



EMPLOYMENT TRIBUNALS

Claimants: 1) Mr Mark Edwards
2) Mr William Evans
3) Mr David Sharp
4) Mr David Hurley
5) Mr Terence Elrick

Respondent: Futurama Limited (in administration)

Heard at: Leeds Employment Tribunal **On:** 10 October 2023

Before: Employment Judge Deeley

Representation

Claimants: Mr Evans (on behalf of all claimants, assisted by Mr Edwards and Mr Elrick)

Respondent: Did not attend

JUDGMENT

1. The Tribunal declares that all five claimants have suffered unauthorised deductions from wages in relation to:
 - 1.1. non-payment of their wages from 1 to 23 February 2023; and
 - 1.2. non-payment of accrued holiday pay on termination of employment.

The claimants are awarded the amounts set out in the Schedule to this judgment.

2. All five claimants' claims for:
 - 2.1. non-payment of statutory notice pay; and
 - 2.2. wrongful dismissal (non-payment of contractual notice pay);

succeed and they are awarded the amounts set out in the Schedule to this judgment. (The contractual notice pay amounts consist of the balance of the claimants' notice periods, less their statutory notice pay).

3. The claims of unfair dismissal brought by Mr Edwards, Mr Evans, Mr Sharp and Mr Hurley are upheld (the “**Unfair Dismissal claimants**”). (Mr Elrick had less than two years’ service and therefore did not claim unfair dismissal). The Unfair Dismissal claimants are awarded the statutory basic awards set out in the Schedule.
4. Mr Sharp’s compensatory award for unfair dismissal will be set out in a separate judgment. No compensatory awards are made to the other four claimants (with their agreement) for the reasons set out below.

WRITTEN REASONS

BACKGROUND AND TRIBUNAL PROCEEDINGS

5. The claimants requested written reasons for this Judgment at the hearing on 10 October 2023. These written reasons are provided in accordance with the Employment Tribunal Rules of Procedure 2013 (the “**ET Rules**”).
6. The respondent went into administration with effect from 5 May 2023, when Mr Acland and Mr Collier were appointed as administrators on behalf of FRP Advisory Trading Limited. Mr Acland wrote to the Tribunal on 6 July 2023, stating that the respondent did not wish to ‘be active’ in proceedings.
7. The claimants provided witness statements, schedules of loss, copies of their contracts of employment (save for Mr Elrick who did not have a written contract) and their payslips for January 2023.
8. Mr Darren McMurray (respondent’s director) applied to postpone today’s hearing on 25 September 2023. This request was refused and Mr McMurray was informed that he could attend the hearing and provide written submissions or documents, if he wished to do so. The deadline for providing such submissions or documents was extended at Mr McMurray’s request to 4pm on 9 October 2023.
9. Mr McMurray did not attend today’s hearing. He emailed a document to the Tribunal on 9 October 2023, but that document was blank (save for a heading). The Tribunal emailed and telephoned Mr McMurray, who then emailed a further half page document to the Tribunal after judgment had been reached. Mr McMurray’s document was therefore not considered before the Tribunal reached its judgment.

FINDINGS OF FACT

Contract terms

10. The claimants were employed by the respondent as set out in the table below:

	Role (at date of dismissal)	Start Date
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Mr Mark Edwards	Chief Executive Officer	1 January 2018
Mr William Evans	Finance Director	10 February 2016
Mr David Sharp	Commercial Director	1 October 2012
Mr David Hurley	Operations and Installation Director	17 July 1990
Mr Terence Elrick	Acting Managing Director (from September 2022)	7 October 2021

11. Mr Elrick did not receive a written contract of employment. However, I accept Mr Elrick's evidence that the respondent had agreed that he was entitled to a 6 month notice period. I also accept Mr Edwards and Mr Evans' evidence that his role was of the same status as Mr Edwards, Mr Evans and Mr Hurley (each of whom was entitled to 6 months' notice from the respondent).
12. The terms of employment for the other four claimants are set out in their contracts of employment. All five claimants' current salaries were evidenced by their January 2023 payslips.

Claimants' dismissals

13. The five claimants were all part of the respondent's senior management team. The respondent was owned by Rymack Sign Solutions Ltd ("**Rymack**"). The claimants provided a copy of the minutes of an Extraordinary General Meeting of Rymack's Board of Directors held on the morning of 23 February 2023, chaired by Mr McMurray. The minutes of that meeting state:
"...the business of the meeting was to discuss the possible removal of members of the Board of Directors of Futurama Ltd, a business fully owned by Rymack Sign Solutions Ltd, due to their mismanagement of Futurama Ltd affairs, its assets and its creditors.

The chairman and members present discussed at length the areas of concern, specifically with regards to working capital irregularities, significant stock discrepancies, apparent sales invoicing not being raised in a timely manner and also that the Directors of Futurama having acted in a deliberately obstructive manner when asked for appropriate and pertinent information by Rymack Sign Solutions Ltd over an extended time period."

14. Rymack's directors decided to remove the Mr Edwards, Mr Evans, Mr Sharp and Mr Hurley as statutory directors of the respondent with immediate effect. Rymack's directors also decided that:

"All four of the statutory directors named, and Terry Elrick, are also to be removed from their employment with Futurama Ltd on the grounds of Gross Misconduct..."

15. The respondent arranged a meeting on the afternoon of 23 February 2023, whose purpose was stated to be a discussion of the respondent's cashflow. The meeting was attended by Mr Evans and Mr Hurley (in person) and Mr

Edwards and Mr Elrick (via Microsoft Teams). Mr Sharp was not invited and did not attend the meeting.

16. The meeting lasted less than ten minutes. Mr Bramhall (a statutory director of the respondent and of Rymack) informed the claimants that they and Mr Sharp were summarily dismissed and would not be paid in lieu of notice. The claimants were instructed to return their company cars and equipment immediately. In addition, The claimants were not offered the opportunity to appeal the respondent's decision.
17. Following that meeting, all five claimants received letters dated 23 February 2023 stating that they had been summarily dismissed on grounds of gross misconduct.
18. The respondent did not provide any evidence of any investigation undertaken into the claimants' alleged gross misconduct. The Tribunal therefore accepts the claimants' evidence that:
 - 18.1. stock discrepancies had been an issue for the respondent for some time. Mr Elrick dismissed the employee responsible for such discrepancies in or around September 2022 when he was appointed acting Managing Director;
 - 18.2. Mr Edwards had been working in a different role within the respondent's group since 1 January 2022 and had no day to day responsibility for the respondent during the final year of his employment;
 - 18.3. Mr Evans had taken on responsibility for preparing consolidated group accounts and other additional responsibilities from 1 January 2022, in effect acting as a Group Finance Director. He noted that the cashflow position of the group as a whole had worsened from the second half of 2022;
 - 18.4. Mr Sharp had been absent on sick leave from the business from 5 November 2022 until February 2023;
 - 18.5. Mr McMurray had discussed the opportunity of a management buy-out by the senior management team (i.e. the five claimants) with Mr Edwards in early February 2023; and
 - 18.6. none of the claimants had been given any indication by the respondent of any potential gross misconduct allegations prior to the meeting on 23 February 2023.
19. The respondent reached its decision to dismiss the claimants at the Board meeting on the morning of 23 February 2023. The respondent did not follow any disciplinary procedure with the claimants.
20. The claimants were not paid their wages for the period from 1-23 February 2023. They did not receive payslips for that month, nor did they receive P45s.

In addition, they did not receive the expenses that they had submitted using the respondent's online expenses system. The respondent did not provide any evidence that such payments were made to the claimants.

21. The claimants did not receive any notice pay (whether statutory or contractual) because they were summarily dismissed. They were not paid in lieu of notice.

RELEVANT LAW

22. Please see the Annex.

CONCLUSIONS

23. Applying the law to the facts, the Tribunal concludes that:
 - 23.1. Mr Edwards, Mr Evans, Mr Sharp and Mr Hurley were unfairly dismissed and wrongfully dismissed; and
 - 23.2. Mr Elrick was wrongfully dismissed.
24. The key reasons for these conclusions are:
 - 24.1. the respondent has not provided any evidence substantiating the allegations set out in Rymack's Board minutes of the EGM at 9.15am on 23 February 2023 or in the claimants' letters of dismissal. The Tribunal has concluded that the claimants did not commit gross misconduct and/or a serious breach of contract entitling the respondents to dismiss the claimants without notice or pay in lieu of notice;
 - 24.2. the respondent did not follow a fair procedure in dismissing the claimants. In particular:
 - 24.2.1. the respondent did not hold any investigatory meeting with the claimants;
 - 24.2.2. the respondent did not inform the claimants that the purpose of the meeting on 23 February 2023 was to discuss gross misconduct allegations and that one outcome of that meeting may be their dismissal;
 - 24.2.3. the respondent did not in fact discuss the allegations at the meeting with the claimants;
 - 24.2.4. Rymack's Board minutes from the meeting on the morning of 23 February 2023 indicate that the respondent had already decided to summarily dismiss the claimants; and
 - 24.2.5. the claimants were not provided with a right of appeal against their dismissals.
25. The respondent breached the ACAS Code of Practice on Disciplinary and Grievance Procedures by dismissing the claimants in the manner set out above.
26. The claimants are also entitled to receive:

- 26.1. their wages for 1-23 February 2023;
- 26.2. their accrued holiday pay on termination of employment;
- 26.3. their contractual notice pay (inclusive of any statutory notice pay); and
- 26.4. their expenses payments for expenses incurred during employment but not paid as at termination.

Remedies

- 27. The Tribunal concluded that all of the five claimants would have been dismissed due to redundancy in any event with effect from 5 May 2023 (i.e. the date when the respondent went into administration).
- 28. The Tribunal has concluded therefore that the claimants (save for Mr Sharp who was entitled to one month's notice) have no financial losses to be awarded as part of any unfair dismissal compensatory award because they have been awarded 6 months' notice pay as part of their wrongful dismissal complaints.
- 29. Mr Sharp's compensatory award for unfair dismissal will be set out in a separate judgment.
- 30. The amounts awarded to each claimant are set out in the attached schedule.

Employment Judge Deeley

Date: 16th October 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

Date: 19th October 2023

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FOR THE TRIBUNAL OFFICE

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Schedule of awards (£)

Name	Unpaid wages (gross) for 1-23 February 2023	Unpaid expenses	Accrued holiday (days)	Holiday pay - gross (£)	Notice pay (gross) less earnings received	UDL basic award	UDL compensatory award
Mark Edwards	6,089.20	5,228.85	12.3	4,393.78	8,954.71	3,426.00	N/A
Jo Evans	5,034.62	70.00	17.2	5,083.98	7,403.85	5,995.50	N/A
David Sharp	4,576.92	114.00	11.0	2,952.56	5,384.61	8,565.00	[to be confirmed by separate judgment]
David Hurley	4,576.92	292.75	4.2	1,121.79	9,423.07	13,989.50	N/A
Terence Elrick	5,688.46	720.00	4.2	1,394.23	8,365.38	N/A	N/A

Annex – Relevant law

Unfair dismissal

1. The right not to be unfairly dismissed is set out in the Employment Rights Act 1996:

Section 94

(1) An employee has the right not to be unfairly dismissed by his employer...

Section 98

(1) In determining...whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is...a reason falling within subsection (2)...

(2) A reason falls within this subsection if it –

...(b) relates to the conduct of the employee

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case..."

2. Where the employer's reason for dismissing the employee relates to the employee's conduct, the tribunal must first consider whether the respondent has established that its reason (or if more than one its principal reason) for dismissing the employee, was for a reason related to his or her conduct. The tribunal then goes on to consider the fairness of the dismissal for that reason, taking into account the guidance in *British Home Stores Limited v Burchell* [1980] ICR 303.
3. In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct, in determining whether that dismissal is unfair the tribunal has to decide whether the employer entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. The employer must demonstrate three elements:
 - 3.1 the fact of that belief – i.e. that the employer did believe it;
 - 3.2 that the employer had in its mind reasonable grounds upon which to sustain that belief; and

- 3.3 the employer had carried out as much investigation into the matter as was reasonable in all the circumstances of the case, at the time at which it formed that belief.
4. The Tribunal is required to apply a band of reasonable responses test as laid down in *Iceland Frozen Foods Limited v Jones* [1983] ICR 17. It is not for the Tribunal to decide whether the Tribunal would have dismissed the employee, as set out in the *Iceland* case at paragraph 24:
- “(i) the starting point should always be the words of Section 98 for themselves;
(ii) in applying the section the tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the tribunal) consider the dismissal to be fair;
(iii) in judging the reasonableness of the employer’s conduct, the tribunal must not substitute its decision as to what was the right cause to adopt, for that of the employer
(iv) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;
(v) the function of the tribunal as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, if a dismissal falls outside the band, it is unfair.”*
5. The ACAS code of practice on disciplinary and grievance procedures states as follows:
- “(9) If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence which may include any witness statements with the notification.”*

Compensatory award

6. The statutory provisions relating to the compensatory award are set out at s123 of the Employment Rights Act 1996 (“**ERA**”):

123 Compensatory award

**Case No: 1801471/2023, 1801472/2023, 1801473/2023,
1801474/2023,1801475/2023**

- (1) ...the amount of the compensatory award shall be such amount as the tribunal consider 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.
- (2) The loss referred to in subsection (1) shall be taken to include –
 - (a) any expense reasonably incurred by the claimant in consequence of the dismissal, and
 - (b) ...loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- ...
- (4) In ascertaining the loss referred to in subsection (1), the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales...

7. The claimant's compensatory award is capped at the lower of:

- 7.1 52 weeks' gross pay (inclusive of employer's pension contributions - *University of Sunderland v Drossou* UKEAT/0341/16); and
- 7.2 the statutory cap.

8. The compensatory award can be reduced to take into account the likelihood of the claimant's employment ending in any event (*Polkey v AE Dayton Services Ltd* [1988] ICR 142). The compensatory award can also be reduced or increased due to a breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures.