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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102647/2022

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Hearing held by CVP on 21 July 2022

Employment Judge McFatridge

15 **Mr Justin Lynn**

**Claimant
In person**

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Teamcard Limited

**Respondent
Represented by
Ms Stobart, Advocate
Instructed by
Messrs Moore Barlow
Solicitors**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the respondent did not breach their contract with the claimant and the claim of breach of contract does not succeed. The claim is dismissed.

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REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he was entitled to a contractual enhanced redundancy payment following the termination of his employment by the respondent. It was his position that in terms of his contract he was due an enhanced redundancy payment amounting to £52,961.46. He indicated he had only been paid £16,320 and sought payment of the difference. The respondent submitted a response in which they denied the claim. It was their position that the claimant was only entitled to statutory redundancy pay and that this had been paid in full together with all other entitlements. At the hearing the claimant gave evidence on his own behalf. Evidence was also led on behalf of the respondent from Malcolm Andrew Peden their Chief Executive Officer. The respondent lodged a bundle of productions which they indicated they considered to be a joint bundle. The claimant had forwarded his productions to them and these had been incorporated in the bundle with the exception of various documents which the respondent said related to the ACAS Early Conciliation and were inadmissible. The claimant lodged his own bundle which was referred to during the claimant's evidence in chief and he was cross examining witnesses. In the judgment below I have referred to the claimant's bundle by page number using the prefix C and the respondent's bundle by page number using the prefix R. In the event most of the documents referred to during the hearing were in the respondent's bundle as well as in the claimant's bundle. Both parties also lodged additional emails prior to the hearing. I advised the claimant at the outset that I was not prepared to hear evidence in relation to what had gone on during ACAS conciliation since this appeared to be irrelevant as well as inadmissible on public policy grounds. On the basis of the evidence and the productions I found the following essential matters to be proved or agreed.

Findings in fact

2. The respondent is a software company which provides access solutions and software to large sporting venues to allow the customers to be

admitted in an orderly fashion. Their customers include the Open and Wimbledon. The claimant commenced employment with the respondent in or about January 2002. His contract of employment was lodged at pages C2, C3. A scan of the original contract was also lodged (C4, C5).

5 The claimant signed the contract on 9 January 2002 (C5).

3. The document contains the usual terms and conditions which one would expect to see in a contract of employment. The claimant's role is described as that of Graduate Programmer and his salary was £20,000 per annum. The contract of employment does not refer to a Company Handbook or Employee Handbook. At that time the company did not have such a handbook. The contract does not refer to any enhanced redundancy terms, it is silent on the point. The contract does contain a clause (C3) stating

15 "Entire agreement. This agreement contains the entire agreement between the parties and supersedes all prior arrangements and understandings whether written or oral with respect to the subject matter hereof and may not be varied except in writing signed by both parties hereto."

4. In or about 2008 the respondent introduced a Handbook. This Handbook was subject to various revisals over the years. A copy of the handbook said to be dated May 2014 was lodged (R70-92). There is a version history page at the beginning (R70) which refers to this version as being version 1.05. Five previous versions are mentioned dating from the initial document which is said to be dated 17 June 2008. These documents were not lodged.

5. A paper copy of the Handbook was kept in the St Andrews office at which the claimant worked. The claimant was aware of the existence of the document but it was not a document which was referred to by him in the normal course of his employment.

6. A further revision of the handbook was lodged bearing the date 27 August 2019 which was referred to by the claimant as revision 1.06. On the title page it is referred to erroneously as Revisal 1.05 but since there are two Revisal 1.05s it would appear logical to call this 1.06. The document was

lodged at R93-114. Both of these handbooks contained two sections both confusingly numbered 3.4. The 2014 version has them on pages R86-87 and the 2019 version has them on pages R108-109. They are in identical terms. It is probably as well to set out the terms of both of these sections in full.

“3.4 Employment Practice

The company looks to promote good employment practice through discussions with management and employees to promote open dialogue, flexibility and co-operation.

This guide will be issued to all employees outlining these basic terms and conditions and the company’s policies and procedures. All employees will be kept information of any agreed changes to the handbook.

All employees will be issued with an individual contract of employment which will not be altered without agreement.

Our commitment to employees demonstrate good practice and employees are encouraged to put forward any ideas for improvement considered appropriate to their line manager or office manager.

3.4 Redundancy Policy

The company policy is to comply with the law both in letter and in spirit. The company will provide compensation as set out below to employees who continue their employment up to the official termination date or else leave earlier with the agreement of the company in all cases the provision of the Employment Rights Act will apply.

- a. One week’s pay for each year of service below the age of 30
 - b. Two weeks’ pay for each year of service between the ages of 30 and 40
 - c. Three weeks’ pay for each year of service beyond the age of 40
- In calculation redundancy one week’s pay will be the average of the 12 weeks’ gross pay prior to the date of termination of employment.”

7. Both of these handbooks contain an introduction which contains a paragraph stating

5 “The terms herein do not replace terms and conditions of employment as may be agreed within any individual’s contracts of employment.”

8. Generally speaking, when new employees start in the business they are sent a series of briefing documents. Copies of these would be kept in the employee’s personnel file. A Lee Slater joined the company in or about June 2019. Amongst the briefing documents he was sent was a copy of the staff handbook which was the version 1.05 dated 20 August 2014. The copy of Mr Lee Slater’s personnel file relating to briefing documents was lodged at R92.

9. In or about November 2019 Lorraine Gunby joined the company. She was not sent a copy of any company handbook in her briefing documents. A copy of the list of briefing documents relating to Lorraine Gunby’s recruitment was lodged at R116.

10. Lorraine Gunby’s role within the company involved her dealing with HR matters. She formed the impression that the company’s contracts of employment and company handbook were in need of updating and tidying up.

11. From around November 2019 onwards management team meetings within the respondent contained an Agenda item which related to updating the Company Handbook and Procedures. During this time Ms Gunby arranged for an outside firm of solicitors Messrs Brodies to provide a draft Handbook. This document contained around 200 pages. The original intention was to have Brodies carry out the task of updating the handbook and contracts of employment including dealing with any consultation process required. In the event, a decision was subsequently made by the respondent to dispense with the services of Messrs Brodies.

12. In or about April 2020 Mr Peden commenced employment with the respondent as their new Chief Executive. Part of his task was to tidy up the company processes and documents so as to facilitate any future

disposal of the company by the shareholders. Mr Peden quickly became aware that there was an agenda item for management meetings relating to updating contracts of employment and handbook which had been on the Agenda for some months. He indicated to the management team that either this was something which should be abandoned and taken off the Agenda entirely or it should be followed through. The respondent's management team decided to follow through and complete the process. In addition, it was their intention to tighten up processes and document things better. It was intended to introduce a proper appraisals process and thereafter a proper pay review process. Mr Peden had become aware that there were certain unusual employment patterns and practices and considered that these required to be properly documented. As noted above this task was eventually to be carried out in-house.

13. In or about August 2020 the claimant received a promotion and received a new contract of employment. This followed a meeting with Mr McRobb the respondent's Operations Director which had taken place in October 2020. The claimant was advised he would be getting his new contract in a letter dated 26 October 2020 which was lodged (R43). The document was sent to the claimant however it is unclear whether or not it was ever signed. In August 2020 the pandemic was ongoing and there were issues around paper documents. The contract was lodged (R35-42). Again the contract contains the normal type of clauses as one would expect in such a document. There was also attached to the document a statement of terms and conditions of employment together with various pre and post-termination non-competition undertakings. There is no reference in the contract to any enhanced redundancy payment. There is no reference in this contract to a Handbook of Employment. The respondent's position was that the reason for this was that at this stage the handbook was in a state of flux.

14. With regard to policies which had formerly been in the handbook such as disciplinary and grievance policies the claimant was advised that such policies were available on request from the Business Manager. The document also indicated that such policies did not form part of his terms and conditions of employment (paras 14 and 15 on R39).

15. Under his new contract the claimant received a very substantial increase in salary and his role changed. The claimant started working under the new role and accepting the new salary. He did not challenge the applicability of this contract at any time prior to the termination of his employment. This 2020 contract did not contain a “whole agreement” clause. It did contain a clause stating

“The company may amend, vary or terminate the terms and conditions in this document and any such change will be notified to you personally in writing or when generally applied by notice.”

10 16. In or about April 2021 another employee of the respondent emailed Ms Gunby stating

“Hi Lorraine Is there an electronic version of the employee handbook? If there is I'd like to see it please. I know there was a hardcopy in the office that I read a good long time ago but if I ever had an electronic version I don't now.”

Ms Gunby responded stating

“Hi Al
This is the latest version I can find of the electronic handbook; I'm afraid I don't have an electronic copy of your contract though.”

20 The email exchange lodged for the Tribunal does not indicate which version of the handbook or indeed which document was supplied to Mr Macdonald however on the balance of probabilities I accepted that the claimant was probably correct in stating that this had been version 1.6.

25 17. In or about July 2021 Mr Peden wrote to all staff regarding the revisal of the staff handbook and employment contracts. The letter was lodged (R162-163). It stated

“As many of you are probably aware our contracts of employment have fallen behind the times in terms of changes to legislation and working practices and across the entire employee base the contracts themselves have little consistency so over the next few weeks we'd like to introduce a new standard contract of

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employment. As seems to be the practice nowadays Employment Contracts tend to refer to an Employee Handbook and it tends to be Employee Handbooks that are updated on a more regular basis to reflect changes to employment law and working practices.

5 Unfortunately, we have had an Employee Handbook compiled for us which is nearly 200 pages in length. What I am loathe to do is chuck 200 pages on the intranet and say 'welcome to your new Employee Handbook' without any form of consultation or engagement. However, asking everyone to read and acknowledge the Employee Handbook is a bit unrealistic. The Employee Handbook itself is a list of about 30 'policies' most of which are repetitions of what you would find in law and in most other Company Handbooks.

10 Therefore, what I am proposing is that Lorraine will take each of these policies and allocate each to a group of 2 people to ensure that nobody is over-burdened but everyone is represented and collectively we will come to a sensible position. Please be aware that some of these are a repetition of employment law so there will be little room for modification but we are happy to review."

15 The letter then goes on to list a number of policies. Redundancy policy and enhanced redundancy pay is not in the list of policies referred to. The letter ends with Mr Peden asking

"Is everyone content with this as a way of going forward?"

18. Over the next few weeks various members of staff looked at various parts of the handbook. The claimant was allocated a policy on time off in lieu and fed back on this to Lorraine Gunby. There was some discussion about the process amongst staff. Some staff suggested in the claimant's hearing that the respondent were wanting to do this in order to get rid of any entitlement to enhanced redundancy pay. The claimant did not take part in this conversation and at the time was not interested since he did not think that there was any possibility of him being made redundant. There had been no redundancies at the company in the whole period since 2002 when the claimant commenced his employment.

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19. No member of staff objected to anything in the handbook although some policies were altered in the light of feedback from the process instituted by Mr Peden. None of the staff indicated there was any issue that the handbook did not deal with enhanced redundancy payments. On 16 July
5 Mr Peden emailed all staff again stating

“I just wanted to give you a brief update of where we are heading with contracts, handbook and appraisals as per my recent email on the handbook.

10 The aim is to have the Employee Handbook completed by 30 July then we will issue draft contracts on 2 August for review and completion by 13 August and then we will start the appraisal process immediately thereafter with an aim to have this completed by the end of August.

15 If this timeline does not work for anyone then please let Lorraine or myself know.”

20. This email was lodged by the respondent the day before the hearing. On 22 July Lorraine Gunby sent an email to all staff and Mr Peden stating

20 “Thanks to all who have provided feedback for our Employee Handbook Policies so far and to those who are currently reviewing policies. Could we please have all feedback by the end of next week at the latest?

25 As policies are reviewed they are now being uploaded on to BrightPay. When you log on to BrightPay to access your payslip, you will notice a tab alongside your Payroll Documents Tab named HR Documents & Resources; this is where the Teamcard Employee Handbook Policies are stored and will be stored as they are finalised. Could we ask you to have a look over these, either skim read or read in depth and again, let us have any feedback you wish? ... and ideally by the end of next week?”

- 30 21. All of the new handbook was uploaded on to BrightPay by the end of July. The new handbook was lodged (R165-168). Not all of the handbook was lodged but it is common ground that it did not contain any provisions

relating to enhanced redundancy pay. The introduction to the handbook states

“The handbook sets out some of our main policies and procedures and some of the benefits to which employees may be entitled.”

5 It also states

“The handbook, and the policies and procedures in it, do not form part of any employee’s contract of employment (or any other contract applicable to individuals working for us who are not our employees) except to the extent that they impose obligations on you.

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We may amend the handbook and the policies and procedures in it at any time and may vary these as appropriate to a particular case. We may make such changes to any of your contractual terms of employment as we consider reasonable.” (R167)

15 22. This version of the handbook was available on the BrightPay system to all staff from the end of July 2021. Having dealt with the issue of the handbook the respondent then issued new contracts of employment to all staff including the claimant.

20 23. Ms Gunby sent the claimant a copy of his new contract on 5 August 2021. The email sending this was lodged (R45). The email went on to say

“As already mentioned below, if you have any questions or issues with your Contract please let us know.”

25 24. On 6 September Lorraine Gunby wrote again to him. The letter was lodged (R50-51). The bulk of this deals with holiday entitlement but on R51 she states

“CONTRACT

Can you please let me know if you have any queries with your new contract, if not, could you please sign your contract, have your signature witnessed, and e-mail me a scan or photo of the signing page”

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25. The claimant signed his new contract on 28 September 2021. The contract was lodged (R55-68). The claimant's signature appears on R68. On R56 there is a declaration stating

5 "This Contract sets out your terms and conditions of employment with us. It is also your written statement of employment particulars under section 1 of the Employment Rights Act 1996."

It contains a provision in paragraph 25 stating

"Previous contracts and entire agreement

10 25.1 This Contract supersedes all previous agreements and arrangements (whether oral or in writing) in relation to any of the matters dealt with in it.

25.2 This Contract, together with any documents referred to in it, constitutes the entire agreement and understanding between us regarding your employment."

- 15 26. It also contains a clause at paragraph 26 stating Variations

"26.1 We may make such changes to any of your terms and conditions of employment as we consider reasonable."

20 There is a provision at paragraph 20 which refers to disciplinary and grievance procedures which states that these are set out in the Employee Handbook. The paragraph goes on to state

"These do not form part of your contract of employment and we may alter them or omit any or all of their stages where we consider it appropriate."

- 25 27. The contract of employment was also signed by Mr Peden on behalf of the company on 29 September 2021.

28. Other employees received their draft contracts at around the same time as the claimant. One of these employees, Jenny Haughton, wrote to Lorraine Gunby and Malcolm Peden on 17 August raising a number of matters regarding her contract. One of these stated

“What is the redundancy policy now as that seems to have vanished”.

The email was lodged (R47). Mr Peden contacted her and dealt with her various questions. He advised her that there had never been any entitlement to contractual redundancy terms in her contract of employment. He advised that in his experience it would be very unusual for a company to include this in a contract of employment. Ms Haughton accepted the position. Ms Haughton had not complained about the handbook per se just her contract of employment.

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10 29. Another employee also contacted Mr Peden at around the same time to discuss his contract and mention that he had understood that there had been some entitlement to an enhanced redundancy payment. Mr Peden was unaware of the terms relating to redundancy payment which had previously been in previous version of the handbook. The first handbook he had seen had been the 200-page draft produced by Messrs Brodies which he had considered to be far too complex and had rejected. He had not seen any of the others. He decided that given that two employees had raised the matter he should check their contracts of employment to see if, contrary to what he had understood, there was something in this. Mr Peden obtained the contract of employment of that other employee and went through it with him and he confirmed that there were no provisions relating to enhanced redundancy pay. That employee also professed themselves satisfied with the position and signed his contract of employment.

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25 30. From 29 September 2021 onwards the claimant’s employment with the respondent was governed by the 2021 contract signed by the claimant on 28 September and by Mr Peden on 29 September 2022. That contract contained a “whole agreement” clause. It did not contain any reference to enhanced contractual redundancy pay.

30 31. On or about 21 March 2022 the claimant was advised that the respondent considered that there was a redundancy situation and he was invited to a formal consultation meeting to take place on Tuesday 22 March. He duly attended the meeting which took place with Mr Peden and Randal

McLister the respondent's Chairman. A minute of the meeting was lodged (R177). During the meeting the claimant asked what his redundancy expectation would be and if it was statutory only. Mr Peden indicated that at that stage it was not appropriate to discuss any aspect of a settlement. The reason for this was at that stage it was Mr Peden's understanding that nothing had been decided and it would be inappropriate to enter into any discussions.

32. The claimant then attended a further formal meeting later that week and on Friday 25 March the claimant was advised that his role was redundant and he was being dismissed.

33. At 20:46 on the evening of 25 March the claimant wrote to Mr Peden, copied to Ms Gunby, requesting a copy of his original contract of employment. He stated

"This is a request for my original contract of employment with Scotcomms Technology Group Ltd, now Teamcard Ltd to be provided. By original I am referring to the terms of my employment prior to the new contract we were provided with in the last year. Specifically I am interested in understanding if the previous contract included contractual redundancy pay."

34. Mr Peden responded at 21:34 stating

"Hi Justin,
I shall try and dig that out for you but to my almost certain knowledge there is no such thing as contractual redundancy pay as this was an issue that another employee raised at the time."

At around this time the claimant had obtained a copy of the handbook version 1.06 from Lorraine Gunby. Lorraine Gunby was also dismissed by reason of redundancy by the respondent at around this time. Ms Gunby has herself raised a Tribunal claim against the respondent. On 25 March at 22:46, an hour after Mr Peden sent his initial message the claimant wrote to Mr Peden enclosing an excerpt from the handbook version 1.06 which included section 3.4 relating to redundancy policy stating

“I’m wondering if you’d like to comment on the below. This is from the handbook that accompanied by original contract.”

The following morning Mr Peden sent an email to the Company Chairman confirming that Mr Peden had never seen this before and had no idea where the claimant had found this. It also said

“Setting that aside the new Employee Handbook and Contract of Employment replaced all of this stuff. The whole reason for the new contract and handbook was to kill all the stuff from the past.”

35. The claimant remained on a period of garden leave leaving the company on or about 13 April. He received a payment of his notice pay and a redundancy payment based on statutory redundancy pay. There was initially an error in the way this had been calculated and the claimant subsequently received an additional sum so that the total sum paid to him amounted to all of his entitlements together with statutory redundancy pay.

15 **Observations on the evidence**

36. This is an unfortunate case in that although both parties have a degree of hostility and exasperation towards the other there was substantial agreement as to the relevant facts. There were disputes but these tended to relate to matters which were extraneous to the key points which are relevant and have informed my decision.

37. The claimant agreed that he had signed the first contract in 2002 and the final contract in 2021. His position regarding the 2020 contract was initially that he could not remember it being sent to him. His response to being questioned about it was to ask the respondent to point out where he had signed it. He did not in as many words say that he had not signed it. When pressed by the respondent’s agent he accepted that it was possible that the document had been sent out to him. Whilst at the end of the day his contract was not the one which was in force at the time of his dismissal I thought it as well to make a finding of fact and my finding was that on the balance of probabilities this contract had been sent out to the claimant. I accepted the explanation proffered by Mr Peden to the effect that at that time with the pandemic it was possible that the company had not asked

for a hard copy back duly signed. Mr Peden also made the point that it was gaps in the records like this that he had wanted to address by introducing new contracts and a new handbook in 2021. At the end of the day given the surrounding correspondence which the claimant accepted had been sent to him and given the claimant's acceptance that the document might have been sent to him I decided the document probably had been. Given that the claimant then worked under the contract and received a substantial pay rise I consider that as a matter of law the claimant accepted the new contract.

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10 38. The claimant was cross examined about how he could be sure that the document attached to the email sent by Lorraine Gunby to Mr Macdonald in April 2021 was version 1.6 of the handbook. The claimant was unable to deal with the point at the hearing. The day after the hearing the claimant sent a further document in to the Tribunal and asked for this to be taken into consideration. It related to this matter. I did not look at the document provided by the claimant as I considered that there was no reason the claimant could not have produced this version of the document at the hearing. In any event, I had already decided that on the balance of probabilities it was version 1.6 of the handbook. The position in April 2021 was that the only completed handbook in existence was version 1.6 of the original handbook. The respondent were no longer using this for new starts and it was not referred to in the claimant's latest contract however the new handbook which was to replace it was in a state of flux. At some point the respondent received a draft 200-page document from Brodies. It is unclear when this was received and my view is that it was likely still in the process of being drafted in April 2021. Even if it had been received then it is clear that respondent had not accepted it or endorsed it in any way since they subsequently carried out a consultation process on the new handbook in June and July. I had therefore already decided that it was likely version 1.6 that was sent to Mr Macdonald. At the end of the day however nothing really turns on this given my interpretation of the contractual position as set out below.

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39. Clearly part of the interpersonal difficulty which has arisen in this case is due to the claimant's belief that the respondent deliberately went through

the contract process with a view to surreptitiously removing his contractual redundancy entitlement whilst Mr Peden's position was that he had been totally unaware that anything was in place. His position was that he had gone through what he felt was a standard consultation process with a view to tidying up the respondent's contracts and general employment processes and that having done so he was then presented by the claimant with precisely the kind of situation that he had sought to avoid. At the end of the day I believed Mr Peden's evidence to the effect that he had been entirely unaware of the existence of the redundancy terms in versions 1.05 and 1.06 of the handbook. I accepted that when other employees had raised this as part of the negotiations around their contract (not the handbook) he had checked the contract of at least one of them in order to confirm that there were no such terms and both employees who raised the matter with him had thereafter dropped it.

15 **Discussion and decision**

40. Although the claimant ticked the box stating that he was claiming a redundancy payment in actual fact this claim is essentially a claim of breach of contract. An interesting point arises in that if the claimant had been successful then the award the Tribunal would have made would have been limited to the limit of £25,000 contained in regulation 10 of the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order 1994. The sole question which I had to answer was whether as at the date of dismissal the claimant's contract contained a term entitling him to the enhanced redundancy payment terms set out in paragraph 3.4 of the 2014 and 2019 version of the respondent's handbook. If I found that his contract contained such a term then the claimant would be entitled to payment of the sum underpaid as damages for breach of contract up to a maximum of £25,000.

Discussion and decision

30 41. Both parties made full submissions. The claimant's position was that the enhanced redundancy provision did form part of his contract as at the date of termination. His position was that the new handbook only replaced the terms of the previous handbook where the new handbook had a similar

provision. He referred to the fact that the new handbook makes clear that it only contains “some” of the respondent’s policies. It was his view that given that nothing at all was said about redundancy procedure in this then it could be assumed that the previous provisions relating to redundancy procedure and contained in the 2014 and 2019 handbook still applied. He pointed to the fact that the handbook stated that he was subject to the rules and policies of the company. It was his view that the fact that Mr Peden was unaware of the terms of the original handbook was irrelevant. It had formed part of his contract and still formed part of his contract as at the date of termination. His view was that although the respondent had stopped referring to the handbook when new employees joined the company in 2020 and 2020 it could not be said that the handbook no longer formed part of his contract because things were in a state of flux. He pointed out that there was nothing specific in the new handbook to say that it superseded the old one in its entirety.

42. The respondent’s position was that however one analysed the contractual position the claimant was not entitled to any enhanced redundancy terms and never had been. The respondent’s representative referred to the terms of the Contract Scotland Act 1997 and in particular section 1(3). She pointed out that when the claimant commenced employment in 2002 no handbook existed. His statement in the email of 26 March 2022 to Mr Peden that the handbook had accompanied his original contract was simply incorrect. His initial contract of employment contained a “whole terms” clause in the agreement. She set out the terms of section 1(3) of the Contract Scotland Act 1997 and stated that as a matter of law the tribunal was not entitled to look at extrinsic oral or documentary evidence in order to establish the existence of any additional terms and conditions of the contract. In her view matters did not change in or about 2008 when the handbook was introduced since the handbook was specifically stated to be non-contractual. This remained the position when the claimant signed his new contract in 2020. It is noteworthy that this 2020 contract does not refer to the handbook in any way. The position thereafter was that the respondent then went through a consultation process following which they introduced a new company handbook. They were entitled to do this because the handbook was non-contractual and indeed they had

specifically reserved the right to make changes to the handbook in all previous versions of the handbook. The handbook remains non-contractual. The matter was put in absolutely no doubt by the fact that the claimant had then signed his new contract in September 2021 which contained a “whole agreement” clause.

Decision

43. Essentially, I believed that the respondent’s representative correctly stated the law in this matter and that my inescapable conclusion was that the claimant’s contract did not contain a clause entitling him to an enhanced redundancy payment as at the date of termination. Essentially, I agreed with the respondent’s representative that there was no other course open to me given the terms of section 1 (3) of the Contract Scotland Act 1997. It is probably as well that I set out the terms of that section here. It states

“(1) Where a document appears (or two or more documents appear) to comprise all the express terms of a contract or unilateral voluntary obligation it shall be presumed, unless the contrary is proved, that the document does (or the documents do) comprise all the express terms of the contract or unilateral voluntary obligation.

(2) Extrinsic oral or documentary evidence shall be admissible to prove, for the purposes of subsection (1) above that the contract or unilateral voluntary obligation includes additional express terms (whether or not written terms).

(3) Notwithstanding the foregoing provisions of this section, where one of the terms in the document (or in the documents) is to the effect that the document does (or the documents do) comprise all the express terms of the contract or unilateral voluntary obligation that term shall be conclusive in the matter.”

44. In this case both the first contract signed in 2002 and the third contract signed in 2021 contain a clause of the type referred to in paragraph (1)(3). This means that as a matter of law I am not able to look at anything beyond what is written in the actual contract. I am not allowed to look at what is in the handbook. Neither of the two contracts makes any reference to

enhanced redundancy terms and therefore it is my view that the claimant's claim must fail.

5 45. The respondent's representative went on to address me as to what would have been the case had I found her argument unpersuasive. While it is not necessary for me to do so, I feel that it is as well to set out my view on the matter.

10 46. I consider it is a moot point as to whether, if the claimant had been dismissed while his second contract of employment was in force he could have relied on the enhanced redundancy terms contained in the version 1.6 of the staff handbook. I would then have been in a position to consider such extrinsic evidence however I have to say that my view is that I still think it is unlikely that the claimant would have been able to demonstrate that such enhanced terms were part of his contract given that the handbook is not referred to at all in the contract of employment. What I
15 am much more clear on however is that even if the third contract of employment entered into in September 2021 had not contained such a whole terms clause I would not have found in favour of the claimant. It was clear to me that the respondent had carried out a proper consultation process and introduced a new version of the handbook. It is perhaps
20 unfortunate that at the time Mr Peden did not appreciate that the old handbook contained the redundancy terms and that the matter was not brought specifically to employees' attention at that time. That having been said, the employees all went through a consultation process in respect of the handbook and the new handbook was adopted and the employees
25 were clearly told that this was now the current handbook. I do not accept the claimant's argument that because the handbook states that it only refers to "some of the respondent's policies" that this means that anything written in a previous handbook which is not specifically revoked would somehow remain in existence. I do not see that the new handbook's
30 production can possibly be interpreted in this way and I do not consider that such a term could be implied for the reasons given by the respondent's agent. I accepted Mr Peden's evidence that the whole point of the exercise was to try to tidy things up and provide a new Staff Handbook and new contracts which would entirely replace what had gone

before. It would make a nonsense of that aim if provisions in any of the old handbooks continued in force if they were not specifically mentioned in the new handbook. The new handbook, like the new contract, does not give the claimant enhanced redundancy terms.

5 47. As noted above I am not convinced that the claimant was ever contractually entitled to enhanced redundancy terms but if he was, then the time for him to object was at the time when the new handbook was being introduced. He did not do so.

10 48. In my view it is clear that the contractual position as at the time of the claimant's dismissal was that he was not entitled to any enhanced redundancy payment. For this reason his claim fails.

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Employment Judge:	I McFatridge
Date of Judgment:	2 August 2022
Date sent to parties:	2 August 2022