



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N K Harrington  
**Respondent:** Evergreen Timber Frames Limited  
**Heard at:** Lincoln **On:** Monday 29 July 2019  
**Before:** Employment Judge Blackwell (sitting alone)

## Representatives

**Claimant:** In Person  
**Respondent:** Mr Morgan of Counsel

# JUDGMENT

The decision of the Employment Tribunal is that:-

1. The claim of breach of contract succeeds in part and the Respondents are ordered to pay to the Claimant by way of damages the sum of £8,400.

# REASONS

1. Mr Harrington represented himself and gave evidence on his own behalf. Mr Morgan of Counsel represented the Respondents and he called Mr Topham to give evidence on their behalf. There was an agreed bundle of documents and references are to page numbers in that bundle.

## Issues and the law

2. Jurisdiction to hear Mr Harrington's claim is given by article 4 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Mr Harrington's claim is that there was a contractual agreement which brought about the end of his contract of employment and it contained three elements, the first being an agreement to transfer the ownership in a Nissan vehicle registered LS14 BYO and because that did not take place he seeks damages of £8,400 being the value of that vehicle as at 1 August 2018.
3. Secondly he says there was an agreement to transfer a company computer into his ownership and again because that did not take place he places the value of that computer at £1,000.

4. The third element is a “bonus” of one month’s net pay.

Findings of fact

5. Mr Harrington’s employment began with the Respondents on 31 May 2016 and we see his contract of employment at pages 44-45. The Respondents Evergreen ran into financial difficulty towards the end of 2017. As a consequence discussions took place at senior management level including Mr Harrington. As Mr Topham describes in his evidence at paragraph 39 there were two options. Firstly, an immediate closure of the business and the second alternative was to change the business plan and move forward with an improvement plan. In fact option two was adopted and Evergreen continued to trade.
6. I accept that there were discussions in October 2017 which did involve Mr Harrington and Mr Topham. I accept that in relation to the option to immediately close the business there were discussions as to how Mr Harrington would exit the business. It seems to me that even if Mr Harrington is right and they were firm proposals he can no longer rely upon them because of the passage of time and the fact that the option on which they were dependent ie closure did not take place.
7. Regrettably however the financial difficulties were not solved and during May 2018 the decision was taken to cease trading. At page 58 we see the notice that was sent to all employees. That began a formal redundancy process and Mr Harrington received an individual notification of potential dismissal and a meeting, although it is undated, probably early in June 2018.
8. The meeting to which Mr Harrington was invited took place on 3 July and a brief note thereof is at page 64. The meeting was conducted by Mr Topham and Mr Evans the Operations Manager was also present.
9. A formal letter which we see at pages 65 and 66 was handed to Mr Harrington (although he is named as Harrison) at the end of that meeting it is headed confirmation of dismissal on notice. It sets out in detail the terms upon which Mr Harrington’s employment will terminate on grounds of redundancy for example it says you will be paid the following amounts:
  - “(a) All pay up to and including the effective date of termination of your employment.
  - (b) Notice pay only if you are to be paid in lieu of your notice period.
  - (c) A sum in respect of accrued but untaken annual leave entitlement (if applicable).
  - (d) A sum in respect of redundancy pay to be quantified in due course.”

I note that that sum (d) was quantified in another undated letter at page 67 sent out by K C Topham. The letter at page 65 went on however:

“The company would like you to use your remaining time of employment focussing on running calculations for engineer timber projects that you have designed. The company will be looking for you to complete as many as possible

during your notice period.

The company would also like to gift to you a Nissan Qashqai registered LS14 BYO.”

The letter went on to grant a right of appeal against “the decision”.

10. Mr Harrington did appeal by a brief e-mail of 6 July at page 68. That led to a meeting chaired by Cassie Topham with Mr Evans present and of course Mr Harrington. There are very brief notes at page 70. The relevant parts being as follows:

“NH said the main reason for his appeal was due to his redundancy package. NH felt there were points omitted from his final redundancy package that was otherwise verbally confirmed to him. NH felt that this formed a verbal contract and that he would seek further advice if required.

CT responded that the redundancy package was not up for negotiation as all statutory requirements had been met and the purpose of the redundancy appeal meeting was to appeal his position being made redundant not any remunerations.”

11. At that meeting of 23 July Mr Harrington read out a letter which appears at pages 75 and 76. The salient parts read as follows:

“I acknowledge and accept the following:-

- All pay up to and including the effective date of termination of your employment
- Pay, notice pay
- A sum in respect of accrued but untaken annual leave entitlement
- The gift of the Nissan Qashqai LS14 BYO (previously agreed before the closure of the business)

I have one concern that I would like to have further explanation on:-

- A sum in respect of redundancy pay to be qualified in due course. I would like clarification on the sum to be paid and how the calculations have been reached”

12. As I have noted above that matter was dealt with to Mr Harrington’s satisfaction by the letter at page 67.

13. Returning to Mr Harrington’s letter of 25 July he then went on in essence to say that the main reason for his appeal was the omission from the confirmation of dismissal notice of:-

- “Four weeks’ pay in lieu of redundancy notice as a bonus and;
- The computer I was using to conduct the closing down of the business and deal with any requests for calculations that have not been asked to prior to closure.”

14. In response there is again an undated letter to the effect that the original redundancy dismissal decision stands. The reasons are set out as follows:
- “No appeal was made against the decision to make the position of Design Manager redundant
  - The company ceased trading with clients
  - The company does not require a Design Manager
  - You have now exercised your right of appeal and this decision is final.”

### Conclusions

15. Firstly, the claim as to the value of the computer. On this point I prefer Mr Topham’s evidence that no such offer was ever made either in the discussions of October 2017 or later. It seems to me inherently unlikely that Evergreen would agree to hand over a computer containing data that they were responsible for protecting.
16. As to the bonus of one month’s pay it seems to me that Mr Harrington is in some ways confused. I accept that there were discussions in October 2017 and putting his evidence at its highest that there was an agreement that he would receive a bonus of one month’s pay.
17. Looking at his letter read out at the appeal hearing he appears to rely upon a discussion that took place “around nine months ago”, ie the October 2017 discussion. I reject his evidence that there was a meeting on 30 May at which there was confirmation of the three elements that form the basis of his claim. Again I prefer Mr Topham’s evidence on that point. In regard therefore to the computer and the bonus month’s pay Mr Harrington’s claims fail on the facts.
18. Turning now to the Nissan vehicle. Mr Morgan submits that the letter handed to Mr Harrington on 3 July which I have quoted above cannot be relied upon as a term upon which Mr Harrington can sue. He says it is what it says it is, namely a gift within the discretion of the company. I reject that submission. The statement is made in the context of a letter bringing about the agreed termination of Mr Harrington’s employment on the ground of redundancy and it is to be read in that context.
19. Mr Morgan goes on to say however that even I am against him on that point and that the letter handed in on 3 July is a contractual offer to transfer ownership in the Nissan vehicle, by appealing Mr Harrington rejected that offer and tabled a counter offer. Again I do not agree with that submission. Mr Harrington in his letter of 25 July accepts the offer set out in the letter of 3 July in terms subject first to clarification as to the amount and calculation of the redundancy payment which was given and accepted by Mr Harrington and secondly to his appeal on what he says were the terms that were not included and should have been within that letter.
20. It seems to me this is not as Mr Morgan puts it a battle of terms. Mr Harrington accepts the letter of 3 July and goes on to say that it is not complete. In my view therefore there is offer and acceptance of the letter of 3 July. Mr Harrington’s letter of 25 July cannot be read as a rejection or a counter proposal.
21. Thus, in my view Mr Harrington’s claim in respect of the Nissan succeeds. Mr Morgan went on to argue that there was insufficient evidence of value for me to conclude that

£8,400 was a correct sum by way of damages. I accept that all I have is Mr Harrington's evidence in which he says he researched the value of the vehicle on the internet. I think it is well known that such services are widely available and therefore I accept Mr Harrington's evidence on the point and note that whilst they could have done so Evergreen have served no evidence to the contrary.

---

Employment Judge Blackwell

Date 15 August 2019

JUDGMENT SENT TO THE PARTIES ON

.....

.....  
FOR THE TRIBUNAL OFFICE