



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr B Griffiths

Aaqua Limited

**Heard at:** London Central (by video)

**On:** 5 October 2023

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

## Representations

**For the claimant:** In person

**For the respondent:** No appearance or representation

# RULE 21 JUDGMENT

The Respondent is ordered to pay the Claimant the amount due under Clause 13.3 of his contract, being notice pay of one week's salary equivalent to £1,538.46 gross. Payment is to be made net of tax and National Insurance contributions.

# REASONS

1. This claim for notice pay and associated damages was filed on 26 October 2022. It has been in the system too long and I apologised to Mr Griffiths for the delay at this hearing.

2. The claim was served on the Respondent at what was then its proper registered office address on 28 October 2022. The Respondent was at that point subject to a worldwide freezing injunction and in financial difficulties.
3. No ET3 Grounds of Resistance was filed. A notice dated 6 December 2022 from Regional Employment Judge Freer indicated that the Tribunal was not satisfied at that point that the Respondent had been properly served. A final hearing listed for 13 December 2022 was vacated.
4. The case was not reinstated as it should have been. Notice of this hearing was sent to the Respondent by letter dated 13 July 2023 to what was still at that point its proper registered office address.
5. Information on Companies House indicates that a notice for compulsory strike off of the Respondent was given on 2 May 2023 and on 26 July 2023 the Respondent's registered office address was changed to the Companies House Default Address (which I understand to be the address for companies who no longer have any active management).
6. The Claimant informed me at this hearing that he has applied to Companies House for suspension of the strike off until after resolution of this claim and that Companies House granted his application.
7. In the circumstances, I am satisfied that the Respondent had proper notice of this hearing and that the reason it has not responded to the claim is because it has not been functioning as an organisation over the relevant period. I am satisfied it is appropriate to give judgment on the claim under Rule 21.
8. The salient facts of this matter are that the Claimant left a good job at Channel 4 in order to take up a role with the Respondent, having been headhunted for a new role of Internal Communications Lead. He signed a contract with the Respondent on 4 July 2022 and was due to start work on 8 August 2022.
9. Three working days before his start date he was informed orally by Zoe Ebdon (Head of Talent Acquisition) and Jim Butcher (Director of Internal Communications) that the role was being withdrawn as the company was subject to a worldwide asset freezing order and he was informed that he would be paid one week's pay as compensation.
10. The Claimant did not accept this offer at the time, believing that he was entitled to more by way of compensation for the Respondent's failure to honour the employment offer, especially given that he had been enticed away from his previous employment in reliance on that offer.
11. The difficulty for the Claimant is that the only claim open to him in these circumstances is a claim for the Respondent's failure to pay the pay in lieu of notice (PILON) that he was entitled to under his contract: see *Breakspear v*

*Colonial Financial Services (UK) Limited* (HQ01X03144) at [24] per Fernyhough QC (sitting as Deputy High Court Judge):

24.. In the present case, once Colonial had exercised its right to make a payment in lieu of notice, Mr. Breakspear became entitled to receive that payment as a debt. Colonial were not in breach of contract, as the employer was in the *Cerberus* case, because they did what they were entitled to do. Thus, strictly speaking, Mr. Breakspear's claims are not for damages for breach of contract but are for debt in the liquidated sums that he has claimed. ...

12. The Claimant's contract provided for a probationary period of 3 months (clause 1.1.6), during which the period of notice required to be given under the contract was 1 week (clause 1.1.4 and 13.1). By clause 13.3 the Respondent reserved the right to terminate employment at any time by making a payment in lieu of notice consisting solely of the basic salary for the period of notice without any other entitlements or benefits and the contract stipulated: "*Termination of employment will take effect when you are notified (whether verbally or in writing) that the Company is exercising its right under this clause 13.3 and that it has made or will make a payment in lieu of notice to you.*"
13. Accordingly, the effect of the conversation that occurred three days before the Claimant's start date was to trigger that clause 13.3 and his employment terminated at that point (before it had started) in accordance with the terms of clause 13.3 of the contract. There was therefore no breach of the contract, save that the Respondent failed to pay the Claimant the 1 week's notice to which he was entitled.
14. No other sums are recoverable by the Claimant both because there is no breach of contract from which damages could flow and because, even if there was, damages at common law for wrongful dismissal are limited to damages for failure to give notice in accordance with the contract and do not extend to damages for the manner of the dismissal: *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2012] 2 AC 22.
15. The Claimant is therefore entitled to 1 week's salary, net of tax and national insurance contributions. His base salary under the contract was £80,000 per annum gross, which (divided by 52) is £1,538.46 per week.

**Employment Judge Stout**

**Dated: 5 October 2023**

Sent to the parties on:

05/10/2023

For the Tribunal: