fact that their salary/notice pay was outstanding. He was unhappy with the treatment of staff, a number of who had left or was in the process of leaving the business, the experience being that once an employee resigned they were asked to leave immediately and notice pay was not paid. Andrew Gilligan decided to resign due to Christian Hugo's "overly aggressive nature" which he had previously raised with Kelly Hugo.

39. The BT bill for telephone and internet had been outstanding from July 2016 which was the responsibility of Mr Hugo to pay. On behalf of the respondent it was argued that Andrew Gilligan had been responsible for bringing the outstanding payment to Christian Hugo's attention, and he had failed to do so which was an act of gross misconduct enabling it to summarily dismiss. It was not disputed by the respondent that BT had sent nine reminders and Andrew Gilligan had included the BT bills within a weekly report. The Tribunal accepted Andrew Gilligan's evidence that it was not his responsibility to pay the bill, it was common for outstanding payments to remain on the weekly report for a substantial period of time. When Christian Hugo found that BT had disconnected the telephone and internet, he swore aggressively at Andrew Gilligan and informed his co-workers that it was Andrew Gilligan's fault. As a result of Christian Hugo's behaviour, on 28 September 2016 Andrew Gilligan approached Kelly Hugo who in oral evidence conceded Andrew Gilligan had resigned and offered to work his notice. Matters were left that Kelly Hugo would speak to her husband, who was away. Andrew Gilligan was concerned that his work environment was not safe during the notice period, and whilst he was waiting to hear from Kelly Hugo regarding working his notice a number of text communications were received from Christian Hugo. On 27 September 2016 Andrew Gilligan emailed Kelly Hugo:

"He's [a reference to Christian Hugo] in with delivery. He wants to kill me he said. Trying my best."

40. In a later text message Andrew Gilligan wrote:

"I'm always stressed coming in everyday. I work my bollocks off. I'm not sleeping. Always stressed and getting emotional as well. Not good for you, is it? Especially when called a dozy cunt and told he wants to kill me."

41. Kelly Hugo responded:

"Once this sorted it be fine. Just think get it back on like now."

This was a reference to the BT disconnection.

42. On 28 September 2016 Christian Hugo texted Andrew Gilligan as follows:

"You wanna shit stir with my wife and try and deflect the blame from yourself u little shit. William Hill haven't paid the money back yet, eh. You fucking smart arse. Really...forgot to mention that it was only because they hadn't had my documents u little shit. You're not a man you're a backstabbing little shit."

43. The messages followed in a similar vein. One sent 16:42 on 28 September 2016, Christian Hugo texting:

"Answer your phone u spineless little bastard. How dare you lump your fuck ups on Kelly."

44. At 20:20 he texted:

"Either answer your phone or I will knock on your door..."

45. Later on 28 September Christian Hugo texted Andrew Gilligan alleging that he had stolen financial data and would end up in "lots of trouble".

46. On Friday 30 September Kelly Hugo texted the claimant, stating:

"We just going through Xero on an have screenshots of your logging on Wednesday an yesterday Andy. You need to ring the office and explain what and why you was doing this when you no longer work for Govdata and this is personal financial information... Christian is very serious about contacting police today...Here is no reason for it, no-one told you to use Xero or outbanking information especially as you left employment Wednesday...You need to ring Christian now."

47. The claimant was sent a letter dated 30 September 2016 from Christian Hugo stating the following:

"As from 28 September your employment with Govdata has been terminated. The reason for the termination is gross misconduct due to the following –

(1) *Walking out of office in middle of day without informing anyone...*

(2) *After receiving notice and overdue letters for payment from BT from June 2016 no payment was made to them...*

- (3) *For then paying the bill without checking that the lines would go straight back on...*
- (4) *Causing loss of business on income as customers and sales teams were unable to carry on their duties without huge disturbances...*
- (5) *Logging onto Xero at 9.07pm, 10.05pm and 10.48pm on Tuesday 27th. There had been no permission whatsoever for you to access out of working hours and also logging into Xero on Thursday 29th at 8.21am and 8.45am and the potential theft of financial data which can be proved by screenshots.*
- (6) *By not contacting the CEO to explain what was happening and why you left the office in such disarray and lied about the date it could be coming back on and then not contacting anyone else about you walking out apart from Kelly Hugo, who is currently off sick...*
- (7) *When questioned about theft of financial data you lied about the reason you: went on for a password from Emily although this is a blatant lie...*
- (8) *Putting the personal interests of your relatives ahead of the company and your employer's commercial interests and attempting the cause [sic] the company damage in doing so.*

As your reason for termination is gross misconduct then no notice is needed."

48. The Tribunal finds as a matter of fact that Andrew Gilligan resigned on 28 September 2016 with a view to working one months notice. His employment was terminated during the notice period by a letter dated 30 September 2016 which took effect when Andrew Gilligan received it on 1 October 2016. The effective date of termination was 1 October 2016. Andrew Gilligan was not paid salary for the month of September 2016, which he had worked, and on 12 December 2016 judgment was entered in his favour for £913.01, promulgated 3 January 2018. Andrew Gilligan was also not paid his notice pay, in the sum of £338.14 net as set out in this judgment. Cumulatively, it is a substantial amount of money and the Tribunal accepted, taking into account the contemporaneous bank statements, that Andrew Gilligan had incurred overdraft bank charges amounting to £459.00 directly as a result of the non-payment of wages from 30 September 2016 to 29 June 2017.

49. In direct contrast to the respondent's disciplinary procedure which provided for investigation, a hearing and the right to appeal, Andrew Gilligan was dismissed without any of this taking place. The Tribunal accepted on the balance of probabilities Andrew Gilligan's explanation that the Xero log in, the Kelly Hugo password and the other allegations set out within the 30 September 2016 aimed at avoiding any payments to be made post termination.

50. Andrew Gilligan was cross examined on the allegation concerning putting family interests before that of the respondent in the relevant documents in the bundle. From those documents it appears that on 12 April 2016 Christine Sherlock

(who became Christine Gilligan when she married Andrew Gilligan) emailed Andrew Gilligan:

“Can you do me a favour and send me an email with proof that Chloe (an employee in the respondent business) has left the business due to poor attendance. Can you say she left the business end of February? I know she left Jan but this is when we terminated her apprenticeship after not being able to get hold of her for a few weeks. We just need evidence up to February to satisfy the STA.”

51. Andrew Gilligan responded almost immediately:

“I can do but it won’t add up with the RTI records as our accountant would have noted her and date when we did end it with them.”

52. There was no evidence that Andrew Gilligan had changed the dates requested, and the Tribunal accepts that he had not, and accordingly there could not have been an act of gross misconduct. Having considered all of the evidence, the Tribunal took the view that Andrew Gilligan was not in breach of contract and he was entitled to be paid his notice pay in the agreed sum.

53. There was no argument raised by the respondent as to whether, after a certain point, the claimant’s over draft losses become too remote from the original underpayment for the respondent to continue to remain liable i.e. the chain of causation has been broken, and the Tribunal in any event, was not provided with any evidence to this effect by any party. From the bank statements, it appeared the £459.00 over draft fees were directly caused by the non-payment of wages and notice pay; accordingly, it is just and equitable to order the re-payment of overdraft fees.

54. In conclusion:

David Denton – Case No: 2405186/2016

14. The claimant suffered an unlawful deduction of wages for the period 1 July 2016 to 22 July 2016 inclusive in the agreed sum of £2,324.00 net, and the respondent is ordered to pay to the claimant compensation in the sum of £2324.00.

15. The claimant suffered an unlawful deduction of wages in respect of childcare vouchers for the month of June 2016 in the agreed sum of £124.00 and the respondent is ordered to pay to the claimant compensation in the sum of £124.00.

16. The claimant's claim for accrued unpaid expenses during his employment in the sum of £1,020.50 is well-founded, and the respondent is ordered to pay to the claimant £1,020.50.

17. The claimant's wrongful dismissal claim for notice pay is dismissed upon withdrawal.

18. The claimant's claim for childcare vouchers payable in the month of July 2016 is dismissed upon withdrawal.

19. The claimant's claim for unpaid pension contributions in the month of July is well-founded, and the respondent is ordered to pay to the claimant employer contributions in the agreed sum of £22.

Mr A Gilligan – Case No: 2405189/2016

20. The claimant's claim for wrongful dismissal is well-founded, and the respondent is ordered to pay to the claimant one week's contractual pay in the sum of £338.14 net.

21. The claimant's claim for unpaid expenses is well-founded, and the respondent is ordered to pay to the claimant unpaid expenses in the sum of £25.01.

22. The claimant's claim for overdraft fees is well founded, and the respondent is ordered to pay £459.00 to the claimant.

23. The claimant's claim for holiday pay is dismissed upon withdrawal.

Miss M Toolan – Case No: 2405191/2016

24. The claimant's claim for wrongful dismissal is well-founded, and by consent the respondent is ordered to pay to the claimant £518.60 by way of unpaid notice.

25. The claimant's claim for accrued unpaid holiday pay is well-founded, and the respondent is ordered to pay to the claimant the agreed sum of £518.60 net.

26. The claimant's claim for pension contributions is not well-founded and is dismissed.

27. The claimant was provided with a statement of terms and conditions of employment in accordance with section 1 of the Employment Rights Act 1996 as amended.

16.3.18

Employment Judge Shotter

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

22 March 2018

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: 2405186/2016 & others

Name of cases: Mr D Denton & others v Govdata Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 22 March 2018

"the calculation day" is: 23 March 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office