



# EMPLOYMENT TRIBUNALS

**Claimants:** Ms S Islam  
Ms S Bacchus  
Mr S Fahid  
Mr D Liasedis

**Respondents:** (1) CyberSecurity 1 AB (publ) company number 556135-4811  
(2) Cognosec Limited

**Heard at:** East London Hearing Centre **On:** 10 and 11 December 2020

**Before:** Employment Judge Allen QC

## Appearances

For the claimants: In person

For the respondent: Ms Gevers, Chief Operating Officer; Mr Brown Chief Executive Officer

**This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was V: video - fully (all remote) by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are in the tribunal file, and in the written submissions, authorities and bundles of documents produced by the parties, which I had before me.**

## JUDGMENT

1. Cyber 1 Security AB is not a legal entity and is dismissed from the proceedings.
2. Darren Stilwell was not the employer of any of the Claimants and is dismissed from the proceedings.
3. Ms Islam, Ms Bacchus and Mr Fahid were employees of Cyber Security 1 AB (publ) a company operating under Swedish law.

4. Mr Liasedis was an employee of Cognosec Limited, a related company to Cyber Security 1 AB (publ).
5. Ms Islam's continuity of service started on 12 June 2012.
6. Ms Bacchus's continuity of service started on 1 June 2014.
7. All four Claimants were dismissed on 1 April 2020. The reason stated for dismissal by the Respondents was 'redundancy'.
8. The tribunal has jurisdiction to accept all of the Claimant's claims.
9. Although Cyber Security 1 AB (publ) is in 'reconstruction', a Swedish form of insolvency process:
  - a. consent of a court or the insolvency practitioner is not required under Swedish law in order for a claim to proceed against a company in reconstruction;
  - b. the 'Reconstructor', Marcus Wenner, has in any event consented to the claims being determined;

therefore the tribunal was able to hear the Claimant's claims for amounts outstanding on termination as claims for unlawful deduction from wages (including failure to pay for accrued holiday entitlement), breach of contract and failure to pay redundancy payment.

10. Cyber Security 1 AB (publ) is ordered to pay the following sums to Ms Islam:
  - a. £10,416.66 gross for unpaid March 2020 salary
  - b. £3,605.77 gross for unpaid accrued holiday entitlement
  - c. £25,000 gross for unpaid contractual notice pay
  - i. (this figure of £25,000 is the statutory maximum that can be awarded by a tribunal for a wrongful dismissal (failure to pay notice pay) claim – the actual contractual entitlement and the figure which should have been paid is £31,250 gross for 3 months (including contractual car allowance)
  - d. £3,675 redundancy payment
  - e. £258 unpaid expenses

Total: £42,955.43 gross
11. Cyber Security 1 AB (publ) is ordered to pay the following sums to Ms Bacchus:
  - a. £3,750 gross for unpaid March 2020 salary
  - b. £576.35 gross for unpaid accrued holiday entitlement
  - c. £4,326.90 gross for unpaid notice pay

d. £2,625 for unpaid redundancy payment

Total: £11,278.25 gross

12. Cyber Security 1 AB (publ) is ordered to pay the following sums to Mr Fahid:

- a. £3,166.67 gross for unpaid March 2020 salary
- b. £2,448.08 gross for unpaid accrued holiday entitlement
- c. £1,461.54 gross for unpaid notice pay
- d. £1,575.00 unpaid redundancy payment

Total: £8,651.29 gross

13. Cognosec Limited is ordered to pay the following sums to Mr Liasedis:

- a. £7,500 gross for unpaid March 2020 salary
- b. £2,803.85 gross for accrued holiday entitlement
- c. £7,500 gross for contractual notice pay
- d. £1,837.50 redundancy payment

Total: £19,641.35 gross

14. All sums outlined above are stated gross. Any payments made may be subject to taxation under Swedish or UK law either at source or in the hands of the Claimants.

15. The Claimants have claims relating to unpaid pension contributions, which are being pursued with the Pensions Regulator.

16. Ms Islam has an unfair dismissal claim which was not heard as part of this hearing.

## **REASONS**

1. By order dated 12 September 2012, case numbers 3201643/2020, 3201644/2020, 3201645/2020, 3201647/2020, 3201648/2020, 3201649/2020, 3201651/2020 and 3201686/2020, some of which were included in multiples 5001 and 5002 were ordered to be considered together.
2. Notice of this hearing was sent to the parties on 12 September 2020.
3. At the outset of the hearing, the parties agreed that Cyber 1 Security AB is not a legal entity and it was therefore dismissed from the proceedings.
4. The claims before the tribunal are claims which can only be brought against employers (in a broad sense) and Mr Stilwell, named as a Respondent, was not

the employer of any of the Claimants and therefore he was dismissed from the proceedings.

5. Ms Islam, former Group Finance Director, presented an ET1 claim form on 20 June 2020 against Cyber 1 Security AB, Cognosec Limited and Cyber Security 1 AB (publ) claiming unfair dismissal, notice pay, holiday pay, arrears of pay and expenses and redundancy pay and also making reference to unpaid pension payments.
6. Ms Bacchus, former Business Manager, presented an ET1 claim form on 20 June 2020 against Cognosec Limited and Cyber Security 1 AB claiming notice pay, holiday pay, arrears of pay and redundancy pay and also making reference to unpaid pension payments.
7. Mr Fahid, former Legal Analyst, presented an ET1 claim form on 25 June 2020 against Cognosec Limited and Cyber Security 1 AB claiming notice pay, holiday pay, arrears of pay and redundancy pay.
8. Mr Liasedis, former Senior Technical Consultant, presented an ET1 claim form on 20 June 2020 against Cognosec Limited and Darren Stillwell claiming notice pay, holiday pay, arrears of pay and redundancy pay and also making reference to unpaid pension payments.
9. The 2 day hearing was not long enough to include determination of Ms Islam's unfair dismissal claim; in addition determination would be greatly assisted by a considered response and witness evidence on behalf of Cyber Security 1 AB and in any event, given that the company is currently in 'reconstruction', any award made in the event that the Claimant was successful would be highly speculative. Case management orders will follow to enable that claim to be heard.
10. In the background to the claims was the unexpected death in December 2019 of Jacobus Adriaan Paulsen, known as 'Kobus', a director and shareholder of both Respondents and other companies. The untangling of his affairs and those of the companies that he was involved with appears to have been very taxing for the Respondents, their creditors and the insolvency practitioners.
11. Cyber Security 1 AB (publ) is in 'reconstruction', a Swedish form of insolvency process. In UK law under Paragraph 43(6) of Schedule B1 to the Insolvency Act 1986 (IA 1986) where a company is in administration, 'no legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except... with the consent of the administrator, or... with the permission of the court'. With this in mind and ignorant of the dictates of Swedish law, I issued a witness order on 10 December 2020 for the brief participation of the 'Reconstructor' Marcus Wenner of 180 Grader, 180 Affärsutveckling AB, Svensk Företagsrekonstruktion, Org. Number: 556934-2511, Strandvägen 7 B, 114 56 Stockholm. Mr Wenner had only been appointed on 9 December 2020 – although the reconstruction has been ongoing for a number of months. I am grateful to him for his participation in the hearing on 11 December 2020. He

confirmed that consent of a court or the insolvency practitioner is not required under Swedish law in order for a claim to proceed against a company in reconstruction; but in any event he did not object to these claims being determined by the tribunal. Mr Wenner also explained that the Claimants had no special protection as employees in the Swedish system because employer taxes had not been paid in Sweden given that the payroll function had paid the Claimants through the UK Limited Company.

12. The four Claimants appeared in person. Ms Gevers, Chief Operating Officer of Cyber Security 1 AB appeared on 10 December; and Mr Brown, Chief Executive Officer of Cyber Security 1 AB appeared on 10 and 11 December for the Respondent. All four Claimants gave evidence in the course of which Ms Islam adopted her signed witness statement dated 27 November 2020; Ms Bacchus adopted the content of her ET1 claim form; Mr Fahid adopted the content of his email to the tribunal of 10 August 2020; Mr Liasedis adopted the content of his ET1 claim form. Various documents were supplied by the parties which are on the ET file.
13. I heard oral submissions from all parties.
14. The Respondents had not responded to the claims and they had been informed by order dated 2 December 2020 that no response having been received, under Rule 21 of the 2013 ET Rules, a judgment may now be issued and that any participation in any hearing would only be to the extent permitted by the Employment Judge. I did permit the Respondents to participate and both Ms Gevers and Mr Brown assisted the Tribunal.
15. The Respondents had applied on 9 December 2020 to have the hearing postponed on the basis that they had not had sufficient opportunity to respond to the claims given a change of address. That application was refused by Employment Judge Jones on 9 December 2020. I gave the Respondents an opportunity to re-apply for postponement of the hearing and having considered the matter further, they declined that opportunity.
16. It was agreed that all four Claimants were dismissed with effect from 1 April 2020. The reason stated at the time by the Respondents was redundancy.
17. It was agreed that as at the date of dismissal, Ms Islam, Ms Bacchus and Mr Fahid were employees of Cyber Security 1 AB (publ) a company operating under Swedish law.
18. Ms Islam, Ms Bacchus and Mr Fahid were domiciled in the UK and had physically worked in the UK. They were paid via Cognosec Limited, a UK company. It was agreed and the tribunal was satisfied that no territorial jurisdiction issue arose in relation to these claims.
19. It was agreed that as at the date of dismissal, Mr Liasedis was an employee of Cognosec Limited.

20. It was agreed that Cognosec Limited was an associated employer with Cyber Security 1 AB (publ).
21. It was agreed that letters had been sent to the Claimants informing them that they were dismissed by reason of redundancy with effect from 1 April 2020. The outstanding amounts said to be owed to the Claimants were set out in letters dated 7 April 2020. The Respondents did not contend that any of the amounts set out in those letters had ever been paid. It was not disputed that the Claimants were entitled to back pay for the month of March 2020, payment for accrued holiday pay, notice pay and redundancy pay (if they had sufficient continuity of service). It was not disputed that Ms Islam was entitled to have expenses paid.
22. The disputes between the parties related to whether Ms Bacchus and Ms Islam actually had the continuity of service, which the Respondents had referred to in the letters of 7 April 2020; and whether the notice pay calculations in the case of Ms Islam and Mr Liasedis were correct.
23. It was asserted by the Claimants and not denied by the Respondents that pay slips and P45s were issued which contained erroneous information, giving the impression that some of the payments owed to the Claimants had been paid, when they had not. Those pay slips and P45s cannot therefore be relied upon as a source of information as to pay received by the Claimants.
24. The periods of continuous service for Mr Fahid and Mr Liasedis were not in dispute.
25. The letter to Ms Islam of 7 April 2020 recorded that she had a period of 7 years and 9 months continuity of service. This was based on a start date with Securetrading Group Limited on 12 June 2012 and a transfer to Cyber Security 1 AB (publ) in November 2018. Ms Islam's contract of employment with Cyber Security 1 AB (publ) stated that "it is agreed that previous employment with Securetrading Group Limited counts as part of the Executive's period of continuous employment with the Company".
26. The letter to Ms Bacchus of 7 April 2020 recorded that she had a period of 5 years and 9 months continuity of service. This was based on a start date with Securetrading Group Limited on 1 June 2014, which Ms Bacchus told me then transferred to Mansion Associates Limited in about September 2017 and then Cyber Security 1 AB (publ) in July 2019. Ms Bacchus's contract was silent on the issue of any continuity of employment with other companies.
27. The Respondent disputed that the connection between Securetrading Group Limited and Mansion Associates Limited was sufficient to make them 'associate employers' within the meaning of section 231 Employment Rights Act 1996. Pointing out that Cyber Security 1 AB (publ) was a public company as opposed to those UK Limited companies and that the nature of the work done by those companies differed and they were not part of the same group.

28. I heard evidence as to the directorship and ownership of the Securetrading Group Limited and Mansion Associates Limited – and in particular the close involvement of Kobus Paulson in both companies and with the two Respondent companies. Taking into account the Respondent’s own assertions as to continuity of employment in the 7 April 2020 letters, I was satisfied on the balance of probabilities that these were associated companies on the basis of Mr Paulson’s part ownership and control of all of these companies and that the periods of continuity asserted in the 7 April 2020 letters was correct.

29. On the basis of the clear provision to the effect in his contract of employment at clause 13, which stated:

The first six months of your employment will be a probationary period during which either party may terminate the employment by serving one week’s written notice. The firm reserves the right to extend your probationary period in which case the notice period of one week will continue to apply.

After successful completion of the probationary period, either party may terminate this agreement by giving the other one months’ written notice.

I accepted that Mr Liasedis was entitled to a one month notice payment of £7,500 which was more than that set out in the letter to him of 7 April 2020.

30. On the basis of the clear statements to the effect in her contract of employment, which stated at clause 13.3:

The executive’s employment may be terminated by the company giving to the executive not less than three (3) months written notice or the executive given to the company not less than three (3) months written notice

I was satisfied that Ms Islam was entitled to a notice payment of £31,250 gross for 3 months (including her contractual car allowance) which was more than that set out in the letter to her of 7 April 2020.

31. However in Ms Islam’s case, the tribunal’s jurisdiction in claims of breach of contract is restricted to £25,000 and that limits the amount that can be awarded under that head – although I can record that as a matter of contract, she was entitled to be paid £31,250. This cap does not affect her other claims for unlawful deduction of wages and redundancy pay.

**Employment Judge Allen QC  
Date: 14 December 2020**