



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Simon Robinson v**

**1. Brightmast Ltd (in voluntary liquidation)  
2. Secretary of State for Business, Energy & Industrial Strategy**

**Heard at:** Watford (by CVP)  
A Bury St Edmunds case

**On:** 9 January 2023

**Before:** Employment Judge Alliott (sitting alone)

## **Appearances**

<b>For the Claimant:</b>	In person
<b>For the First Respondent:</b>	Did not attend
<b>For the Second Respondent:</b>	Did not attend

## **JUDGMENT**

The judgment of the tribunal is that:

1. The claimant's claim for unauthorised deduction of wages is well founded and the First Respondent is ordered to pay him the gross sum of £16,666.66 (subject to Income Tax and National Insurance deductions).
2. The claimant's claim for breach of contract for non-payment of expenses is well founded and the First Respondent is ordered to pay him the sum of £911.42.
3. The claimant's claim for breach of contract for wrongful dismissal is well founded and the First Respondent is ordered to pay him the sum of £20,190.68 (a sum calculated net of Income Tax and National Insurance).
4. The claimant's claim for accrued holiday entitlement not taken at the time of termination of his contract of employment is well founded and the First Respondent is ordered to pay him the gross sum of £7,692.31 (subject to Income Tax and National Insurance deductions).
5. The claim against the Second Respondent is dismissed.

## REASONS

### The absence of the respondents

1. In the record of a preliminary hearing heard on 19 August 2022, Employment Judge Nicklin recorded that on 28 June 2022 the First Respondent passed a resolution to commence voluntary liquidation and a Liquidator was appointed on the same date. The Liquidator, Mr Steven Wiseglass of Inquesta Corporate Recovery & Insolvency, gave notice before that hearing that he did not intend to appear at the hearing or otherwise respond to the claim. I have concluded that the liquidator wants to play no part in these proceedings.
2. At the preliminary hearing on 19 August 2022, Employment Judge Nicklin directed that the Secretary of State for Business, Energy & Industrial Strategy shall be notified of the claim and served with the papers in the case. However, it appears that rather than notifying the Secretary of State, the Secretary of State was made a party to these proceedings and served accordingly. It seems to me that the Secretary of State was probably made a party in error and consequently I have dismissed the claim against the Secretary of State.
3. In the circumstances I have decided to deal with this matter in the absence of the respondents.

### The claimant's claims

4. The claimant gave evidence on oath. The claimant told me that he was not paid his salary for the months of July and August and that there was no agreement that he would not be paid for these months. Accordingly, I find that his claim for unauthorised deduction of wages is well founded.
5. The claimant submitted an expenses claim in the sum of £911.42 which has not been paid. I find that he was contractually entitled to be reimbursed his expenses and his claim of breach of contract in this respect is a good one.
6. The claimant resigned with immediate effect on 31 August 2021. I do not find that issues relating to the transfer of his equity in the company to the chairman in order to secure a chairman's loan to the company represent fundamental breaches of the claimant's contract of employment. However, I do find the failure to pay his salary in July and August 2021 and the uncertainty as to whether he would be paid for September, were fundamental breaches of his contract of employment entitling him summarily to terminate his contract. Accordingly, I find the claimant's claim for wrongful dismissal and payment of his notice pay to be well founded. The claimant earned £5,047.67 net of tax and National Insurance per month. The claimant told me that in January 2022 he had obtained employment at a comparable salary. Consequently his losses run for four months.  $4 \times £5,047.67 = £20,190.68$  net damages for breach of contract.

7. As far as holiday pay is concerned, the claimant had a holiday entitlement of 27 days plus statutory bank holidays. He was entitled to carry over 5 days and did carry over 3 days into 2021. The holiday year ran from 1 January to 31 December. By my calculation, as of 31 August 2021, the claimant had an accrued holiday entitlement of 23 days plus the 3 carried over days total of 26 days. By 31 August the claimant had had 6 statutory bank holidays. Accordingly, I find that the claimant was entitled to 20 days accrued holiday not taken at the date of termination of his contract of employment.
8. The claimant's annual salary was  $\text{£}100,000 \div 260 \times 20 = \text{£}7,692.31$ .

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Employment Judge Alliot

Date: 20<sup>th</sup> January 2023

Sent to the parties on: 05.02.2023

GDJ  
For the Tribunal Office