



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr S Dixon

**Respondents:**

- (1) Mr R Powell
- (2) Integrated Payment Systems Ltd

**Heard at:** Watford Employment Tribunal      **On:** 13 July 2020

**Before:** Employment Judge George

**Appearances:**

For the claimant: In person  
For the respondent: Mr Somaïke, counsel

## JUDGMENT

1. All claims against the first respondent, Robert Powell, are dismissed.
2. The claim of disability discrimination against the second respondent is dismissed.
3. The claims of unfair dismissal, holiday pay accrued but not taken on termination of employment and unauthorised deduction from wages continue against Integrated Payment Systems Ltd which shall hereafter be known as “the respondent”.

## RECORD OF A PRELIMINARY HEARING

**Final hearing**

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting alone at the **Employment Tribunals, 2<sup>nd</sup> Floor, Radius House, 51 Clarendon Road, Watford WD17 1HP** on **14-16 September 2020**, starting at 10am or as soon as possible afterwards. The revised estimate for the hearing is **three days** based on the claimant’s intention to give evidence and the respondent’s to call up to three witnesses.

## The claim

2. At the open preliminary hearing on 13 July 2020 I heard evidence from the claimant and submissions on behalf of both parties before deciding the issues set for determination by Employment Judge Bedeau in the case management hearing on 4 October 2019. I concluded, for reasons which were given orally at the time, that at the material time of 14 October to 31 December 2018 the claimant was not a disabled person within the meaning of s.6 and schedule 1 of the Equality Act 2010 (hereafter referred to as the EQA). Reasons having been given orally at the time I do not provide them now unless they are asked for by a written request presented by any party within 14 days of the date on which this judgment is sent to them.
3. The claimant had withdrawn his unfair dismissal, unauthorised deduction from wages and holiday pay claims as against Mr Powell. Therefore, following my decision that he does not have standing to bring a disability discrimination claim I dismissed all claims against Mr Powell and dismissed the disability discrimination claims as against the corporate respondent. The parties agreed that the time estimate of five days could be reduced following my decision and the listing was adjusted as above.

## The issues

4. The issues between the parties which fall to be determined by the Employment Judge at the final hearing are as follows:
  - 4.1 The respondent accepts that the claimant was dismissed.
    - 4.1.1 When was the claimant dismissed? Was it on 3 December 2018 for reasons set out in the letter which the claimant first saw on 3 December, namely poor work performance and not following the sickness and lateness procedures, or was it on 30 November 2018 as alleged by the respondent?
    - 4.1.2 What was the reason for dismissal? It is for the respondent to prove that the reason was a potentially fair reason or one within s.98(2) of the Employment Rights Act 1996. The respondent alleges that the reason for dismissal was conduct or, in the alternative, capability namely performance together with an alleged failure to comply with the sickness reporting procedures.
    - 4.1.3 Was the decision to dismiss fair or unfair in all the circumstances? Relevant circumstances will include:
      - 4.1.3.1 Whether the respondent had a genuine belief on reasonable grounds that the claimant was guilty of any misconduct alleged against him;

- 4.1.3.2 Whether the respondent purported to dismiss summarily or on notice;
- 4.1.3.3 Whether there was a fair investigation;
- 4.1.3.4 Whether there were relevant outstanding warnings;
- 4.1.3.5 Whether a fair disciplinary/capability process was followed;
- 4.1.3.6 Whether the sanction of dismissal was within the range of reasonable responses.

*Remedy for unfair dismissal*

4.2 If the claimant was unfairly dismissed and the remedy is compensation:

- 4.2.1 if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed See: Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; [W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604];
- 4.2.2 would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?
- 4.2.3 did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?
- 4.2.4 whether the claimant has failed to mitigate his loss? It is for the respondent to prove that there has been any relevant failure to mitigate.

*Unauthorised deduction from wages*

4.3 Did the respondent make unauthorised deduction from the claimant's wages in accordance with ERA section 13 by paying the claimant less in wages or sick pay than he was entitled to be paid and if so, how much less?

*Unpaid annual leave – Working Time Regulations*

- 4.4 When the claimant's employment came to an end, was he paid all of the compensation he was entitled to under regulation 14 of the Working Time Regulations 1998?

**Other matters**

5. The following case management orders were uncontentious and effectively made by consent.

**ORDERS**

**Made pursuant to the Employment Tribunal Rules of Procedure**

1. The order for disclosure in paragraph 7.1 of the order of Employment Judge Bedeau sent to the parties on 26 October 2019 is varied to provide for compliance by **3 August 2020**.
2. The claimant is to notify the respondent which documents he wants in the bundle for the final hearing by **7 August 2020**.
3. The respondent is to produce a copy of the bundle to the claimant so as to arrive by **14 August 2020**.
4. Paragraph 10.5 of the order of Employment Judge Bedeau is varied so as to provide that witness statements are exchanged so as to arrive on or before **21 August 2020**.
5. The respondent is to provide to the claimant a breakdown of how they calculated sums paid to him, if any, in respect of pay periods starting 1 October, 1 November, 1 December 2018 not later than **3 August 2020**.
6. The claimant is by **17 August 2020** to serve on the respondent a revised schedule of loss setting out the compensation now claimed for alleged unfair dismissal, holiday pay and unauthorised deduction of wages.
7. The parties are released from compliance with paragraphs 11.2 and 11.4 of the order of Employment Judge Bedeau.

**8. Other matters**

- 8.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 8.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 8.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be

agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

**8.4 Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**8.5 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

**8.6 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

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Employment Judge George

Date:...10 August 2020 .....

Sent to the parties on:

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For the Tribunal:

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