



EMPLOYMENT TRIBUNALS

Claimant: Mr An-Heng Yang

Respondent: Linga International Limited

Heard at: London South, by CVP

On: 5 February 2025

Before: EJ Rice-Birchall

Representation

Claimant: Mr Neaman, counsel

Respondent: Not in attendance

JUDGMENT having been sent to the parties on 24 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

Background

1. The claimant resigned from his employment on 1 September 2023. He alleged that he had been continuously employed (as a result of TUPE transfers) since 1 December 2018.
2. Early conciliation took place between 28 November 2023 and 9 January 2024.
3. By a claim dated 8 February 2024, the claimant brought claims of unfair and wrongful dismissal; that the respondent had made unlawful deductions from the claimant's wages; and that the respondent had failed to provide a written statement of employment particulars.
4. No response was received.
5. The file was reviewed by EJ Khalil who decided that it was not appropriate to issue a judgment because more information was needed. The case was therefore to proceed to its final hearing on 17 October 2024, which was adjourned until 5 February 2025.
6. The respondent did not attend the final hearing.

The issues

7. The following issues were the issues to be determined at the hearing:

Constructive Dismissal

1. Was the Claimant unfairly constructively dismissed? (s.94 & 98 Employment Rights Act 1996 (ERA)).

(a) What was the most recent act or omission on the part of the Respondent which the Claimant says caused his resignation on 1 September 2023? The Claimant relies on an instruction given by Mr Lingajothy on 1 September 2023 to file an application in an active matter on which the Claimant had no authorisation to act and in which Mr Lingajothy was, by an order under s.43(2) of the Solicitors Act 1974 (the s.43 Order) made on 31 July 2023, prohibited from being involved.

(b) Did the Claimant affirm the contract after that act?

(c) Did Mr Lingajothy's conduct on 1 September 2023 above itself constitute a repudiatory breach of the implied term of trust and confidence?

(d) If not, did Mr Lingajothy's conduct on 1 September 2023 amount to a final straw forming part of a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?

(e) Did the Claimant resign (partly) in response to the Respondent's repudiatory breach?

Wrongful dismissal

2. Was the Claimant wrongfully constructively dismissed?

(1) Was the Claimant constructively dismissed (see above)?

(2) Was the Claimant dismissed without notice in circumstances where the Respondent was not entitled to do so?

3. If the Tribunal finds the Claimant was unfairly and/or wrongfully dismissed, to what compensation is he entitled? The Claimant seeks:

(1) In respect of the wrongful constructive dismissal, the net value of the salary he would have received during his notice period.

(2) In respect of the unfair constructive dismissal, a basic award under s118 (1)(a) ERA 1996, a compensatory award for past and future financial loss, and an award for loss of statutory rights.

(3) An uplift of 25% to take into account the Respondent's unreasonable failure to follow the ACAS Code of Practice Disciplinary and Grievance Procedures in respect of:

(a) The Claimant's dismissal on 1 September 2023; and/or

(b) Failing to investigate under its grievance process the concerns raised by the Claimant in his letter to Mr Lingajothy dated 14 September 2023.

Failure to Provide Statement of Changes to the Contract (s.4 ERA 1996)

4. Did the Respondent fail to provide the Claimant with any written statement containing particulars of the changes to his employment particulars as required by s.4 ERA 1996? The Claimant avers that he was not given a statement of changes after his employment was transferred for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 from Duncan Ellis Solicitors to the Respondent from 7 April 2022.

Breach of Contract

5. Did the Respondent fail to pay the Claimant his salary in respect of 1 September 2023.

The evidence

8. The claimant provided a bundle of documents of 171 pages and a witness statement of 68 paragraphs. The claimant gave oral evidence also. The claimant's evidence was unchallenged and the Tribunal accepted the claimant's evidence.

Facts

9. On 1 December 2018, the claimant commenced employment with L&L Law Solicitors (L&L), an SRA-regulated firm of solicitors, as a legal secretary/paralegal. He worked from L&L's office in Colliers Wood (the Colliers Wood Office). L&L's principal was Mr Balasubramaniam. Mr Lingajothy was employed at L&L and managed the Colliers Wood Office. Mr Lingajothy was a CILEx lawyer but not a qualified solicitor. He was a senior case worker for L & L.
10. The claimant had a service agreement dated 6 December 2018 which entitled him to one month's notice of termination of employment.
11. In 2020, Mr Balasubramaniam died. Mr Sooben took over the operation of L&L under emergency SRA authorisation. Mr Sooben also had a separate practice with an office in Hounslow, Duncan Ellis Solicitors (DES) (originally called IBS Solicitors).
12. In November 2021, L&L's business transferred to DES (the First Transfer). The claimant was first told of the transfer in November 2021, after it had taken place. In January 2022, the claimant received a P45 stating his employment with L&L had terminated on 30 November 2021. From that time, the claimant received payslips from DES but continued working at the Colliers Wood Office as before.
13. With effect from 7 April 2022, the claimant's employment was transferred from DES to the respondent (the Second Transfer). The claimant was not

informed of the transfer until 26 May 2022, when he received a P45 stating his employment with DES had terminated on 6 April 2022. Mr Lingajothy told the claimant that DES was being restructured, and he was now employed by the respondent. The respondent paid the claimant's salary from April 2022 (though the claimant received no payslips for April / May 2022). The claimant and Mr Lingajothy continued to work at the Colliers Wood Office exactly as before.

14. The respondent operated the Colliers Wood Office as a satellite branch of DES as Mr Lingajothy was not himself a qualified solicitor. He could therefore practice only under the supervision of an SRA registered entity. In July 2023, Mr Sooben agreed to supervise the claimant for a period of recognised training which the claimant required to qualify as a solicitor. The claimant worked for Mr Sooben from the Colliers Wood Office, and for a time at DES' office in Hounslow. The claimant continued to perform work for Mr Lingajothy from the Colliers Wood Office throughout.
15. In April 2023, Mr Lingajothy and Mr Sooben fell out. Given the deterioration in relations, Mr Lingajothy intended to transfer the cases on which he was the primary fee earner to MDL Solicitors (MDL). MDL's sole practitioner was Munaf Dayal. Although by 1 September 2023 some of Mr Lingajothy's cases had been transferred to MDL, most remained with the respondent. Mr Dayal did not authorise the claimant to work on such cases as had been transferred. The claimant at no point saw or spoke to Mr Dayal. The respondent paid the claimant's salary until the claimant's employment terminated.
16. On 31 July 2023, the claimant was informed that a s.43 Order had been imposed on Mr Lingajothy. Mr Lingajothy was prohibited from involvement in a legal practice without the SRA's prior written consent. Nonetheless, it appears that Mr Lingajothy continued to conduct active cases and expected the claimant to perform work under his supervision. The claimant, however, decided to work only on cases on which he was supervised by Mr Sooben.
17. Towards the end of August 2023, Mr Lingajothy asked the claimant to progress a case in which the time limit for lodging an appeal was about to expire. The claimant said the file had been transferred to MDL and he had no authorisation to work on the case, so there was nothing he could do.
18. On 1 September 2023, Mr Lingajothy attended the Colliers Wood Office. He held meetings with clients throughout the day, which the claimant believed to be in breach of the s.43 Order. After he had finished his meetings, Mr Lingajothy again asked the claimant about the progress of the appeal. He asked why the claimant had not filed an application for permission to appeal. The claimant believed that Mr Lingajothy expected the claimant to file the application and was instructing him to do so, despite the s.43 Order and the claimant's lack of authorization.
19. In response to Mr Lingajothy's instruction, the claimant informed Mr Lingajothy that he was resigning from the respondent. The claimant was contractually entitled to one month's notice. However, he did not receive any salary for 1 September 2023 or any notice pay. The claimant later received a P45 stating that his employment with the respondent had

terminated on 1 September 2023.

Findings relevant to remedy

20. At the date of termination of his employment with the respondent the claimant was 46 years old and had 4 years' continuous service.
21. The claimant's gross basic salary was £2,287.45 per month through PAYE but received an additional £500 per month which was not recorded on his pay slips but as regards which the claimant is liaising with HMRC. This meant that his gross basic salary was £33,449.40 per annum; which equates to £2,787.45 per month or £643.26 per week.
22. His net salary is £27,603.17 per annum; £2,300.26 per month; or £530.83 per week.
23. The claimant's payslips record employer pension contributions being made to a NEST pension in respect of his recorded salary. The respondent was required to make employer contributions of a minimum of 3% of the claimant's salary in order to meet its obligations under pension auto-enrolment legislation. Those employer contributions equate to £83.62 per month (when the additional £500 is taken into account).
24. The claimant was initially able to perform some work for Mr Sooben on an ad hoc self-employed basis. However, this arrangement came to an end in January 2024. DES were intervened by the SRA in February 2024 and Mr Sooben's practising certificate was suspended. From that point on, the claimant searched for other roles, primarily on a specialist website for immigration lawyers. However, he has not succeeded in securing alternative employment and is now considering a career change.

Law

TUPE

25. Regulation 3 (1) (a) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) states: "A transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity".
26. Regulation 4(1) deals with the effect of a transfer on contracts of employment as follows: (1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

Constructive dismissal

27. The Tribunal should follow the five-stage approach to determining whether an employee was constructively dismissed which was set out in **Kaur v**

Leeds Teaching Hospitals NHS Trust [2019] I.C.R. 1 at [55]:

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has employee affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trusts and confidence?

(5) Did the employee resign in response (or partly in response) to that breach?

28. The test for breach of the implied term of trust and confidence is whether, viewed objectively, the employer without reasonable or proper cause conducted itself in a manner “calculated or likely to destroy or seriously damage” trust and confidence: **Omilaju v Waltham Forest LBC** [2005] I.C.R. 481 at [14.2].

29. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal: **Omilaju** at [14.5]. The last straw must be “an act in a series whose cumulative effect is to amount to a breach of the implied term [of trust and confidence].” It does not have to amount in isolation to a breach of contract. Nor do any of the other acts in the series: **Omilaju** at [19].

Written particulars of employment

30. Section 38 of the Employment Act 2002 provides as follows:

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996[or [(in the case of a claim by an worker) under section 41B or 41C of that Act, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of a worker shall—

- (a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
- (b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

Remedy

- 31. If a claim of unfair dismissal is well founded, the claimant may be awarded compensation under Section 113(4) ERA. Such compensation comprises a basic award and a compensatory award, calculated in accordance with sections 119 to 126 ERA.
- 32. So far as the compensatory award is concerned, ERA provides that the amount of compensation shall be such amount as is just and equitable based on the loss arising out of the unfair dismissal.
- 33. Separately, if it appears to the Tribunal that either the employer or the employee has unreasonably failed to follow or comply with the ACAS Code referred to above, the Tribunal may increase or decrease any compensatory award by up to 25% if it considers just and equitable in all the circumstances to do so (s207A TULRCA).

Failure to follow the ACAS Code

- 34. As to the uplift for failure to follow the Acas Code of Practice on disciplinary and grievance procedures (the Code), grievances are “concerns, problems or complaints that employees raise with their employers”: para. 1 of the Code.
- 35. The Code can apply to grievances lodged post-termination. Section 295 Trade Union and Labour Relations (Consolidation) Act 1992 defines an “employee” as including individuals who “*worked* under a contract of employment”. In **Base Childrenswear Ltd v Otshudi** (UKEAT/0267/18/JOJ), the ET had found the Code applied where the claimant had lodged a grievance after their dismissal. The EAT did not suggest the ET had erred (though the point was not in issue on the appeal).

Mitigation of Loss

- 36. The burden of proof is on the employer: **Cooper Contracting Ltd v Lindsey** (UKEAT/0184/15/JOJ) at [16.1]. If the employer adduces no evidence of a failure to mitigate, the Tribunal has no obligation to find it: Cooper at [16.2].

Conclusions

TUPE

- 37. The claimant has the requisite two years' minimum service. The Second Transfer was a relevant transfer for the purposes of Reg. 4(1) of TUPE and so preserved the claimant's continuity of service. Part of DES' business was transferred to the respondent. That part retained its

economic identity, as evidenced by the fact that Mr Langajothy and the claimant continued to work on the same cases in the same manner from the same office, i.e., the Colliers Wood Office. The claimant was employed by DES at the time of the transfer, which occurred with effect from 7 April 2022. In the alternative, the effective date of termination of the claimant's contract with DES was 26 May 2022, i.e., after the claimant's salary had begun to be paid by the respondent and so after the transfer must have occurred.

Constructive dismissal

38. The claimant was constructively dismissed on 1 September 2023. When, on 1 September 2023, Mr Lingajothy instructed the claimant to file an application in a case on which the claimant was not authorised to act and in which Mr Lingajothy was prohibited from being involved under the terms of the s.43 Order, this was a direct instruction to become complicit in Mr Lingajothy's breach of the s.43 Order and to breach the claimant's own ethical/regulatory obligations.
39. Moreover, the claimant was being asked to perform work under Mr Lingajothy's supervision where Mr Lingajothy was prohibited from being involved in a legal practice. By obeying Mr Lingajothy's instruction, the claimant would have himself become complicit in Mr Lingajothy's breach of the s.43 Order. It was clear more broadly that Mr Lingajothy's intending to continue his legal practice and expected the claimant to continue working under his supervision. Mr Lingajothy's conduct was, viewed objectively, likely to destroy or seriously damage the claimant's trust and confidence in the respondent and constituted a repudiatory breach of the implied term of trust and confidence, entitling the claimant to treat himself as dismissed.
40. The claimant's resignation was in response to Mr Lingajothy's conduct on 1 September 2023. The claimant resigned that day, so no question of affirmation arises and the Tribunal is satisfied that the claimant resigned in response to the breach. No other reason was suggested.
41. In respect of the unfair constructive dismissal, the claimant is entitled to a basic award under s118 (1)(a) ERA 1996, a compensatory award for past and future financial loss, and an award for loss of statutory rights.

Wrongful Dismissal

42. The claimant was constructively dismissed for the reasons set out above. The claimant was entitled under the terms of his contract to one month's notice. He did not, however, receive any notice pay upon his constructive dismissal. There were no circumstances entitling the respondent to withhold the claimant's notice pay.
43. Accordingly, the claimant is entitled to the net value of salary he would have received during his notice period.

Written statement of employment particulars

44. The claimant was not provided with a written statement containing particulars of the changes following the Second Transfer. The respondent

was obliged to provide such a statement under s.4(1) ERA (since, as explained above, the Second Transfer was a relevant transfer for the purposes of Reg. 4(1) TUPE). The claimant is entitled to compensation in the sum of four weeks' pay under s.38 Employment Act 2002, as it is just and equitable to award such amount given that there was no effort made to comply with the obligations to provide an up to date section 1 statement.

Breach of contract

45. The claimant was not paid in respect of work performed on 1 September 2023. He is entitled to an award in the sum of the unpaid salary.

Remedy

Failure to follow the ACAS Code

46. The claimant's letter of 14 September 2023 raises concerns regarding a number of issues, including unpaid salary, working conditions, and Mr Lingajothy's continuing breach of the s.43 Order.

47. The claimant is awarded an uplift of 25% to take into account the respondent's unreasonable failure to follow the ACAS Code of Practice Disciplinary and Grievance Procedures in respect of the claimant's dismissal on 1 September 2023 and failing to investigate under its grievance process the concerns raised by the claimant in his letter to Mr Lingajothy dated 14 September 2023.

Mitigation

48. In this case, the respondent does not allege any failure to mitigate and has adduced no evidence of such a failure. It is in any event clear from the claimant's own evidence that there was no unreasonable failure to mitigate. The claimant accepted ad hoc employment with DES for as long as he was able. He regularly searched for jobs.

49. The claimant sought, and was awarded, the compensation set out in the Updated Schedule of Loss.

Constructive Unfair Dismissal

50. As regards 2 September 2023 to 1 October 2023, this is the period covered by the wrongful dismissal claim and this period was not therefore included in the calculation of the claimant's past losses for the compensatory award.

51. Past losses were calculated for the period 2 October 2023 to 5 February 2024 inclusive, with a deduction of £2000 for the claimant's earnings during that period.

52. Increase for delayed receipt was added at 2.6255 per annum, being half of the Bank of England's base rate applicable on 1 September 2020 (5.25%).

53. The Schedule did not include future losses as he acknowledged that the

statutory cap would apply to limit the compensatory award.

54. The claimant was awarded £500 for loss of statutory rights following his unfair dismissal.

55. To the extent that the sums claimed by the claimant for unfair dismissal (basic and compensatory award) exceed the level of £30,000, the sums claimed for the compensatory award that represents a sum in excess of that £30,000 level were grossed up to avoid double taxation (to income tax only).

56. The statutory cap applied. 52 weeks' gross pay for the claimant was £34,452.88 (including employer pension contributions).

Failure to provide written statement

57. It was just and equitable in the circumstances for an award of four weeks' gross pay to be made in respect of the respondent's failure to provide any written statement containing particulars of the changes to the claimant's employment particulars.

Approved by:

**Employment Judge Rice-Birchall
13 May 2025**

JUDGMENT SENT TO THE PARTIES
ON: **15 May 2025**

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FOR THE TRIBUNAL OFFICE