



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4102690/2020 (V)

Held via Cloud Video Platform (CVP) on 14 – 16 July 2021

10

Employment Judge Murphy

Mr T Jeffrey

**Claimant
In Person**

15

Avocet Agritech Ltd

**Respondent
Not present
Not represented**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The respondent has breached the claimant's contract of employment and is ordered to pay to the claimant ONE THOUSAND SIX HUNDRED AND
25 FOUR POUNDS STERLING AND SIXTY NINE PENCE (**£1,604.69**) in respect of net damages for such breach in failing to give the statutory minimum notice period of three weeks of the termination of the claimant's employment as incorporated into his employment contract by section 86 (4) of the Employment Rights Act 1996.
- 30 2. The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of ONE THOUSAND NINE HUNDRED AND SEVENTEEN POUNDS STERLING AND EIGHTY ONE PENCE (**£1,917.81**) in respect of unpaid wages relating to ten days' accrued
35 untaken holiday outstanding as at the termination of employment on 17 April 2020.

3. The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of SEVEN THOUSAND ONE HUNDRED AND NINETY FIVE POUNDS AND EIGHTY THREE PENCE (**£7,195.83**) in respect of unpaid wages relating to the period from 1 March to 17 April 2020.
4. The sums awarded at item 2 and 3 are expressed gross of tax and national insurance. It is for the respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.
5. The claimant's complaint of breach of contract in respect of a failure to pay expenses in the sum of £1,511.31 is not well founded and is dismissed.
6. The claimant has been unfairly dismissed. Save in respect of the following matters on which the Tribunal makes a determination, the question of remedy is held over. The Tribunal makes the following determinations relevant to remedy:
- i. The claimant has no entitlement to a basic award in this case by operation of s122(4) of ERA.
 - ii. The dismissal was neither caused nor contributed to by any action of the claimant for the purposes of s.123 (6) of the Employment Rights Act 1996; and
 - iii. It has not been proved that a fair dismissal would have ensued or that the claimant's employment would have ended lawfully within any particular timescale, such that no *Polkey* reduction falls to be applied to any award.

REASONS

1. The claimant brought a claim for damages for failure to serve the statutory minimum notice period, a claim for an unauthorised deduction from wages in respect of accrued untaken holidays outstanding at the termination of his employment, a claim for arrears of pay outstanding on the termination of his employment, and a claim for breach of contract in respect of unpaid expenses. Similar claims were brought against the respondent and another group company by two fellow claimants which were heard alongside the claimant's claims at the hearing.
5
2. The claimant also brought a complaint of unfair dismissal. At the outset of the hearing, he identified that he believed he had a 'whistle-blowing' claim against the respondent for automatic unfair dismissal. It was pointed out that no such claim was disclosed by his ET1. In the circumstances, the claimant was informed if he wished to pursue such a claim, he would require to seek an adjournment to prepare written details of the matters complained of and thereafter to make an application to amend his claim form to introduce the new facts and legal claim, which application would then be considered. The claimant confirmed he did not wish to do so, and was content to proceed on the basis of her 'ordinary' unfair dismissal claim.
10
15
20
3. This final hearing took place remotely by video conferencing. The parties did not object to this format. A face-to-face hearing was not held because of the Covid 19 pandemic and issues were capable of determination by a remote hearing.
25
4. A notice of the claim was sent to the respondent. The respondent entered a response and subsequently intimated amended grounds of resistance. A notice of the hearing was sent to the respondent on 9 June 2021. The respondent did not attend and was not represented at the hearing. Numerous attempts were made in advance of the hearing to contact the respondent to arrange a CVP test. The Clerk emailed the respondent on 5, 7, 12 and 14 July 2021 and attempted to reach the respondent by telephone on 8, 13 and 14 July 2021. The Clerk obtained no answer. The Clerk attempted to call the respondent again on the morning of the hearing.
30
35

It was elected to proceed with the hearing in the respondent's absence under Rule 47, having considered all information available and made such enquiries as were practicable as to the reasons for the respondent's absence.

5

5. Oral reasons were given at the hearing. Written reasons will not be provided unless they were requested at the hearing or are asked for by any party within 14 days of the sending of this written record of the decision.

10

6. The Tribunal determined there to be a need for a separate hearing to determine remedy in respect of the complaint of unfair dismissal, save to the extent specified in paragraph 6 of the judgment above. The three days allocated was insufficient to hear evidence on remedy in relation to the unfair dismissal complaint of the claimant and one of her fellow claimants and relevant documentary evidence on this issue had not been produced in the joint bundle (see Case Management Order below).

15

ORDER OF THE EMPLOYMENT TRIBUNAL

1 The Tribunal orders that:

20

1. A remedy hearing (by CVP) shall be listed for three hours on the next available date after 5 August 2021 to determine the Claimant's remedy entitlement arising from the foregoing judgment on liability. The remedy hearing shall be listed separately to the remedy hearing in the claim 4102720/2020 (Shotton v Avocet Faculties Ltd).

25

2. The Respondent and any representative will be entitled to:

a. attend the remedies hearing;

b. submit written submissions to the tribunal on remedy / compensation which have not been determined, and any such submissions shall be sent to the claimant and copied to the tribunal by no later than 4 pm on the business day falling two business days before the remedies hearing;

30

- c. cross-examine the claimant's witnesses on issues of remedy / compensation which have not been determined only;
- d. make oral submissions to the Tribunal on issues of remedy / compensation which have not been determined only;

5 3. By **4 pm on 5 August 2021**, the Claimant shall **send to the Respondent and to the Tribunal by email** the following. Please see paragraphs 8 to 12 below for more information on how these documents should be organized and formatted:

- 10 a. An updated schedule of loss (i) particularising all sums sought; and (ii) providing a clear explanation of how each sum is calculated;
- b. Particulars of benefits received since 17 April 2020;
- c. Particulars and evidence of any income / earnings from any source since 17 April 2020;
- 15 d. Particulars of any efforts to mitigate loss arising from the dismissal to include applications for alternative employment; other documentation showing or tending to show efforts to secure employment; and documentation showing or tending to show income received from self-employment since 17 April
- 20 2020.
- e. Copies of any documents on which the claimant intends to rely at the hearing which shall include copies of the following:
 - i. The claimant's bank statements for the period 17 April 2020 to 31 July 2021. Leave is granted for the claimant
 - 25 to redact irrelevant entries / private information.
 - ii. In the absence of appropriate payslips which were not supplied latterly by the respondent, bank statements in the period prior to 17 April 2020 and such other documentation as shows or tends to show the claimant's

entitlement to salary and other benefits prior to the termination of employment with the respondent;

5 iii. documents evidencing the respondent's employer contributions to the claimant's pension in 2019 and 2020 (or confirmation he has none);

iv. the claimant's P60s for tax years 2018/2019 and 2019/2020 (claimant must check HMRC do not have copies) (or confirmation there are none);

10 v. any other documents relevant to compensation / remedy on which the claimant intends to rely at the remedies hearing.

4. While the pandemic continues there are good reasons to avoid the unnecessary use or transmission of hard copy documents. When exchanging documents, the parties may do that simply by sending scans to each other.

5. **The claimant must send the documents listed in paragraph 3 and sub paragraphs to the respondent and to the Employment Tribunal by email by not later than 4 pm on 5 August 2021** in the format prescribed below.

20 6. The file of documents must be contained in a single pdf file as far as reasonably practicable and should be indexed and paginated. The visible pagination must match the pagination of the electronic pdf file. That means that sub-divided pagination (e.g "pages 56A to 56C") should not be used under any circumstances. It also means that the index must itself be paginated.

25 7. Unless the Tribunal has ordered otherwise, each side can decide whether they wish to use hard copy printed documents during the preliminary hearing or electronic documents displayed on a suitable screen. If electronic documents are to be used, then an additional screen or device will be needed to display them because the video link will require a dedicated screen of its own.

30

8. Each witness (if any are called other than the claimant) will require their own copies of the joint file of documents. The party calling the witness must ensure that the witness can refer to those documents during the hearing, on a separate screen or device if they are viewing them electronically.
9. Unless and until notified that the Tribunal needs hard copies, the parties should assume the Tribunal is happy to receive documents solely in electronic PDF format.
10. The parties are referred to the joint Presidential Guidance, Practice Direction and FAQ documents issued in response to the pandemic. All are updated as necessary and are freely available online¹
11. The equipment test offered by the Tribunal is extremely important. Experience suggests that most technical problems can be detected and solved during the test. The parties and all of their witnesses (if any) must participate in the test. A failure to do so without good reason could be regarded as a failure to comply with the overriding objective in rule 2 if technical difficulties then arise during the hearing.

IMPORTANT INFORMATION ABOUT ORDERS

- 1) If this order is not complied with, the Tribunal may make an Order under Rule 76 (2) for expenses or preparation time against the party in default.
- 2) You may make an application under Rule 29 for this Order to be varied, suspended or set aside. Your application should set out the reason why you say that the Order should be varied, suspended or set aside. You must confirm when making the application that you have copied it to the other party(ies) and notified them that they should provide the Tribunal with any objections to the application as soon as possible.
- 3) If this order is not complied with, the Tribunal may make an Order under Rule 76 (2) for expenses or preparation time against the party in default

¹ <https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland/>

Employment Judge: Lesley Murphy
Date of Judgment: 18 July 2021
Entered in register: 12 August 2021

5 and copied to parties