



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Riffat Amin

**Respondent:** (1) Arrayent UK Limited (2) Prodea Systems, Inc

**Heard at:** Reading **On: 7 December 2020**

**Before:** Employment Judge Gumbiti-Zimuto

**Appearances**  
**For the Claimant:** Mr U Amin (claimant's son)  
**For the Respondent:** Not attending and not represented

## JUDGMENT

1. The claimant was employed by Prodea Systems, Inc.
2. The claimant was unfairly dismissed.
3. The respondent is ordered to pay to the claimant the sum of £82,741.50 in compensation for unfair dismissal.
4. The respondent has made an unauthorised deduction from the claimant's wages. The respondent is ordered to pay to the claimant £58,274.48. This is the gross amount. If the respondent pays the tax and national insurance due to HMRC, payment of the net amount will meet the judgment debt.
5. The respondent failed to pay the claimant in lieu of entitlement to annual leave. The respondent is ordered to pay to the claimant the sum of £4,496.83.

## REASONS

1. In this judgment the reference to respondent is to Prodea Systems, Inc.
2. In a claim form presented on the 25 May 2018 Mr Riffat Amin made a claim to the employment tribunal containing complaints of unfair dismissal, unpaid wages, holiday pay, and notice. The claimant was employed by

the respondent from 1 August 2014 until the 15 March 2018 on a salary of £127,500 per year. At the date of his dismissal his role was that of VP European Operations.

3. The claimant's original employment was with Arrayent UK Limited UK Limited however they were acquired by the respondent who at the date of the claimant's dismissal were the claimant's employer and have entered a response as such in these proceedings.
4. The claimant's claim form set out how during a telephone call on the 15 March 2018 he was dismissed by the respondent. The claimant was told about an alleged complaint from a third party which was said to constitute grounds for dismissal and his employment terminated forthwith. The respondent failed to comply with the ACAS Code of Practice on disciplinary procedures.
5. The respondent, in its response received by the employment tribunal on the 23 July 2018, admitted that the claimant's dates of employment were correct, that the description of his job and job title had been correctly stated. The respondent did not complete the section 5 of the claim form where details of earnings and benefits can be set out. In section 6.1 of the claim form the respondent stated that it defended the claim and believes the claimant was not unfairly dismissed. The respondent admitted that the claimant was entitled to sums claimed up to the date of his dismissal on 15 March 2018. The amounts admitted are

Unpaid salary	£47,812.50
Commission	£10,461.98
Holiday pay	£4,496.83

6. The respondent stated that it had informed ACAS of a detailed summary of three incidents and the meetings the claimant had with the respondent that led to his termination on 15 March 2018. No details of those matters were set out by the respondent in the response. The respondent stated that it relied on the claimant's contract which allowed the respondent to terminate his employment at any time, without notice or pay in lieu of notice, and with no liability to make any further payments to him, if certain conditions are met. The respondent contends that the claimant's conduct as described in the summary provided to ACAS (but not set out in the response to these proceedings) showed that the conditions had been met and they were the sole reason for dismissal.
7. Section 98 of the Employment Rights Act 1996 provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show the reason (or, if there was more than one, the principal reason) for the dismissal, and that it is a reason falling

within subsection (2). The conduct of an employee is a reason falling within the subsection.

8. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.
9. The Respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case. It is not necessary that the tribunal itself would have shared the same view of those circumstances.<sup>1</sup>
10. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting our own decision as to what was the right course to adopt for that of the employer) must decide whether the Claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair"<sup>2</sup>. The burden is neutral at this stage: the Tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.
11. The respondent in this case has not attended the proceedings and did not participate today. The respondent was notified of the hearing by the employment in a notice sent to the parties on the 9 February 2020. The hearing at this stage was intended to be an in person hearing at which all the parties were to attend in person at the Reading Employment Tribunals, 30-31 Friar Street (Entrance in Merchants Place), Reading, RG1 1DX.
12. As a consequence of the general circumstances pertaining due to COVID-19 the hearing was converted to remote hearing by CVP on 4 December 2020 providing the parties with detailed instructions on how to participate in the hearing. A notice was sent to the parties on the 4 December 2020. The employment tribunal received the following response from the respondent.

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<sup>1</sup> British Home Stores Limited v Burchell [1978] IRLR 379

<sup>2</sup> Iceland Frozen Foods v Jones [1982] IRLR 439

**From:** Anousheh Ansari <[anousheh.ansari@prodea.com](mailto:anousheh.ansari@prodea.com)>  
**Sent:** 07 December 2020 04:44  
**To:** WATFORDET <[watfordet@Justice.gov.uk](mailto:watfordet@Justice.gov.uk)>  
**Cc:** [riffata@gmail.com](mailto:riffata@gmail.com); Kathy Lam <[kathy@prodea.com](mailto:kathy@prodea.com)>  
**Subject:** Re: CVP Hearing Link - 3307425/2018 - 7 December 2020

Dear Sir/ madam

*I just found this email In my spam mailbox. Originally there was suppose to be an in person 5 day hearing in London. We were not aware that this has been changed to a video call. The call is scheduled in the middle of the night for us in US. If there is a video call we would request that it takes into account the time zone for all parties.*

*Also please always copy ms Kathy Lam who is looking after this case. She was not copied on this email so she was not aware of it either. I have included her on this email.*

Regards

Anousheh Ansari

*"Light a small candle instead of cursing the dark."*

*Sent from my communicator*

13. I note that the email does not contain any application to postpone the hearing or any other application in relation to the way that the hearing was to be conducted.
14. The respondent did not attend the hearing.
15. I heard from the claimant and considered the information which is contained in the employment tribunal file. I made the following decisions.
16. The claimant was employed by Prodea System, Inc.
17. The claimant was unfairly dismissed.
18. The respondent admits to the claimant's claim for unpaid wages-£47,812.50, Commission-£10,461.98, and Holiday pay-£4,496.83.
19. The claimant was dismissed on 15 March 2018, his age was 60 years, he had been employed by the respondent for three complete years. The claimant is entitled to a basic award pursuant to section 119 Employment Rights Act 1996 is entitled to a basic award of £2,200.50.
20. The claimant's contract of employment provides that the claimant is entitled to three months' notice of termination of his employment. The claimant was dismissed without notice on the 15 March 2018. The respondent has not shown circumstances justifying the claimant's dismissal without notice. In calculating the claimant's compensatory

award, I include three months' pay in the sum of £31,875.00 to represent notice period.

21. The claimant obtained alternative sometime after employment after his dismissal. The difference in pay in the new employment comparing employment with the respondent is £9,500 per month. The loss of earnings in the period from the end of the notice period to the March 2020 is therefore £171,00.00.
22. The claimant's compensatory award for unfair dismissal is increased by 25% pursuant to section 207A Trade Union Labour Relations (Consolidation) Act 1992 because the respondent failed to comply with the ACAS code of practice on the conduct of disciplinary proceedings. The maximum award is made because the respondent entirely failed to follow any process in this case and further it is not clear that any underlying concerns that the respondent might have had would have justified a dismissal in any event. A maximum uplift is just and equitable in this case. The award is therefore increase by £50,718.75.
23. Subject to the statutory limit the total compensatory award I would make is therefore £253,593.75. Section 124 of the Employment Rights Act 1996 provides for a limit on the award for unfair dismissal. At the date of the claimant's dismissal was £80,541.00. I therefore make an award in this amount in respect of compensator award under section 118(1)(b) Employment Rights Act 1996.

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Employment Judge Gumbiti-Zimuto

Date: 7 December 2020

Sent to the parties on:18/12/2020.....

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For the Tribunals Office

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