



## EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Mr M Gerrard  
Claimant

V

Online Account Filing Ltd  
Respondent

HELD AT: London Central ON: 30/8/2019  
Employment Judge: Mr J S Burns  
Appearances  
For Claimant: In person  
For Respondent: Mr C Goodman (Managing Director)

### JUDGMENT

1. The claim for notice pay succeeds in the sum of £1923.08
2. The claim for pay in lieu of holidays not taken succeeds in the sum of £184.60
3. The total of £2107.68 is payable by the Respondent to the Claimant by 14/9/2019 (this figure is gross of tax which the Claimant should account for to HMRC)
4. Any counterclaim by the Respondent is dismissed on withdrawal

### REASONS

1. I heard evidence from the Claimant who had produced a witness statement and bundle of documents, and then from Mr Goodman.
2. The Claimant was employed from 29/10/2018 on a salary of £30000 per year. The parties entered into a written employment contract which provided for a probationary period of two months, subject to the possibility of the probation period being extended if performance was not up to the required standard. There was a further provision that if the contract was to be ended by notice by either side after the completion of the probation period, one month's notice must be given. However, if the probation period was still incomplete, only one week's notice had to be given.
3. On 25/1/2019 the Claimant had a meeting with Mr Goodman in which the Claimant gave orally one month's notice of termination. This was followed by email confirmation. Mr Goodman countered with an email saying that as the Claimant was still on probation he was entitled to only one week's notice, which Mr Goodman then gave. The Respondent paid the Claimant for his wages until 28/1/2019 plus one week's pay in lieu of notice only. The only real issue in relation to notice pay is whether or not the Claimant was still on probation on 25 or 28/1/2019.
4. In the ordinary course of events the Claimant's 2-month probation period would have expired on 28 December 2018. If the probation period was to continue beyond

then, some positive action from the Respondent to confirm and communicate this to the Claimant would have been required before the end of December 2018.

5. Mr Goodman contended that he had orally informed the Claimant at a meeting shortly before Christmas 2018 that Mr Goodman was extending the Claimant's probation until the end of January 2019. The Claimant agreed that there had been a meeting at which the Respondent's poor performance in the run-up to Christmas was discussed, but that there was no mention of his probation period at all. The Claimant pointed out that another new employee Scott Simpson, had had his probation extended at that time, but this had not happened to him. Mr Goodman admitted that he had extended Mr Simpson's probation at this time, and issued Mr Simpson with a formal letter to this effect, but that he had not sent such a letter to the Claimant, because he thought "*they were friends*" and that such a letter was unnecessary. Nor could Mr Goodman produce any note of the meeting at which he contended that the claimed extension of the Claimant's probation had been advised orally.
6. On a balance of probabilities, I prefer the Claimant's evidence about this. This was a professional business relationship, and not one conducted on the basis of friendship. A formal contract and probation period with financial consequences had been imposed. If Mr Goodman wanted to formally extend the Claimant's probation period he had no good reason to not send the Claimant a letter confirming this at the time.
7. I find that the probation period was not extended and therefore the one month's notice provision operated when the employment was terminated. The Claimant is due £2500 (one month's gross pay) less £576.92 (one weeks gross pay) = £1923.08 in respect of notice.
8. The Respondent's holiday year ran from 1 January. By the expiry of the one month's notice period the Claimant was entitled to 4.6 days paid holiday. There is a dispute between the parties as to whether he had taken 3 or 4 days by then. The Respondent apparently keeps a leave record for employees but Mr Goodman had failed to bring this to the Tribunal. Hence, I prefer the Claimant's evidence on this also. He is according due pay in lieu of 1.6 days holiday ie 1.6 x £115.38 (daily gross pay).
9. In the ET3 there are remarks tending to suggest that the Respondent was making an informal counterclaim against the Claimant. No particulars or calculation had been provided by Mr Goodman, who confirmed at the outset of the hearing that the Respondent did not wish to pursue any such counterclaim.

Employment Judge - Burns

Date : 30/08/2019

Date sent to the Parties

11/09/2019