



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Foster

**Respondent:** City Construction (Longcroft) Limited

## HEARING

**Heard at:** Ashford **On:** Monday, 5 August 2019

**Before:**

### Representation

**Claimant:** In Person

**Respondent:** No attendance

## JUDGMENT

**The Judgment of the Tribunal is as follows:-**

1. The Claimant is entitled to a redundancy payment in the sum of **£4,318.00**. The relevant date is the 7 August 2018.
2. The Respondents do pay the Claimant the sum of **£1,026.00** (net) as damages for breach of contract in failing to give proper notice of termination of employment.
3. The Respondents do pay to the Claimant the sum of **£2,076.92** (gross) in respect of unlawful deduction from wages.

### REASONS

1. On the 5 August 2019 there was a hearing in Ashford Tribunal Hearing Centre of the Claimant's claim for redundancy payment, damages for breach of contract, and payment of wages. There was no attendance on behalf of the Respondents. The Tribunal heard evidence from the Claimant who confirmed the truth of the witness statement that he had produced dated 28 July 2019. Judgment was given by the Tribunal in favour of the Claimant.
2. The Judgment was promulgated to the parties on 30 August 2019. On 2 September 2019 an email from Mr Jim Cornish, Managing Director, of the

Respondents was received by the Tribunal which stated:-

“We have received the enclosed but have never been notified of any date, time or venue of the hearing and was never asked for any evidence. I don't see how this can happen without the employer being present. We had a similar scenario with Ben Cork, where again we were never informed of the hearing and was found in our favour when attending. We therefore wish to place in writing the above and that our company will be appealing the decision.”

3. On 11 September 2019 a further email was sent by Mr Jim Cornish to the Tribunal stating:-

“We are appealing the above Judgment and require a copy of the written reason please as require this document to complete out appeal.”

4. These written reasons are supplied following the request from the Respondents dated 11 September 2019.

5. The Claimant, Mr Neil Foster, submitted a claim to the Employment Tribunal on 1 February 2019. The Claimant complained of being unfairly dismissed and was seeking a redundancy payment, together with notice pay, arrears of pay and other payments. The Respondent's address was given as Unit 89, John Wilson Business Park, Whitstable, Kent, CT2 3QT. On the 13 March 2019 notice of the claim and notice of hearing for Monday, 5 August 2019 was sent to the Respondents at that address. The notice informed the Respondent that if they wished to defend the claim, their response must be received at the Tribunal office by 10 April 2019. The notice referred to the hearing taking place at 1<sup>st</sup> Floor, County Square Shopping Centre, Ashford, Kent, TN23 1YB on Monday, 5 August 2019 at 10.00am or as soon thereafter on that day as the Tribunal can hear it.

6. On 4 April 2019 the response form completed in long hand, giving the name of the contact for the Respondents as Jim Cornish, was received by the Tribunal. In paragraph 6 of the response it was said that the claim was defended. The particulars stated:

“As agreed in writing with ACAS by email 21/11/2018 the sum of £2757.00 was agreed, as full and final figure taking into account materials etc the Claimant had from City Construction. We are still be prepared to pay this figure. As ACAS were preparing some ACAS Cot 3 settlement. The email was sent by ACAS to City Construction in order to resolve dispute. We reserve the right to add further to our defence if necessary as City Construction have been made aware of other evidence but wish to settle this amicably to the agreed figure of £2757.00 email 21/11/18 received from ACAS as full and final settlement.”

There were enclosures of emails from ACAS which should not have been enclosed because they were concerned with offers or matters relating to offers.

7. The Tribunal acknowledged receipt of the response on the 30 May 2019.

8. On 2 August 2019 a member of the Tribunal service staff in Croydon spoke to Mr Cornish of the Respondents regarding whether the case was going ahead. Mr Cornish said that the claim had been settled and the Respondents were not aware of the hearing date but in any event ACAS had drawn up a COT3 some time ago and he had heard nothing since.
9. An email was then sent by the Tribunal on the 2<sup>nd</sup> August to Mr Cornish at 15:07 saying ' Further to our conversation earlier today regarding the above case, Employment Judge Davies has asked me to enquire whether the claim was settled via ACAS and, of so, do you have a copy of the confirmation(Cot3 notification)?' No reply was received from the Respondents.
10. The case remained in the list because there was no confirmation from either party of a COT3 settlement or from ACAS itself. The Respondents did not appear at the hearing. The Tribunal concluded that they had been properly served with notice of the hearing and also reminded about the fact of the hearing in the telephone conversation on 2 August 2019. No explanation was received from the Respondents other than that recorded by the Tribunal service.
11. There was no reason not to proceed with the hearing. Mr Foster gave evidence in accordance with his written statement. The statement was detailed and related to the events leading to the termination of employment. There were various appendices to the statement concerning the history of the case. The Claimant confirmed that there had not been a COT3 agreement with ACAS. The Claimant said that he had ultimately rejected any offers to settle the case and hence there had been no ACAS conciliated settlement.
12. The Tribunal accepted the evidence of the Claimant about these matters. The evidence of the Claimant regarding non-payment of redundancy monies, failure to give proper notice of employment and unlawful deduction from wages in the sums alleged was accepted by the Tribunal as were the figures given by the Claimant. The Claimant confirmed that he had obtained new employment on the 10<sup>th</sup> August 2018.
13. In the circumstances, Judgment was given in favour of the Claimant for the amounts claimed.

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Acting Regional Employment Judge Davies

Date: 10 October 2019

