



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Liam Preston

**Respondent:** Converge Technology Ltd

**Heard at:** Bristol Employment Tribunal (sitting remotely) On:30.10.2020

**Before:** Employment Judge Hughes

## Representation

Claimant: In person

Respondent: Mr Ian Phelps (Respondent's Group Operations Director)

## JUDGMENT

- 1 The Claimant's claim for breach of contract is well-founded and is upheld, and the Respondent is ordered to pay the Claimant the sum of £301.37;
- 2 The Claimant's claim for unlawful deduction of wages, contrary to s13 of the Employment Rights Act 1996, is well-founded, is upheld, and the Respondent is ordered to pay the Claimant the sum of £1,147.

## REASONS

- 1 This claim is brought by Mr Liam Preston, against his former employer, Converge Technology Limited.
- 2 It is agreed between the parties that Mr Preston was employed by Converge Technology limited – to which I will refer as “the Respondent” – from 5<sup>th</sup> June 2019 to 21<sup>st</sup> February 2020. Although the Respondent's ET3 says that his employment ended on 29<sup>th</sup> January 2020, Mr Ian Phelps, the Respondent's Group Operations Director, who appeared for the Respondent today, clarified that it was agreed that that was the day on which Mr Preston gave his notice, rather than the day on which his employment came to an end.
- 3 Mr Preston was unrepresented in today's hearing, and Mr Phelps an employee of the Respondent, appeared on its behalf. Each of them

was helpful and courteous, both to one another and the Tribunal, for which I am grateful.

- 4 Although at various times the Respondent was referred to as “GBE”, the parties agreed that there is no dispute that Mr Preston’s employer was indeed Converge Technology Limited.
- 5 Mr Preston’s contract of employment describes his job title as “Senior Network Engineer” – see clause 4.
- 6 Clauses 21 and 22 of the contract were discussed in the hearing. Clause 21 provides as follows:

***Leaving without notice***

*If you leave the Company without working your full contractual notice and without authorisation, the Company reserve the right to seek reimbursement from you for the full amount of any expenses incurred by the Company in covering your duties during the required period and you expressly agree that the Company may deduct the cost of hiring a replacement for that notice period from your final pay.*

- 7 Clause 22 provides, insofar as is relevant, as follows:

***Training costs***

*If you terminate your contract of employment within 6 months of attending an externally operated training course or courses, the company reserves the right to either deduct from any final payment due to you, or in the alternative claim from you, the monies expended on attending such course on the following proportions;*

- *Within 6 months of attendance – 100% of the monies expended,*
  - *Within 8 months of attendance – 70% of the monies expended,*
  - *Within 12 months of attendance – 50% of the monies expended*
- and, by signing this agreement, you expressly agree to such deductions being made.*

*...”*

- 8 It is not disputed that Mr Preston undertook training with Fibreplus Telecommunications College Ltd from 16<sup>th</sup> to 19<sup>th</sup> December 2019, for which the Respondent paid £669 + VAT, with Ermin Plant, on 16<sup>th</sup> November 2019, for which the Respondent paid £185 + VAT, again with Ermin Plant on 2<sup>nd</sup> December 2019, of a value of £125 + VAT, and once more with Ermin on 6<sup>th</sup> December, again worth £125 + VAT. Earlier on, he had undertaken health and safety training on 11<sup>th</sup> June 2019, worth £130 + VAT.
- 9 It was agreed that Mr Preston’s probationary period was 6 months. It therefore came to an end in early December 2020. He did not receive any pay increase, and he raised this in an email to Ms Taylor dated 15<sup>th</sup> January 2020 at 08:34hrs. The email says;

*“When I had my interview with yourself and Kev, Kev said that I would be started off at £23,000 but after successful of probation I would get a rise to Senior wage. When will this be as I have successfully passed my probation?”*

10 I pause to observe here that, although Mr Phelps commented that there was no documentary proof that Mr Preston had passed his probation, it was not disputed that he had indeed passed it.

11 Ms Taylor’s response came the same day, and was;

*“I have messaged Kev about this as I do not recall this.*

*As soon as I hear back from him I’ll let you know”*

12 The following day, Mr Preston chased this up. He emailed Ms Taylor to ask if she had any update regarding this, and received a reply timed at 11:57 am on 16<sup>th</sup> January 2020, which read:

*“Yes I did, he does recall conversations about it.  
I need to speak to Ian as it is not in the budget – he is back on Monday so I will let you know asap if there is anything I can do.  
Sorry Liam, I completely forgot. I did put additional in for you in the budget, but it was not approved”*

13 On Monday 20<sup>th</sup> January 2020, Ms Taylor emailed Mr Preston. She said

*“I have briefly spoken to Ian, we are waiting for the official budget confirmation to come through, so what I put in may be approved. As soon as I get this I will let you know and we can go from there.”*

14 There were further emails on 20<sup>th</sup> January. At 14:19hrs, Mr Preston wrote

*“Last week you advised me that the budget wasn’t approved for the extra funds.  
I appreciate there is budgets but it was one of the factors for me joining GBConverge is that after 6 months I would be getting a pay rise to Senior wage on successful completion of my probation.  
I have been here Now 7 months, if I’m not going to get this pay rise anytime soon can you please advise me?”*

15 There were further emails on 20<sup>th</sup>, which I will not set out, and on 21<sup>st</sup> January at 08:01hrs, MS Taylor emailed Mr Preston to say

*“I spoke to Ian Phelps again yesterday evening to get a definitive answer for you.  
Unfortunately, there is no budget assigned against you.  
I understand that this is not ideal in any way, and can only apologise that this has happened. I know this is not ideal and you are disappointed.*

*No data engineer is currently on £25k – not that this helps your cause but do not want you to think other are on £25k+ and it is just you that has not been given this”*

- 16 On 29<sup>th</sup> January 2020, there was a further exchange of emails. Mr Preston wrote to Ms Taylor, saying

*“I have taken further advise on the pay rise situation and am still being advised that this is a breach of contract from GBE Converge. I would like to hope that GBE Converge will accept 1 month’s notice of terminating my contract as of today with no deductions from my earnings.  
...”*

- 17 Ms Taylor responded, saying

*“We have spoken to our legal representative this end, they have advised that we are not in breach of contract. As discussed earlier, we are able to compromise on the 3 month notice period, and mutually agree a leave. We are willing to accept 1 months’ notice period as stated below”.*

- 18 Mr Preston sought clarification, emailing

*“Thank you for your response.*

*So you are accepting my 1 month’s notice without deductions from earnings so my final working day would be 28<sup>th</sup> February 2020?”*

- 19 Ms Taylor responded, a minute later, saying

*“This is correct, Karen will send you an official letter confirming the date”*

- 20 When Mr Preston received his final wages, deductions totalling £1,177 had been made. I am not sure that the calculation was correct, and in the course of the hearing Mr Phelps accepted that an error was made, in that, as he put it, one of the payments was within the 80% bracket. I pointed out that the contract did not have an 80% bracket, which Mr Phelps accepted, and said that a further £6 should be payable to Mr Preston. A miscalculation of £30 had been identified prior to today’s hearing, and been repaid to Mr Preston, and it was common ground that the total amount of deduction I had to consider was £1,147.

- 21 Mr Preston claimed in his ET1 that, in his interview with the Respondent, there was a discussion between himself, Casha Taylor and Kevin Slater, both employees of the Respondent, that they wanted him to start as a Senior Data Cabling Engineer, but he didn’t have experience in a senior role. His ET1 states that *“The salary was discussed and was advised starting wage for a Senior Data Cabling Engineer is £25k a year but as I didn’t have the experience I would start on £23k and after I passed my probation I would get a rise to Senior wage which was £25k”.*

- 22 Mr Preston goes on to say in his ET1 that, after passing his probation, he didn't get the rise as promised. He says in his ET1 that *"I decided to leave GBE Converge on these grounds as they were in breach of contract. The pay rise wasn't in my contract but it was a verbal agreement between myself, Casha and Kevin which I signed the contract on these terms (I have emails from Casha confirming the pay rise and that Ian Phelps refused to no budget against myself)"*.
- 23 The ET1 goes on to say *"When I handed in my notice via email on the 29<sup>th</sup> January 2020, I put a statement in which was; I would like to hope that GBEConverge will accept 1 month's notice of terminating my contract as of today with no deductions from my earnings"*. In email correspondence to the Tribunal dated 6<sup>TH</sup> March 2020, Mr Preston sought to explain that he thought that there may be a minimum wage element to his claim.
- 24 At the start of the hearing, I discussed the issues with Mr Preston and Mr Phelps. It emerged that there were documents that I had not seen, including the email correspondence of 29<sup>th</sup> January and Mr Preston's contract of employment. We adjourned for a short time for me to be able to locate these documents, and the hearing then continued.
- 25 I clarified with Mr Preston that he was claiming both in respect of the deduction of training expenses, and the failure to give the pay rise. He confirmed that this was so. Mr Phelps confirmed that he understood Mr Preston's case.
- 26 I clarified with Mr Preston and Mr Phelps that the issues appeared to be
- (a) Terms of the contract – was there a binding agreement that Mr Preston would get a pay rise?
  - (b) Did Preston's contract of employment allow for the deduction of training expenses?
  - (c) If so, was Mr Preston given written notice of the provision allowing for the deduction of training expenses?
  - (d) Were the training expenses incurred?
  - (e) Was there an agreement not to deduct training expenses?
- 27 Mr Preston and Mr Phelps agreed that these were the issues that fell for me to decide.
- 28 It quickly became clear that the issues were, in fact, narrower. Mr Phelps did not dispute the training that he had received, nor the cost or it, nor that the contract of employment allowed for the deduction of training expenses. The real issues were therefore, whether there had been a contractual agreement that Mr Preston would receive a pay rise on successful completion of his probationary period, and whether it had been agreed that the Respondent would not deduct from his final pay packet the training expenses incurred.
- 29 As to the former, I have the evidence of the Claimant, there are notes of the interview taken by Ms Taylor, and the other documentation to

which I have referred. I do not have the assistance of evidence from either Ms Taylor or Mr Slater.

- 30 Mr Preston's oral evidence was consistent with his ET1. His previous employment had paid a salary of £23,400 or thereabout. He said that, in interview, he told Ms Taylor and Mr Slater that he wasn't happy taking the drop in wages, but he was happy to take it as long as there was a pay rise at the end of the probation. It was agreed that there would be a pay rise up to £25,000 if passed it and no issues raised up to probation time. Mr Preston said that it was Kevin Slater who agreed that, with Ms Taylor was taking notes, as Kevin Slater was the one carrying out the interview. He said to Mr Preston, "you haven't had the senior experience", to which Mr Preston agreed. They went on to discuss salary, Mr Slater saying to Mr Preston that the Respondent would start him off at £23,000. Mr Preston said that he was thinking of the future and potential this job would give him, they said it would go up to £25k.
- 31 It was not suggested that Mr Preston was deliberately untruthful at any time in the hearing. Nor was it suggested that Mr Phelps was untruthful. But honesty is not the same thing as accuracy. A witness can be honest but mistaken. I have to find what happened on a balance of probabilities.
- 32 On that standard, I accept Mr Preston's evidence. I accept that the events discussed happened over a year ago now, but the events are likely to have been of some importance to Mr Preston and he would have had cause to remember them. There is no evidence from anyone else who was present at the meeting to contradict him. The notes of the interview are ambiguous and not of assistance on this point, and far from full. Importantly, none of the documents that I have seen contradict him. I think that Ms Taylor's emails offer some support to Mr Preston. At first, she does not recall, but later she emails that Mr Slater does remember, and the discussion then moves on to whether there is budget for it. Nowhere in the emails is there any protestation that either Ms Taylor or Mr Slater did not agree this.
- 33 I therefore find that it was agreed that, on successful completion of his probationary period, the Claimant would be entitled to a pay rise up to £25,000 per annum.
- 34 I turn now to the question of deductions. In this case, there is no doubt that the contract of employment did provide for deductions for training expenses.
- 35 The relevant statutory provisions are the Employment Rights Act 1996, s13(1) and 13(2). S13(1)(b) allows for deductions where a worker has previously signified his or her agreement in writing. S13(2) requires that a provision (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to in question, or (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the

worker the employer has notified to the worker in writing on such an occasion.

36 In this case, the real question is the effect of what was agreed when the Respondent agreed to accept 1 month's notice from Mr Preston, rather than 3 months.

37 Mr Preston told me, and it was not seriously challenged, that, if the Respondent had not agreed to take 1 month's notice and no deductions, he would not have left the job. I accept this.

38 The question comes down to this, I consider: when Mr Preston and Ms Taylor emailed one another, saying:

*So you are accepting my 1 month's notice without deductions from earnings so my final working day would be 28<sup>th</sup> February 2020?"*

And

*"This is correct, Karen will send you an official letter confirming the date"*

What did "*without deductions*" mean?

39 Mr Phelps says that it meant, without the deductions provided for by clause 21 of the contract. He said that that is what Ms Taylor would have meant. That may or may not be so. I have to decide what it objectively meant.

40 Clause 21 does include the word "*deduct*". But I find that, in the context of this discussion, it meant deductions of any kind (other than those required by law, for example for tax). There is nothing in it limiting its scope to those deductions that may be authorised under clause 21.

41 I therefore find that the deduction from the Claimant's last pay packet was not lawful.

42 In his schedule of loss, Mr Preston sought what he termed "*Compensation for stress and time off work to attend court as well as travel costs*". The claim for stress was not actively pursued before me, and his claim for travel costs and time off was, in substance, a claim for a preparation time order. I do not consider that this would be appropriate.

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Employment Judge David Hughes

Date: 30 October 2020

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