



# EMPLOYMENT TRIBUNALS

**Claimant** Mr R Stevenson

**Respondent** Brian English T/A  
Insignia Shade & Shutter Company

**Heard at:** Exeter  
(remotely by video hearing)

**On:** 3 & 4 January 2023

**Before:**  
**Employment Judge** Goraj

## **Representation**

**The claimant:** in person

**The respondent:** Mr A Peck, Counsel

## **RESERVED JUDGMENT**

### **THE JUDGMENT OF THE TRIBUNAL IS that: -**

1. The claimant's claims for holiday pay and arrears of salary (bonus) are dismissed upon withdrawal by the claimant.
2. The claimant was dismissed by the respondent.
3. The claimant's claim for breach of contract for notice is dismissed.
4. The respondent's contract claim for damages in respect of the Hayes and Hutchings jobs is dismissed.

## REASONS

### BACKGROUND

#### **The claimant's claims in case number 1401476/2022**

1. By a claim form which was presented to the Tribunals on 27 April 2022 the claimant, who was employed by the respondent/ its predecessor business from 19 May 2014 until February 2022, brought claims of unfair dismissal, breach of contract for notice together with claims for holiday pay and arrears of pay (bonus). The claimant's claim form is at pages 4 -16 of the bundle. The claimant confirmed at the start of the hearing that he had received all outstanding holiday pay and bonuses and the claimant's claims for holiday pay and arrears of pay were therefore, by consent, dismissed upon withdrawal by the claimant.
2. The claimant's ACAS Certificate records that the claimant contacted ACAS on 19 April 2022 and that the ACAS Certificate was issued on 21 April 2022 (page 3 of the bundle).
3. The respondent denied the allegations including that it had dismissed the claimant. The respondent contended that the claimant had resigned his employment. The respondent's response is at pages 16 – 27 of the bundle.

#### **The respondent's contract claim in case number 140218/2022**

4. The respondent brought an employer's contract claim for damages in respect of alleged losses arising from deliberate/ negligent work carried out by claimant/ the claimant's resignation without proper notice. The particulars of the employer's contract claim are at pages 29 – 30 of the bundle. The Tribunal directed that the respondent's contract claim should be heard together with the claimant's claims.

### Witnesses

5. The Tribunal has received witness statements and heard oral evidence (unless otherwise indicated below) from the following witnesses:-

#### **On behalf of the claimant**

- (1) The claimant.
- (2) Mr Aiden Carter, friend and former colleague at the respondent.
- (3) Mr Paul Finch, friend and former colleague at the respondent.
- (4) Ms Janice Nutting, mother of Mr Carter.
- (5) Ms Snoxell and Ms J Baudry for whom the claimant had undertaken fitting work. Neither of them attended the Tribunal to give oral evidence and the Tribunal has therefore placed limited weight on their evidence.

**On behalf of the respondent**

- (1) Mr B English, proprietor of the business.
- (2) Mr M Flood, installer with the respondent and former colleague of the claimant and
- (3) Mrs L Edwards, office manager of the respondent.

**Documents**

6. The respondent received a main hearing bundle (“the bundle”) together with a supplementary bundle (“the SB”) and additional documentary evidence (“the AD”) from the claimant, additional documents from the respondent relating to the claimant’s covid absence in July 2021 (“the R’s AD”) and the respondent’s opening note and chronology.

**Issues and associated matters**

7. In his claim form the claimant contends that at a meeting on 22 February 2022 (later stated to have occurred on 21 February 2022) the respondent put to him 3 options including to leave immediately and receive 7 weeks’ notice plus “a bit on top”. This was (until the course of the oral evidence) denied by the respondent.
8. At the commencement of the hearing the respondent raised an issue as to whether any such alleged offer ( which was denied by the respondent) constituted a protected conversation for the purposes of the claimant’s unfair dismissal claim pursuant to section 111 A of the Employment Rights Act 1996 (“the 1996 Act”) and whether any evidence regarding any such alleged offer was therefore admissible for such purposes. No application had been made by the respondent prior to the hearing for the separate determination of this issue. After discussion with the parties, it was agreed that the most practical way forward was to limit the issues at this hearing to the determination of the claimant’s breach of contract claim together with the respondent’s employer’s contract claim and thereafter review the way forward with regard to the claimant’s unfair dismissal claim in the light of the findings in respect of the above-mentioned claims.
9. The documents in the bundle include without prejudice exchanges of correspondence between the parties following the claimant’s departure from the respondent. Both parties confirmed that they waived any privilege in respect of such correspondence.

**The issues**

10. Following discussion with the parties, it was agreed that the issues for determination at this stage were as follows: -
  - (1) Issue 1 – How/when the claimant’s employment with the respondent came to an end – namely whether: - (a) by dismissal by

the respondent (b) by resignation by the claimant or (c) by agreement between the parties.

- (2) Issue 2 – If the claimant’s employment with the respondent came to an end by dismissal whether the respondent was entitled to terminate the claimant’s contract without notice because of the claimant’s conduct.
- (3) Issue 3 – Whether the respondent is entitled to recover damages from the claimant in respect of any alleged breaches of contract/ negligence by the claimant in respect of the work undertaken for the clients of Hutchings and Hayes in the claimed total sum of £829.11 or some other sum.
11. The claimant confirmed that his case is that he was either expressly dismissed by Mr English by his letter dated 22 February 2022 or in the alternative, that he was dismissed by way of an enforced resignation. The claimant confirmed that he does not contend that he was constructively dismissed.
12. The respondent’s case is that claimant verbally communicated his resignation to Mr English on 22 February 2022 with immediate effect.
13. The respondent’s contract claim was limited by the respondent to the two matters identified above.

**Conduct of the hearing**

14. The matter was conducted remotely. Notwithstanding the best efforts of the Tribunal and the parties (who sat until 17.55 pm on the second day to complete the oral evidence) there was insufficient time for closing submissions. The Tribunal therefore gave directions for the sequential exchange of closing submissions (to assist the claimant in the light of legal issues in this case).

**FINDINGS OF FACT**

15. The claimant was employed by the respondent/ his predecessor business as a blind installer from 19 May 2014 until February 2022. The claimant’s employment transferred to the respondent in January 2020 pursuant to the TUPE Regulations following the insolvency of the respondent’s limited company. The claimant was an experienced fitter who worked alongside and provided support and guidance to less experienced fitters including at the relevant time Mr Flood.

16. The respondent is the proprietor of the respondent business which he set up in 1997. The respondent supplies and installs shutters, blinds and awnings in the Poole and Bournemouth area. At the time of the termination of the claimant's employment the respondent employed seven or eight employees.

**The claimant's statement of terms and conditions of employment.**

17. The claimant was issued with, and accepted, a main statement of terms and conditions of employment dated 22 November 2021 ("the statement") which is at pages 45 – 47 of the bundle. The Tribunal has noted the references in the statement to the respondent's disciplinary rules and procedures which were stated to be attached and form part of the claimant's contract of employment. The Tribunal has also noted in particular that the statement requires employees with more than one month's service to give 4 weeks' notice to terminate their employment and further reserved the contractual right to give pay in lieu of all or any part of notice given by either party.

**The respondent's policies and procedures**

18. The respondent's policies and procedures are at pages 45 – 68 of the bundle. The Tribunal has noted in particular the following :-

- 18.1 The provisions relating to Other employment (paragraph I) and Private Work (paragraph J) at page 56 of the bundle.

- Paragraph I) (the relevant part) states :-  
" You are expected to devote the whole of your time and attention during working hours to our business. If you propose taking up employment with an employer or pursuing separate business interests or any similar venture, you must discuss the proposal with the proprietor in order to establish the likely impact of these activities on both yourself and the Company....."

".... If you work without consent this could result in the termination of your employment".

- Paragraph J) (the relevant part) states :-  
"You are forbidden from undertaking any private work without authorisation from the Company. You will not be allowed to undertake any work which could otherwise have been undertaken by the Company. In the event of you being approached to undertake such work you must report the approach to the proprietor".

18.2 The respondent's disciplinary rules and procedures at pages 59 – 60 of the bundle including the examples of unsatisfactory conduct and misconduct (at page 59 of the bundle) and gross misconduct (at page 60 of the bundle). The procedure states that "any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct".

18.3 The respondent's rules relating to Liability for Loss and Damage (paragraph F) at page 50 of the bundle.

18.4 The respondent's rules and procedures relating to termination state that "All resignations must be supplied in writing, stating the reason for resigning your post" (page 68 of the bundle).

### **Supply of blinds to friends and families**

19. There was a dispute between the parties concerning the circumstances in which employees were entitled to undertake private fitting work during their own time. There is no written policy regulating such work. The claimant contended in his witness statement that the respondent operated a policy whereby employees were permitted to fit for family and friends, in their own time without charge. The claimant stated in his witness statement that he had undertaken (in his own name) private fitting work for family and friends with the full knowledge and support of the respondent and included in the bundle copy exchanges of messages with the respondent (at pages 130 – 142 of the bundle) concerning such orders for family/ friends. The claimant further contended in oral evidence that he assumed that it was also permissible to fit, without charge, for family and friends blinds which were not purchased via the respondent. Mr Finch, one of the claimant's witnesses however stated in evidence that the respondent's policy applied to blinds which were ordered through the respondent. Mr Finch also stated in evidence that friend meant a friend of the employee.

20. Mr English contended in his witness statement that he permitted employees to purchase blinds at cost for their family. Mr English however accepted in oral evidence that the policy applied to both close relatives and friends of the employee with the respondent taking a judgment on a case by case basis as to the level of any discounted price for blinds purchased via the respondent. Mrs Edwards stated in her oral evidence that respondent permitted employees to order blinds at cost price for family with the fitter being entitled to fit them for free in their own time. Mrs Edwards further contended in her oral evidence that as far as friends of employees were concerned, the respondent would apply a sliding scale mark up to the cost price of the blinds

rising to full price for those who were not close friends of the employee concerned with the fitter being permitted in both cases to fit for free during their own time Both Mr English and Mrs Edwards denied that the respondent's policy applied to blinds which were supplied by another supplier.

21. Having weighed the above evidence the Tribunal is satisfied, on the balance of probabilities, that the respondent's policy was, at the relevant time, as described by Mrs Edwards above including that it applied to family and friends of the employee with the respondent however using its discretion as to the price charged for the blinds. The Tribunal is further satisfied that in respect of blinds that were ordered via and supplied by the respondent, employees were entitled to fit them without charge during their own time. The Tribunal is not satisfied however on the evidence that the policy also applied to blinds which were not supplied by the respondent / extended to friends of a friend of the employee. When reaching the above conclusions the Tribunal has noted in particular that Mr English accepted in his oral evidence that the policy did extend to friends of employees, the evidence of the claimant's own witness Mr Finch and further, that the claimant did not contend in his witness statement that the policy applied to blinds which were not ordered via/ supplied by the respondent.

**The incident in February 2021**

22. In February 2021 there was an incident involving the claimant and Mr Carter (a work colleague and friend of the claimant) involving the parking of the respondent's van on a grassed area on an installation at a park home which had given rise to a customer complaint and payment of compensation by the respondent. The documentation relating to the incident is at pages 159 – 166 of the bundle. The claimant and Mr Carter were both suspended pending further investigation of the matter. In the respondent's email dated 14 February 2021 (page 166 of the bundle) notifying the claimant of his suspension the respondent expressed concerns that there had been a general erosion of the claimant's obligations to the respondent over the previous few months and questioned the future of their working relationship. This matter was however ultimately resolved in relation to the claimant, following an informal meeting between the parties, with no further action being taken against the claimant as confirmed by the respondent's email dated 19 February 2021 (page 159 of the bundle). Mr Carter was however unhappy about the way in which the matter had been dealt with by the respondent and resigned his employment.

23. The respondent held a number of subsequent informal meetings with the claimant during 2021 / early 2022 to discuss concerns, including a meeting on 9 February 2022, during which the respondent

discussed with the claimant concerns relating to recent installations undertaken by the claimant and the level of support provided by the claimant to junior fitters.

**Meeting of 21 February 2022**

24. The respondent held a meeting with the claimant on 21 February 2022. The meeting was conducted by Mr English together with Mrs Edwards. The respondent's notes of the meeting, which were prepared by Mrs Edwards, are at pages 89 -90 of the bundle. These minutes were not provided to the claimant for comment at the relevant time and the Tribunal is not satisfied for the reasons explained below that they are a complete or fully accurate account of the matters discussed at that meeting.
25. There is a dispute between the parties regarding the matters discussed and outcome of this meeting. In summary, the claimant contended in his witness statement that he was asked to attend a meeting without warning at which he was told that things were not good between the parties and that he had three options namely :- (1) to accept 7 weeks' wages plus "a bit on top" for him to leave that day (2) resign and hand in his notice giving 4 weeks' notice and (3) try and resolve any issues. The claimant further contended in his witness statement that he was shocked by what happened, said in response that he would probably have to start his own company, that he needed time to think and would let the respondent know the following day what he wanted to do.
26. In his oral evidence, the claimant accepted that there had been a discussion about other matters during the meeting including that the respondent had raised with him concerns that the claimant had been witnessed speeding in the respondent's van, for which he apologised, together with his level of performance and that he raised with the respondent the possibility of becoming a self-employed contractor which was rejected by the respondent.
27. In summary, the respondent's witnesses contended in their witness statements that the claimant was asked to attend a meeting on 21 February 2022 to discuss that the claimant had been witnessed and tracked travelling at excessive speeds in the respondent's van on the previous Friday ( which the claimant admitted and apologised for) together with other concerns relating to the poor standard of work and lack of commitment to the job shown by the claimant and that they questioned whether the claimant was happy/ wished to leave. The respondent's witnesses also contended in their witness statements that the claimant indicated that he was happy in his work and did not wish



to leave but that he also asked about the possibility of becoming self-employed and queried how much notice he would be required to give if he did leave. The respondent's witnesses further contended that meeting ended on a positive note with the issues resolved/ nothing further to be discussed and that the claimant returned to work accordingly.

28. The respondent's witnesses initially denied that there had been any discussion of the three options as referred to above. They did however accept in response to questions from the Tribunal (who had drawn their attention to the respondent's letter dated 24 February 2022 at page 112 of the bundle), that the claimant was informed that one of the options going forward was for him to leave on agreed financial terms. Mrs Edwards accepted in her oral evidence that there was a discussion about the payment of wages but could not recall the amount discussed.

29. Having given careful consideration to the available documentary and oral evidence the Tribunal is satisfied, on the balance of probabilities that the following matters were discussed at the meeting namely: -

29.1 The respondent raised with the claimant concerns that the claimant had been witnessed and tracked driving in the respondent's marked vehicle at excessive speeds in severe weather on the previous Friday. The claimant admitted speeding (which he said had happened as needed to get home urgently to deal with an issue relating to his children) and apologised.

29.2 The respondent also raised wider concerns with the claimant relating to the claimant's perceived recent poor standard of work which it considered showed a lack of commitment to the job and undermined the respondent's trust in the claimant.

29.3 In the context of such concerns, Mr English of the respondent raised with the claimant the three options referred to at paragraph 25 above including for the claimant to accept 7 weeks' wages plus a "bit on top" for the claimant to leave that day. When reaching this conclusion the Tribunal prefers the claimant's evidence on this matter as it is more consistent with the associated contemporary correspondence including as the respondent's subsequent letter dated 24 February 2022 (page 112 of the bundle) states that Mr English informed the claimant at the meeting that they had a number of options including that if the claimant was unhappy and wanted to leave they could reach an agreement and subsequently set out at the conclusion of that letter proposed confirmation of

settlement terms which were in line with the “third option”. Further, notwithstanding their original denials, both Mr English and Mrs Edwards accepted in oral evidence that a departure on agreed settlement terms had been raised with the claimant at the meeting on 21 February 2022.

- 29.4 The claimant asked about the possibility of remaining with the respondent on a self employed basis (which was refused by the respondent) and said that if he left he would probably have to start his own company. The claimant further informed the respondent that he would think about the options raised by the respondent overnight and would let him know the following day.
30. The claimant texted the respondent later that evening (page 91 of the bundle) asking Mr English whether he would be free for a chat the following morning to which Mr English agreed.

**The events of 22 February 2022**

31. The claimant met with the Mr English on the morning of 22 February 2022. There were alone. There is a conflict of evidence as to what happened at that meeting.
32. In summary, the claimant contended that he told Mr English on the morning of 22 February 2022 that having thought about what had happened the previous day he wished to accept the option of leaving with 7 weeks’ pay plus “a bit on top” and that he would be “going self-employed”. The claimant also contended that Mr English initially replied that it was “yesterday’s offer” and was no longer on the table. The claimant further contended that Mr English subsequently said that he would accept that the offer was still on the table and that he would get something written up that week.
33. In summary, the respondent contended that the claimant told Mr English that he was concerned how they would overcome the absence of trust and that he wanted to take up an offer of pay in lieu of notice and start up his own blind business. The respondent further contended that he told the claimant that he would have to check the position with his HR advisers as no such offer of pay in lieu of notice had been made the previous day and that the claimant subsequently resigned with immediate effect.
34. Having weighed the evidence the Tribunal considers on, the balance of probabilities, that the claimant’s evidence is a more credible account of the above events. When reaching this conclusion, the Tribunal has taken into account in particular its previous findings that,

notwithstanding his initial denials, Mr English had put forward the option of the claimant leaving with 7 weeks' notice and "a bit on top" at the meeting the previous day and further the acknowledgment by Mr English that the claimant had raised with him on 22 February 2022 his concerns as to how they would overcome the absence of trust.

35. Following the discussions that day the claimant carried on with his installation duties. During the course of the day the claimant informed two of his work colleagues that he would be leaving the business that day and would be setting up his own business. Mr English accepted in oral evidence that he was upset the claimant had told others that he would be leaving and had a heated discussion with another employee that day as to how he could trust the employee not to disclose future business dealings to the claimant.

36. At the end of the working day Mr English handed the claimant the following letter dated 22 February 2022 :-

Dear Ryan

Further to our discussion earlier today I regretfully and very reluctantly can confirm that I accept your decision to resign and leave your position with immediate effect.

I look forward to receiving confirmation in writing and your settlement proposals to bring this all to a close as swiftly as possible and in the meantime look forward to the safe return of all company property and keys.

I confirm that that the balance of your sales bonus of £1,336 and this last week's wages will be paid this week as normal. Your week in hand and holiday pay will be calculated and paid the following week.

I look forward to receiving your proposals for settlement and wish you and your family all the best for the future.

Yours sincerely".

### **Subsequent events**

37. In the light of the events of 21 / 22 February 2022, the claimant sought professional advice and sent to the respondent on 23 February 2022, the without prejudice letter which is at pages 110 of the bundle. In summary, the claimant stated that there appeared to be a misunderstanding between them as he had not resigned and was under the impression that the respondent had asked him to leave. The

claimant further stated that whilst he was not prepared to provide the respondent with a resignation letter to protect the respondent from a potential claim for unfair dismissal, he agreed that the working relationship between them was problematic and he was prepared, without prejudice, to leave on the terms set out in his letter. In summary, the proposed terms included payment of any outstanding monies together with the claimant's statutory entitlement to 7 weeks' paid notice together with a nominal payment for loss of statutory rights and an agreed reference.

38. On 24 February 2022 the claimant emailed the respondent advising that he was unwell due to the stress of the situation which had been created by the respondent and that he was too ill to attend for work that day. The claimant further stated that he would keep the respondent updated regarding his sickness absence and would obtain a certificate from his GP if he exceeded the self-certification period. The claimant also requested a response to his recent without prejudice letter (page 111 of the bundle).

39. The respondent sent a holding response confirming that the claimant's pay for the week had been paid into his account early to assist the claimant and that his solicitor was working to provide a prompt response.

**The respondent's letter dated 24 February 2022**

40. The respondent sent a letter to the claimant dated 24 February 2022 which was marked "without prejudice and subject to contract". This email is at page 112 of the bundle. The respondent contended that their recollections of the relevant discussions varied and denied that he had asked the claimant to leave. In summary, the respondent stated that he had told the claimant that he had concerns about his conduct and standard of the claimant's work and that he had told the claimant that if he was unhappy and wanted to leave that they could reach an agreement. The respondent denied that he had provided the claimant with the details of the settlement which he was prepared to offer. The respondent stated that the meeting had concluded that day with a resolution of the issues and an agreement to move forward including that it was agreed that the respondent would not take any further action in respect of the claimant's speeding. The respondent stated that the claimant had however, had a change of heart and when he had arrived at work the following morning had informed the respondent that he had decided to leave. The respondent further stated that when he had told the claimant that they had not reached any settlement the previous day the claimant said that wanted to finish as soon as possible as he had decided to set up a business in competition. The respondent further stated that he had needed

confirmation of the claimant's resignation in writing and that the purpose of his subsequent letter to the claimant was to confirm his understanding of their discussions that morning including that the claimant's employment had come to an end. The respondent concluded his letter by responding to the claimant's without prejudice proposals and confirming the basis upon which the respondent was prepared to conclude terms of settlement. The terms set out in the respondent's letter were largely in line with those proposed by the claimant in his letter dated 23 February 2022 and included the payment of 7 weeks' pay in lieu of notice together with an ex gratia payment of £350. The respondent asked the claimant to confirm that the terms were acceptable so that he could arrange for the paperwork to be drawn up.

**The claimant's email dated 26 February 2022**

41. On 26 February 2022, the claimant sent the respondent a without prejudice email confirming that, notwithstanding their differing recollections of the events in question, he accepted the terms of agreement as set out in the respondent's email (page 113 of the bundle).

**Subsequent events**

42. There were subsequent technical issues relating to the status of the claimant's legal adviser and associated issues which delayed the completion of the settlement agreement.

43. On 24 March 2022, it came to the respondent's attention that the claimant had created a Facebook page for a business called Wessex Blinds. The respondent also became aware of other face book/ website entries which he believed demonstrated that the claimant had set up his own business and had been carrying out private work on his own account in breach of the terms of his contract of employment with the respondent.

44. On 8 April 2021 the respondent wrote to the claimant (page 121 of the bundle) informing the claimant that he was no longer prepared to ratify the settlement agreement in its present form as he had reason to believe that the settlement terms had been breached by the claimant. The respondent stated that his solicitor considered that the claimant's dated website/ Facebook entries demonstrated that the claimant must or should have known that they would have created a conflict of interest which would have brought about an irreversible breach of trust as the claimant had breached the terms of his employment and that the inevitable consequences would have been obvious to him.

45. The claimant responded by a letter dated 12 April 2022 (pages 93 – 96 of the bundle). In brief summary, the claimant denied any

wrongdoing in respect of Wessex Blinds. The claimant stated that the earliest post, which was at the time he set up the page, was on 9 March 2022 which was after his employment had come to an end. The claimant denied any breaches of contract / warranties in the settlement agreement as he was no longer employed by the respondent at the relevant time. The claimant however acknowledged that if he had set up Wessex Blinds whilst in the employment of the respondent it would have constituted a breach of contract which would have entitled the respondent to initiate disciplinary procedures and which may have led to the claimant's dismissal. The claimant further stated that as the respondent was aware of his plans to set up his own business in February 2022 and had yet still entered into a settlement agreement on 8 March 2022 he had come to the conclusion that the respondent had made fraudulent and dishonest representations and had never had any intention of honouring the settlement agreement. The claimant concluded his letter by stating his intention to make an application to an Employment Tribunal unless he received the cleared settlement funds by 15 April 2022.

**Private work undertaken by the claimant**

46. The respondent contended that he discovered after the termination of the claimant's employment that the claimant had undertaken various private work during his employment with the respondent in breach of his contract of employment and in relation to which the Tribunal has made the findings of fact below. The claimant denies any wrongdoing in respect of any such work.

**Katie Snoxell**

47. The claimant is a friend of Paul Finch. Mr Finch is a carpenter and former employee of the respondent with whom Mr Finch did not part on good terms. Mr Finch is a friend of Katie Snoxell. Ms Snoxell was not known to the claimant prior to her introduction by Mr Finch. Ms Snoxell submitted a witness statement, on behalf of the claimant, but did not attend the Tribunal to give oral evidence. Ms Snoxell states in her witness statement that she had been friends with Mr Finch for a number of years and that the claimant/ Mr Finch assisted her with the fitting of blinds in her home. Ms Snoxell does not say in her statement whether she made any payment to Mr Finch or the claimant for fitting her blinds nor does she give any explanation of why she subsequently posted a recommendation for Wessex Blinds for the work in April 2022.

48. The evidence of the claimant/ Mr Finch is that Ms Snoxell approached Mr Finch as a friend on Facebook asking him to help her to fit shutters in her home. They further contend that Mr Finch asked the claimant to assist him and that in or around April 2021 Mr Finch took the claimant to Ms Snoxell's house to measure up for blinds which they ordered on behalf of Ms Snoxell via [pgblindsandshutters.co.uk](http://pgblindsandshutters.co.uk).

The blinds were subsequently fitted by the claimant and Mr Finch on the morning of Saturday 22 May 2021.

49. On 7 April 2022 the job was subsequently reviewed by Ms Snoxell on Facebook as work undertaken by Wessex Blinds (page 81 of the bundle) which was recommended by her.
50. The claimant denies any wrongdoing in respect of such work which he contends was work undertaken by him in his own time without payment and which and in accordance with the respondent's policy which permitted him to do such work on behalf of friends and family. The claimant further contends that the Facebook entry was placed by Ms Snoxell in April 2022 after his departure from the respondent to assist in promoting his new business Wessex Blinds. The claimant has not provided any documentary evidence relating to his dealings with Ms Snoxell.
51. Having weighed the evidence, the Tribunal is satisfied that Ms Snoxell was a friend of Mr Finch and that claimant became involved in the matter as contended by the claimant above. The Tribunal also accepts, on the balance of probabilities, the evidence of the claimant that he did not receive any payment for the work undertaken as it was done to assist Mr Finch and further, that the subsequent Facebook post was placed in April 2022 in order to promote the business of Wessex Blinds following the claimant's departure from the respondent.
52. The Tribunal is not however satisfied that the work was undertaken by the claimant in accordance with the respondent's policy relating to work undertaken for friends and family as Ms Snoxell was a friend of Mr Finch, not of the claimant, and further the blinds were not ordered via the respondent as required by the terms of the policy.

### **The Rainbirds**

53. The claimant/ Mr Finch contend that Mr and Mrs Rainbird are friends of Mr Finch and his girlfriend. They accept that they were not known to the claimant until they were introduced by Mr Finch in the summer of 2021. In his witness statement Mr Finch stated the claimant assisted him with the installation of blinds in the Rainbirds' home on two occasions including that he and the claimant measured for the blinds, ordered them on 9 June 2021 (via [pgblindsandshutters.co.uk](http://pgblindsandshutters.co.uk)) and fitted them together on 21 July 2021. Mr Finch further stated in his witness statement that the Rainbirds subsequently approached him for further shutters for their home and that he and the claimant measured up on 15 January 2022, ordered them via [pgblindsandshutters.co.uk](http://pgblindsandshutters.co.uk) and installed them on 19 February 2022. The claimant again denies any breach of contract and contends that the work was undertaken on

the same basis as for Ms Snoxell. The claimant has not provided any documentary evidence or oral evidence from the Rainbirds regarding the matter.

54. The respondent contends that not only was the work undertaken by the claimant in breach of the terms of his contract of employment/ the respondent's policy relating to private work but further that the work on one of the installations (on 21 July 2021) was also undertaken by the claimant on a date when he had advised the respondent that he could not work as he was required to isolate for 10 days following a positive test for covid.
55. The respondent's documents (R's AD 1-5) record that the claimant notified the respondent on 17 July 2021 that he had received notification on 16 July 2021 of a positive covid test result together with advice to isolate for 10 days.
56. When asked about the installation date of 21 July 2021 (when the claimant was stated to be isolating for covid), Mr Finch sought to retract the dates / contended that the relevant dates had come from the claimant. The claimant accepted that he had assisted Mr Finch with the installation but stated in oral evidence that he could not recall the exact dates and did not know whether the dates given by Mr Finch in his witness statement were correct. The claimant further, in any event, denied that he would have worked whilst having covid. The claimant accepted however, that if he had worked on a date when he had advised the respondent that he was self-isolating for covid this would be a potentially very serious breach of his contract of employment.
57. Having weighed the evidence, the Tribunal is satisfied, on the balance of probabilities, that the claimant became involved in and undertook the work for the Rainbirds on the same basis as for Ms Snoxell. The Tribunal is also satisfied however, that the first installation was undertaken on 21 July 2021 (a Monday), as originally contended in Mr Finch's witness statement, namely a day on which the claimant was absent from work because he was isolating with covid. When reaching this conclusion, the Tribunal has taken into account that Mr Finch gave unequivocal dates for the ordering and installation of the first set of blinds in his sworn witness statement and that neither the claimant nor Mr Finch have given a satisfactory explanation for resiling from the date of 21 July 2021 (including the provision of any documentary evidence to support the alleged error) when faced with the respondent's documentary evidence regarding the claimant's absence from work due to covid isolation that day.



58. The Tribunal is therefore satisfied in respect of the Rainbirds that the claimant acted in breach of the respondent's policy relating to the undertaking of work for family and friends as the Rainbirds were friends of Mr Finch rather than the claimant and further that their blinds were not ordered via the respondent in accordance with his policy. The Tribunal is further satisfied that the claimant acted in breach of his contract of employment in respect of the work undertaken by him, on the balance of probabilities, at the Rainbirds on 21 July 2021 when absent from work due to isolation for covid.

**Katie Tyler**

59. The claimant accepts that he undertook work for Katie Tyler in response to an initial request for the name of a fitter on Facebook to which Mr Carter responded recommending the claimant and the claimant also responded (page 72 of the bundle). The claimant however contended in his oral evidence that Ms Tyler was a school friend/ that his wife worked with her and that he fitted her blinds without charge in his own time. The claimant further contended that whilst he had visited Ms Tyler as a friend to give her a rough price for the blinds whilst in the employment of the respondent, he did not order and fit them until after he had left the employment of the respondent at which time he did not charge her for fitting. The claimant further stated that the post recommending Wessex Blinds was posted on 19 April 2022 after his dismissal to assist him in promoting his new business. The claimant has not provided any documents evidencing his dealings with Ms Tyler or a witness statement from her.

60. Having weighed the evidence, the Tribunal is satisfied, on the balance of probabilities, that Ms Tyler contacted the claimant following the recommendation by Mr Carter and the claimant's subsequent post on Facebook on 18 October 2021. The Tribunal is further satisfied that the claimant quoted for the work shortly thereafter and fitted the blinds, which were ordered and paid for by Ms Tyler, prior to the termination of his employment with the respondent.

61. When reaching this conclusion the Tribunal has noted that in Ms Tyler's subsequent review dated 19 April 2022, in which she recommends Wessex Blinds, she states that the claimant came out straight away to quote and returned to fit them within days of the arrival of the blinds. Further, the Tribunal is not satisfied, on the balance of probabilities, that the blinds were fitted by the claimant without charge as a friend as contended by the claimant.

62. When reaching the above conclusions, the Tribunal has taken into account in particular that there is no indication in the original Facebook entry (page 72 of the bundle) that the claimant and Ms Tyler

were known to each other. Further, the Tribunal has not received any evidence from the claimant and/or Ms Tyler to support the claimant's assertion that they were school friends or any details of their financial arrangements. Moreover, in her subsequent review on 19 April 2022, Ms Tyler states that the claimant quoted for the job and that it was "All at such a reasonable price" (page 81 of the bundle). The Tribunal is therefore satisfied, on the balance of probabilities, that the claimant acted in breach of the respondent's policy/ of his contract of employment in relation to the private work undertaken by the claimant for Ms Tyler whilst in the employment of the respondent.

**Totally Polished**

63. Totally Polished is the trading name of Mr Carter's partner Lauren's business. On 3 January 2022 Lauren posted an entry in the name of Totally Polished (page 72 of the bundle). In the post Lauren gave " a massive thank you to our friend Ryan Stevenson for fitting our gorgeous new blinds. He really is amazing at his work and I would highly recommend his services!". The claimant contended in evidence that he had done the work for free in his own time for his friend Mr Carter/ Mr Carter's partner Lauren who had paid for the blinds. The claimant/ Mr Carter accepted in evidence that the respondent had previously quoted for the work, but that Mr Carter/ his partner no longer wanted the respondent to do the work following Mr Carter's acrimonious departure from the respondent.

64. On 15 February 2022 Mr Carter's partner Lauren posted the recommendation at page 74 of the bundle in which she displayed a picture of the work undertaken by the claimant at their home alongside copies of the claimant's Wessex Blinds business cards together with a contact number, email address and Facebook/ Instagram address for Wessex Blinds. The claimant / Mr Carter sought to explain such entries on the basis that they arose as a result of a misunderstanding by Lauren who removed the post when she became aware of her error. The claimant further sought to explain the Wessex Blinds business cards as something that was produced by his brother-in-law as a family joke, and which were not used by the claimant prior to his departure from the respondent.

65. Having weighed the evidence, the Tribunal is satisfied, on the balance of probabilities, that the work for Totally Polished was undertaken by the claimant in his own time without charge on behalf of his friend, and former colleague, Mr Carter / his partner Lauren. The Tribunal is however further satisfied that such work was undertaken by the claimant in breach of the respondent's policy as the blinds had not been ordered via the respondent.

66. Further the Tribunal is not satisfied that the claimant has given a satisfactory explanation for the existence of the post on 15 February 2022 recommending the services of the claimant under the name of Wessex Blinds together with the presence of the associated copy business cards and contact details.
67. Having weighed the evidence, the Tribunal is satisfied, on the balance of probabilities, that the Wessex Blinds business cards would have been provided by the claimant to Lauren, together with the associated telephone number and other contact details for Wessex Blinds . The Tribunal is further satisfied, that the claimant would/ should reasonably have been fully aware when providing such business cards and associated information that they would be used to promote his services in competition his then employer, the respondent.
68. The Tribunal is accordingly satisfied that the claimant acted in breach of his contract of employment with the respondent in respect of the above-mentioned matters.

**Janice Nutting**

69. Ms Nutting is Mr Carter's mother who gave evidence to the Tribunal (which is accepted by the Tribunal) regarding the following matters. Ms Nutting wanted new blinds for her kitchen. Mr Carter suggested to his mother that they should ask his friend, the claimant, to assist them with the purchase and installation of the blinds. Ms Nutting paid the claimant a cash payment of around £100 - £150. The fitting of the blinds was undertaken by the claimant towards the end of January 2022 / beginning of February 2022. The claimant did not provide Ms Nutting with an invoice. Ms Nutting told the Tribunal that she did not know whether the claimant had "added anything on top" for his labour (but would not have minded anyway). The claimant contended in his evidence that he assisted Ms Nutting as Mr Carter was a close personal friend. The claimant further contended that he measured up and ordered the blinds on behalf of Ms Nutting and subsequently fitted them during his own time with the only charge to Ms Nutting being for the cost of the blinds/ and associated materials .
70. Having weighed the evidence, including the close friendship between the claimant and Mr Carter, the Tribunal is satisfied, on the balance of probabilities, that the work was undertaken on the basis contended by the claimant including that the claimant did not charge Ms Nutting for anything over and above the cost of the blinds which he ordered on her behalf/ any associated materials.
71. On 13 March 2022 Mrs Nutting posted a recommendation for Wessex Blinds on Facebook in respect of the work undertaken by the claimant

in her kitchen. This post is at page 81 of the bundle. In the post Mrs Nutting describes the claimant as having done an amazing job for a competitive price. Ms Nutting stated in evidence that she could not recall the circumstances in which she made the post but accepted that the post was misleading as she had reviewed the work undertaken by the claimant as a business client rather than as a friend in order to promote the claimant's business following his departure from the respondent.

72.

Having considered the above, the Tribunal is satisfied that the claimant acted in breach of the respondent's policy as Ms Nutting was a relative of a friend rather than a friend and further as the blinds were not ordered via the respondent in accordance with the respondent's policy.

### **Wessex Blinds**

73.

In brief summary, the respondent contends that the available evidence demonstrates that the claimant had, in breach of contract, set up and was operating Wessex Blinds as a business during his employment with the respondent. The respondent relies in particular on:- (a) the Facebook entry which he says shows that the Wessex Blinds Facebook page was operative from 9 January 2022 (page 75 of the bundle) and (b) that Wessex Blinds business cards, social media pages and email addresses were in existence and being disseminated to clients by 15 February 2022 ie a week before the termination of the claimant's employment ( the Totally Polished post).

74.

In brief summary, the claimant however contends that he did not set up and/or operate Wessex Blinds as a business prior to his "dismissal" by the respondent on 22 February 2022. The claimant further contends that he has provided by way of the AD documents submitted during the course of the hearing, evidence to show that he did not have an income and expense account/ order work clothing / set up trade accounts or other advertising materials until after the termination of his employment with the respondent.

75.

Having considered the evidence the Tribunal is satisfied that by 9 January 2022 the claimant had set up a Facebook page for Wessex Blinds as evidenced by the copy Facebook page at page 75 of the bundle which shows a creation date of 9 January 2022. The Tribunal is further satisfied that, having had regard to its findings of fact regarding Totally Polished ( as referred to above and page 74 of the bundle), Wessex Blinds had its own contact email address and was, with the

claimant's knowledge/ consent, being promoted on social media by 15 February 2022.

76.

The Tribunal is not however, satisfied, on the balance of probabilities, that the claimant was operating a business as Wessex Blinds prior to the termination of his employment with the respondent. When reaching this conclusion the Tribunal has taken into account in particular that :- (a) there is no evidence that the claimant took formal steps to set up the business prior to the termination of his employment with the respondent – by way of example the clothing, trading accounts , income and expenses records and liability insurance were all created / put in place following the termination of the claimant's employment with the respondent ( the AD documents) (b) the “ private work” undertaken by the claimant in respect of the work identified above, arose , with the exception of Ms Tyler, by reason of the claimant's friendship with Mr Finch and Mr Carter (c) in respect of the work undertaken by Ms Tyler there is no reference in the original Facebook entry in October 2021 to Wessex Blinds and (d) all the posts, save for that for Totally Polished on 15 February 2022, post-date the termination of the claimant's employment with the respondent . Further, the work undertaken by the claimant for Totally Polished arose because of his friendship with Mr Carter/ his partner.

**The respondent's employer's contract claim.**

77.

In summary, the case advanced by the respondent at the hearing in respect of the respondent's contract claim is that between November 2021 and 22 February 2022 the claimant made deliberate errors in measurements on surveys for shutter installations and damaged the home and blinds of a customer in both cases contrary to paragraph F of the Safeguards and Standards incorporated into his contract of employment (page 50 of the bundle) and/or in breach of the implied term of mutual trust and confidence and/or the duty to exercise reasonable care and skill. The respondent further contended that the above breaches by the claimant caused the respondent loss and damage as items had to be remade and/or reordered in order to rectify the work.

78.

The respondent confirmed at the commencement of the hearing that the above claims were limited to two customer jobs namely for Hutchings and Hayes. The claimant denies any deliberate and/or negligent/ unreasonable conduct and contends that the allegations have been pursued against him by the respondent as a disingenuous tactic retrospectively to justify his behaviour towards the claimant.

**The Hayes job**

79.

The respondent is claiming the sum of £145.86 for rectifying the alleged poor workmanship in respect of the Hayes job which was carried out on 8 February 2022 (the invoice dated 22 March 2022 at page 106 of the bundle).

80.

In summary, the respondent contended that the claimant had fitted shutters over a window sill instead of adjusting the shutter to fit properly (page 174 of the bundle). The respondent further contended that the claimant had failed properly to supervise the other fitters who had also fitted shutters incorrectly (page 173 of the bundle). The respondent further contended in evidence that the claimant knew how to fit the shutters and would previously have done so competently and without hesitation and also that he was being deliberately obstructive by refusing to assist the fitters and asking them to telephone Mr English.

81.

In summary, the claimant denied any deliberate or negligent/ incompetent work/ that he had failed to exercise reasonable care and skill. The claimant contended in particular that the frames had been incorrectly ordered (for which he was not responsible) with 4 sided rather than 3 sided frames. The claimant also contended that he properly advised the other two fitters, Mr Flood and Mr Miller to contact Mr English, for further advice, on what to do which they failed to do. The claimant further contended that he was concerned that it would invalidate the warranty if he had cut/ instructed others to cut the frames and that he had advised the customer accordingly including that the frames would need to be reordered with which he agreed.

82.

Mr Flood gave evidence to the Tribunal regarding the Hayes job. In summary, he contended that he asked the claimant for guidance who declined to assist and instructed him to telephone Mr English for advice (which he accepted that he had failed to do). Mr Flood also accepted in his evidence that a mistake had been made with the ordering of the frames and further that if they had cut the frames to fit there was a risk that they could subsequently warp if water got into the frame.

83.

Having weighed the evidence, the Tribunal is not satisfied that the claimant's actions on the Hayes job constituted negligent or incompetent work / a failure to exercise reasonable care and skill (including any deliberate conduct) / a breach of the express/ implied

terms of his contract of employment such as to render him liable to reimburse the respondent for the cost of any loss.

84.

When reaching this conclusion the Tribunal has taken into account in particular, that it is agreed by the parties that the window frames were incorrectly ordered and that there is no evidence that the claimant was responsible for any such error. Further, Mr Flood acknowledged in his evidence that he was advised by the claimant to contact Mr English for further advice but failed to do so. Mr Flood also acknowledged in his evidence that if they had cut the frames, as is contended by Mr English was the appropriate way forward, that this could have led to the warping of the frames if water ingress had occurred.

#### **The Hutchings job**

85.

The respondent is claiming reimbursement in a total sum of £683.25 in respect of the Hutchings invoices at pages 107 and 109 of the bundle. In summary, the respondent contended that the claimant made two errors namely :- (1) reordering a whole shutter to reduce the height from 1300 mm to 1290mm when this was not necessary as the shutter would have fit the original measurement and (2) providing an incorrect measurement of 825mm instead of 525mm when reordering the frame and thereby putting the respondent to further unnecessary cost.

86.

The claimant denied that he made deliberate / negligent errors/ had failed to exercise reasonable care and skill in respect of the Hutchings job and contended that he had contacted Mr English to discuss the job.

87.

Having weighed the evidence, the Tribunal is not satisfied that the claimant's actions on the Hutchings job constituted negligent or incompetent standards of work (including any deliberate conduct)/ a failure to exercise reasonable care and skill / a breach of the express/ implied terms of his contract of employment such as to render him liable to reimburse the respondent for the cost of any loss. When reaching this conclusion, the Tribunal is not satisfied that there is any evidence to show that any error on the part of the claimant was deliberate or negligent/ incompetent/ a failure to exercise reasonable care and skill and/or that any losses were attributable to the claimant in the light of Mr English's acknowledgment in his oral evidence that it was fair to say there had been a number of errors by a number of people on this particular job.

## **CLOSING SUBMISSIONS**

88.

As explained above, there was insufficient time at the conclusion of the hearing for the closing submissions and the Tribunal therefore agreed with the parties directions for the sequential exchange of written submissions/ right of reply. The Tribunal has had regard to such helpful written submissions together with the legal authorities referred to therein.

## **THE ISSUES**

89.

The Tribunal has considered the Issues previously identified above as set out below.

**Issue 1- “How/when the claimant’s employment with the respondent came to an end – namely whether – (a) by dismissal by the respondent (b) by resignation by the claimant or (c) by agreement between the parties.**

### **The relevant law**

90.

The Tribunal has considered in particular the following statutory provisions:- Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the 1994 Order”) and section 95 (1) (a) of the 1996 Act.

91.

The Tribunal has also had regard to the following legal authorities (some of which were identified to the parties by the Tribunal at the commencement of the hearing and some of which were relied upon by the respondent in its written submissions) as follows :-

**Edwards v Surrey Police [1999] IRLR 456 EAT  
Geys v Societe Generale, London Branch [ 2013] 1 AC 523, SC,  
Marshall ( Cambridge) Ltd v Hamblin [1994] ICR, 362, EAT  
Martin v Glynwed Distribution Ltd [1983]ICR 511 CA  
Birch and anor v University of Liverpool [ 1985] ICR 470, CA  
Asamoah- Boakye v Walter Rodney Housing Association Ltd  
[2001] EWCA Civ 851 and  
Feltham Management Limited and ors v Feltham and ors UKEAT  
0201/16.**

92.

The Tribunal has reminded itself in particular of the following: -

(1) The burden is on the claimant to satisfy the Tribunal, on the balance of probabilities, that his employment was terminated by dismissal.



- (2) Section 95(1) (a) of the 1996 Act provides that an employee is dismissed by his employer if the contract under which he is employed is terminated by the employer (whether with or without notice).
- (3) An employee may also terminate the contract of employment by resignation in which case the contract comes to an end when the employee has communicated such resignation to the employer either by words or by conduct.
- (4) The other party must be notified in clear and unambiguous terms that the right to bring the contract to an end is being exercised and how and when it is intended to operate.
- (5) A threat of dismissal or invitation to resign can amount to “an enforced resignation” and therefore a dismissal. The issue of whether there has been an enforced resignation is a question of fact for the Tribunal to decide in the circumstances of the case. The key question in such circumstances is “Who really terminated the contract of employment” and if the answer is the employer there will be a dismissal. The legal interpretation of whether such facts amounted to a dismissal (or some other manner of termination) is however a question of law.
- (6) If a termination is subject to agreeing the terms of a settlement agreement there cannot be a termination by agreement unless and until a binding agreement has been concluded. This does not however preclude the possibility that the employment can, as a matter of fact, be terminated by mutual consent.
- (7) The erroneous acceptance of a resignation in circumstances where the employee has not resigned does not, in and of itself, constitute a dismissal.

93.

As stated previously above, the claimant confirmed at the commencement of the hearing that it is his case that he was either expressly dismissed by the respondent by his letter dated 22nd February 2022 or, in the alternative that he was dismissed by way of an enforced resignation. The claimant further confirmed that he does not contend that he was constructively dismissed by the respondent.

#### **The submissions of the respondent**

94.

The respondent has submitted detailed written submissions regarding this issue. In essence however the respondent’s case is that:-

- (1) The claimant’s employment came to an end by reason of his resignation-The claimant verbally communicated his resignation to Mr English on 22 February 2022 with immediate effect.

- (2) The claimant has failed to prove dismissal. The letter dated 22 February 2022 merely accepted the claimant's resignation and it is clear from Mr English's evidence that he genuinely understood that the claimant had resigned. Moreover, if Mr English was mistaken regarding the claimant's dismissal it does not, in any event, follow that his letter dated 22 February 2022 amounted to a dismissal.
- (3) The factual circumstances are such that the termination of the claimant's employment on 22 February 2022 could neither be characterised as a dismissal or an enforced resignation.
- (4) Although the respondent is not required to prove its case as to the method of termination, the respondent draws the Tribunal's attention in particular to the following matters :- (a) the claimant's own interpretation of what happened on 21 to 22 February is more consistent with termination by resignation or mutual consent than dismissal (b) the claimant told colleagues that he would be leaving that day to set up his own business which was consistent with the steps which he had already taken to set up his own business (c) the claimant's conduct during 22 February was consistent with the respondent's understanding that the claimant had unambiguously resigned with immediate effect and (d) the claimant's without prejudice email dated 23 February 2022 is inconsistent with the case that he was dismissed or forced to resign on 22 February 2022 and is an insincere attempt to resile from the resignation which he communicated the previous day using the threat of an unfair dismissal claim as leverage to negotiate an increased payment in lieu of notice.

#### **The claimant's closing submissions**

95.

The claimant reiterated that the respondent had, without warning, put the three options previously identified to him at the meeting on 21 February 2022. The claimant drew the Tribunal's attention to the fact that when questioned by the Tribunal the respondent finally accepted that there had been a discussion which included such options but had not provided any explanation as to why, if the claimant had resigned, he would have written to the respondent the following day informing him that he had not resigned and further had taken no steps to allow him to continue working at the respondent.

96.

It was clear that the respondent wanted him out.

97.

The respondent's letter accepting the claimant's alleged resignation, when he knew that the claimant had not resigned, constituted his

dismissal and there is no other way to interpret it particularly as he did nothing to allow the claimant to return.

98.

As to the question of “who really terminated the contract of employment”- it is absolutely clear it was the respondent. The respondent initiated the “three options meeting”, wrote the claimant a letter accepting his resignation and when the claimant wrote to the respondent saying that he had not resigned simply offered to make the claimant the payments previously offered. Although the respondent did not use the words “you are dismissed” he did dismiss the claimant.

99. Further there could not have been a termination by agreement as the agreement was never concluded.

100. Still further, this is not a case in which the respondent erroneously accepted a resignation. The respondent deliberately and wilfully constructed the claimant's resignation knowing that he had not resigned and when the claimant wrote to state categorically that he had not resigned he took no steps to rectify his error but instead continued on his course of conduct to remove the claimant from his employment. The respondent had still not signed the agreement by 8 April 2022 at which time he informed the claimant that he had reneged on the agreement.

**THE CONCLUSIONS OF THE TRIBUNAL ON ISSUE 1**

101. Having given careful consideration to all of the above, the Tribunal is satisfied that the claimant has established, on the balance of probabilities, that his employment with the respondent terminated by way of dismissal on 22 February 2022 rather than by way of resignation or mutual consent for the reasons explained below.
102. The meeting on 21 February 2022 was initiated by the respondent to discuss concerns regarding the claimant's recent speeding together with wider concerns relating to the claimant's perceived recent poor standard of work and lack of commitment to his job which the respondent considered undermined its trust in the claimant. It was in this context that the respondent raised the three options identified by the claimant two of which were for the claimant to leave the respondent (paragraph 25 above). On the facts, the upshot of the meeting was that the claimant told that he respondent that he would think about the matter overnight and the claimant subsequently contacted the respondent later that evening asking to speak to him (paragraph 30). The matter was therefore not resolved at that time as contended by the respondent.
103. Further, Mr English acknowledged in evidence that when he met with the claimant on the morning of 22 February 2022 the claimant told him that he was concerned about how they would overcome the respondent's lack of trust in him and the Tribunal is satisfied on the facts that it was in that context that the claimant indicated that he wished to accept the offer of taking the respondent's third option of leaving with 7 weeks' notice with "the bit on top" and going self-employed (paragraph 32 above). In response the respondent initially told the claimant that "it was yesterday's offer" and was no longer on the table albeit he subsequently agreed that the offer was still on the table and that he would get something written up later that week. There was therefore no concluded terms of agreement between the parties at that time and the claimant continued to work as normal that day.

104. The Tribunal has gone on to consider the question of who really terminated the employment. Having considered that question in the context of the above, the Tribunal is satisfied that, viewed objectively, the claimant's employment was terminated by the respondent's letter of 22 February 2022 which constituted a letter of dismissal. Whilst the respondent's letter purports to accept the claimant's decision to terminate his employment and leave his position with immediate effect it also requests confirmation of the resignation in writing (as is required by the respondent's procedures) together with claimant's settlement proposals to bring the matter to a close. The letter also requested the return of all company property and keys and confirmed arrangements for the payment of outstanding wages and other payments.

105. Further, the Tribunal rejects the contention that the respondent genuinely understood that the claimant had resigned as it is clear from the above findings of fact that following their discussions on the morning of 22 February 2022 the claimant's departure would be on agreed terms which had not been concluded at that time and which Mr English stated he would get written up ( paragraph 32) . Moreover, the respondent's letter dated 22 February 2022 refers to receiving proposals for settlement from the claimant and the claimant made it clear to the respondent in his letter dated 23 February 2022 that he had not resigned and that he was under the impression that the respondent had asked him to resign (paragraph 37).

106. In all the circumstances, the Tribunal is satisfied that the claimant has established, on the balance of probabilities, that his employment was terminated by the respondent by way of dismissal on 22 February 2022.

107. The Tribunal has therefore gone on to consider Issue 2.

**Issue 2 "If the respondent's employment with the respondent came to an end by dismissal whether the respondent was entitled to terminate the claimant's contract without notice because of the claimant's conduct".**

#### **The relevant law**

108. The Tribunal has had regard in particular to the following statutory provisions / legal authorities :- Article 3 of the 1994 Order together with the authorities of

**Laws v London Chronicle ( Indicator Newspapers) Ltd [1959]  
1WLR 698 CA**

**Malik v Bank of Credit and Commerce International SA (in  
compulsory liquidation) [ 1997] ICR606 HL.**

**Boston Deep Sea Fishing and Ice Co v Ansell [ 1888] 39 ChD 339  
CA**

109. The Tribunal has reminded itself in particular of the following:-

- (1) An employer may terminate an employment contract without notice if an employee is guilty of repudiatory conduct. The burden of proof is on the employer to prove such repudiatory conduct.
- (2) The right to terminate a contract only arises where the conduct is sufficiently serious to amount to a repudiation of the contract. The employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract.
- (3) There is an implied term in all contracts of employment that the employee will serve the employer faithfully and will not act in a manner which is contrary to the interests of the employer. There will be a breach of such implied term if the conduct is done without reasonable and proper cause and is calculated or likely seriously to damage or destroy trust and confidence in the employment relationship. A breach of the implied term of mutual trust and confidence will amount to a repudiatory breach.
- (4) If an employer discovers after an employee has been dismissed that the employee was guilty of a fundamental breach of contract which would have entitled him to dismiss the employee without notice the employer can rely upon this to defeat a claim for breach of contract for notice.

### **The submissions of the respondent**

110. Again, the respondent has submitted detailed written submissions regarding this issue. In essence however the respondent's case is as follows: -

- (1) The claimant was in breach of paragraphs I and J of the General Terms and Procedures which were express terms incorporated into his contract of employment and also of the implied terms of mutual trust and confidence and /or fidelity.
- (2) The claimant had agreed to the terms of his contract and acknowledged in his witness statement that if he had set up Wessex Blinds during his employment with the respondent this would have amounted to a breach of contract which would have

entitled the respondent to initiate disciplinary proceedings and may have led to his dismissal.

- (3) The claimant's evidence that he had not set up Wessex Blinds during his employment with the respondent is untrue as demonstrated by the Wessex Blinds Facebook page which was operative from 9 January 2022 and by the Wessex Blinds business cards and contact details which were being disseminated by 15 February 2022.
- (4) The evidence by the claimant and his witness Mr Carter regarding such matters is not credible. The evidence shows that the claimant was running and marketing his own business, taking orders from customers, building a reputation, placing orders with suppliers / competing installations on his own account prior to the termination of his employment. The claimant was expressly forbidden from undertaking business interests or private work without the consent/ authorisation of the respondent. The claimant did not have the respondent's express permission for any of the relevant Facebook posts and any blind fitting work done other than through the respondent was a breach of the express and implied terms of his contract of employment.
- (5) The claimant was ordering and installing blinds privately during 2021 and prior to the termination of his employment in 2022. The claimant contends that any such work was limited to friends and family which was permitted by the respondent. It is however denied by the respondent that the policy extended to include friends (or family without purchasing blinds via the respondent). The respondent further says that the work undertaken by the claimant was not, in any event, limited to friends and family as further identified in the respondent's submissions.
- (6) In reality, the claimant left his employment with the respondent to commence a full-time self-employed business Wessex Blinds which was already in operation prior to the termination of his employment with the respondent.
- (7) The Tribunal is therefore invited to conclude that the claimant was in prior repudiatory breach and was therefore not entitled to be dismissed with notice or recover any notice pay and his claim should be dismissed accordingly.

### **The claimant's submissions**

111.

Wessex Blinds did not exist until after the claimant's dismissal – it was only a vague idea for the future. There is no website, and the Facebook page was set up on 9 March 2022. There were no posts/ reviews prior to that date.

112. All installations carried out prior to the termination of his employment were carried out for friends and family with the full knowledge and support of the respondent and any associated reviews were given retrospectively to support the claimant after he had lost his job.
113. The respondent acknowledged that he allowed staff to purchase materials and equipment for their friends and family for cost price. Orders for friends and family were usually placed through the respondent and were usually delivered to the respondent.
114. The claimant denies that he has failed to provide all relevant information relating to the starting up of his business – he says that he did not undertake any private work as Wessex Blinds prior to 22 February 2022 and that there were therefore no further documents to disclose.
115. The messages contained in the bundle, which were messages passing between the claimant and office staff, demonstrate that staff were allowed to fit blinds for family and friends.
116. It is difficult to prove a negative however the claimant has provided all the documentation that he can to show that he was not operating as Wessex Blinds prior to the termination of his employment.
117. The Wessex Blinds business cards were a joke gift from the claimant's brother in law and the name just stuck.
118. Prior to his dismissal the claimant only did work for friends and family which was not a secret and for which he did not take any money.

## **THE CONCLUSIONS OF THE TRIBUNAL ON ISSUE 2**

119. Having had regard to the above findings, the Tribunal is satisfied that the claimant's proven conduct in respect of the "private work" undertaken during his employment with the respondent falls into the following three categories namely :-
- (1) Private ordering and fitting work undertaken by the claimant of blinds which were not ordered by him via the respondent and/or was undertaken for people who were friends/ family of friends ( ie one removed from direct friends) which were not, on either count, in accordance with the terms of the respondent's policy regarding such work (paragraph 21 above)/ the terms of the respondent's contract of employment (paragraph 18 above). This relates to work undertaken for Ms Snoxell, the Rainbirds, Mr Carter/ his partner



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& 1402018/2022**

/Totally Polished and Ms Nutting. The Tribunal is not however satisfied that such work could, viewed objectively, be regarded as repudiatory conduct. When reaching this conclusion, the Tribunal has taken into account in particular that the Tribunal has accepted the claimant's evidence that he did not receive any monies for such work which was carried on in his own time and was carried out for friends and/or family of his close friends (Mr Finch and Mr Carter).

(2) Private work undertaken for (a) Ms Tyler and, separately, (b) the Rainbirds on 21 July 2021.

(a) Considering first the work undertaken for Ms Tyler (paragraphs 59-62 above) the Tribunal is satisfied that, viewed objectively, that such work was undertaken by the claimant in breach of Paragraphs I and J of the General Terms and Procedures incorporated into his statement of his main terms of employment ( paragraph 18 above) and further in breach of the implied terms of his contract relating to mutual trust and confidence and /or fidelity. When reaching this conclusion, the Tribunal has taken into account in particular that it is not satisfied that the blinds were fitted for Ms Tyler without charge as a friend as contended by the claimant (paragraph 62 above). The Tribunal has noted that Paragraph J not only forbids the claimant from undertaking any private work without authorisation from the respondent but also expressly states that the claimant was not allowed to undertake any work which could otherwise have been undertaken by the respondent. When responding to Ms Tyler's post (after the initial response from Mr Carter) the claimant did not suggest to Ms Tyler that the work could be undertaken by the respondent but rather took on the work himself in breach of the above mentioned express terms and also the implied term of trust and confidence/ fidelity.

(b) As far as the Rainbirds were concerned, whilst the Tribunal accepts that the work was undertaken by the claimant free of charge as they were friends of Mr Finch the Tribunal is nevertheless satisfied that, viewed objectively, that in addition to his breaches of paragraphs I and J the claimant also acted in breach of the implied term of mutual trust and confidence / fidelity by installing the blinds on 21 July 2021 when he was absent from work due to isolating for covid. Further the claimant himself acknowledged in evidence that had he done this ( which he denied ) this would be a potentially serious breach of his contract of employment (paragraph 56 above).

(c) Work undertaken for Totally Polished (for Mr Carter's partner Lauren)- whilst the Tribunal is satisfied that the work was undertaken by the claimant in his own time for free for his friend and former colleague (Mr Carter) / his partner, the Tribunal is nevertheless satisfied that the subsequent post on 15 February 2022 (of which the claimant would/ should have been aware) promoting Wessex Blinds / providing associated contact details was a breach of paragraph 1 of the General Terms and Procedures incorporated into the claimant's statement of main terms of employment and also a breach of the implied term of mutual trust and confidence / fidelity as it was promoting, during the claimant's employment with the respondent, the claimant in direct competition to the respondent.

120. Further the Tribunal is satisfied that, viewed objectively, the conduct identified above in respect of Ms Tyler, the Rainbirds on 21 July 2021 and the advertising of Wessex Blinds on 15 February 2022 went to the root of the contract which, singularly and cumulatively, disclosed a deliberate intention by the claimant to disregard the essential requirements of the contract.

121. Moreover, the Tribunal is satisfied that in such circumstances, if the respondent had been aware of the above mentioned repudiatory conduct prior to the termination of the claimant's employment he would, have been entitled, as a matter of contract, to have terminated the claimant's employment without notice. The Tribunal is further satisfied that having regard to the principles contained in the Court of Appeal Judgment of **Boston Deep Sea Fishing** the respondent is entitled, notwithstanding that such conduct was not discovered until after the termination of the claimant's employment, to rely on it to defeat the claimant's claim for breach of contract for notice.

122. The claimant's claim for breach of contract for notice is therefore dismissed.

### **The respondent's breach of contract claim**

123. Finally, the Tribunal has therefore gone on to consider Issue 3.

**Issue 3 "Whether the respondent is entitled to recover damages from the claimant in respect of any alleged breaches of contract/ negligence by the claimant in respect of the work undertaken for the clients of Hutchings and Hayes in the total sum of £829.11 or some other sum?"**

124. At the start of the hearing the respondent confirmed that the respondent's employer contract claim was limited to the above-mentioned matters.

**The relevant law**

125. The Tribunal has had regard to Article 4 of the 1994 Order together with the common law principles referred to below.

126. The Tribunal has reminded itself in particular that :-

(1) The employer must establish that the employee acted in breach of the employment contract and that it has caused him loss.

(2) The remedy is to put the employer in the position it would have been in but for the breach of contract. The fact that damages are difficult to assess does not disentitle the employer to compensation for loss caused by the employee's breach

**The respondent's submissions**

127. As stated previously above, the respondent contends that between November 2021 and 22 February 2022 the claimant made deliberate errors in measurements on surveys for shutter installations and /or that on 8 February 2022 the claimant damaged the home and blind of one of the respondent's customers which was , in both cases, contrary to paragraph F of the Safeguards and Standards incorporated into the claimant's contract of employment / a breach of the implied term of trust and confidence and/or the duty to exercise reasonable care and skill and caused the respondent loss and damage.

128. As further identified above, above the claims are limited to two jobs namely those of Hutchings and Hayes.

**The claimant's submissions**

129. In summary, the claimant contends that it is nonsense to suggest that he made deliberate mistakes between November 2021 and February 2022 which he knew would not be identified before he left including how could he predict that any errors ( which he denies) would not be discovered until after he had left the respondent.

130. The claimant further contends that in its own evidence the respondent accepted that the claimant was not responsible for the alleged damaged.

### THE CONCLUSIONS OF THE TRIBUNAL ON ISSUE 3

131. The Tribunal has considered first the Hayes job. Having had regard to the findings at paragraph 79 – 84 above, the Tribunal is not satisfied on the facts that the respondent has established any deliberate/ actionable conduct / failings on the part of the claimant.
132. Finally, the Tribunal has gone on to consider the Hutchings job. Again, having had regard to paragraphs 85-87 above, the Tribunal is not satisfied on the facts, including in the light of the acceptance by Mr English in evidence that a number of people had made errors on that job, that the respondent has established any deliberate/ actionable conduct / failings on the part of the claimant/ that any losses were attributable to the actions of the claimant.
133. The claimant's contract claim in respect of the Hayes and Hutchings jobs are therefore dismissed.

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Employment Judge Goraj  
Date: 28 March 2023

SENT TO THE PARTIES ON  
19<sup>th</sup> April 2023 by Miss J Hopes

FOR THE OFFICE OF THE TRIBUNALS

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**Case numbers 1401476/2022  
& 1402018/2022**