



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr K Tullet

**Respondent**  
Placeflow Limited

and

Held at Ashford on 24 July 2018

**Representation**

**Claimant:**

In Person

**Respondent:**

Ms Y. Montaz, Consultant

**Employment Judge** Harrington

## **REASONS FOR JUDGMENT OF 24 JULY 2018**

### **Introduction**

- 1 These written reasons for the Tribunal judgment dated 24 July 2018 are provided pursuant to a request from the Respondent dated 10 September 2018.
- 2 The Claimant, Mr Tullet, brought complaints against the Respondent, Placeflow Limited, claiming unfair dismissal, breach of contract and a redundancy payment. At the hearing on 24 July 2018 the Claimant represented himself and the Respondent was represented by Ms Montaz, a Consultant.

### **Adjournment Application**

- 3 At the commencement of the full merits hearing, Ms Montaz made an application to adjourn. After hearing submissions from both Ms Montaz and the Claimant, I refused the Respondent's application. My reasons for refusing the application, as stated at the hearing, were as follows:
- 4 This case was listed for a full merits hearing today. The Respondent makes an application to adjourn the hearing. The relevant chronology to that application may be stated briefly. By a letter from the Tribunal on 12 March 2018, the case was listed for 12 June 2018 and a number of directions were made, so as to ensure the parties had properly prepared the case for it to be determined on that day.

- 5 Following the Tribunal's directions, there was some inactivity on the part of the Respondent which caused the Claimant to write to the Tribunal by an email dated 22 May 2018. The Respondent had failed to submit any witness statements on or before the 21 May 2018.
- 6 Unfortunately, in the event, the case had to be adjourned from 12 June 2018 because of lack of judicial resource.
- 7 By an email on 17 June 2018 from Mr Adrian Harling of AH Business Consultants Ltd, attaching a letter sent on behalf of the Respondent, a hearing date after 23 September 2018 was requested by the Respondent. Reference was made to the fact that its principal witness had to attend various hospital appointments, that the Respondent is a small company and was struggling with both attending the Tribunal and annual leave commitments and that a close family member of the principal witness is receiving end of life care. Subsequently the Tribunal listed the case for today, 24 July 2018. Notification of this hearing date was sent to the parties on 28 June 2018.
- 8 On 18 July 2018 Peninsula informed the Tribunal that they were now instructed by the Respondent. On the following day, they made an application to adjourn this hearing. Reference was made to the fact that there had been no preparation and many points set out in the earlier letter sent on 17 June 2018 were repeated.
- 9 The Claimant's response to the application is that he wishes the hearing to go ahead. He has prepared as best he is able and refers to the ongoing stress of the case. His wife is also terminally ill which adds to his desire to have this matter concluded.
- 10 Ms Montaz asks for an adjournment. She apparently has little, if any, instructions on the issues in the case and would be in great difficulty defending the matter if the case proceeded today. She has referred me to an email from Mr Nicholls sent yesterday. It refers to him being unlikely to attend today and references a hope that things might change during the day to enable him to attend. There is reference to 'prostate problems' and attached is a letter inviting Mr Nicholls to a hospital clinic appointment at the heart failure clinic on 6 June 2018.
- 11 I have considered the application with reference to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1. In particular I have had regard to the overriding objective which requires me to deal with cases in ways which are proportionate to the complexity and importance of the issues and to avoid delay so far as is compatible with proper consideration of the issues. I have also considered the prejudice to the parties in the event that I grant or refuse the adjournment and the detail of the submissions made by both parties. After careful consideration, I do not accept that this case should be adjourned today for the following reasons:

- 12 Both parties had adequate notice of the hearing but the Respondent's application to adjourn was not made until two weeks or so after it had been informed of today's hearing date. Whilst there is some evidence that Mr Nicholls has health difficulties, there is no medical evidence to support the suggestion that he is unable to attend today. There is a lack of clarity over Mr Nicholl's medical conditions and whilst reference has been made to prostate cancer, in Mr Nicholls own email he refers to prostate problems.
- 13 Accordingly, whilst Ms Monza has done her best this morning, I simply do not have sufficient evidence before me to conclude that Mr Nicholls is prevented from attending the tribunal today because of health conditions. Further, and in any event, there would appear to be other people from the Respondent who could have attended and provided relevant evidence to the claims - Mr Taylor is the Managing Director and was involved in all of the pertinent discussions with the Claimant with which this case is concerned. There is absolutely no explanation as to why he cannot be here today.
- 14 I also note that the Respondent's conduct to date does not suggest that they are proactively defending the claims. For example, there has been no apparent preparation of the defence of the claims beyond the provision of an ET3. Ms Montaz could not explain why the Respondent has sat on their hands in terms of disclosure, bundles and statements. Further, I have seen correspondence from the Claimant and the Respondent about a data subject access request. The result of this request being that the Respondent has failed to provide the appropriate documents to the Claimant despite the fact that he sent a postal order with his request, as acknowledged by the Respondent. What is particularly strange about this issue, is that whilst acknowledging in earlier correspondence that a cheque was sent by the Claimant, the Respondent later says it cannot comply with the request for data because it has not received any payment.
- 15 In summary, the Respondent's application to adjourn is in the context of there being significant inactivity on the part of the Respondent without a cogent explanation for that inactivity.
- 16 In all of the circumstances, I am satisfied that the case should proceed today and I refuse the Respondent's request for an adjournment. I shall, of course, allow Ms Montaz an opportunity to take further instructions and to consider how she might best proceed with the Respondent's defence of the claims today.

### **The Claims**

- 17 Following the Respondent's application for an adjournment being refused, the hearing continued. I heard oral evidence from the Claimant and both parties made closing submissions. Following a further

opportunity to consider the entirety of the evidence and the submissions made, I delivered the judgment set out below.

### **Conclusions**

- 18 I proceeded to hear this case today after refusing an application from the Respondent to adjourn the hearing. In hearing this matter I have been referred to two bundles of documents – a bundle from the Respondent and a bundle from the Claimant. I also heard oral evidence from the Claimant and short closing submissions from both parties.
- 19 Ms Montaz confirmed to the Tribunal that it was conceded by the Respondent that the Claimant had been procedurally unfairly dismissed.
- 20 As identified this morning, the Claimant claims the following amounts:
- |    |                             |           |
|----|-----------------------------|-----------|
| a) | 3 months notice pay         | £9,914.67 |
| b) | redundancy pay              | £3,461.53 |
| c) | 2 days holiday & 2 days pay | £660.97   |
| d) | pension contributions       | £85.32    |
- 21 Ms Montaz helpfully addressed me on the figures. In summary, the Respondent concedes that the Claimant is owed the last three figures set out above – namely: redundancy pay, 2 days holiday pay and 2 days pay and pension contributions. This amounts to £4,207.82.
- 22 It was agreed by the parties that the remaining issue is notice pay. Ms Montaz accepts that the Claimant is owed notice pay but submits that it should be 3 weeks pay. This is the statutory amount. The Claimant however refers to a contract of employment signed by him and Mr Denton on 4 January 2016. This contract states that the notice period is 3 months.
- 23 Ms Montaz submits that, on the balance of probabilities, the contract is not a genuine one and that it was created after the event to support the Claimant's claim for 3 months notice pay. The support for this suggestion is the Claimant's reference within his ET1 to there being a verbal agreement for 3 months notice pay and the fact that the Claimant did not immediately provide a signed copy of the contract to the Respondent when they asked for one.
- 24 The Respondent asks me to find that Mr Tullett and Mr Denton created a contract in order to support his claim for 3 months notice pay and that they signed this document fraudulently dating it in January 2016. This is a bold submission with their being no positive evidence that this occurred. In fact, Mr Tullett absolute rejects the suggestion.

- 25 I have carefully considered the evidence of Mr Tullett. I find him to be a straightforward witness and a witness of truth. He gave clear and unambiguous answers to a series of questions. I am satisfied that the contract he refers to was a genuine contract in place from 2016 onwards. For the avoidance of doubt, I entirely reject the contention that the contract was made up and created to support the Claimant's claim. The Claimant claims that his contract has been breached by a failure to pay notice pay. I am satisfied that there was a breach of contract and that the Claimant is entitled to 3 months notice pay in damages.
- 26 Ms Montaz has submitted that this entitlement should be reduced to take account of the fact that if a fair process had been followed, the Claimant would have been paid for say a further 4 weeks. However in my view this argument confuses the complaint of unfair dismissal and the complaint of breach of contract. The Claimant is entitled to his notice pay as the remedy for his claim of breach of contract subject to any arguments of a failure to mitigate. No such arguments have been raised by the Respondent. The Claimant has not claimed a compensatory award beyond the earlier agreed amounts and therefore a consideration of any arguments as to what would have happened if a fair process had been followed is unnecessary.
- 27 Accordingly it is my judgment that the Claimant was unfairly dismissed and that he was dismissed in breach of contract. The Respondent agrees he is owed and shall pay the Claimant monies in respect of redundancy pay, outstanding pay including holiday pay and pension contributions, in the total sum of £4,207.82.
- 28 In addition, the Respondent shall pay the Claimant 3 months notice pay. This is net rather than a gross figure, as the measure of damages for a breach of contract is the sum which the employer would have had to pay in order to bring the contract to an end lawfully. This is £7,502.07. The total sum due is therefore £11,709.89.

Employment Judge Harrington  
Date: 19 October 2018