



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Kwabena Wiredu  
**Respondent:** Optim Management Ltd

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford **On:** 4 October 2023  
**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: In person  
For the respondent: Did not attend.

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant was unfairly dismissed and the respondent is ordered to pay him:
  - 1.1. A basic award of £14,275.
  - 1.2. A compensation award of £3,546.14 net.  
(£3,046.14 net of tax and National Insurance compensation and £500 loss of statutory rights).
2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay him damages in the net sum of £5,584.59 (net of tax and National Insurance).
3. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay him the gross sum of £1,649.96 (subject to tax and National Insurance).

## REASONS

### Introduction

1. The claimant was employed by the respondent on 1 August 2000. He was dismissed with effect on 10 March 2023. By a claim form presented on 18 May 2023, following a period of early conciliation from 15 to 31 March 2023,

the claimant brings a complaint of unfair dismissal and claims for holiday pay and notice pay.

**The respondent's absence**

2. The claimant's claim was served on the respondent on 2 June 2023. This set out that any response was due to be received by the tribunal office by 30 June 2023. The respondent clearly received the claim as a Ms Helen Nicola, Managing Director, wrote to the tribunal requesting an extension of time for filing the response. The letter is date stamped as received on 21 June 2023. On 12 July 2023 the application for an extension of time was rejected as it did not state that the application had been copied to the claimant.
3. Nothing further has been heard from the respondent.
4. Notice of this hearing was served on the respondent.
5. The claimant informed me the respondent remains trading and that the office premises remain the same.
6. It would appear that for whatever reason the respondent has decided not to participate in these proceedings and in the circumstances I have decided to proceed with the hearing in the absence of the respondent as it would not be in the interests of justice or proportionate to adjourn this hearing.

**The claimant's claim.**

7. The claimant informed me that on 3 March 2023 he was informed by Mr Demetris Nichola that his services would not be needed from 10 March 2023. Accordingly, I find that the claimant was given notice of termination of his contract of employment on 3 March 2023 and was only given one week's notice.
8. Pursuant to s.98 of the Employment Rights Act 1996 it is for the respondent to show the reason for any dismissal. The respondent has not done that.
9. The claimant has shown me an email sent to him by Ms Helen Nicola. This states:-

“On behalf of the company, I am quite shocked with your calculations, considering you gave notice in writing on 11.10.2021.

You had explained that you had decided to stop at the end of 2022, beginning of 2023, as your wife was in need of care as a result of her mental breakdown. You were too stressed to come in to work every day and wanted to stop.”
10. The claimant told me on oath that he had not handed in his notice in 2021 and wanted to carry on working. I find it inherently improbable that someone would give 18 months' notice of terminating their contract of employment. I accept the claimant's evidence and find that his contract of employment was simply terminated on 3 March 2023.
11. The respondent has failed to show a potentially fair reason for dismissal, and accordingly I find that the dismissal was unfair.

12. I make the following awards:-

**Basic award.**

13. The claimant was born on 6 March 1972. He was employed from 1 August 2000 until 10 March 2023, a period in excess of 22 full years. His basic award is capped at 20 years and, due to his age, he is entitled to a multiplier of 25.
14. The claimant was not in a position to give me a precise figure for his gross earnings. The claimant told me he did not have a contract of employment or recent payslips. The claimant told me and I accept that he averaged about £2,200 net per month. The payments to him shown on his bank statements do not reflect his earnings as some payments were reimbursements by the respondent for payments the claimant had made on behalf of the respondent. £2,000 net equates to £26,400 per annum. I have taken the gross equivalent to be at least £33,000 per annum or £634.61 per week.
15. The statutory cap on a weeks pay is £571.
16.  $25 \times £571 = £14,275$ .

**Compensatory award.**

17. I award the claimant £500 for loss of statutory rights.
18. As will appear later I have awarded the claimant damages for 11 weeks' notice pay. Accordingly I do not make a compensation award for loss of earnings between the effective date of termination of his contract of employment on 10 March 2023 until 26 May 2023.
19. The claimant told me that he went on holiday to Ghana for the month of April 2023. I make no adjustment in relation to that as he has been compensated for that period by virtue of the notice period.
20. The claimant told me that he registered with an agency and started alternative work on 29 June 2023. In his first week he earned £541.80. Whilst he may have earned slightly less than that in the following week he earned the same in the third week. I do not have a full breakdown of his earnings since then. It may be that the claimant had periods not working but in my judgment, by 29 June 2023 he had an earning capacity in excess of when working for the respondent and could and should have been able to earn those sort of amounts thereafter. Consequently, I do not award compensation for loss of earnings after 29 June 2023.
21. From 26 May – 29 June 2023 I award 6 weeks at the net sum of £507.69 = £3,046.14.

**Notice pay.**

22. As already found the claimant was given 1 weeks' notice. By virtue of the claimant's service he was entitled to a statutory minimum of 12 weeks. Consequently I find that the respondent was in breach of contract in not paying him for 11 weeks' notice.  $11 \times £507.69 = £5,584.59$  net.

**Holiday pay.**

23. Contrary to the claimant's claim form, the claimant told me that he was always paid for bank holidays. Further the claimant told me that he had 21 days holiday in 2019 when he went to Ghana and a further 12 days holiday in 2020. Those period of holiday were paid. The claimant accepted that he did not request holidays in 2021 and 2022. The claimant was not able to take me to any contractual provision or agreement that he could roll over his holiday entitlement. In the circumstances and in my judgment the only claim for holiday pay made out relates to the holiday year during which the claimant was dismissed.
24. I have taken the holiday year as beginning on date that the claimant was employed, namely 1 August.
25. 1 August – 10 March 2023 = 222 days. Based on the claimant's statutory entitlement of 28 days per annum he had an accrued holiday entitlement by 10 March 2023 of 17 days. By that date 4 bank holidays would have taken place. Consequently I find that the claimant had 13 days accrued holiday entitlement not taken at the date of dismissal.
26.  $£33,000 \div 52 = £634.61$  gross or  $£126.92$  per day.
27.  $13 \times £126.92 = £1,649.96$

**Acas uplift**

28. The claimant does not appear to have been dealt with under any disciplinary process and no grievance was raised. Consequently, I make no adjustment in relation to the Acas Code of Practice.

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Employment Judge Alliot

Date: 24 October 2023.....

Sent to the parties on:10/11/2023

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For the Tribunal Office