



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Mason  
**Respondent:** Eastman Staples Ltd

**Heard:** via Cloud Video Platform                      **On:** 18 May 2023

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

## Representation

**Claimant:** In person  
**Respondent:** Did not attend and was not represented.

Mr Andrew Kyprianou attended the start of the hearing and was represented by Damian Brown of counsel.

# JUDGMENT

The decision of the Tribunal is as follows:

1. The name of the respondent is amended to Eastman Staples Ltd.
2. Mr Andrew Kyprianou is removed as a respondent.
3. The claimant was unfairly dismissed.
4. The respondent made unlawful deductions from the claimant's wages by not paying him for October 2022.

5. The respondent breached the claimant's contract by not giving him 12 weeks' notice or paying him in lieu of notice.
6. The respondent is ordered to pay compensation of £13,716.04 to the claimant.

## **REASONS**

### **The Background**

1. The claimant was employed by the respondent from Early conciliation began on 2 November 2022 and ended on 14 December 2022. The claim was presented on 8 January 2022 and includes complaints of unfair dismissal, for notice pay and for arrears of pay. The claimant alleges, in summary, that he was employed by the respondent from 1 February 2020 until 21 October 2022 as Executive General Manager, that he was unfairly dismissed, and that the respondent owes him arrears of pay and notice pay.
2. On 2 and 17 February 2023 the respondent's general manager wrote to the Tribunal stating that the respondent had been advised not to respond to the claim until Mr Andrew Kyprianou was removed as a respondent. Notwithstanding that, the respondent filed a response on 22 February 2023 indicating that it intended to defend the claim. It submitted that the claimant was fairly dismissed for misconduct and denied that the claimant is entitled to any payments.
3. On 24 February 2023 the respondent wrote to the Tribunal asking that Mr Andrew Kyprianou be removed as a respondent.
4. The claimant was asked whether he consented to the name of the respondent being amended to Eastman Staples Ltd. On 7 March 2023 he wrote to the Tribunal indicating that he did.
5. In a judgment sent to the parties on 10 May 2023 Employment Judge Shepherd struck out the response to the claim on the ground that the respondent had not complied with the Order of the Tribunal dated 26 January 2023 and the response was not being actively pursued.
6. On 16 May 2023 an Insolvency Administrator from Begbies Traynor wrote to the Tribunal stating that the respondent is in creditors voluntary liquidation and does not have the funds to defend the claim. The letter indicated that neither the respondent nor the Joint Liquidators would be attending the hearing for costs reasons.
7. A search of the Companies House register on the morning of the hearing confirmed that the respondent is in Creditors voluntary liquidation and that the winding up of the company commenced on 25 April 2023.

### **The Proceedings**

8. The case was listed for a final hearing today. The claimant attended the hearing. There was no appearance on behalf of Eastman Staples Ltd. Mr Andrew Kyprianou did attend the hearing and was represented by Mr Damian Brown of counsel.
9. There was no bundle of documents, but the claimant did send to the Tribunal a number of documents, some of which were considered and discussed during the hearing. The claimant gave evidence and Ms Sharon Devoir, formerly the respondent's external HR consultant, also gave evidence on behalf of the claimant.
10. At the start of the hearing I addressed the question of the correct respondent to the claim. The claimant issued proceedings against Eastman Staples Ltd (Andrew Kyprianou). A search of Companies House revealed no such company with that name.
11. The claimant was reluctant to accept that Mr Kyprianou should be removed as a respondent, particularly since Eastman Staples Ltd is now in liquidation. I therefore heard evidence from the claimant as to the identity of his employer, and submissions from the claimant and Mr Brown on that question. I was of the view that, as Mr Kyprianou was present at the hearing and had instructed counsel to represent him, counsel should be allowed to address the hearing on the question of the correct respondent.
12. Having heard evidence and submissions I decided, for the reasons set out below, that Mr Kyprianou should be removed as a respondent. Mr Brown and Mr Kyprianou then left the hearing.

### **The Issues**

13. The issues that fell to be determined during the hearing were as follows:
  - a. Who was the claimant's employer?
  - b. Was the claimant unfairly dismissed?
  - c. If so, what basic and compensatory awards should the respondent be ordered to pay?
  - d. Did the respondent make an unlawful deduction from the claimant's wages by not paying him for October 2022?
  - e. Did the respondent breach the claimant's contract of employment by not giving him notice of termination or paying him in lieu?
  - f. If so, what sums if any should the claimant be ordered to pay by way of damages for breach of contract.

### **Findings of Fact**

14. The respondent's response to the claim has been struck out. The respondent did

not attend the hearing and was not represented. These findings of fact are therefore brief as the claim was effectively unopposed.

15. In January 2020 the claimant was offered a role with the respondent. The terms of his employment were set out in a letter dated 21 January 2020 which was written on the respondent's headed notepaper. The terms of the claimant's employment included the following:
  - a. A salary of £40,000 pa;
  - b. Car allowance of £5,000
  - c. Notice period of 12 weeks
16. The letter did not state specifically who the claimant's employer was. It did however state that the claimant would report to "*Andrew Kyprianou or any other Manager notified to you in the interim period*".
17. The claimant was not provided with any documents which suggested that he was employed by Andrew Kyprianou.
18. The claimant was paid by Eastman Staples Ltd and the payslips he received all contained the name of Eastman Staples Ltd. The claimant did not receive any payments from Andrew Kyprianou.
19. The claimant's employment started on 1 February 2020 and ended on 21 October 2022 when he was dismissed with immediate effect.
20. Approximately 18 months after the start of his employment the claimant became concerned that Mr Kyprianou was trying to manage him out of the business. The claimant's duties were gradually removed from him, and he was excluded from important meetings.
21. Matters came to a head in October 2022 when the claimant was invited to a disciplinary hearing. That hearing took place on 18 October and Ms Devoir was also present in her capacity as HR consultant. In advance of the meeting a letter was sent to the claimant setting out the allegations against him. The claimant refuted all of the allegations.
22. At the end of the meeting the claimant was told that Mr Kyprianou and Ms Devoir would discuss matters and that a decision would be reached within the next few days. Ms Devoir's view was that the claimant should not be dismissed. She drafted a letter for Mr Kyprianou to send to the claimant. Mr Kyprianou did not send the letter prepared by Ms Devoir but wrote another letter dismissing the claimant for purported gross misconduct. Some of the alleged misconduct referred to in the dismissal letter was not even discussed in the disciplinary hearing.
23. On 21 October 2022 Mr Kyprianou called the claimant into the boardroom and told him that he was being dismissed with immediate effect. The claimant was told to leave the premises immediately, which he did. The claimant subsequently received

a letter confirming his dismissal and offering him the right of appeal.

24. The claimant was dismissed with immediate effect on 21 October 2022. He was not given any period of notice or paid in lieu of his notice period.
25. The claimant appealed against the decision to dismiss him. Other than an acknowledgment of his appeal however, he heard nothing further about the appeal and no appeal meeting was arranged.
26. Whilst he was employed by the respondent the claimant was paid a salary of £40,000 pa which equated to a gross monthly pay of £3,333.33. The claimant's gross weekly pay was £769.23 (£40,000 pa divided by 52 weeks in the year). He also received a car allowance payment of £416.67 a month gross. His employer contributed 3% of his salary to the company pension scheme on his behalf, a total of £1,200 p.a. or £100 a month. He received no other benefits from the respondent.
27. The claimant was aged 59 when his employment started and 61 when he was dismissed. He had two complete years of service.
28. After leaving the respondent's employment the claimant worked for approximately three months at Sainsbury's. His total earnings whilst at Sainsbury's were £3,044.25 net. Sainsbury's also made employer pension contributions totalling £62.92 on his behalf.
29. At the end of February 2023 the claimant obtained a new job which is permanent. The claimant is not claiming any loss of earnings beyond the end of February 2023.
30. The claimant did not receive any social security benefits between leaving the respondent's employment and starting his new job. He is not seeking reinstatement or re-engagement.

## The Law

### Unfair dismissal

31. Section 94 of the Employment Rights Act 1996 contains the right for employees not to be unfairly dismissed.

### Basic Award: Unfair dismissal

32. Section 118 of the Employment Rights Act 1996 ("**the ERA**") provides that:

*"(1) Where a tribunal makes an award of compensation for unfair dismissal...the award shall consist of –*

*(a) A basic award (calculated in accordance with sections 119 to 122 and 126), and*

*(b) A compensatory award (calculated in accordance with sections 123, 124, 124A and 126.”*

33. Section 119 of the ERA contains the provisions for calculating a basic award, which shall be done by:

*“(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,  
(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and  
(c) allowing the appropriate amount for each of those years of employment...”*

34. The ‘appropriate amount’ is *“one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one...”* (section 119(2)(a)).

#### Unfair dismissal compensatory award

35. Section 123 of the ERA contains the power to make a compensatory award where an employee has been unfairly dismissed, of *“such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer”*.

#### Unlawful deduction from wages

36. Section 13 of the Employment Rights Act 1996 states that:

*“(1) An employer shall not make a deduction from wages of a worker employed by him unless –*

*(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract,  
or*

*(b) The worker has previously signified in writing his agreement or consent to the making of the deduction...*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”*

#### Wrongful dismissal

37. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 gives Tribunals the power to hear claims for breach of a contract of employment or other contract connected with employment where the claim arises or is outstanding on the termination of the claimant's employment.

## **Conclusions**

### **The identity of the employer**

38. I have no hesitation in finding, on the evidence before me, that the claimant was employed by Eastman Staples Ltd and not by Andrew Kyprianou. The offer letter setting out the main terms and condition of employment was on Eastman Staples Ltd headed notepaper. The claimant was paid by Eastman Staples Ltd, and that company's name was on the payslips that the claimant received. There was no evidence whatsoever to suggest that Andrew Kyprianou was the claimant's employer. Moreover, in an email sent to the Tribunal on 7 March 2023, the claimant wrote that he agreed that Eastman Staples Ltd was his employer.

39. All of the claims that the claimant is bringing are ones that can only be brought against an employer, and not against individuals in their personal capacity (unless of course those individuals were the employer). As the claimant was not employed by Andrew Kyprianou, Mr Kyprianou is removed as a respondent from these proceedings and the claim will proceed against Eastman Staples Ltd only.

### **Unfair dismissal**

40. The respondent has adduced no evidence as to the reason for dismissal, nor any evidence that the dismissal was fair. As the respondent has not discharged the burden of establishing a fair reason for dismissal, the claim for unfair dismissal succeeds.

41. I also find, in the alternative, based on the claimant's evidence, that it cannot be said that he was guilty of gross misconduct. He refutes all of the allegations against him, and I accept his evidence on that issue.

42. The procedure followed by the respondent was not a fair procedure. There was no evidence of any investigation meeting, the claimant appears to have been dismissed at least in part for allegations that were not even put to him during the disciplinary hearing, and there was not appeal.

43. The claimant was therefore unfairly dismissed by the respondent.

### **Breach of contract**

44. The claimant was entitled to 12 weeks' notice of termination. He was dismissed with immediate effect. The respondent has not adduced any evidence to suggest that the claimant was guilty of conduct that was so serious as to amount to a repudiatory

breach of contract. The respondent has therefore breached the claimant's contract of employment by not giving him 12 weeks' notice of termination or paying him in lieu of that period.

#### Unlawful deduction from wages

45. The claimant worked for the respondent until 21 October 2022. He was not paid at all for the month of October. The respondent has made an unlawful deduction from the claimant's wages by not paying him salary or car allowance for October 2022.

#### Remedy

##### Basic Award

46. The basic award is calculated by multiplying a week's gross pay by the multiplier of 3, as the claimant was aged 61 at the date of dismissal and had been continuously employed for 2 years. The claimant's gross weekly pay was £769.23 which is above the statutory cap at the time of £571 a week. The basic award is therefore  $3 \times 571 =$  **£1,713.**

##### Unfair Dismissal Compensatory Award

47. I award the claimant £350 for loss of statutory rights.

48. I also award the claimant compensation for financial losses between the 22 October 2022 and the 27 February 2023, the day before the claimant started his new permanent role. That is a total period of 18 weeks and 4 days, or 18.57 weeks. In calculating losses, I have worked from net figures.

49. The claimant was unable to provide me with net weekly pay figures, so I have used the online net salary calculator. For salary of £40,000 pa and car allowance of £5,000 pa, the net earnings using this calculator are a total of £665.81 per week, and £133.16 per working day, or £95.12 per calendar day.

50. The claimant's lost earnings during the period 22 October 2022 to 27 February 2023 are therefore  $£665.81 \times 18.57 =$  **£12,364.09.**

51. For the purposes of calculating pension loss, I have used a weekly figure of £23.08 (the annual employer pension contribution of £1,200 divided by 52 weeks). The loss of employer pension contributions is therefore  $18.57 \times £23.08 =$  **£428.60.**

52. Total loss of earnings and employer pension contributions following dismissal until the claimant got a new permanent role is (12,364.09 plus 428.60) **£12,792.69.**

53. From this sum I have deducted the salary (£3,044.25) and employer pension contributions (£62.92) from Sainsburys, totalling **£3,107.17.** This gives a total award for loss of earnings and pension contributions of (£12,792.69 minus £3,107.17) **£9,685.52.**



54. The total compensatory award for unfair dismissal is therefore **£10,005.52** (£90,655.52 loss of earnings and pension contributions plus £350 loss of statutory rights).

Wrongful dismissal

55. The claimant's notice period is covered by the award for unfair dismissal. I therefore order no additional compensation by way of damages for wrongful dismissal, to avoid double recovery and the claimant being compensated twice for the same period of time.

Unlawful deduction from wages

56. The claimant is entitled to be paid salary and car allowance for the 21 days that he worked in October 2022. Applying a daily rate of £95.12 times 21 days gives a total award of **£1,997.52**.

57. The respondent is therefore ordered to pay the following sums to the claimant:

- a. Basic award: £1,713
- b. Compensatory Award : £10,005.52
- c. Unlawful deduction from wages : £1,997.52

58. This results in a total award to the claimant of **£13,716.04**.

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Employment Judge Ayre

Date: 18 May 2023

JUDGMENT SENT TO THE PARTIES ON

.....24 May 2023.....

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FOR THE TRIBUNAL OFFICE

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