



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr. K Malek

AND

Respondent
Atom Supplies Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London South (Ashford)

ON: 7 February 2020

EMPLOYMENT JUDGE Mason

Representation

For the Claimant: No attendance or representation

For the Respondent: Ms. N. Gyane, counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The Respondent breached the Claimant's contract of employment by failing to pay monies in lieu of his full notice entitlement and is ordered to pay the Claimant £1,656.89 (net).

REASONS

Background

1. The Claimant was employed by the Respondent as a Liquid Production Supervisor.
2. His employment was terminated by the Respondent with effect from 16 January 2020.
3. On 9 January 2020, the Claimant was given one week's notice. He was also paid an additional 2 days pay.

4. The Claimant contacted ACAS on 7 April 2019 and an Early Conciliation Certificate was issued on 7 May 2019.
5. On 6 June 2019, the Claimant presented this claim of wrongful dismissal. The Claimant says that he passed his Probationary Period and was therefore contractually entitled to one month's notice. On 6 September 2019, the Respondent submitted a response (ET3) defending the claim; it says the Claimant's initial Probationary Period of six months was extended by agreement with the Claimant and therefore he was still within the Probationary Period when his employment ended and therefore contractually entitled to one week's notice.
6. In October 2019, the Claimant confirmed he wished to amend his claim to include a claim of race discrimination. The Respondent opposed that application and on 30 October 2019, a Preliminary Hearing was conducted by EJ Martin to consider the Claimant's application.
7. In a decision dated 20 December 2019, EJ Martin:
 - 7.1 refused the Claimant's application to include a race discrimination claim;
 - 7.2 listed this case for a full merits hearing today (7 February 2020); and
 - 7.3 made an order that witness statements be exchanged simultaneously on 24 January 2020.
8. EJ Martin refused the Claimant's application for a Reconsideration of her decision.
9. On 24 January 2020 the Claimant lodged a Notice of Appeal to the Employment Appeal Tribunal (EAT).

The Issues

10. EJ Martin summarised the parties' respective positions in para. 20 of her decision as follows:

"The Respondent's position is that the Claimant's employment was terminated because he did not satisfactorily complete his probationary period and that contractually he was therefore only entitled to one weeks' notice. The Claimant's position is that he had satisfactorily completed his probationary period in June 2018 and consequently, he is entitled to one months notice."
11. The claim for wrongful dismissal is the only claim before me and the issue which I am required to determine is as follows:
 - 11.1 What was the Claimant's contractual entitlement to notice?
 - 11.2 Did the Respondent fail to give the Claimant due contractual notice or pay in lieu?
 - 11.3 If so, how much is the Claimant owed?

Procedure at the Hearing

12. The Respondent provided a bundle of documents [pages 1-122] and a witness statement for the Respondent's only witness, Mr. Stuart Medcalf (the Claimant's former Line Manager).
13. The Claimant did not attend and was not represented. In accordance with **Rule 47 Employment Tribunals Rules of Procedure 2013** ("Tribunal Rules"), if a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
14. I read the Tribunal correspondence file which shows:
 - 14.1 On 4 February 2020:
 - (i) At 07:38, the Claimant emailed the Tribunal and concluded:

"The ET's Helpline advised me that, because I have lodged a Notice of Appeal to the EAT, there will be no ET hearing for this case ... on 7 February 2020. Please could you confirm this."

However, the Claimant does not say who he spoke to or when and I take judicial notice that the Employment Tribunal customer contact centre (which I assume the Claimant is referring to) cannot give legal advice.
 - (ii) The Tribunal replied at 14.22:

"Thank you for your email received 4th February 2020. Your email has been forwarded to the relevant employment Judge and you shall receive a response shortly."
 - (iii) A note on the Tribunal file timed at 14:34 reads:

"The application for pp [postponement] has to be determined by the Tribunal which is hearing this case. Both parties will have the opportunity to make submissions to the Tribunal about pp request".
 - 14.2 On 6 February 2020:
 - (i) A note on the Tribunal file reads:

"I spoke with C – he is currently out of UK (sending in evidence) so will not be attending. R is ready to go ahead tomorrow."
 - (ii) Later that day, at 17:39 (the evening before the hearing), the Claimant emailed the Tribunal repeating his email of 4 February and added:

"Due to receiving no feedback from the ET, as well as work commitments outside the UK, I have not made any travel arrangements for a hearing, if any, tomorrow. The Respondent's representative is likely to try to use this as "further proof of my unreasonableness". However, I respectfully request that the failure of the ET to respond to a reasonable request be noted. This also provides further basis for one of the grounds for my appeal namely apparent bias, procedural irregularity and unreasonable conduct by the respondent and their representative. If it becomes necessary to confirm or discuss the above, I will make sure that I am available, either by phone (079 5515 1660) or Skype (ID: Kajo Malek)".

15. On 7 February 2020, on the morning of the hearing:
- 15.1 The Tribunal clerk spoke to the Claimant prior to the start of the hearing; the Claimant confirmed he was not attending.
- 15.2 At 10.21 (after the hearing had started), the Claimant emailed the Tribunal as follows:
- "I have just spoken to the Clerk at Ashford Tribunal who informed me that the Employment Tribunal Judge has decided to go ahead with the hearing in my absence.
In view of the correspondence with all the parties over the past two weeks, and no acknowledgement from any of them, I find this to be unreasonable and prejudiced towards me.
I have also expressed my intention to be available – albeit not in person – by phone... or Skype ... should the hearing proceed.
This has also been ignored.
The above is further proof of one of the grounds for my appeal, namely apparent bias, procedural irregularity and unreasonable conduct by the respondent and their representative."*
16. Ms. Gyane on behalf of the Respondent resisted a postponement. She asked that the Tribunal dismiss the claim and points out:
- 16.1 The Claimant failed to serve a witness statement on 24 January 2020 (or at any time subsequently) and has therefore not provided any witness evidence to support his claim of breach of contract.
- 16.2 The Tribunal did not confirm to the Claimant that the hearing had been postponed. The assertion that he was advised by the ET helpline that the hearing would be postponed is unlikely; his correspondence with the Tribunal suggests he was waiting for confirmation of postponement.
17. In the alternative, Ms. Gyane submitted that the hearing should proceed in the Claimant's absence:
- 17.1 The Claimant's application to postpone is late.
- 17.2 There is no information regarding the progress of his appeal to the EAT. In any event, such an appeal has no bearing on this claim (wrongful dismissal) as the appeal is against a refusal to grant an amendment to advance a wholly different head of claim (race discrimination).
- 17.3 The Claimant has provided no written evidence to support his erroneous belief that the hearing today had been postponed.
- 17.4 It is in the interests of justice and the "overriding objective" to proceed taking into account:
- (i) the Tribunal has set aside valuable resources for the case to be heard today;
 - (ii) the Respondent has complied with all Tribunal orders;
 - (iii) the Respondent has attended today with its witness and counsel;
 - (iv) the Tribunal has the pleadings and the relevant contemporaneous documents;
 - (v) the Claimant has not provided a witness statement
18. Having considered the above, I am satisfied that all practicable enquiries were made about the reasons for the Claimant's absence. I do not accept

that the Claimant had confirmation at any time from the Tribunal that the hearing would be postponed; the reason for his absence was based on an unfounded assumption on his part that the hearing should be postponed because of his appeal to the EAT.

19. I then considered all the information available to me which consists of the bundle and the pleadings.
20. With this in mind, and having considered the Presidential Guidance on applying for a postponement (4 December 2013), I concluded that whilst it was not in the interests of justice to dismiss the claim, it was in the interests of justice and the “overriding objective” (Rule 2) to proceed in the Claimant’s absence rather than postpone, taking into account the following:
 - 20.1. The date of the hearing today was agreed with the parties at the Preliminary Hearing before EJ Martin on 30 October 2019.
 - 20.2 I am not satisfied that the reason for the Claimant’s absence warrants a postponement. Despite not receiving any confirmation of postponement, he elected to make himself unavailable by attending to (unspecified) business commitments in a country (unspecified) outside the UK.
 - 20.3 There is no information before me regarding his appeal to the EAT but in any event I agree with Ms. Gyane that such an appeal has no bearing on this claim (solely wrongful dismissal) as his appeal is against EJ Martin’s decision to refuse to allow him to amend his claim to include race discrimination.
 - 20.4 The degree of prejudice to either side:
 - (i) The Claimant had the opportunity to provide a witness statement but failed to do so (contrary to EJ Martin’s order). However, he has set out his position in a number of documents which are before me including the claim form and various lengthy correspondence with the Respondent which is in the bundle. The factual issue to be decided is very narrow, specifically whether or not the Claimant agreed to an extension of his Probationary Period and I am satisfied that I understand the Claimant’s case on this point. As EJ Martin recorded in her decision, it is his case that he satisfactorily completed his Probationary Period in June 2018.
 - (ii) As Ms. Gyane points out, the Respondent has prepared for the hearing and duly attended with documents, a witness and counsel. The Respondent has therefore incurred expense.
 - 20.5 This claim was presented on 6 June 2019 and the case has therefore been waiting to be heard for over eight months. Given the Tribunal’s limited resources, a postponement is likely to result in further significant delay.
21. Having concluded that the hearing should proceed, I considered whether to allow the Claimant to take part in the hearing by telephone or skype:
 - 21.1 In accordance with Rule 46:

“A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the

hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal.”

- 21.2 However, I exercised my discretion not to allow the Claimant to take part remotely for the following reasons:
- (i) These are adversarial proceedings and giving evidence by telephone would reduce the Tribunal’s ability to observe the Claimant’s demeanour and deportment whilst giving evidence which is important for the purposes of assessing accuracy and credibility.
 - (ii) The Claimant did not provide the Tribunal with sufficient advance notice to ensure practical preparations were made in time for him to give evidence by Skype. He only mentioned for the first time the possibility of giving evidence by telephone or Skype the evening before the hearing and after close of business.
 - (iii) The factual issue to be decided is very narrow and I am satisfied that I understand the Claimant’s case on this point.
22. After an adjournment to allow me time to read the papers and Mr. Medcalf’s witness statement, I heard evidence from Mr. Medcalf. I reminded myself that it is not for me to “enter the arena” by cross-examining the Respondent’s witness or playing devil’s advocate; on the other hand I am not obliged to accept the Respondent’s evidence if there are questions of credibility, for instance arising as a result of inconsistencies. Ms. Gyane made brief submissions. I then reserved my decision which I now give with reasons.

Findings of fact

23. Having considered all the evidence, and reminded myself that the standard of proof is the balance of probabilities, I make the following findings of fact.
24. On **8 March 2018**, prior to commencement of his employment, the Claimant signed a Contract of Employment [pages 52-62]. The relevant clauses are as follows:
- “1.2 *The first six months of your employment shall be a probationary period. During this period, your employment may be terminated by the Company on one week’s notice. We may, in our sole and absolute discretion, extend your probationary period for up to a further three months. During your probationary period (including any extension), your performance and suitability for continued employment will be monitored. Prior to or at the end of your probationary period, you will be informed in writing if you have successfully completed your probation.*”
 - “8.1 *Subject to clause 15.2 below, after successful completion of your probationary period referred to in clause 1.2. you or the Company may terminate your employment by giving the other party one month’s written notice (Notice Period). The Notice Period will be reviewed annually and may change from time to time in our sole and absolute discretion without affecting the other terms of your employment”*
 - 8.2 *Notwithstanding clause 8.1 above, the Company may, in its sole and absolute discretion, terminate your employment at any time (including during your probationary period) and with immediate effect by notifying you that the Company is*

exercising its right under this clause 8.2, and instead of giving you the relevant notice required under clause 8.1 (or 1.2 as applicable), it will make a payment in lieu of such notice (the Payment in Lieu) to you within 28 days. This Payment in Lieu will be equal to the basic salary (as at the date of termination) which you would have been entitled to receive under the Contract of Employment during the relevant notice period referred to in clause 8.1, if applicable (or, if notice has already been given, during the remainder of the notice period) less income tax and National Insurance contributions. For the avoidance of doubt, the Payment in Lieu shall not include:

8.2.1. ...

8.2.2 any payment in respect of benefits which you would have been entitled to receive during the period for which the Payment in Lieu is made.

25. On **12 March 2018**, the Claimant commenced employment with the Respondent as Liquid Production Supervisor. He initially reported to Ms. Lora Hemy.
26. The Claimant's starting salary in March 2018 was £28,000 per annum gross.
27. On **30 July 2018**, Mr. Medcalf commenced employment with the Respondent as Liquid Production Manager and became the Claimant's Line Manager.
28. At some point prior to Mr Medcalf's appointment, the Claimant's salary was increased and he was also provided with additional benefits including payment for local accommodation and payment of transport to and from his home. By the date of termination of his employment (16 January 2019) his salary had increased to £35,000 per annum gross (monthly £2,916 gross, £2,207 net). The Respondent also contributed £173.79 per month into a pension scheme on his behalf.
29. On **6 September 2018**, Mr. Medcalf and the Claimant met. In One-to One Notes of that meeting [pages 68-70], Mr. Medcalf recorded that "*things are going well*" and that the next meeting would take place on "*1st Thursday in October*". The document history [page 107-109] shows that these notes were created on 17 September 2019.
30. On **14 September 2018**, Mr. Medcalf invited the Claimant to a Probation Meeting to be held on 18 September 2018 [pages 74-75]. The Claimant accepted this meeting [page 76].
31. On **18 September 2018**, the Review Meeting took place [Record of Meeting pages 77-82].
 - 31.1 In addition to the Claimant and Mr. Medcalf, also in attendance were Mr. Liam Belton (Operations Manager and Mr. Medcalf's Line Manager) and Mr. Michael Munroe (People Operations & Data Manager); Mr. Munro took notes.
 - 31.2 I accept Mr. Medcalf's evidence [w/s para. 9]:

"At the review meeting it was suggested by myself and a member of the People (Human Resources) Team that, due to the short period of time that I had been managing the

Claimant and the number of days the Claimant had been absent during this time, his probation period should be extended for a further 3 months in order to give me sufficient time to review his performance and to also give him some time to adjust to the role with the additional benefits that had been offered to him (as he had recently expressed dissatisfaction with the role and we were not certain if he would want to even continue in it). The Claimant agreed to the extension and understood the reasons behind the decision. The Claimant was also informed that the additional benefits set out in paragraph 3 of my statement would be reviewed in January 2019”

31.3 I also accept that the Claimant agreed to this extension of three months. This is supported by the notes which show:

- (i) *“outcome of meeting; Karel’s probation will be extended for a further 3 months”* [page 77].
- (ii) *“[Mr. Belton]: ... it only seems appropriate to extend your probation for a period of 3 months”*.
“[Claimant]: Yes, that seems fair enough”

32. I find that the principal reason for the extension was due to Mr. Medcalf having had only a limited time to review the Claimant.

32.1 Whilst some performance concerns were raised, Mr. Medcalf also praised the Claimant:

“I can see what a good job you’ve done with the team in difficult circumstances...

Mr. Belton commented that the Claimant had “worked really hard to keep the liquid production team going ...” [page 78].

32.2 Mr. Belton commented that there had been *“some friction with the new members of the team”* and asked the Claimant if he had a *“very focused/particular view of how things should be done”*; the Claimant replied that he did not have a problem working with the team.

32.3 The meeting concluded with Mr. Belton commenting:

“[Mr. Medcalf] will continue to work closely with you and this doesn’t diminish the hard work and time you’ve put into the company” [page 78].

33. Mr. Medcalf said in verbal evidence that the Claimant agreed at the meeting on 18 September 2018 to an extension to the Probationary Period until an unspecified date in early January 2019. Mr. Medcalf told me that this date was agreed rather than 18 December 2018 because it was “cleaner” to finish off the year and then review the Claimant in January. However, this explanation is inconsistent with:

33.1 Mr. Medcalf’s own witness statement [para. 10]:

“The 9 month review meeting was due to held on 18 December 2018 but was postponed to January for a number of reasons including the Claimant’s absences due to sickness and the majority of the workforce, including myself and the Head of People, being on annual leave during the Christmas and New Year period.. Due to the delays, the 9-month review was scheduled for 9 January 2019....”

33.2 The termination letter dated 10 January 2019 from the Respondent to the Claimant confirming termination of his employment [page 103-104] which makes it clear the *“... extended probationary period was due to expire on 19 December 2018; however, in recognition of your extended period of sickness, your probation period was paused for the duration of your absence and subsequently restarted on your return to work”*.

- 33.3 The Respondent's own pleaded case (ET3 page 44):
"... an initial probation review was carried out on 18 September 2018. During that meeting, Claimant was notified his probation would be extended for a further three months in order for the new line manager to be in a better position to assess his work. Due to some prolonged absences of Claimant and the holiday period (with his line manager and Head of HR being away), the probationary review meeting was schedule for early January 2019."
34. I have considered the evidence potentially pointing to the Claimant having agreed to an extension until January, specifically:
- 34.1 Handwritten notes prepared by Michael Munroe [page 82] record:
"Liam extend probation until Jan. [Claimant] understand this and accepts it" [82]. However, Mr. Munroe did not attend to give evidence and verify these notes and I place limited weight on them.
- 34.2 One-to-One Notes dated 4 October 2018 [pages 89-91] prepared by Mr. Medcalf after the meeting which show under the heading "Objectives"
"There were no objectives set during the six month plan from Lora Hemy, probation was extended till January, a full set of objectives will be set in January once everything is more stable and KM's position is more certain"
However, there is no evidence before me that the Claimant accessed this document on a shared drive or otherwise and therefore that he saw this document.
- 34.3 A Probationary Checklist completed by Mr. Medcalf [pages 83-88] records that there was no initial three month review carried out by the Claimant's previous Line Manager (Lora Hemy) [page 84]. Under the heading "Second Review (6 months meeting)" under the sub-heading "Is the employee's contract to be confirmed or extended?" it states [page 87]:
*"Extended
LB, SM and MM explained to KM that the probation would be extended by 3 months until early January. This would give KM time to work out his needs outside of his work. Come January we would reassess and see if it is more secure for both sides to proceed with a permanent position.
KM acknowledged that he understood why and also agreed it would be better for SM to get a full working period with KM"*
The document properties [page 111- 116] show that it was posted on to a shared drive on 22 October 2018. However, again, there is no evidence before me that the Claimant accessed and therefore saw this document.
35. On the balance of probabilities, in view of the inconsistencies in the Respondent's own evidence and its pleaded case, I find that in fact the Claimant only agreed to a three month extension of the Probationary Period i.e. until 18 December 2018, and did not agree to an extension until an unspecified date in January 2019. The Respondent's reason for postponing the Claimant's review until January was due to the Claimant's absences and as these absences (31 October to 16 November 2018) fell after the meeting on 18 September, the decision to postpone to early January must logically have been taken by the Respondent unilaterally at some point after the meeting on 18 September 2018.

36. On **21 December 2018**, the Claimant was sent an invitation to a review meeting to take place on 9 January 2019 1pm-2pm [page 97]. The Claimant was absent from work **24 to 28 December 2018**. On **31 December 2018** the Claimant accepted the invitation [page 98].
37. In the bundle [pages 92-96] is a Probationary Checklist dated **4 January 2019** completed by Mr. Medcalf [pages 92- 96].
- 37.1 Under the heading *“Is the employee’s contract to be confirmed or extended?”* it states [page 95]:
*“No (Not Renewed)
Having completed a 3 month extension to the probation I do not feel it should be confirmed to permanent employment.”*
- 37.2 Another version of this document is in the bundle [pages 118-122] and the document properties show that this was created on 6 January 2019. Mr. Medcalf said in verbal evidence that he prepared this document prior to the meeting and then filled in his comments after the meeting and placed it in a shared drive. This version differs from the version at pages 92-96 in one important respect. In the version at pages 118-122, under the heading *Is the employee’s contract to be confirmed or extended?”* it states [page 121] *“under construction”* (struck through).
- 37.3 This inconsistency was not explained at the hearing
38. On **9 January 2019**, the Claimant was sent an updated invitation changing the time of the meeting to 3pm-4pm [page 99]. The Claimant accepted the updated invitation [page 100].
39. On **9 January 2019**, the Claimant met with Mr. Medcalf and Ms. Marina Warren, Head of People. I have not been provided with any notes of that meeting but it is not in dispute that the Claimant was informed that his employment was to be terminated with effect from 16 January 2019 on the grounds he had not successfully completed his Probationary Period.
40. On 10 January 2019, Ms. Warren wrote to the Claimant [pages 103-104] as follows:
*“Thank you for coming in to meet with us yesterday.
Under your employment contract ... the first six months of your employment was a probationary period, which could be extended at our discretion for a further three months. On or about 19 September 2018 (the end of your initial six month probationary period), we exercised our right to extend your probationary period for a further three months following discussions with you and your request in this regard. That extended probationary period was due to expire on 19 December 2018; however, in recognition of your extended period of sickness, your probation period was paused for the duration of your absence and subsequently restarted on your return to work. Your probation review meeting was then held on 9 January 2019.”*
Ms. Warren goes on to give the Claimant one week’s notice of termination of his employment and advises that he will be on garden leave during the notice period (10 January to 16 January 2019 inclusive). Additionally, he would be paid until the 18 January 2019 as a “gesture of goodwill”.

41. There then ensued an exchange of emails between the Claimant and Marina Warren [pages 14-24]. The thrust of the Claimant's emails is challenging the Respondent's decision to dismiss him which he regarded as wholly unfair.

The Law

Claims for monies in lieu of notice

42. Article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 gives the Employment Tribunal jurisdiction to hear claims for damages for breach of contract provided the claims arose or are outstanding on termination of the contract of employment and have been brought in time. If an employee proves that they have been dismissed without due notice, this will give rise to a claim for damages for wrongful dismissal.
43. Construction of the contract:
- 43.1 If express terms are wholly in writing, then it is a matter of interpreting the document containing them unless it is alleged that the written agreement
- (i) mistakenly fails to reflect an earlier oral agreement or
 - (ii) it has been replaced or revoked by a subsequent agreement.
- 43.2 The "parol evidence rule":
- (i) Extrinsic evidence is not admissible to help interpret a written contract; it is impermissible for a court or tribunal to depart from the clear wording of a contractual document in the absence of a plea that that it contains a mistake that should be rectified.
 - (ii) Where a term of the contract is ambiguous, a court or tribunal may take into account the surrounding circumstances when construing the terms of an employee's contract
- 43.3 The contract should be interpreted not according to the subjective view of either party, but in line with the meaning it would convey to a reasonable person having all the background knowledge which would have been available to the parties in the situation in which they were at the time of the contract
- 43.4 Clear language is required to give one party the right to vary a contract unilaterally.

Conclusions

44. The Claimant's Contract (clause 1.2) provides that the six months Probationary Period may be extended at the Respondent's discretion "*up to a further three months*" i.e. a total of nine months. In the Claimant's case, the nine months point was 18 December 2018.

45. The Contract should be interpreted in line with the meaning it would convey to a reasonable person having all the background knowledge which would have been available to the parties in the situation in which they were at the of the contract. I believe that the obvious interpretation of this part of clause 1.2 is that the maximum length of the Claimant's Probationary Period was nine months unless the Claimant and the Respondent agreed otherwise.
46. It was not necessary for the Claimant to agree to a three month extension to the initial six months Probationary Period as it could be extended by up to three months at the Respondent's discretion. However, I have found that in any event he did consent to an extension of three months i.e. until 18 December 2018.
47. I have not accepted that the Claimant agreed to an extension until an unspecified date in January 2019. The decision to extend the Probationary Period beyond 18 December 2018 was taken unilaterally by the Respondent. They may have had sensible reasons for doing so, but nevertheless, they did so without the Claimant's consent.
48. Ms. Gyane submits that the fact that the Claimant was not informed by the Respondent in writing that he had successfully completed his Probationary Period, must mean he had not completed his Probationary Period as clause 1.2 goes on to state:
"Prior to or at the end of your probationary period, you will be informed in writing if you have successfully completed your probation."
I do not accept Ms. Gyane's submission. The earlier part of clause 1.2 clearly provides for a maximum Probationary Period of nine months. If I were to accept Ms. Gyane's submission it would have the unhappy consequence that the Claimant could potentially have been on probation indefinitely at the Respondent's discretion which I do not believe was the intention of either party.
49. It follows that the Claimant's Probationary Period in fact expired on 18 December 2018. As the Claimant was no longer in his Probationary Period at the date of termination of his employment, he was entitled to one month's notice of termination of his employment. By failing to give the Claimant due notice, the Respondent was in breach of contract. The Respondent paid the Claimant for the period 10 January to 18 January and this sum (£723.90) must be against damages for breach of contract. The Claimant is awarded a month's net pay of £2,207.00 plus pension contribution of £173.79 less £723.90 paid leaving a sum due from the Respondent of £1,656.89.
50. Finally, as I mentioned at the hearing, it is regrettable that the Respondent did not write to the Claimant to confirm the position after the meeting on 18 September 2018 (or at any time thereafter) to clarify its understanding of the

situation. It is entirely unsatisfactory to rely on notes uploaded to a shared drive which an employee may or may not access.

51. For the purposes of rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which I have identified as being relevant to the claim are at paragraphs 10–11 and all of these issues which it was necessary for me to determine have been determined; the findings of fact relevant to these issues are at paragraphs 23-41; a statement of the applicable law is at paragraphs 42-43; how the relevant findings of fact and applicable law have been applied in order to determine the issues is at paragraphs 44-49.

Employment Judge Mason
10 February 2020