



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Mogg

**Respondent:** Prestige Networks Limited

**Heard at:** Reading **On:** 7,8,9,12,13 and 14 May 2025

**Before:** Employment Judge Gumbiti-Zimuto

**Representation**

Claimant: Mr T Perry, counsel

Respondent: Mr M Green, counsel

## REASONS

*[Reasons for judgment sent to the parties on 12 June 2025 provided at the request of the respondent.]*

1. The claimant was employed from October 2018 until dismissal on 14 April 2022. Between August 2021 and December 2021, the respondent says that the claimant was not an employee but a contractor. The claimant contends that his employment was continuous.
2. The claimant was initially employed as Head of Operations, then as Head of IT Systems and latterly as Technology and Strategy Director. In June 2021 the claimant resigned his position as Head of IT Systems. The claimant's notice period expired on 31 July 2021. The claimant and Mr Khorossani agreed that from 1 August 2021, the claimant would continue to carry out work for the respondent one day a week and would be paid £300 per day.
3. It was agreed that the claimant would continue to work for the respondent principally in respect of ongoing software projects that he had been undertaking. It was expressly agreed that the claimant's engagement would be on a self-employed contractor basis and that the claimant would provide invoices for his services under the guise of Pulse Consultancy. A consultancy agreement was prepared by the respondent to be between the respondent and Pulse Consultancy but the parties did not complete the agreement by signing it.
4. It is in dispute between the parties whether the claimant continued to have any management responsibility between August 2021 and December 2021.

5. It was subsequently agreed, in about December 2021, that the claimant would take up the full time role of Technology and Strategy Director from 4 January 2022. It is not in dispute between the parties that the claimant from this point was an employee of the respondent on a salary of £70,000 per annum. A new contract was prepared but once again unsigned by the claimant who had queried some of the terms on which the new position was being offered. The unsigned contract gave the claimant continuous employment as being from 4 January 2022.
6. The claimant commenced working pursuant to the new arrangements from 4 January 2022.
7. The claimant refers to the period between August 2021 and December 2021 as a sabbatical. It was not a sabbatical. At the time the claimant went into the consultant role there was no expectation between the parties that the claimant would return to working pursuant to any specific prior arrangements, or at all. Matters were not clear or decided as to what would happen in the future.
8. In the period August 2021 to December 2021 the claimant continued to receive NHS Top Up Medical Benefit provided pursuant to his employment contract. The claimant continued to have meetings with other colleagues on his working days. The claimant attended board meetings as part of the senior leadership team. The claimant was paid his full bonus at the end of the year. Bonuses are only payable to employees while they continue in employment with the respondent.
9. The claimant states that his role did not change during the period August to December 2021. This cannot be correct, the claimant went from working five days a week to one day a week. The claimant couldn't have continued in his role as before during the period from August 2021 to December 2021. The nature of his role changed in this period, his role was now to just work on the software projects and didn't require the claimant to carry out duties involving the day-to-day management or supervision of staff. The claimant described himself, in relation to the period before August 2021, as the "*primary point of contact for most issues in the office generally*": this could not have been the case after August 2021 until December 2021 when the claimant was only in the office one day a week and occasionally 2 days a week.
10. The respondent continued to provide the claimant with the equipment for carrying out his role and he was held out to the world as a director of the business. The claimant retained an office and his e-mail address. In the period between August 2021 to December 2021, on the days he was not working for the respondent, the claimant was free to carry out work for others, in particular he carried out work for his brother.
11. The respondent's senior leadership team comprised of Mr Shawn khorossani, Mrs Shohreh Fleming, Mrs Meryem Munro and the claimant.
12. Mrs Fleming, one of the owners of the business, from time to time employed an executive assistant. Mrs Suzie Francis was employed as an

executive assistant for Mrs Fleming from 1 March 2022. There is a difference of viewpoint about the status of Mrs Francis. The claimant considered that she *“was accountable to me and Meryem Munro”*. Mrs Fleming on the other hand made it clear that Mrs Francis was answering to her and described Mrs Francis as her *“right arm”* and sent an e-mail to the senior leadership team and others stating that *“Susie is acting on my behalf. When she asks you about something work-related she is acting with my authority and approval”*.

13. The claimant had a low opinion of the various executive assistants employed by Mrs Fleming from time to time, he said of them, *“these executive assistants didn’t stay for long ... but they left behind them errors which had to be rectified and feelings of stress and resentment in the rest of the staff, increasing staff turnover generally.”* The claimant and Mrs Nicola Wilson, the People and Welfare Manager, considered that Mrs Francis had made a number of statements which were untrue.
14. Before Mrs Francis commenced employment, Mrs Wilson reported to Mrs Fleming, one of the owners of the business, however soon after Mrs Francis started Mrs Wilson found herself reporting to Mrs Francis. Mrs Wilson complained that she was bullied by Mrs Francis and reported this to Mr Khorossani and Mrs Fleming, however they did not address the issues that she raised.
15. Around 27 March 2022 claimant says that he was told about a document being prepared by Mrs Francis for Mrs Fleming. The claimant then searched the respondent’s computer system by accessing files and documents created Mrs Francis and in Mrs Fleming’s confidential files the claimant found the document at pages 215 to 216 of the trial bundle. The claimant was concerned about the content of the document and sought a meeting to discuss the content of the document with Mr Khorossani.
16. There is a dispute about the date when this meeting took place on one version it is 18 March from another it is 28 March. In the meeting the claimant was clear that he wanted Mr Khorossani to *“withdraw authority from Susie”*, Mrs Francis.
17. Around this time Mrs Wilson was also having difficulties with the way she was working with Mrs Francis and in her witness statement Mrs Wilson refers to a meeting on 31 March at which she was present with the claimant, Mr Khorossani and Mrs Fleming. This was on the face of it a meeting discussing things similar to those referred to in the meeting between Mr Khorossani and the claimant. At the meeting Mrs Fleming expressed her anger at the claimant for obtaining a document which was prepared by Mrs Francis for Mrs Fleming, while the claimant raised concerns about the content of the document.
18. Mr Khorossani, who states that he met with the claimant on the 18 March 2022, says that at that meeting the claimant *“admitted checking the personal communication between Shohreh and Susie which is against the company’s procedures and had never been done before”*.

19. After the meeting Mr Khorossani states that he considered the claimant's conduct and actions in accessing confidential information warranted further action.
20. In the meantime, Mrs Wilson says that matters involving Mrs Francis came to a head on 7 April 2022, as a result of Mrs Francis was trying to *"undermine her and her professional knowledge."* Mrs Wilson asked for a meeting with the claimant and Mrs Munro. At the meeting that took place the concerns raised by Mrs Wilson were such that it led the claimant and Mrs Munro to say that Mrs Wilson could work from home.
21. The decision to allow Mrs Wilson to work from home came to the attention of Mrs Francis. On 8 April, Mrs Francis retracted the permission for Mrs Wilson to work from home. This led to Mrs Wilson submitting a grievance about bullying and harassment of her by Mrs Francis, she was also signed off as sick.
22. Also on 8 April the claimant sent an e-mail to the senior leadership team in which he stated that he had instructed *"Susie that she must not, under any circumstances make contact with Mrs Wilson and if she does it will lead to her suspension."* This action was symptomatic of the difference between the claimant and Mrs Fleming because the claimant considered that he had the authority to give such an instruction to Mrs Francis. Mrs Francis was also told by the claimant that she was not to notify Mrs Fleming of the situation that had developed on 7 April and that her failure to comply with the instruction would be treated as *"now a clear gross misconduct offence"*.
23. The email was copied to Mrs Fleming and when she received that email Mrs Fleming replied to the claimant, her reply was direct and clear. It pointed out Mrs Wilson was not part of the claimant staff and HR was not part of his responsibility; that Mrs Francis was now Mrs Wilson's line manager and it was only Mrs Francis who could authorise Mrs Wilson to work from home; she stated that Mrs Francis has authority to act on Mrs Fleming's behalf and to keep her informed; and finally that the claimant had no right to threaten to suspend staff other than his own staff.
24. The claimant's response to Mrs Fleming's email was to send an email saying *"you will have my resignation on Monday. You've just handed Nicky (and me) a constructive dismissal win on a plate"*.
25. On the Monday, 11 April 2022, before the claimant had submitted any resignation, the claimant was called to a meeting with Mr Khorossani, Mrs Munro was present, and Mrs Francis was also present. Mrs Francis subsequently prepared a note of the meeting. In the meeting the claimant was informed that he was being suspended. The allegations against the claimant related to the claimant interfering in other department's matters in particular in relation to him looking at Mrs Fleming's personal documents and the way he had treated Mrs Francis and manipulated various members of staff including in Mrs Wilson. The letter of suspension is on page 236.

26. The claimant initially assumed that the reason for his suspension was related Mrs Wilson but it was explained that that wasn't the reason. Notes of the meeting have been produced. The claimant refers to the notes as a fabrication. I do not accept that the notes are fabricated. They record matters which the claimant agreed occurred. The notes may not have been all made during the meeting but I am satisfied that they were a near contemporaneous note of the meeting.
27. In the notes there is reference to the claimant saying, in reference to the events that had taken place, this is an "*atom bomb*" and also referring to "*major repercussions*".
28. The claimant denies the accuracy of the notes. What the claimant says he said was that "*this is putting a bomb under a minor situation*". Intending to convey that those matters had been blown up out of all proportion and not, as the note suggests, some form of veiled threat. The notes however accord with the recollection of Mr Khorossani about how the meeting progressed.
29. I accept the notes as an attempt to make an accurate record of the suspension meeting. It is not a fabrication. Recollections now may differ about precisely what was said but I accept that this document (page 236) represents the respondent's attempt to produce a true record of the suspension meeting.
30. I also have regard to the way the meeting is described by Mr Khorossani in his witness statement includes the following extracts paragraph 33, 34, 37, 38, and 39 which I accept as an accurate representation of how things went in that meeting.
31. Mr Khorossani claims to have carried out some sort of an investigation which involved speaking with Mrs Francis, Mrs Fleming and retrieving CCTV footage. The claimant was then invited to attend an investigation meeting on 14 April 2022. This investigation meeting was intended to be a meeting at which a fact finding was to be undertaken.
32. The claimant informed the respondent that he hadn't been given sufficient time to prepare for the meeting and wouldn't be attending. On being informed of this Mr Khorossani wrote to the claimant on 14 April 2022 informing him that he had been dismissed. The claimant's evidence was that he received a copy of the dismissal letter by courier delivery at 11am on 14 April 2022.
33. The dismissal letter refers to a full investigation of the facts, but does not set out what these facts were save for reference to "*compelling evidence regarding your conduct and your intentions to defame another member of staff*". The dismissal letter also refers to the claimant's explanations being found "*insufficient*" when the claimant did not attend a hearing to give any explanation. According to the claimant the dismissal letter arrived with him before the scheduled time for the meeting to which he was invited for the purpose of establishing the facts.

34. The respondent concedes that the claimant's dismissal was procedurally unfair. The respondent however does not accept that the claimant had two years qualifying employment and so does not have the right to claim unfair dismissal pursuant to sections 94 and 98 of the Employment Rights Act 1996.
35. The respondent contends that the claimant resigned his employment unambiguously and worked out his notice until 31 July 2021. Then from the 1 August 2021 the claimant was a contractor, who was paid on submitting invoices at the rate of £300 per day.
36. Whilst I agree with the respondent's submissions that the claimant cannot sustain the contention that the claimant gave no thought to whether there was a change in his employment position, it does not lead me to the conclusion that his employment status changed. The whole purpose of the claimant resigning in June 2021 was because he considered that the "*role was excessive*" and the claimant "*was not progressing in line with promises made*".
37. It is clear that the claimant's work was to be for one day a week to, "*carry on your current role in relation to overseeing projects you are currently working on*".
38. While the claimant refers to treating the period, I will call the consultation period, like a sabbatical, it was not a sabbatical. Mr Vadim Cotorobai made it clear that from his interactions with the claimant during the period from August to December 2021 there was no clarity as to whether the claimant would work for his brother for a long time or come back. Mr Cotorobai was one of the people that the claimant carried a form of supervision on his working days.
39. The claimant worked mainly Thursdays and some weeks did more than one day's work.
40. A contract was prepared, but not signed, between the respondent and Pulse Consultancy, and I note that Pulse Consultancy was not a legal entity but was the style used by the claimant for invoicing the respondent.
41. When the claimant's situation changed after December 2021, he had negotiated new terms including a change of title and salary suggesting a larger role than he previously held prior to August 2021.
42. I have regard to the criteria in Ready Mix Concrete -v- The Minister of Pensions and National Insurance, I am satisfied that the claimant was an employee of the respondent in the consultant period. There could have been no expectation that anyone other than claimant would have provided the services to do the work that was expected of the claimant one day a week. This in my view is the only interpretation that can be sensibly given to the e-mail of 28 June 2021 (page 198) from Mrs Fleming to the claimant where it is said that the claimant "*will be fully committed to prestige and will carry on your current role in relation to overseeing projects you are currently working on.*"

43. While the claimant was working for the respondent I am satisfied that the respondent did have control over his work so that he can be considered an employee. The claimant had meetings with staff under his remit of IT and systems the claimant had meetings as part of the senior leadership team.
44. There is no event in the consultancy period that allows me to conclude that the claimant was or wasn't subject to the disciplinary and grievance policy.
45. There was clearly mutuality of obligation as is evident from the e-mail of 28 June 2021.
46. The claimant continued to be treated as an employee save that he was now only working one day a week. That the claimant provided invoices is not significant as this came about because it was considered to be easier to deal with the claimant that way rather than to go through payroll when the claimant was coming to work one day, or maybe on occasion two days, a week.
47. The claimant continued to perform a part of his old duties with particular responsibility for overseeing projects.
48. While there was a reduction in working time, from the five days to one day a week, (sometimes two days) and the claimant's duties contracted significantly leaving him with the primary role of overseeing projects, in my view his status as an employee remained.
49. Two further points support that conclusion. The claimant was paid a bonus at the end of the year and bonus is only payable to employees. The claimant continued to be in receipt of employee benefits specifically health benefits during this period.
50. The claimant also seeks to make a claim that he made protected disclosures and that he was dismissed from employment because of making protected disclosures or was subjected to detriment because of making protected disclosures.
51. Section 43A Employment Rights Act 1996 provides that a protected disclosure means a qualifying disclosure as defined by section 43B which is made by a worker (among others) to his or her employer.
52. Section 43B provides that a qualifying disclosure is a disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the matters listed at (a) to (f) of section 43B(1), which includes at (d) that the health or safety of any individual has been, is being or is likely to be endangered.
53. Section 103A provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that he employee made a protected disclosure.

54. The list of issues at paragraph 7.1 identifies the qualifying disclosure relied on by the claimant in the following way: *“on 28 March 2022 orally to Mr Shawn Khorassani that the senior leadership team was being excluded and that stripping benefits in the way proposed would impact the health of staff.”*
55. The claimant relies on an alleged oral disclosure at a meeting on 28 March 2022 (or 18 March 2022). Based on the evidence before me I find it hard to identify something I can view as a protected disclosure. In his submission, the claimant says he disclosed the existence of the document created by Mrs Francis (see pages 215-216) and that it showed that Mrs Francis was proposing to exclude the senior management team and remove benefits from staff in a way that would put their health at risk.
56. The disclosure of the existence of the document is not a qualifying disclosure. The document is merely a series of proposals about procedural and practical changes to the operation of the respondent being put forward by Mrs Francis. What the claimant says is that his interpretation of that document led him to express concerns about the health of other employees.
57. After considering the document I find it difficult to understand why on a simple reading of that document it can be considered that it was likely to show information that the health of an employee was at risk. In his witness statement at paragraph 42 the claimant states:

The meeting took place in my office, the next day, 28<sup>th</sup> March 2022, I told him that document existed, with a list of changes Suzy was planning to make without involving the Senior Leadership Team. It wasn't printed out. I talked about the recurring pattern and that we were going down the same route Suzy was given too much authority and she was changing so much stuff. She would override us. The stripping of benefits and staff would lead to stress and impact the health of our staff. Shawn was angry his face showed it. Initially he didn't believe it existed. He wouldn't want to have to confront it. He left and found it of his own accord.

There is no reference in the statement as to what benefits are proposed to be stripped. Mr Khorossani in his evidence gives a date that differs from the claimant for the meeting. His statement contains the following:

At the meeting on 18 March 2022 Darren asserted that he was seeking to protect the company, though it was unclear on what basis. He was also 'knocking down' Suzi and said that she was lying and said Suzi had talked to her husband about him as her husband was an IT security expert. Darren had said that he had looked into Suzi's husband and mentioned that he was 'just an average IT guy, nothing special, working for a post office'. He made no mention of being concerned for the health of staff and I believed that he was trying to protect his own position. I could not understand why he would feel



threatened by Suzi as their roles did not overlap and they did not work in the same departments.

58. I am satisfied that the reference to the meeting on 18 March and 28 March in fact relate to the same meeting between Mr Khorossani and the claimant but that one of them has the wrong date for the meeting. In his oral evidence, it wasn't clear to me what the claimant was relying on as the qualifying disclosure: in his submissions it is said the claimant subjectively believed that information tended to show that the health and safety of staff was likely to be damaged by Mrs Francis' proposals.
59. I am satisfied that the claimant discussed the proposals made by Mrs Francis. I am not satisfied that the claimant made any mention of health and safety of employees. The gravamen of the claimant's position was that he did not like the way that Mrs Francis was operating and appears not to like the status that she retained within the company, in relation to not only to himself but also Mrs Wilson. The connection between the health and safety of employees and the content of the document appears to me to be obscure. There appears to be a clear link between the position or status of Mrs Francis as perceived by the claimant and the content of the document. The document refers to organisational or procedural changes that the claimant was unhappy with, this is corroborated by the evidence of Mr Khorossani. But it is not clear what if anything is linked to health and safety of employees.
60. On balance I am satisfied that the claimant in raising this document with Mr Khorossani did not mention the health and safety of staff. There was no disclosure of information of the type alluded to in the list of issues at paragraph 7.1, there was no protected disclosure.
61. The claimant was not dismissed because of making a protected disclosure the claimant was not subjected to detriments because of making a protected disclosure.

Unlawful deductions and notice and counterclaim

62. The claimant's final pay was withheld by the respondent the claimant states that there is no reason to apply the clause in the contract that governs the ability to make deductions.
63. The respondent contends that the claimant's actions on 11 April 2022 and or following his dismissal justify the deduction because of the loss sustained by the respondent as a result.
64. I am satisfied on the evidence before me that the claimant was responsible for deliberately deleting files on the 11 April 2022 at about 9:19 AM; Setting up a rule to delete Microsoft Teams chats including the claimant or Mrs Wilson; That on the 14 April at about 12:46 the claimant logged onto the Paxton system and deleted Mr Khorossani's ability to enter the building and the car park and; That on the 14th of April between 12:59 and 13:05 the claimant made requests to terminate the hosting of live web sites.

65. The claimant had the ability to carry out all these actions, the claimant had in his meeting with Mr Khorossani on the 11 April used words that could be characterised as a threat to the respondents business.
66. Some of the claimant's actions have been shown to emanate from an IP address that the claimant was using.
67. The impact of the actions of the claimant is that the respondent sustained loss in having to take steps to remedy the claimant's malicious actions. Those malicious actions were in breach of the claimant's contract of employment. Subject to the respondent being able to show that it suffered a pecuniary loss the respondent is entitled to succeed on the counter claim.
68. The respondent has not shown that it sustained a pecuniary loss and so I make no award pursuant to the employer's contract claim.

Contributory fault

69. I bear in mind that the claimant was dismissed on the 14 April when it was not known that there had been malicious action taken by the claimant on 11 and 14 April. I am not satisfied that the claimant's conduct contributed to his dismissal in a blameworthy way justifying a reduction in compensation. The claimant was suspended from work because his conduct toward Mrs Francis had led to a breakdown in the relationship with the owners Mr Khorossani and Mrs Fleming.
70. While a proper investigation of the events that includes taking the claimant's viewpoint into account may still have resulted in his dismissal, the claimant's conduct up to the 11 April was not such that I am able to conclude that dismissal was inevitable or even likely. The claimant had taken up a position in respect of Mrs Francis that created obvious problems for the respondent. However, the claimant had an alternative viewpoint to that of Mrs Francis and Mrs Fleming about the role of Mrs Francis. While the claimant would be required to comply with the reasonable instructions from Mr Khorossani and Mrs Fleming, as a director and an employee in a senior role he was entitled to be heard and put forward his position in respect of Mrs Francis. While there was a breakdown in the relationship between the claimant and the owners, Mr Khorossani and Mrs Fleming, I am not satisfied that the claimant's conduct up to that point was so blameworthy as to result in a deduction for contributory fault.

Polkey

71. In respect of Polkey, I am satisfied that had a fair procedure been followed that the claimant would have been dismissed. Had a proper procedure been followed it would have emerged that the claimant had been responsible for a series of malicious acts. The claimant's conduct on 11 April and on the 14 April was malicious and designed to cause damage to the respondent. Notwithstanding the good relationship that the claimant had previously enjoyed with Mr Khorossani it is inconceivable that the claimant's employment would have continued in the light of those events.

Those actions by the claimant were more important than the disagreement between the claimant and the owners about the role of another employee. The claimant's actions of 11 April were carried out before the claimant was dismissed, had the respondent been aware of such conduct I am satisfied that it would have resulted in further disciplinary action and would have been gross misconduct. The claimant's conduct in relation to Mrs Francis and his accessing the proposals document in a confidential file belonging to Mrs Fleming, was in my view action that destroyed the relationship between the claimant and the owners of the business.

72. In my view while it is likely that the claimant could have been fairly dismissed for this conduct it was not inevitable. It was not inevitable because the claimant had enjoyed a good working relationship with Mr Khorossani and if there was a hearing at which the claimant displayed an acknowledgement and understanding of the inappropriateness of his conduct and the willingness to comply with instructions from the owners, it's possible the claimant may have continued in employment. However that didn't happen what happened was that the claimant carried out the malicious acts on 11 April. In light of what is now known the claimant would have been dismissed in any event even if a fair procedure had been followed. That dismissal would have taken place after a reasonable period of time had been afforded to the claimant to prepare for the disciplinary hearing such a period would have been no more than a month.

#### Wrongful dismissal

73. The claimant was dismissed for gross misconduct. The claimant's complaint of wrongful dismissal is therefore dismissed.

#### Remedy

74. The respondent made an unlawful deduction from the claimant's wages and is ordered to pay to the claimant the net sum of £3408.64 (the gross sum is £4758.81).
75. The respondent concedes that the claimant was unfairly dismissed. The respondent is ordered to pay the claimant the sum of £2,569.50 as basic award for unfair dismissal.
76. The respondent is ordered to pay to the claimant the sum of £4,406.55 as a compensatory award for unfair dismissal. The compensatory award reflects that the claimant would have continued in employment for a further period of a month and the fact that the claimant has sustained a loss of his employment rights.
77. I am satisfied that the respondent has unreasonably failed to comply with the ACAS code of practice on disciplinary proceedings and so some sort of uplift is required in this case. I apply therefore a 10% increase to the award for unpaid wages and compensatory award for unfair dismissal. The respondent is ordered to pay to the claimant the sum of £781.52 pursuant to the provisions of section 207A Employment and Labour Relations (Consolidation) Act 1992.

Approved by:

**Employment Judge Gumbiti-Zimuto**

**5 August 2025**

JUDGMENT SENT TO THE PARTIES ON

11 August 2025

FOR THE TRIBUNAL OFFICE

#### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)