



## REASONS

### Purpose of the hearing

1. Default Judgement having been given by Employment Judge Maidment on 12 June 2019 for unfair dismissal, breach of contract, unauthorised deduction of wages/unpaid wages, holiday pay, redundancy the matter was listed to determine remedy.
2. The claimant attended the hearing. No one appeared for the respondent.

### Evidence

1. The claimant produced a bundle of documents which included his further particulars of claim, copy contract, various emails and the letter dismissal. He also showed me the wage slips he received electronically on his telephone.
2. The claimant was the only person to give evidence. Apart from the documents referred to above he had no witness statement.
3. I was unable to deliver judgement at the hearing because of time constraints due to another case being brought forward. I therefore reserved my decision.

### Findings of Fact and Conclusions.

4. The claimant was employed by the respondent as chief executive officer from May 2015 until his dismissal on 9 February 2019. The claimant has produced documents including a written contract and his letter of dismissal and has given oral testimony. I found the claimant to be a credible and frank witness.
5. The claimant was dismissed by letter sent electronically under the cover of a What's App message. There was no disciplinary hearing and the claimant was given no opportunity to answer the charges or to appeal. The process adopted by the Respondent is a flagrant breach of the ACAS code in respect of which I apply a 25% uplift.
6. By letter dated 22 January 2019 the claimant inter alia sought the reason for his dismissal but received no reply. The claimant is entitled to receive written reasons for his dismissal within 14 days (s92 ERA 1996). I find that the respondent unreasonably failed to provide written reasons for the dismissal and I make an award under section 93 ERA 1996 of the weeks' pay.
7. The claimant has been given no reason for his dismissal but accepts that the true reason is unlikely to be redundancy. A more likely reason is that the incoming investor took against the claimant.
8. The claimant has found a new position on more favourable terms as from 25 March 2019.

9. He received his normal pay and a payslip up to period 8 ie November but has received no wages since then. There was a period during which he consulted his GP and supplied a fit note but he was never absent on sick leave. The GP recommended working from home, the company supplied him with work to do at home and he did that work. After 12 January 2019 he was placed on garden leave for which he was entitled to be paid. The respondent paid him £400 in respect of the period up to dismissal. The claimant has therefore not been paid the wages properly payable to him in the period from 1 December 2018 to 9 February 2019 period of about 10 weeks - this amounts to an unlawful deduction of wages contrary to section 13 ERA 1996.
10. He was unemployed from 9 February 2019 until 25 March 2019.
11. Under the contract of employment he was entitled to 4 weeks' notice. The letter of dismissal was sent electronically on 12 January 2019, to expire on ninth of February, a period of four weeks. The respondent has therefore satisfied the contractual and statutory obligations as to notice save that during the notice period the respondent failed to pay the claimant the wages properly payable as above.
12. The Claimant seeks to make a Contract Claim based on a section of his contract under the heading employee benefits – 'after working for one year the employee acquires the right to receive fully paid one-year non-competition clause '. The contract is dated May 2018. The claimant explained that a consultant was brought in to draft the contract. The claimant believes that this clause was not in his previous contract and asserts that that contract went missing in mysterious circumstances. The Claimant was unable to explain what this clause meant or how any benefit should be calculated and I therefore make no award.
13. Under the contract the claimant was entitled to a car allowance of £50 a month.
14. Under the contract the claimant was entitled to 28 days paid holiday in addition to public holidays. That amounts to an annual holiday entitlement of 36 days. The claimant is entitled to statutory holidays of 20 days and 8 additional statutory days.  
It is customary to calculate statutory holiday entitlement before considering other holidays due. Taking into consideration the fact that the holiday year begins on 1 May and the claimant was dismissed on 9 February 2019 he has received his full entitlement of paid statutory holiday and additional days having taken 26 days holiday.  
There remains outstanding 6 days of holiday accrued but not taken under the contractual provisions which expressly states that the respondent will pay for holiday accrued but not taken when the employment ends. They have not done so and are in breach of contract.

### **Calculations**

15. Factual details given by the Claimant for the purposes of calculating the awards

Date of birth of claimant 12/07/1987  
Date started employment 01/05/2015  
Effective Date of Termination 09/02/2019  
Period of continuous service (years) 3  
Age at Effective Date of Termination 31  
Date new equivalent job started or expected to start 23/03/2019  
Remedy hearing date 19/08/2019  
Contractual notice period (weeks) 4  
Statutory notice period (weeks) 3  
Net weekly pay at EDT 370.39  
Daily rate net £ 74  
Gross weekly pay at EDT 461.54  
Gross annual pay at EDT 24,000.00

**16. Basic award**

Number of qualifying weeks (3) x Gross weekly pay (461.54) £1,384.62  
Less amount for unreasonable refusal to be reinstated 0.00  
Less redundancy pay already awarded 0.00  
**Total basic award £1,384.62**

**17. Damages for wrongful dismissal / Notice – Nil**

Contractual Notice of 4 weeks given on 12 January to expire on 9 February

**18. Compensatory award (immediate loss)**

Loss of net earnings  
Number of weeks (6) x Net weekly pay (370.39) £2,222.34  
Plus loss of statutory rights £500.00  
Plus Company Car £75.00  
**Total compensation (immediate loss) £ 2797.34**

**19. Adjustments to total compensatory award**

Uplift for failure by employer to follow statutory procedures @ 25%

Compensatory award before adjustments **£2797.34**

Total adjustments to the compensatory award £699.34

**Compensatory award after adjustments £ 3496.68**

**20. Holiday Pay – contractual**

6 days accrued contractual holiday accrued but not taken as above

6 x £74 = **£444**

No Statutory holiday accrued but not taken

**21. Contractual pay / Unlawful Deductions**

The wages properly payable fall short by £3703 (10 x 370.39 = 3703).

The Claimant gives credit for £400 paid on dismissal

Deduction = £3703 less 400 = £3303.

I uplift that sum by 25% because of the complete failure to observe the Acas Code.

Deduction £3303

Uplift £825.75

**Total £ 4128.75**

**8. Failure to Give Written Reasons for Dismissal – S93 ERA 1996**

2x £461.54 = **£923.08**

**9. Summary totals**

Basic award £1,384.62

Wrongful dismissal 0.00

Compensation award including statutory rights £3496.68

Total unfair dismissal award £ 4881.30

Holiday Pay £444

Unlawful Deduction £4128.75

Failure to give Reasons £923.08

Total Compensation due £10377.13

19 August 2019

**Employment Judge O'Neill**

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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