



EMPLOYMENT TRIBUNALS

Claimant: Mr S Wilton

Respondent: Trend Control Systems Ltd

Heard at: London South ET (by video) **On:** 5, 6 February 2025

Before: Employment Judge Curtis

Representation

Claimant: In person

Respondent: Ms. Gyane (counsel)

JUDGMENT having been sent to the parties on 10 February 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Claims and issues

1. The Claimant brings claims of unfair dismissal and wrongful dismissal.
2. The ET1 indicated a claim for other payments; that was clarified at the outset of this hearing as being a claim for losses flowing from the unfair dismissal. I explained that that would be part of the compensatory award if the unfair dismissal claim succeeds and it is not a separate claim for payments. The Claimant understood that.
3. The issues for the tribunal to consider were discussed and agreed at the start of the hearing. There are as follows:

Unfair dismissal issues

3.1 Did the Respondent do any of the things listed at paragraph 30 of the Grounds of Complaint, namely:

30.1 - Failing to appoint the Claimant as a Fellow on 16 October 2023 and 27 October 2023 respectively, despite: i) the wide-spread advertisement of his title as a Fellow and (ii) his line manager representing to him that his selection was certain and/or that he would be formally announced as one

30.2 – Refusing to re-consider the decision to not appoint the Claimant as a Fellow describing his announcement as a Fellow as a “mistake” on 23 October 2023

30.3 – Appointing a biased individual to deal with the Claimant’s grievance in relation to the issue of his appointment as a Fellow on or around November 2023

30.4 – refusing to re-consider the decision to select Mr Hill as the investigator of the Claimant’s grievance (as communicated to the Claimant on or around the week commencing 27 November 2023) when the Claimant had made clear he considered Mr Hill to have a conflict of interest; and

30.5 – Rejecting the Claimant’s grievance on 12 December 2023 for his alleged failure to engage with the process.

3.2 If so, was that conduct which was calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence that exists between employer and employee?

3.3 If so, did R have reasonable and proper cause for behaving that way?

3.4 The parties agreed that the Claimant resigned in response to the behaviour set out at paragraph 30.1 of the list of issues

3.5 Did C affirm the contract before resigning? The tribunal will need to decide whether the Claimant’s words or actions showed that he chose to keep the contract alive even after the breach.

Wrongful dismissal issues

3.6 The issue is whether the Claimant was dismissed. If he was, then the Respondent accepts that he was entitled to a notice period of 12 weeks, which was not fully provided or paid for.

3.7 The other issue is whether the period between C giving notice of his resignation and the termination of his employment counts as part of the notice period, in light of the fact that C was on annual leave at the time.

Documents and evidence heard

4 I had witness statements from the following:

4.1 Mr Zongtao Tony Lu, who is employed by Honeywell Control Systems, US as a Director of Engineering;

4.2 Mr Christopher Ladas, who was the Senior Director and Chief Technology officer for Building Management Services at the time of the Claimant’s employment; he was Mr Lu’s line manager at the material times;

4.3 Mr Brad Hill, who was employed by the Respondent as Senior Director of Engineering at the material time. Mr Hill was line managed by Ms. Udaya Shrivastava at the material time.

5 The Claimant relied on his Grounds of Complaint as his witness statement.

6 I heard oral evidence from each of the witnesses.

- 7 By way of general point, I am satisfied that each witness did their best to comply with their obligation to tell the truth, the whole truth and nothing but the truth. Their accounts did not match in certain respects; they had differing accounts as to what happened on certain dates or as to the effect of what had happened. I consider that that was not due to any deliberate evasion or misleading on the part of any of the witnesses, but due to the fact that different people who witness or are part of the same event may recollect the event differently, either because of fading of memories or because of the mis-storing of memories. Also, it is perfectly normal for people to take differing interpretations of some facts that they agreed on.
- 8 I was provided with a bundle containing 249 pages and a supplemental bundle from the Claimant containing 21 pages.

Fact findings

- 9 The Claimant commenced employment on 15 June 1998. His employment terminated on 2 January 2024 when his job title was Principal Software Engineer (although there is some dispute as to that, which I will come on to deal with).
- 10 The Respondent is part of a larger group of companies which come under the umbrella of the Honeywell International Inc group.
- 11 At the time the Claimant was employed, the Respondent came within what was known as the Honeywell Building Technology business (“HBT”). That included the Respondent along with some other brands from within the Honeywell Group.
- 12 Mr Hill was also employed by the Respondent, although his role spanned across the Building Management Services (BMS) and other areas including the Fire Business, Security, Projects and Services. He was employed by the Respondent as he was based at the Horsham site, which was where R was based. Mr Hill’s evidence, which I accept., was that had he been based at a different site then he would have been employed by a different limited company within the Honeywell Group, although he would have carried out the same role.
- 13 During his employment the Claimant sought promotion to the position of Fellow. It was a role which he unsuccessfully applied for in 2019. The claim before the tribunal relates to the Claimant not being appointed to the role of Fellow in 2023, in particular between August and October of that year.
- 14 The process for achieving the position of fellow was as follows. The employee would fill out a nomination form, that would normally be filled out collaboratively with their line manager. The nomination forms were then considered by a group of more senior people within the Honeywell group; in 2023 that group included Mr Ladas. As a result of the consideration by the more senior group some, but not all, nominees would be successful and be appointed to the role of Fellow. Mr Ladas’ evidence, which was not disputed was that around 1 out of 3 applicants succeeded.

- 15 In 2023, the nomination forms were due to be submitted by 7 July, with an intention to announce fellows on 18 August. In fact, the announcements were delayed until October due to a promotion freeze in place in August 2023.
- 16 In his ground of complaint, which stood as his evidence in chief, the Claimant stated that he had a number of discussions with Mr Lu (his line manager) about his possible promotion to fellow. The grounds of complaint state that Mr Lu told the Claimant that that an announcement that the Claimant was a fellow had come prematurely, and that he should wait for the official announcement, but that the Claimant's appointment was certain.
- 17 The Claimant's evidence in cross-examination, and the position he put forward in closing submissions, did not quite get as high as the position set out in the grounds of complaint. Mr Lu's evidence was that he was very positive about the Claimant's application and his prospects of being appointed, indeed he was optimistic about the Claimant's application, but that he did not ever state or given the impression that appointment to Fellow was a formality. Mr Lu said that the Claimant would have been aware of this as he knew how the nomination process worked and that Mr Lu was not on the reviewing committee.
- 18 I find that Mr Lu spoke to the Claimant in positive terms about his application; he encouraged the application and indicated his belief that the Claimant was a good candidate. I find that at no point did Mr Lu say to the Claimant that he was certain to be appointed, or that the nomination process was a formality. Nor did Mr Lu say anything similar to that. Based on the evidence I heard, it was clear to me that based on what Mr Lu said, the Claimant inferred that he was highly likely to be appointed. That is different to an appointment being promised or being a formality.
- 19 Before the nomination process commenced, the Claimant was referred to as a fellow on three or four occasions.
- a) On 13 April 2023 he was sent an email from Jon Potter which said: "Are you available for a Fellow/CTO interactive chat on upcoming new technologies you are working on..."
 - b) On 17 May 2023 an invitation was circulated for a talk the following day which referred to C as "BMS Fellow".
 - c) At the talk on 18 May 2023 C was introduced as a fellow. For the last of these, Mr Ladas' evidence was that he does not recall introducing the Claimant as a Fellow at the talk; I find that the Claimant probably was introduced as a Fellow by Mr Ladas or by another person at the talk, as that was consistent with the invite and Mr Ladas' evidence was that he did not correct the erroneous title from the invite.
 - d) I also heard evidence that there was an occasion in the Mexico City visit when the Claimant was referred to as a Fellow by Ms. Maresca
- 20 Each of the two written communications also involved Armin Wellig, another employee who was not a fellow. The email from Mr Potter was sent to Mr Wellig and the talk invite also referred to Mr Wellig as "BMS Fellow". The Claimant accepts that Mr Wellig was not a fellow at the time, although he is not sure whether he was aware of that in May 2023.
- 21 In my judgment, those communications that referred to the Claimant as a Fellow were in error. They were not an indication that the Claimant had in fact

been appointed as a Fellow, nor where they communications that he was about to be appointed as a Fellow. I heard no evidence to suggest that Mr Potter had involvement in the process of appointing Fellows, nor that he had been told that the Claimant and Mr Wellig would be appointed as Fellows. In fact, Mr Wellig was not made a Fellow in 2023.

22 The Claimant's nomination form for Fellow came to be submitted and a copy is in the bundle at pages 93-100. It was submitted in July 2023

23 As I have said, appointments not announced in August 2023 due to recruitment freeze, instead there were announcements on two dates in October 2023. The Claimant was not appointed as a fellow on either of those occasions.

24 The Claimant says that he had been led to believe that he would be appointed. I have dealt with that above. The Claimant also says that Mr Ladas refers to him as being "ready now", which the Claimant says supports his assertion that he was led to believe he would be appointed in 2023. I accept Mr Ladas' evidence that the term "ready now" when used within the Honeywell Group means that an individual is worthy of nomination, but is not a guarantee of being appointed. I find that employees within Honeywell knew that being "ready now" did not mean that they would be appointed, as the employees knew of the high failure rate at nomination stage.

25 On 29 October 2023 Mr Ladas and the Claimant had a telephone conversation following the announcements of the successful Fellow appointments. The Claimant covertly recorded that telephone call; the appropriateness of making a covert recording is not directly relevant in these proceedings so I will make no further comment on that.

26 There is a transcript of the recording. The accuracy of the relevant parts of the transcript is not disputed. It includes a discussion about patents at the bottom of page 106 of the tribunal bundle. Having reviewed the relevant part of the transcript, I find that that conversation was about how the Fellow appointment process had worked historically, when there had been a heavy weighting given to the number of patents, and how the process had changed.

27 The relevant part of the transcript appears at the bottom of page 106. In that part it appears clear to me that Mr Ladas is talking about what the position was historically; he says

"It was – when I started it, it was very academic you know, bias, yeah. We had a lot of chemists. You know PhDs with , you know, many hears; experience. The criteria was how many patents... how many publications...how many ...talks did they give. That was heavy, heavy weighting to becoming a fellow".

28 It was clear to me that Mr Ladas then went on to talk about how that had changed, saying things such as:

"When HPS joined we changed it. So how do you compare, for example, a software engineer who may only have a few patents to a chemical engineer who may have 50 or 100? ... we started to shift it across Honeywell to number one; what has the individual

done to drive innovation of a significant revenue and impact to the industry? That's the heaviest weight now."

- 29 In my judgment, the Claimant was not told that an insufficient number of patents was the reason for him not being appointed. In fact, what was explained to him was that historically there had been a heavy reliance on the number of patents, but the focus had shifted to driving innovation which results in revenue, which could be demonstrated through patents but could also be displayed in other ways. It was clear to me, and ought to have been clear to the Claimant, that what Mr Ladas was saying was that the sheer number of patents did not have anywhere near the same weight as it had historically had.
- 30 On 19 October 2023 the Claimant sent an email to Udaya Shrivastava, which is at page 119. In it the Claimant made very clear his feelings about not being appointed Fellow. He said that prior to April he had considered that appointment was something that would happen this year and that it had become de-facto truth. The Claimant said that finding out he had not been appointed was humiliating and that Mr Ladas' feedback was insulting. He gave Ms. Shrivastava a "simple choice" – she could make him a Fellow or he would be forced to conclude that Honeywell no longer wanted to retain his services.
- 31 Ms. Shrivastava responded on 23 October. In her response she said *"I also understand there are some concerns with being incorrectly identified as a Fellow in a recent communication. We are looking into this to make sure we mitigate any similar mistakes in the future"*. In my judgment, that was her saying that the April/May communications which referred to the Claimant (and Mr Wellig) as a fellow were erroneous, i.e. that the job title assigned to them was mistaken. It is clear to me that Ms Shrivastava is not saying that the Claimant's application to be a Fellow was a mistake, nor is she saying that the Claimant is mistaken in thinking that he could achieve Fellow in the future. In my judgment, to the extent that the Claimant reads that into the email he is wrong to do so.
- 32 The Claimant then raised formal grievance on 3 November 2022. The grievance reiterated his concern that he had not been appointed having believed that he was going to be appointed, and the embarrassment which had flowed from that. It also complained that a fair reading of Ms. Shrivastava's email of 23 October 2023 was that identifying the Claimant for promotion was a mistake, which he found highly offensive and threatening.
- 33 Mr Brad Hill was appointed as investigation officer. A meeting took place on 23 November 2023 where the Claimant objected to Mr Hill being the investigating officer. The objection is repeated in an email on the same day in which the Claimant C says that *"Given the grievance directly revolves around the conduct of the office of BTS CTO, and the incumbent [Ms. Shrivastava], the investigator and adjudicator has to be at least a peer"*
- 34 Ms. Sluce (HR) responded on 28 November 2023 saying that Mr Hill would remain as investigation manager. The Claimant's response on 30 November made plain that he strongly objected to Mr Hill being the investigation manager.

- 35 The Claimant and Mr Hill spoke in the week commencing 4 December. There is a dispute as to exactly what was said in that conversation. I find on the balance of probabilities that Mr Hill's account is probably the correct one. Mr Hill's account was that in the conversation he gave C a 'heads up' that an outcome letter would be sent, explaining the position and giving C a right of appeal. I do not accept the Claimant's evidence that Mr Hill said that he was "withdrawing from the process" in that conversation; I reject that as it is not consistent with the contemporaneous documentation nor with Mr Hill's account and I believe that the Claimant is mistaken. The Claimant suggests that if Mr Hill's account was correct then he (the Claimant) would have resigned on the day and I should prefer the Claimant's account on the basis that he did not resign that day. I don't find that persuasive as in my judgment it is equally plausible that the Claimant would wait for the written outcome before taking any further action.
- 36 The outcome letter was sent on 12 December 2023. It said that the grievance was not upheld on the basis that the investigation meeting could not proceed once the Claimant raised objections about partiality and that Mr Hill could not continue further with the investigation and therefore had insufficient evidence to support the complaint.
- 37 The Claimant gave notice of resignation on 15 December 2023.

The Law

- 38 The following terms are implied into a contract of employment:
- a) That the employer will not, without reasonable and proper cause, act in a way calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence which exists between employer and employee (*Malik v BCCI* [1997] IRLR 462)
 - b) That the employer will reasonably and promptly afford a reasonable opportunity to employees to obtain redress of any grievance they may have (*WA Gold (Pearmak) Ltd v McConnell* [1995] IRLR 516)
- 39 The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
- 40 Where there is more than one act relied upon, the tribunal ought to look at the last act in the series to see whether that by itself breaches the implied term of mutual trust and confidence. If not, then the tribunal ought to look at all of acts cumulatively and ask whether they amount to a breach of the implied term.

Analysis and Conclusion

- 41 I shall consider each of the alleged breaches of the implied term of mutual trust and confidence in turn.

30.1 Fail to appoint Claimant as a Fellow in October 2023 despite widespread advert as Fellow and line manager representing that selection was certain and/or that it would be formally announced

- 42 As a fact I have concluded that Mr Lu did not represent that selection was certain nor that it would be formally announced. That part of the allegation must therefore fall away based on my findings of fact. I have found that Mr Lu was positive and optimistic but did not make any promises. I've also found that the Claimant would have known that appointment was not certain and would have depended on a selection process which had a pretty high failure rate.
- 43 I have also found that there were three or four occasions on which the Claimant was referred to as a Fellow and that these were mistakes, in that his job title was mistakenly assigned as "Fellow" when it was in fact different. In my judgment that does not amount to a widespread advertisement that the Claimant is a Fellow. It is a relatively small series of isolated mistakes, three of which come from the same individual, Mr Potter.
- 44 In those circumstances, I conclude that failure to appoint was not something which was a breach of the implied term of mutual trust and confidence. Nor was it capable of contributing to a breach of that implied term. It could only really be a breach of the implied term, or contribute to a breach, if the process for appointment had been capricious, which is not alleged in this case, or if the Respondent broke a promise that the Claimant was going to be appointed. I have found that the Respondent made no such promise, either expressly or impliedly.

30.2 Refuse to reconsider the decision and describing the announcement as a mistake

- 45 I found that the email which was referring to a mistake was referring to the fact that the Claimant's job title was mis-described. It was not referring to him being appointed as a Fellow being a mistake. The fact that the Claimant's job title was mis-described should not have been a surprise to the Claimant; he knew what his proper job title was at the time that it was mis-described by Mr Potter.
- 46 Any different reading of the email from Ms. Shrivastava is not objectively sustainable.
- 47 The refusal to reconsider the decision not to appoint the Claimant was, in my judgment, perfectly proper and cannot be criticised. The Claimant gave the Respondent an ultimatum in his email of 19 October 2023: appoint me or I will consider myself constructively dismissed. The Respondent's refusal to bend to that demand cannot be criticised in circumstances where it has not promised appointment to the Claimant, nor behaved in a way calculated or likely to destroy or seriously damage mutual trust and confidence.
- 48 In my judgment, this is not something that is capable of contributing to a breach of the implied term of mutual trust and confidence.

30.3 and 30.4 – Appointing Mr Hill to investigate the grievance and refusing to re-consider the decision to select him to investigate the grievance

- 49 These are the points which caused me the most concern. I have little hesitation in saying that it would have been better to appoint someone other than Mr Hill given that he was junior to Ms. Shrivastava. Whilst I might think

that, the question I actually have to decide is whether in and of itself that is a breach of the implied term of mutual trust and confidence, or the implied term that an employee is given a reasonable opportunity to be afforded redress of any grievance.

50 I have taken into account the ACAS Code of Practice on Disciplinary and Grievance Procedures. Nothing in the ACAS Code requires the grievance officer to be more senior than the individual named in the grievance. I have also considered the Respondent's own policy which on my reading does not require the grievance decision maker to be more senior than the person complained about.

51 I've also taken into account Mr Hill's reasons for not stepping to one side, which was that the focus of the Claimant's complaint was his non-appointment to Fellow rather than Ms. Shrivastava's email. I can see how Mr Hill may have reached that conclusion.

52 Where that leads me is to a finding that whilst it may have been good industrial practice to have had the grievance investigated by someone more senior than Mr Hill, or someone other than Mr Hill, it is not something which was calculated to destroy or seriously damage, nor was it something which, objectively viewed, was likely to destroy or seriously damage mutual trust and confidence. I reach that conclusion in part because it is possible that Mr Hill could have concluded the grievance in the Claimant's favour (although that may have been unlikely given the findings I made above about the facts which were the subject-matter of the grievance). It is also possible that Mr Hill would have given a fair and proper consideration of the Claimant's grievance and a proper opportunity of redress, notwithstanding the fact a relatively small part of the grievance was directed at Mr Hill's line manager.

53 In conclusion, I find that these two points did not amount to a breach of the implied term of mutual trust and confidence, although I have reached that conclusion with some hesitation.

30.5 – Rejecting the Claimant's grievance

54 There was limited progress made with the grievance because of the dispute that arose about the investigator and whether it should have been someone else. In those circumstances there was not much more that the Respondent could have done – it would have been almost impossible for it to uphold the grievance without a full and proper investigation meeting at which the Claimant would have had an opportunity to put forward all of his complaints, have them heard, and have them determined.

55 As such, in my judgment the failure to uphold the grievance is not something which contributed to a breach of the implied term of mutual trust and confidence.

56 For all of the above reasons I find that the Claimant was not dismissed. His employment ended by reason of resignation. His claim of unfair dismissal therefore fails.

Other conclusions

57 Had I found that there was a dismissal then I would have gone on to consider what would have happened if the Claimant had not been constructively dismissed.

58 I would have found that the Claimant's employment would have terminated pretty soon after the date of termination in any event. The reason I would have found that is that the bulk of the Claimant's complaint was about not being appointed to the position of Fellow; he adopted a very clear position that if he was not appointed (if the decision was not reversed) then he would consider himself dismissed. In my view there was no realistic prospect of the decision being reversed; a fair process would not have reversed the decision, and the employment relationship would have ended upon completion of a grievance process which would have taken no more than one month beyond the date on which dismissal occurred.

Wrongful dismissal claim

59 The wrongful dismissal claim fails for same reasons as the unfair dismissal claim. I found that the Claimant was not dismissed and so this claim fails.

Employment Judge **Curtis**

Date 5 March 2025