



# EMPLOYMENT TRIBUNALS

**Claimant:** Dean Blanch

**Respondent:** Synapsia Ltd (in creditors' voluntary liquidation)

**Heard at:** Bristol (video hearing)      **On:** 04 May 2022

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person

**Respondent:** Did not attend, was not represented and sent no representations

## JUDGMENT

1. The Claimant was dismissed by reason of redundancy.
2. The Respondent is ordered to pay to the Claimant a redundancy payment of £5,318.77.
3. The Respondent is ordered to pay to the Claimant a compensatory award of £1,329.69.
4. The Respondent is ordered to pay the Claimant £1,329.69 under S93 of the Employment Rights Act 1996 for failing to give written reasons for dismissal.
5. The Respondent is ordered to pay to the Claimant the sum of £5,318.77 notice pay.
6. The total sum the Respondent is ordered to pay the Claimant is **£13,296.92 (payable without deduction)**.
7. The Claimant's other claims, for holiday pay and for unpaid wages and commission, are dismissed.

## REASONS

1. Mr Blanch worked for the Respondent for a little over 8 years. He had a low basic pay of £1,000 a month, but earned commission which took his pay to an average of £2881 a month.

2. The Respondent supplies services to schools, mentoring and motivating cohorts of students identified by schools as likely to benefit from such support.
3. The Respondent was a small company with about a dozen trainers, a couple of administrators. The main salespeople were Mr Thwaites and Mr Blanch.
4. Mr Thwaites owned about half of the Respondent. In autumn 2019 he bought the rest of the company, at considerable expense. In September 2019 he told Mr Blanch that he would be bringing his wife into the company. He did so, as an administrator. Mr Blanch thought at the time that this placed his position in jeopardy, as he thought it likely that Mr Thwaites would think of replacing him with his (Mr Thwaites') wife, as this would divert all Mr Blanch's earnings to Mr Thwaites' family, and that would help repay the money borrowed to buy the half of the company he had not owned.
5. On 23 March 2020 the first lockdown started. For schools, lockdown, plus school holidays, lasted almost without interruption until 09 September 2020.
6. Mr Thwaites was furloughed immediately, for the obvious reason that with the schools closed there were no staff to contact and no pupils to mentor (and external suppliers were not allowed into schools).
7. Mr Blanch returned to work after the August bank holiday, 2020. Mr Thwaites told him to telephone schools and if no response to email them. Mr Thwaites had a policy of not sending emails without first calling the school. Mr Blanch thought this pointless and said so in a direct manner. Nevertheless, after about 20 minutes of bad-tempered exchanges about this he complied.
8. The following morning (03 September 2020) the same discussion resumed, shortly. This ended when Mr Thwaites told Mr Blanch he was dismissed. Mr Blanch left.
9. Mrs Thwaites took up the book of clients of Mr Blanch. No other salesperson was recruited.
10. On 07 September 2020, apparently after Mr Thwaites contacted a solicitor, the dismissal was replaced by a purported resignation, which Mr Thwaites asked Mr Blanch to discuss. There was some discussion about whether this would be rescinded or whether Mr Blanch would work from home. On 09 September 2020 Mr Thwaite decided not. Then, a month later, in early October 2020, through documents drafted by a second firm of solicitors, this was replaced by a purported conduct dismissal. This raised matters not previously mentioned. These were pretexts.
11. I conclude that given the inevitably straightened financial circumstances of the Respondent after the 6 months of lockdown Mr Thwaites decided that Mr Blanch had to go, for financial reasons, and his work be replaced by that to be done by his wife. The real reason for dismissal was that the business could not afford to continue to employ Mr Blanch, and that was why Mr Thwaites dismissed Mr Blanch. It was in the heat of the moment during a disagreement, but this was simply the implementation of something that had been in Mr Thwaites' mind for some time. In the particular circumstances of Covid, this amounted to a redundancy for Mr Blanch.

12. He is therefore entitled to a redundancy payment. He is under 40. He had worked 8 full years. He is entitled to 8 weeks' pay as a redundancy payment. He was paid an average of £2881 a month. The weekly amount is that figure multiplied by 12 and divided by 52, which is £664.85. 8 weeks is (with decimal points) £5,318.77, and that is the redundancy payment due to him.
13. As the reason was a genuine, if disguised, redundancy Mr Blanch is entitled to notice pay, of the same amount.
14. Had Mr Thwaites conducted a proper redundancy exercise it would not have taken long, and the resultant dismissal would have been fair. If a small family-owned company is in difficulty it is unlikely to be unfair to dismiss a non-family member and give the work to an employed family member. I decide that this would be a further two weeks, the pay for which would have been £1,329.69.
15. In addition, an employee who is dismissed is entitled to a letter telling him or her why, and if this is not done, the award is two weeks' pay<sup>1</sup>. Accordingly, I award a further two weeks' pay for this reason.
16. On 20 October 2021 the Respondent appointed a liquidator, having repaid the fixed charge on its assets. Mr Thwaites now runs another company running a similar business, Positively You Education Ltd (12861780, a subsidiary of another company he appears to own, Positively You Group Ltd (12411860).
17. I paid no attention to the without prejudice correspondence which was sent in by Mr Blanch. I did not consider relevant other matters referred to in the documentation which were raised by both parties as relationships deteriorated. I make no findings of fact about them, and no purpose is served in this public document in setting out what they were.
18. Mr Blanch claimed holiday pay but did not quantify the claim. He conceded that the holiday year was the school year, and that as he was dismissed at the beginning of September there could be no such claim. I dismiss that claim for both reasons.
19. Mr Blanch claimed that Mr Thwaites had failed to pay him a substantial amount of commission. This was not clearly calculated, and nor was it clear how commission would be due, as Mr Blanch's evidence was that it was not possible, in early September, to get work because it was not possible to contact school decision makers (and if it had been possible they would not have been able to identify a cohort to benefit from the Respondent's help). As the burden of proving the claim is on the Claimant, this claim must be also be dismissed.

Employment Judge Housego

Date: 04 May 2022

Amended Judgment sent to the parties: 22 June 2022  
FOR THE TRIBUNAL OFFICE

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<sup>1</sup> S92 and S93 of the Employment Rights Act 1996