EMPLOYMENT TRIBUNALS

Between:

Claimant: **Mr J Allen**

Respondent: **All Emergency Services Limited**

JUDGMENT ON RECONSIDERATION

It is the judgment of the Tribunal as follows:

1 That the judgment dated 15 October 2018 a copy of which was sent to the parties on 6 December 2018 is revoked;

2 That the Respondent was in breach of contract and the Tribunal **orders** the Respondent to pay damages to the Claimant in the sum of £1,830.

REASONS

1 At the conclusion of the hearing the judgment and reasons for it were given by the Tribunal orally. It is regretted that the Tribunal administration was not able to issue the short judgment dated 15 October 2018 until 6 December 2018. The Claimant then requested written reasons for the judgment. In preparing those reasons I concluded that I had misdirected myself as to the law and notified the parties in accordance with rule 73 of the Employment Tribunals Rules of Procedure 2013 that I was reconsidering the judgment. I have concluded that is not necessary or proportionate for a further hearing to be held.

2 The business of the Respondent is to provide emergency glazing services principally to retail premises. It is a small employer with some 60 employees, but it is of sufficient size to have a dedicated HR person. In section 5 of the claim form ET1 the Claimant stated that he had been employed by the Respondent as Assistant Manager from 14 July until 22 July 2018. In section 8 he ticked the box to indicate that he was making a claim for notice pay, and he added that he was also making a claim of breach of contract. He attached to the claim form what was in effect a witness statement which contained numerous references to Mr Robert Jones, one of the Respondent's directors. Mr Jones did not attend this hearing. At the hearing the Claimant made some adverse comments about the character of Mr Jones which I am ignoring.

3 Evidence for the Respondent was given by Mr Ash Sood, the Respondent's General Manager. That was less than wholly satisfactory as he was not in

a position to challenge much of the evidence given by the Claimant. No application was made on behalf of the Respondent for a postponement.

4 I found the facts as set out below.

5 On 2 July 2018 the Claimant applied to the Respondent for the post of Assistant Manager. I did not have a copy of any advertisement for the post nor of the application. There was an exchange of text messages between the Claimant and Mr Jones on 3 July 2018 and it was agreed that there would be an interview on Saturday 7 July 2018 at 10 am with Mary Aherne of the Respondent.

6 At the interview there was a discussion about days and hours of work. The Claimant would have been expected to work from 8am to 5 pm on weekdays and also on two out of every three Saturdays. There was no discussion on that occasion about salary. The Claimant was expecting to receive a call on the following Monday with the result of the interview. After various reminders by text Mr Jones sent a message on Friday 13 July saying that he would call the Claimant.

7 It was the Claimant's evidence that in that telephone call he was unconditionally offered the position. It was the evidence of Mr Sood that at that stage the intention of Mr Jones was only to invite the Claimant to come and see how the business ran to enable him to find out if he was interested.

8 It was confirmed during the telephone conversation that the salary was £24,500. There was also a discussion between the Claimant and Mr Jones about when the Claimant could start. The Claimant said that he had to give two weeks' notice and Mr Jones asked if that could be reduced to one week.

9 Following the telephone call the Claimant spoke to his then manager and it was ascertained that his contractual notice was in fact one month. After discussions it was agreed that that period be reduced to two weeks, and the Claimant's manager congratulated him on his new appointment. The Claimant then gave notice to terminate his employment.

10 The Claimant informed Mr Jones that his notice period was two weeks making a start date with the Respondent of 30 July 2018. A message was then sent to the Claimant by Mr Jones at some stage during 13 July although exactly when is not clear:

> You can come in tomorrow for a couple of hours and we can show you wot go's on in our office

11 The Claimant replied asking at what time he should come in and he was told 10 am. He stayed until about 12.30 pm finding out about the position. The Claimant was also invited back the following Saturday when he stayed to about 12.30 pm again. On that occasion it was reconfirmed that the Claimant's start date was to be 30 July 2018. On those Saturdays the Claimant was introduced to the staff and found out more about the role.

12 On 22 July 2018 a text was sent to the Claimant in the following terms:

> Unfortunately we cannot offer you a full time job at AES as we need someone with a lot more get up and go with outgoing personality I don't think it would work for you or us sorry

13 And thus the matter came before the Tribunal. The case for the Claimant was simply that there had been a binding contract made on 13 July 2018 which was then broken by the Respondent. The case for the Respondent as articulated by Mr Sood was that the Respondent always follows a formal procedure of issuing a formal offer by letter or email, and that all that had occurred between the Claimant and Mr Jones was part of a normal conversation about the possibility of employment, and that there had not been a concluded contract.

14 In order for there to be a binding contract of employment in these circumstances the terms of employment offered by the employer must be sufficiently clear, and the employee must have accepted them. Further there must have been an intention by both parties that there was a binding contract.

15 I accept the evidence of the Claimant as to what occurred during the first conversation on 13 July. Mr Sood was not in a position to dispute that evidence. Further the suggestion of the Claimant coming in to the Respondent's premises on the following day was made by text message after the conversation had taken place. The visit was not therefore part of preliminary discussions before the offer of employment was made.

16 I find that all the essential elements of an employment contract were discussed either during the initial interview or during that conversation, being the role, salary and hours of work. In my judgment it is not necessary for all other details, such as holiday entitlement and notice periods to be discussed. Employees have in any event minimum entitlements in those respects as a matter of law. Further the start date had also been agreed.

17 At the hearing I placed the burden of proving that both parties intended there to be a binding contract on the Claimant. That, I now consider, was a misdirection as to the law. The correct position is that the burden is on the employer in such circumstances to show that there was no intention to create legal relations, and that burden is heavy.[1] The fact that the Claimant acted in reliance on the discussion with Mr Jones further tilts the scales, if indeed they need further tilting, in favour of the Claimant.

18 By informing the Claimant that he was not to be offered the job I find that the Respondent was in breach of contract. The Claimant sought damages equivalent to one month's pay. There was no evidence before me as to the terms to be included in any written contract relating to notice, or whether there would have been a probationary period. At common law an employee is entitled to receive notice of such length as is reasonable in all the circumstances. In my judgment one month is a reasonable period. The amount has to be determined on the basis of the net amount which the Claimant would have received. Based on a gross salary of £24,500 the net amount is £1,830.

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[1] See *Edwards v. Skyways Ltd* [1864] 1 WLR 349 at 355 although that case involved an agreement between a trade union and the employer.

19 The Claimant also sought payment for the five hours or so on the two Saturdays when he went to the Respondent's premises, and also for travelling expenses of £6. I am unable to conclude that there is any justification for finding that the Claimant is contractually entitled to be paid for the parts of those days when he was at the Claimant's premises. I see those occasions as a wholly voluntary arrangement under which the Claimant visited the Respondent's premises to learn something of the business and meet staff before starting his employment on 30 July. For the same reason the claim for £6 of travelling expenses fails.

20 The Claimant also sought damages for 'undue stress and hassle'. The Tribunal does not have any jurisdiction to make awards in that respect in a claim of this nature.

Employment Judge Baron

18 January 2019