



EMPLOYMENT TRIBUNALS

Claimant: Mr P Haynes

Respondent: Ellison Systems UK Limited

Heard at: Cambridge

On: 19 November 2018

Before: Employment Judge Foxwell (sitting alone)

Appearances

For the Claimant: In person,

For the Respondent: No appearance

JUDGMENT

1. The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £9,919.86.
2. The Respondent has failed to pay the Claimant's holiday entitlement and is ordered to pay the Claimant the gross sum of £2,115.38. The Claimant shall give credit against this sum (but not that at paragraph 1 of this judgment) for any income tax and National Insurance deducted at source by the Respondent and paid to HMRC in accordance with statute.

REASONS

1. The Claimant, Mr Peter Haynes, was recruited to become managing director of the Respondent, Ellison Systems UK Ltd, by his predecessor in this role, Mr Alan Ball. The Claimant took up the post on 12 December 2015 and his employment ended on 13 October 2017.
2. Having gone through early conciliation between 18 December 2017 and 18 January 2018, on 18 February 2018 the Claimant presented claims of breach of contract as to notice and for unpaid holiday pay to the Tribunal. He alleged that he was entitled to 3 months contractual notice of termination which he had not

received. He also alleged that he had accrued 10 days untaken holiday at the date when his employment ended for which he had not been paid.

3. The Respondent filed a Response disputing any contractual entitlement to notice. It asserted that it had not authorised anyone to agree this. The Response was silent on the issue of accrued holiday pay.
4. The claim came before me today for determination. The Claimant attended in person and adduced a written statement from Mr Ball. He had also filed documentary evidence in advance of the hearing. The Respondent did not attend; it has sent no evidence to the Tribunal apart from its Response (which I have considered).
5. It appeared to me that the Claimants account was corroborated by the documents he produced: he showed me an initial offer of employment dated 3 October 2015 signed by Mr Ball; this was silent on the issue of notice but he also produced Mr Ball's email of 12 October 2015 confirming that three months' notice had been agreed; finally, he produced an offer of employment dated 19 November 2015 which also said nothing about notice. I find that Mr Ball, as the then managing director, had actual or ostensible authority to enter into contractual relations on the Respondent's behalf. Accordingly, having regard to these documents and to Mr Ball's written witness statement confirming the agreement, I find that a three month notice period was agreed with the Claimant and that this was a term of his contract despite him not being issued with a formal written contract.
6. I accept the Claimant's evidence that he was dismissed without notice or a payment in lieu of notice. I find, therefore, that he is entitled to damages for the Respondent's breach of contract as to notice. Such damages fall to be assessed net of tax and National Insurance under the principle in *British Transport Commission v Gourley [1955] UKHL 4* (the position is different for dismissals falling after 5 April 2018). The Claimant's net monthly pay was £3306.62 and I therefore calculate the damages to be paid by the Respondent for breach of contract at £9919.86.
7. The Claimant told me that he had 10 days untaken holiday accrued at the date of his dismissal. In the absence of any evidence to the contrary I accept this. His gross weekly pay was £1057.69 and I therefore award £2115.38 under this head. The Respondent should account for income tax and employee's National Insurance on this sum through its payroll in the ordinary way and pay the balance to the Claimant. It will be liable for employer's National Insurance contributions in addition.

Employment Judge Foxwell

Date: ...19.11.18.....

Case Number: 3304108/2018

Sent to the parties on: ...29.11.18.....

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For the Tribunal Office