



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Andrew Haslam

**Respondent:** JETS (Bournemouth) Ltd

## JUDGMENT

The Respondent is Ordered to pay the Claimant the sum of £5366.90 in respect of Preparation Time, pursuant to Rules 76 and 79 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1.

## REASONS

1. The Claimant applies for a preparation time order. There has been no response to that application from the Respondent and no request for a hearing. I am satisfied that this matter can be fairly and justly resolved without a hearing.
2. The grounds on which the Claimant relies are that the Respondent had acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing of proceedings or the way the proceedings had been conducted and/ or that the response had no reasonable prospect of success.
3. This was a claim for five and a half months notice pay, reflecting the entitlement in the employment contract for six months notice instead of two weeks notice, for arrears of pay and for holiday pay. The claim was successful, save that the claim for holiday pay was not pursued.
4. The claim was initially listed for a one or two hour hearing.
5. The Respondent defended the case on the basis that the contract term in the employment contract was invalid. The Respondent further relied on misconduct discovered after the redundancy dismissal of sufficient gravity to merit instant dismissal, such that the balance of notice pay was not payable and a counterclaim on the same allegations with one addition and on a failure to mitigate.
6. The Respondent applied to consolidate the claims of Mr Haslam with the claims of Mr. Rogers and to stay the claim of Mr Haslam until after the outcome of proceedings against Mr. Rogers in the High Court. Mr Haslam was not a party to those proceedings. No proceedings had been issued

against Mr Haslam in the High Court. That application was dismissed on full consideration. The risk was of a finding in the High Court proceedings that would bind the tribunal in Mr Haslam's case on which he had not had the opportunity to be heard. There was no significant reason to consolidate the claims and no good reason to stay the claim of Mr Haslam pending the outcome of the High Court proceedings in Mr Rogers case. Either course risked unfairness to Mr Haslam.

7. The case was re-listed for one day for 10 March 2023. The Respondent asked for extensions of time and failed to prepare a bundle as directed.
8. That hearing was converted to a case management hearing on 10 March 2023 because the case was not ready for hearing. It was listed for two days on the Respondent's application for a four day hearing. That was on the basis of the issues raised by the response and counterclaim. Four days was disproportionate.
9. The Respondent withdrew the contention that the notice term in the contract was invalid at the start of the final hearing. That had remained at issue at the date of the hearing on 10 March. It was common ground that the notice paid was two weeks, not six months and, as a result of that withdrawal, common ground at the hearing that the notice period was six months.
10. The counterclaims based on misconduct discovered after dismissal for redundancy and breach of contract were dismissed. An oral judgment was given. Written Reasons have not been requested.
11. The Respondent's response and counterclaim had no reasonable prospect of success.
12. In brief summary, the Tribunal found as follows, using as the basis of the List of Issues presented at the start of the hearing.
13. Mr Haslam had been the Chief Pilot, Mr Rogers was the former CEO of the Respondent company and Mr Haslam's line manager until his dismissal in April 2022. Mr Rose was the director from 11 February 2022, and dismissed both Mr Rogers and Mr Haslam.

1. *Did the Claimant commit gross misconduct, either individually or cumulatively, by doing any or all of the following:*

(a) *working on personal matters by corresponding with third parties unrelated to the Respondent in relation to:*

(i) *a claim against his former employer L3 CTS Airline and Academy Training Limited; and*

(ii) *a dispute relating to child maintenance between him and his wife during working hours.*

This claim was misconceived. By the contract, Claimant was on call throughout every other week, day and night. There were no normal working hours; he was bound to and entitled to use his time when not working on personal matters, and had express permission to do so from his line manager.

(b) *setting up a business in competition with the Respondent by diverting in concert with Mr Rogers a business opportunity to purchase an aircraft to HDM Worldwide Limited, a company of which Mr Rogers was the sole shareholder;*

The Claimant did not set up in business in competition with the Respondent or divert a business opportunity to HDM Worldwide Ltd. In the course of his employment, Mr Haslam found five Chieftain planes on sale and he and Mr Rogers offered the Respondent company the opportunity to purchase them. The Respondent company, under the former owner/director, refused to invest in them. The company's field lay in jet aircraft not piston engine planes. The planes remained available for purchase and were bought by Mr Rose's company, Gulfjet Aviation Ltd, from the original vendor, as Mr Rose confirmed in his witness statement. Mr Rose later became a director of the Respondent and at his initiative, the Respondent company paid a finder's fee to Mr Haslam, notwithstanding that the company had not bought the planes. There was no diversion of a business opportunity by Mr Haslam.

- (c) *working as a pilot for MK Flying Limited from at least 1 February 2022, if not from an earlier date;*

Mr Haslam did not work as a pilot for MK Flying Ltd during this contract. Under Mr Rogers' regime, these two companies worked closely together, the Respondent subcontracting planes from MK Flying Ltd, using their pilots and their experience in chartering and gaining visas. Mr Rogers agreed to release Mr Haslam for flying with MK Flying Ltd, partly to maintain his skills. The document relied on is a routine visa application obtained for the Respondent via MK Flying Ltd, on the instructions of Mr Rogers. There was no breach of contract. The allegation is without substance, born of ignorance of the working arrangements in place.

- (d) *assisting Mr Rogers to steal the Mooney Rocket*

The plane was routinely maintained by a regular maintenance company. Log book, manual and keys had to be with the plane when it went for maintenance. The documents, sales evidence, registration, mortgage, insurance, named Mr Rogers as the legal owner. The plane was flown from there under Mr Rogers' instructions by a different pilot. That history does not point to wrongful collusion by Mr Haslam.

This allegation rests on Mr Rose's assertion that Mr Haslam breached an instruction not to let Mr Rogers have the keys and documents. He says only Mr Haslam knew where the plane was when it was under maintenance, so Mr Haslam must have disobeyed the instruction. On its own, that is a far-fetched suggestion. This was a routine maintenance arrangement and Mr Rogers was the former CEO and the legal owner of the plane: he knew where it was maintained. In any event, Mr Rogers had a geolocator on the plane. He knew where it was. There is no evidence to support this allegation or that Mr Haslam acted in breach of any instruction.

#### Holiday Pay

2. *Is the Claimant entitled to accrued holiday pay untaken at the date of his dismissal?*

Mr Haslam did not pursue this at the hearing on the basis that it would represent double recovery.

Employer's Counterclaim

3. *Did the Claimant breach his contract of employment by doing any of the matters listed under paragraph 1 above as well as wiping his laptop of data: paragraph 39 of the Amended Grounds of Resistance [37].*

Mr Haslam did wipe his laptop. The company has a back-up for the key data. There was no contract term requiring him to retain data on the laptop itself and normal practice to wipe it on return. This was not a breach of contract.

14. The Respondent failed to establish any failure to mitigate in respect of the notice pay period.
15. I am satisfied that the Respondent's response and counterclaim had no reasonable prospect of success and in relying on them the Respondent acted unreasonably in the conduct of the proceedings, which were extended from a 2 hour hearing to a two day hearing with further contested applications and additional case management.
16. The bundle of documents, not including witness statements and pleadings, is close to 300 pages. The response and counterclaim required the Claimant to revisit matters over the whole of the period of his employment and to retrieve or consider a wide range of documents. His own claim was clearly cut and limited, founded simply on the wording of the contract.
17. I make a preparation time order pursuant to rule 76((1) (a) and (b) of the Rules.
18. I am required to consider the number of hours in respect of which a preparation time order should be made on the basis of
- (a) information provided by the receiving party on time spent falling within rule 75(2), and
  - (b) the tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and the documentation required.
19. The amount of preparation time order is to be the product of the number of hours assessed and the prescribed rate which in 2022 and until 6 April 2023 was £42 per hour. From 6 April 2023, the rate was £43 per hour. The hearing was on 3 and 4 May 2023.
20. The Claimant claims 196 hours in total. There is rightly no claim in respect of attendance at the final hearing.
21. The Respondent has had the opportunity to comment on this application and has not done so.
22. I have disallowed the costs involved with going to ACAS before lodging a claim, and of preparing the initial claim and grounds and the schedule of loss. That is because the difficulties in this case arose only when the Respondent began pursuing unmeritorious allegations in the response and counterclaim. There was no complexity at that early stage.

23. With regard to the later preparation costs claimed, I note that there were a number of allegations that required detailed review of the course of Mr Haslam's employment and of documentation, that there were significant sums involved and that there were four witnesses and a fifth who gave evidence in a written statement only. I have allowed the costs arising from the Claimant's preparation of a bundle for the March hearing because the Respondent failed, possibly until the last moment, to prepare the bundle directed. I have in general allowed the hours claimed given the legal and factual complexity of the Respondent's case against the Claimant. An element in this consideration has been the significant reputational damage to Mr Haslam if he could not rebut these unfounded allegations, raising as they did charges of dishonesty and disloyalty. It was necessary to be assiduous in preparing to defend himself.
24. Having said that, I have held certain preparation costs claimed to be disproportionate. I have reduced the following:
- Preparing response to strike out application from 30 hours to 20 hours
  - Preparing Witness statement from 35 to 25 hours
  - Preparing for the case management hearing from 8 to 6 hours
  - Amending the witness statement from 8 to 6 hours
  - Preparation of cross examination from 40 to 24 hours
  - Preparing closing statement from 10 to 6 hours
25. I bear in mind that the Claimant is a litigant in person and unused to the preparation of documents of this nature or to cross-examination but consider the hours substituted to be reasonable and proportionate in the light of that, allowing very substantially more than would be justified for a professional advocate.
26. In addition, I disallowed the travel time of ten hours as not within preparation time.
27. I have not allowed the time involved in enforcement proceedings which do not relate to this tribunal, or the time involved in making the application for a preparation time order as falling outside the scope of case preparation.
28. In the outcome, I award costs in respect of 126 hours 48 minutes with 85 hours 30 minutes at £42 per hour, and 41 hours 18 minutes at £43 per hour.
29. That is £3591 plus £1775.90 and totals £5366.90.
30. I have not taken into account the Respondent's financial position because I cannot. No evidence has been put before me.
31. I have not considered in detail the other ground relied on, in relation to the respondent's conduct of the proceedings, although the claimant sets out a careful history which is well supported in the documents I have seen. That is because there was no merit in the grounds for the response or counterclaim and it is not necessary for me to consider the alternative ground relied on.
32. I make an order in the sum of £5,366.90.

**Case Number: 1402148/2022**

Employment Judge Street

Dated 12 July 2023

Judgment sent to the Parties on 28 July 2023

For the Tribunal Office