



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001475/2024

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Held in Edinburgh via Cloud Video Platform (CVP) on 2 December 2024

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Employment Judge McCluskey

Mr Scott Curtis

**Claimant
In person**

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Sureserve Asset Services Ltd

**Respondent
Represented by:
Ms R Thomas
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The judgment of the Tribunal is that:

1. The complaint of breach of contract (notice period) is not well-founded and is dismissed.
2. The complaint of breach of contract (car allowance) is not well-founded and is dismissed.
3. The complaint of unlawful deductions from wages (car allowance) is not well founded and is dismissed.

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REASONS

Introduction & Complaints

1. The claimant is making the following complaints: breach of contract (notice
5 pay) and breach of contract or unlawful deduction of wages (car allowance).

2. The issues to be determined are:
 - a. What was the claimant's notice period?
 - b. Was the claimant paid for that notice period?
 - 10 c. If not, was the claimant in repudiatory breach of contract?
 - d. If not, how much should the claimant be awarded as damages for that notice period?
 - e. What was the claimant's contractual entitlement to payment of a car allowance on termination of his employment?
 - 15 f. Was the claimant paid for that contractual entitlement?
 - g. If not, how much should the claimant be awarded as damages / wages for that car allowance?

3. The claimant produced a file of productions extending to 307 pages. The
20 respondent produced a file of productions extending to 55 pages. There was overlap of documents, including the contract of employment between the parties. I told parties that if they wished any part of a production to be considered by me, they must refer to it by page number during evidence.

- 25 4. The claimant gave evidence on his own behalf. Mr Scott Gingell, HR Business Partner gave evidence on behalf of the respondent.

Findings in fact

5. The claimant commenced employment with the respondent on 22 April 2024. His employment ended on 14 June 2024 by reason of redundancy.

6. The respondent provided the claimant with a contract of employment on 6 April 2024. The claimant worked under this contract during his employment.
- 5 7. The contract of employment contained the following terms:
8. “Probationary Period 3.1 The first 6 months of your Employment will be a probationary period. We may bring your Employment to an end during your probationary period at any time by giving you one week’s written notice in the
10 first month of your employment and one month’s notice thereafter, which we can in our discretion pay in lieu. We may in our absolute discretion, extend the probationary period. During this probationary period, we will carefully monitor your performance and suitability for the role”.
- 15 9. “15 Other Benefits a) Car Allowance You will receive a vehicle allowance of £4,400.00 per annum, for business purposes, which is fixed for and payable for 3 years”.
- 20 10. “19 Termination of Employment / Contractual Notice 19.1 Subject to the terms of the probationary period in clause 3, either you or the Company may bring the Employment to an end by giving at least three months’ written notice to the other party”.
- 25 11. “19.2 Notwithstanding clause 19.1, we may in our sole and absolute discretion, terminate the Employment at any time and with immediate effect by notifying you that we are exercising our right under this clause 19.2 and that we will make within 30 days a payment in lieu of notice (Payment in Lieu), or the first instalment of any Payment in Lieu, to you. This Payment in Lieu will be equal to your basic salary (as at the date of termination) which you
30 would have been entitled to receive under this contract during the notice period referred to in clause 19.1 (or if notice has already been given, during

the remainder of the notice period), less income tax and National Insurance contributions”.

- 5 12. “37 Variation No variation or agreed termination of this contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives)”.
- 10 13. On 10 June 2024 the respondent wrote to the claimant. The letter was headed “Redundancy Dismissal”. The letter informed the claimant that his employment was to be terminated due to redundancy. The letter said “The termination payments you are entitled to were set out in our last meeting and I have attached a copy of the Redundancy Illustration”. The attached letter said “I enclose the terms on which your redundancy has been calculated”. The letter set out various figures including “Payment in lieu of notice (Subject to Tax and NI) £12,100 (3 months)”.
- 15 14. On 27 June 2024 the respondent emailed the claimant. The email said “We’ve been making final checks on the SAS payroll prior to signing it off. Unfortunately it appears your calculation is incorrect. Although your contract states that either you or the Company may bring your employment to an end by giving at least three months’ written notice to the other party, as you were in your probationary period, this is reduced to one month. I therefore regret to inform you that you will receive a reduced payment of £4,033.33. This would be subject to deductions for tax and National Insurance”.
- 20 25 15. The correspondence from the respondent about termination of the claimant’s employment made no reference to a car allowance.
- 30 16. The claimant received a car allowance during the two months of his employment. The claimant received a payment in lieu of one month’s car allowance on termination of employment.

17. Clause 17 of the contract of employment referred to the claimant's obligations, both during and after his employment, about the use of confidential information about the respondent.

Observations on the evidence

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18. This judgment does not seek to address every point upon which the parties gave evidence. If I have not mentioned a particular point, it does not mean that I have overlooked it. It is not included simply because it is not relevant to the question of whether the claim succeeds or fails. Any references to page numbers are to the paginated files of productions provided to me.

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19. The standard of proof is on a balance of probabilities. This means that if I consider that, on the evidence, the occurrence of an event was more likely than not, then I am satisfied that the event in fact occurred. Likewise, if I consider that, on the evidence, an event's occurrence was more likely not to have occurred, then we are satisfied that it did not occur.

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20. Having said that, this was really a dispute about interpretation of the contract of employment between the parties.

20 Relevant law

21. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 when the claimant's employment has come to an end. That is the case here.

Submissions

22. Both parties made oral submissions. These are not repeated here but are referred to where relevant in my discussion and decision below.

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Discussion and decision

Breach of contract (notice pay)

23. This is a claim for notice pay as damages for breach of contract. The claimant has the burden of proof. The claimant asserts that he has a contractual entitlement to three months' notice.
- 5 24. The claimant's primary assertion was that based on a proper interpretation of the contract of employment he was entitled to three months' notice, which could be paid by the respondent as a payment in lieu of notice. The respondent asserted that based on a proper interpretation of the contract of employment the claimant was entitled to one month's notice, which could be paid by it as a payment in lieu of notice, and which he had been paid. The claimant accepted that he had received a payment in lieu of one month's notice and sought the balance of two months.
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25. The claimant submitted that the words "Notwithstanding clause 19.1..." at the beginning of clause 19.2 meant "In spite of..." and that reading on in clause 19.2 the wording "This Payment in Lieu will be equal to your basic salary.... which you would have been entitled to receive under this contract during the notice period referred to in clause 19.1..." could only mean an entitlement to three months' notice, as that was the only notice period referred to in clause 19.1.
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26. The claimant also submitted in the alternative that whilst he recognised that he was still in his probationary period, the probationary period (and the notice period of one month in the probationary period) was only applicable if the termination of employment was for a capability reason and not where the reason was redundancy. He submitted that this was supported by the wording in clause 3.1 which said that during the probationary period, the respondent will monitor performance and suitability for the role.
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- 30 27. The claimant also submitted in the alternative that the respondent had varied his contractual entitlement from one month to three months' notice by the terms of its written correspondence to the claimant on 10 June 2024,

repeating what had been said verbally by the respondent to the claimant during the last redundancy consultation meeting, that he would receive a payment in lieu of three months' notice.

- 5 28. Where express terms are wholly in writing, deciding what they mean is a matter of interpreting the document (in this case the contract of employment) containing them. This is subject to two exceptions, firstly where it is alleged that the contract of employment fails to reflect an earlier oral agreement or a continuing common intention or where the parties have a common intention to mislead. Neither of those exceptions were submitted by the parties to apply here and I was satisfied that they did not.
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29. In interpreting the contract of employment, I was satisfied that during the probationary period the claimant's entitlement was to one month's notice. I was also satisfied that in electing to make a payment in lieu of notice the entitlement was to a payment in lieu of one month's salary. When interpreting the express terms of the contract of employment, the aim of the tribunal is to give effect to what the parties intended. In ascertaining that intention, the words of the contract of employment should be interpreted in their grammatical and ordinary sense in context, except to the extent that some modification is necessary to avoid absurdity or inconsistency.
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30. Applying these principles, I was satisfied that clause 19.1 clearly set out the notice period which the claimant was entitled to receive. This was three months, subject to the terms of the probationary period in clause 3. In other words, clause 19.1 clearly required to be read subject to the terms of clause 3. Clause 3 set out the notice period during the probationary period. In the case of the claimant clause 3 provided that the notice period was one month (as the claimant had been employed for more than one month and less than six months, on the date of termination of his employment).
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31. I was satisfied that clause 19.2 clearly set out the entitlement of the respondent to make a payment in lieu of notice notwithstanding, or in spite of, clause 19.1 which set out the applicable notice period which could be worked. A clause of this nature making provision for the respondent to make a payment in lieu of notice is common in employment contracts.
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32. I was satisfied that clause 19.2, in referring to the entitlement to make a payment in lieu of notice, clearly referenced the notice provisions in clause 19.1. Looking back at clause 19.1 this is three months' notice except where the claimant is in his probationary period (as is the case here) where the payment in lieu of notice is equal to one month's salary.
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33. I was satisfied that the terms of the contract of employment were clear and unambiguous and that the claimant's entitlement under the contract of employment was to one month's notice or a payment in lieu of one month's notice.
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34. I was also satisfied that the reduced notice provisions during the probationary period applied where the reason for termination of employment was redundancy. Clause 3.1 provides that during the probationary period performance and suitability for the role will be monitored. The clause does not say that the reduced notice period during the probationary period will only apply where termination is for a capability reason. A clause of this nature making provision for a shorter notice period during a probationary period, regardless of the reason for termination, is common in employment contracts.
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35. Finally turning to the question of whether the contractual notice (and pay in lieu of notice) provisions were varied by the parties, by reason of the respondent's written communication to the claimant on 10 June 2024 which referred to a payment in lieu of three months' notice.
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36. I am bound to say first of all that it is unfortunate that this error was made by the respondent both verbally during the redundancy consultation and in its written communications of 10 June 2024. I then considered whether these communications resulted in a variation of the contractual notice provisions between the parties.

37. The contract of employment provides at clause 37 that no variation shall be effective unless it is in writing and signed by the parties. Although the communication of a payment in lieu of three months' notice had been communicated in writing by the respondent, it was not intended by both parties as a variation of the claimant's notice period (and pay in lieu of notice) from one month to three months. Additionally, the communications had not been "signed by the parties" namely the respondent and the claimant, as set out at clause 37. Rather it was a letter by the respondent, detailed as a "Redundancy Illustration" in which, unfortunately, an error was made by the respondent. Accordingly, I was satisfied that there was no variation of the contract of employment as required by clause 37 of the contract of employment, such that the claimant's notice period had been varied to three months.

38. In conclusion, the claimant's contractual notice period was one month and he was paid for that notice period.

Breach of contract / unlawful deduction from wages (car allowance)

39. Clause 15 of the contract of employment provides that the claimant will receive a car allowance of £4,400.00 per annum, for business purposes, which is fixed for and payable for three years. The claimant received a car allowance during the two months of his employment. The claimant received a payment in lieu of one month's car allowance on termination of employment. He had received three months in total of car allowance. He asserted that he

was entitled to receive a payment equivalent to three years car allowance (less the three months he had already received).

- 5 40. The claimant submitted that clause 15 of the contract of employment dealing with the car allowance survived termination of his employment, in the sense that the car allowance money continued to be due to him or should be paid as a damages payment.
- 10 41. As before, where express terms are wholly in writing, deciding what they mean is a matter of interpreting the contract of employment. This is subject to two exceptions, firstly where it is alleged that the contract of employment fails to reflect an earlier oral agreement or a continuing common intention or where the parties have a common intention to mislead. Neither of those exceptions were submitted by the parties to apply here and I was satisfied that they did not apply.
- 15 42. When interpreting the express terms of the contract of employment, the aim of the tribunal is to give effect to what the parties intended. In ascertaining that intention, the words of the contract of employment should be interpreted in their grammatical and ordinary sense in context, except to the extent that some modification is necessary to avoid absurdity or inconsistency.
- 20 43. Applying these principles, I was satisfied that clause 15 clearly set out that the payment of a car allowance to the claimant was for “business purposes”. If the claimant was no longer working for the respondent, he was no longer using his car for business purposes for the benefit of the respondent. I was satisfied that having regard to the reference to business purposes the parties intended that the claimant would receive a car allowance (which had been paid monthly) whilst working for the respondent and that the amount of that car allowance was fixed, in the sense that it would not change, for a period of three years if he was using his car for the respondent’s business purposes. I was satisfied that the parties did not intend that the claimant would continue
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to receive a monthly car allowance for a total of three years, even if his employment had ended before that date. The respondent submitted that there were other clauses of the contract of employment such as clause 17 (confidentiality) which set out specific obligations which continued to exist after termination of employment. If the parties had intended that the obligation to pay a car allowance continued to exist after termination of employment they would have said so. I accepted this submission.

44. Accordingly, for the reasons given I was satisfied that there was no contractual entitlement for the claimant to receive a car allowance for a period of three years from commencement of employment, whether he remained employed by the respondent.

Conclusion

45. The complaint of breach of contract (notice period) is not well-founded. No monies are due to the claimant.
46. The complaint of breach of contract and/or unlawful deduction from wages (car allowance) is not well-founded. No monies are due to the claimant.
47. As I had reserved my decision, it was agreed that the respondent's application for expenses would not be dealt with at this final hearing.
48. Finally, I would like to express my apologies to parties for the time taken to issue this judgment and reasons, following the final hearing on 2 December 2024.

Employment Judge: J McCluskey

Date sent to parties

08/01/2025

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5 www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the
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15 [https://www.judiciary.uk/guidance-and-resources/employment-rules-and-
legislation-practice-directions/](https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)