



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE K ANDREWS

**BETWEEN:**

Mr R Padun

Claimant

and

Arcstream Ltd (In Liquidation)

Respondent

**ON:** 6 April 2023

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Did not attend

## **JUDGMENT**

The claimant was unfairly dismissed and dismissed in breach of contract.

The claim of unpaid wages is dismissed.

The respondent is ordered to pay compensation forthwith to the claimant in the total sum of £16,916.86 calculated as below.

## **REASONS**

1. In this matter the claimant complains that he was unfairly dismissed, underpaid wages and not paid his notice pay.
2. A creditor's voluntary liquidation (CVL) process was commenced in respect of the respondent in November 2022. The claimant tells me that that he is in the course of disputing that process. In any event, the existence of a CVL is no bar to proceedings being commenced or continued against a company.
3. In the absence of the respondent I heard evidence and submissions from the claimant and also considered a witness statement and bundle of documents he

had submitted. I also considered a response form submitted by the respondent prior to commencement of the liquidation.

### **Relevant Law**

4. By section 94 of the Employment Rights Act 1996 (“the 1996 Act”) an employee has the right not to be unfairly dismissed by his or her employer provided they have at least two years continuous service at the effective date of termination. Service with associated employers (as defined at section 231 the 1996 Act) will count towards that calculation.
5. It is for the claimant to establish that they were dismissed by the respondent and for the respondent to establish that the reason for the dismissal was a potentially fair one as required by section 98(1) and (2). If the respondent establishes that then it is for the Tribunal to determine whether the dismissal was fair in all the circumstances (including the size and administrative resources of the respondent business) having regard to equity and the substantial merits of the case (section 98(4)). In applying this test the burden of proof is neutral.
6. When considering any procedure followed by the respondent, the Tribunal’s task is to consider the fairness of the whole of the disciplinary process and will also take account of the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015).
7. In coming to these decisions, the Tribunal must not substitute its own view for that of the respondent but to consider the respondent’s decision and whether it acted reasonably by the standards of a reasonable employer.
8. Any summary dismissal of an employee will be in breach of the right to notice of termination (either through the contract of employment or the statutory minimum provided at section 86 of the 1996 Act) and therefore a wrongful dismissal unless there has been repudiatory conduct by the employee justifying that summary dismissal.
9. Sections 118, 119 & 123 of the 1996 Act provide for calculation of basic and compensatory awards in any successful unfair dismissal claim. That compensation may be increased or decreased by up to 25% according to whether a party complied with the principles of the ACAS Code and is a statutory cap of a specified amount (not relevant here) or one years pay.
10. Compensation for any failure to pay notice will be calculated in accordance with the usual contractual principles save where the relevant period has already been compensated for as part of any compensatory award for unfair dismissal.

### **Findings**

11. The claimant was an employee, shareholder and director of the respondent. He had also been an employee, shareholder and director of Interactive Media Group Ltd (‘IMG’). His employment with IMG commenced on 17 May 2017. As an employee of both companies he was paid a basic salary which at the time

of the termination of his (oral) contract of employment was £736.67 per month (equivalent to £141.67 pw ). He also received £650 net per month (£150 pw) car allowance. These two figures taken together represent the wages payable to him under his contract of employment (£291.67 pw) and appear to have been paid gross. He also received £5200 per month by way of share dividends which, although part of his total remuneration package for all his appointments with the respondent, did not form part of his wages.

12. The claimant was a 50% shareholder in both companies. The other 50% was owned by Mr N Dickinson, the other director. As there was no overall controlling interest by either individual, a third party, Mr Weeks, was paid a monthly retainer in order to act as a mechanism for decision-making in the event of a dispute between them.
13. The claimant's bank statements to which I was referred to show that he was paid his wages by IMG up until the end of January 2022 and then was paid the same wages by the respondent (albeit for a short period of time). I am satisfied that there was no gap in the continuity between his appointment with IMG and then with the respondent.
14. I am also satisfied that IMG and the respondent are associated employers as they are both companies of which a third person, namely the claimant and Mr Dickinson, have control.
15. Accordingly the claimant has the necessary status to bring an unfair dismissal claim.
16. The claimant's employment with the respondent was terminated on 29 April 2022, his access to all systems associated with the business and the offices having been removed from him without prior notice on 17 March 2022. Thereafter he was unable to perform any of his functions as an employee. He was not given any prior notification of any cause for concern with his employment, no meeting was held with him and no appeal was offered to him in respect of his termination. There was nothing on the papers or evidence before me to suggest that there was any grounds to terminate the claimant's employment because of any gross misconduct.
17. Accordingly his dismissal was unfair and in breach of both his contract of employment. There was a wholesale failure to comply with the ACAS CoP. The claimant falls to be compensated accordingly.
18. Post termination the claimant has made reasonable efforts to find alternative employment and has now set up his own business which he expects to be paying him an equivalent salary to that which he received from the respondent in the final quarter of 2023.
19. The claimant's compensation is calculated as follows (there will be no separate payment in respect of notice pay as that is covered by the compensatory award and he did in fact receive all wages due up until his termination and therefore his claim for unpaid wages fails).

<u>Basic Award:</u> (£291.67 x 4 x 1.5)	£1,750.02
<u>Compensatory Award:</u>	
Loss of earnings to date £291.67 x 49 weeks	£14,291.83
Plus loss of future earnings to 30/9/23 £291.67 x 25 weeks	<u>£ 7,291.75</u> £21,583.58
Plus 25% uplift (ACAS)	£ 5,395.90
Plus loss of statutory rights	<u>£ 500 .00</u> £27,479.48
Apply statutory cap 52 weeks gross pay:	<u>£15,166.84</u>
<b>Total</b>	<b>£ 16,916.86 gross</b>

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Employment Judge K Andrews  
Date: 6 April 2023