



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Spencer  
**Respondent:** Impact Digital Press Limited (In Voluntary Liquidation)

## AT A HEARING

**Heard at:** Leeds                      **On:** 4<sup>th</sup> December 2018  
**Before:** Employment Judge Lancaster

### Representation

**Claimant:** Mr B Frew, counsel  
**Respondent:** No appearance entered and did not attend

## JUDGMENT

1. The Claimant was unfairly and wrongfully dismissed.
2. The Respondent is ordered to pay to the Claimant compensation as follows:

2.1 Basic award for unfair dismissal (calculated at 26 weeks' pay capped at £489.00)	£12,714.00
2.2 Loss of statutory rights	£450.00
2.3 Damages of 11 ½ weeks outstanding pay in lieu of notice (at £504.60 net per week calculated on £638.73 gross per week including average commission)	£5,802.90
3. The Respondent has not paid the gross sum properly due under the contract by way of unpaid commission at the date of termination (£4,636.18) and is ordered to pay damages in the net sum of £3,662.58.

## REASONS

1. The Respondent did not attend and the case was heard with unchallenged evidence given by the Claimant.
2. I accept the average figure for weekly commission taken from the pay slips at £311.73 which is to be added to the Claimant's salary of £327.00 per week in order to ascertain her weekly pay.
3. The Claimant was constructively dismissed. The Respondent's actions constituted a breach of the implied term as to trust and confidence. There is no fair reason for that dismissal.
4. She gave ½ week's notice but is entitled to a minimum of 12 weeks.

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5. Her gross weekly pay is £638.73. From her pay slips the deductions for tax and national insurance can be calculated at 21 per cent of her gross pay. Applying that same percentage reduction gives a net figure for a week's pay of £504.60.
6. The outstanding 11 ½ weeks pay in lieu of notice at that net rate is £5,802.90. As the employment would have ceased in any event on 9<sup>th</sup> March when the Respondent ceased trading and all remaining employees were dismissed any compensatory claim for loss of earnings flowing from the dismissal is subsumed in this award of damages for breach of contract.
7. The minutes of meetings record that the Respondent accepted that not all the commission due to the Claimant had been paid and there has been no challenge to the assertion in the ET1 that this is properly quantified at £4,636.18 in total.
8. The decision is now amended to reflect the net amount due as damages for the claimed breach of contract, applying the same basis of calculation as in paragraph 5 above, although this was not specified in the oral judgment.

EMPLOYMENT JUDGE LANCASTER

DATE 4<sup>th</sup> December 2018

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