EMPLOYMENT TRIBUNALS

Claimant: Mr A Huggett

Respondent: Thompson Valves Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton Employment Tribunal (by CVP)

On: 1 August 2025

Before: Employment Judge Kelly (sitting alone)

Appearances
For the claimant: In person
For the respondent: Mr Pincott of counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal is dismissed.
2. The claimant's claim for breach of contract is dismissed.
3. The claimant's claim for deduction from wages is dismissed.

REASONS

1. By a claim presented on 11 Nov 2024, after a period of early conciliation lasting from 6 Nov 2024 to 11 Nov 2024, the claimant brought claims of unfair dismissal, breach of contract and arrears of pay. At a case management hearing on 23 May 2025, the claimant confirmed that his claim was for breach of contract only. The claimant also confirmed this point at the start of this Hearing.

2. The claimant agreed that he had withdrawn his unfair dismissal claim and it should be dismissed. The arrears of pay claim was not discussed in terms of it being a claim separate from the breach of contract claim.

3. The claimant complained about the purported termination of his employment by the respondent on 5 Nov 2024 which he said was not a termination and he was entitled to further payments and benefits. He described this as breach of contract and wrongful dismissal

4. He also complained about the failure of the respondent to address his subsequent appeal against dismissal and a failure to respond to his grievance. This was the first time these complaints were raised and we agree with the respondent that a successful application to amend the claim would be required to address them. No such application was made. Therefore, these complaints were not considered.

5. The Tribunal therefore set about considering the claim as set out in paragraph 3 above.

6. As set out in the case management order of 23 May 2025, the background to the claim was that the respondent made a conditional offer of employment to the claimant on 9 Oct 2024. The claimant's case was that all the conditions were fulfilled by 4 Nov 2024 and the employment contract came into effect on that date. The respondent disputed that all the conditions were fulfilled and that the contract came into effect on 4 Nov 2024 (or at all). On 5 Nov 2024, the respondent wrote to the claimant withdrawing the offer of employment and informing the claimant that he would be paid one week's notice to which he was entitled under his employment contract.

7. The case management order set out the claimant's two arguments as to why the 5 Nov 2024 email did not terminate his claimed employment:

    a. A purported withdrawal of the offer was not a valid termination of the employment contract;

    b. The contract did not entitle the respondent to terminate his employment during the probationary period except following an assessment of his capability for the role.

8. The claimant claimed 6-7 months earnings, subject to the cap on breach of contract claims in the Employment Tribunal.

9. Further complications became clear at the start of the hearing:

    a. The claimant raised that he was never under the probationary period in his employment. After discussing this suggestion, the claimant accepted that his argument was that his employment did start and he was therefore in the probationary period.

    b. The claimant asserted that he was still employed by the respondent as his employment had not been terminated. The respondent pointed out that, if this were the case, the Tribunal would have no jurisdiction to

consider a breach of contract claim from the claimant. It was not necessary to deal with this point in order to determine the preliminary issue which we have set out below.

c. There was a dispute over the date the claimant's employment began, if indeed it had begun. The respondent said the employment start date was put back to 11 Nov 2024. The claimant initially agreed with this, and then said that his employment did start on 4 November, but his induction was not to take place until 11 November. In order to avoid over complicating the case, it was agreed to work on the assumption that, if the employment had started, it started on 5 Nov 2024.

10. The claimant accepted that the respondent had paid him one week's pay after its email of 5 Nov 2024.

11. We proposed, and the parties agreed, that we would consider the following as a preliminary issue:

    a. Was the respondent's email of 5 Nov 2024 to the claimant effective to terminate the claimant's employment?

    b. If so, were all due payments made to the claimant?

12. By identifying these issues for a decision:

    a. We were putting the claimant's case at its highest IE we were assuming that, contrary to the respondent's case, the claimant's employment had started by 5 Nov 2024. We had to remind the claimant of this assumption in his favour during the course of the hearing when he wished to make unnecessary arguments about whether the pre conditions for his employment starting had been met.

    b. The assumption that the claimant's employment had begun by 5 Nov 2024 was an assumption made solely for considering the preliminary issue.

13. We explained to the parties that, if the claimant lost the preliminary issue, he would lose his claim and it would not be relevant to go into other aspects of the case.

14. The claimant had produced a written witness statement and he was cross examined on it. The respondent had produced a witness statement for Gary Clapcott, managing director. The contents of this statement were not relevant to the preliminary issue. The claimant wanted to cross examine Mr Clapcott and explained that this was to find out why he had been dismissed. We explained to the claimant that this line of questioning was not relevant to the preliminary issue. The claimant accepted this at the time. We did not hear evidence from Mr Clapcott or any other evidence for the respondent. Essentially, there was no dispute over the chronology of events. It was the interpretation of those events which had to be decided.

15. The claimant made written submissions on the difference between withdrawal of job offer and termination of employment, and also general submissions which we considered.

16. Unfortunately, there were two bundles of documents, one prepared by the respondent of 149 pages and one prepared by the claimant of 199 pages.

17. The claimant relied on the case of *Property Guards Ltd vs Taylor and Kershaw 1982* and the respondent relied on the cases of *Sothern v Franks Charlesly & Co [1981] IRLR 278* and *McClelland v Northern Ireland General Health Services Board [1967] 1 WLR 594*. We required the respondent to copy its cases to the claimant and gave him the time he asked for to read them during an adjournment.

18. The case of *Property Guards Ltd* concerns the issue of dismissing for failure to disclose a spent conviction in the context of an unfair dismissal claim. The reason why the respondent chose not to proceed with the claimant's employment offer was not relevant to the preliminary issue. However, the claimant's main concern appeared to be that the respondent's decision was based on a spent conviction and he had difficulty in surrendering that issue during the course of the Hearing.

Background and relevant facts

19. The claimant was a project manager with significant experience of negotiating and dealing with contracts.

20. The respondent made the claimant a conditional offer of a job as projects manager on 15 Oct 2024, to start on 4 Nov 2024, subject to security clearance. The claimant accepted the offer on 9 Oct 2024. On 15 Oct 2024, the respondent sent the claimant a contract of employment to sign, which the claimant signed and returned on 15 Oct 2024.

21. The relevant clauses of the claimant's employment contract are as follows:

    a. Commencement date: 4 Nov 2024.

    b. Probationary period: The initial employment was on the basis of a probationary period of six months. 'During this period, the Company will assess your capability to fulfil your role and reserves the right to terminate your employment, with one week's notice, without any prior warnings or disciplinary hearing. The Company also reserves the right to extend your probationary period should it be deemed necessary.

    c. Payment in lieu of notice: 'The Company reserves the right at its exclusive discretion to terminate your employment with immediate effect and make a payment to you in lieu of your entitlement to notice.'

22. There was then a period of investigation of whether the claimant fulfilled the conditions for the job offer. The respondent purported to withdraw the offer of employment before 4 Nov 2024 because conditions were still outstanding to be

met. However, it then changed tack and unilaterally sought to postpone the start date to 11 Nov 2024 to give time for the investigation to be completed.

23. The claimant's interpretation of this was that his employment still ran from 4 Nov 2024; he said it was just his induction which was postponed.

24. The respondent then definitely decided not to proceed with the job offer. On 5 Nov 2024, the respondent's Nina Norton, HR Manager, wrote to the claimant by email as follows: '*Following a high-level review of your case, we are writing to formally withdraw the offer of the Project Manager role. We will pay you one weeks' notice to which you are entitled under the contract of employment. This will go through our payroll process and be paid to you on 25 November. A p45 will be issued and sent to you by post in due course. Please note that this decision is final and we will not be able to enter any further discussion of it.*'

25. We asked the claimant what he understood by the reference in the email to sending him a P45. The claimant said that it was the respondent making a decision and there was no option for him to discuss it with them and they had made their mind up.

26. The respondent subsequently made the one week's payment referred to. It did not send the P45.

27. On receipt of the email, the claimant texted an HR representative at the respondent saying he had just had another strange email from Ms Norton and was she free to talk? He did not receive a response.

28. On the same day, the claimant responded to Ms Norton as follows: '*I do not understand this email? I have resigned my current position on your company say so and fully expect to start work next week having met all the requirements and signed a contract many weeks ago. It is not a case of a withdrawal of an offer. I have signed a contract. The pay offer is not acceptable either as I will require substantial compensation for the current situation should you wish to terminate my existing contract. Please can you clarify the situation as this has happened before and it was resolved quickly?*'

29. On 6 Nov 2024, Ms Norton responded to the claimant saying the decision was final and the respondent did not recognise any losses beyond the 'notice pay' it would be paying.

30. On 6 Nov 2024, the claimant began the early conciliation process via ACAS.

31. On 8 Nov 2024, Ms Norton wrote to claimant saying ACAS had contacted it and, as previously communicated on 5 November, the offer had been withdrawn, and he should not come to site on 11 November.

32. On 14 Nov 2024, the claimant wrote to Ms Norton saying he expected to be paid from 4 November and was ready and willing to start work and his probation as per the contract terms.

33. On 21 Nov 2024, the claimant wrote that he fully expected to be paid for the contract in force. He said the respondent lost any right to withdraw the conditional offer when it was signed on 9 Oct 2024.

34. On 22 Nov 2024, the claimant wrote to Ms Norton to make it clear he had received no official notice of termination.

35. On 23 Nov 2024, the claimant wrote to Ms Norton saying he could legally enforce the contract of employment from 15 Oct 2024 and asking for correct pay on 25 November, from 4 Nov 2024.

36. On 25 Nov 2024, the claimant wrote to Ms Norton saying he had not been paid as per the terms of his contract. He said that he was paid £1055.12 and was due £3165.36 for the period 4 Nov 2024 to 25 Nov 2024.

37. On 26 Nov 2024, the claimant complained again about the company's conduct.

38. The claimant tried to raise a grievance and implement other internal employment procedures with the respondent which the respondent ignored and Ms Norton wrote that she had nothing to add.

39. On 13 Jan 2025, the respondent's representative wrote to the claimant saying he was not currently an employee of the company.

40. Any other correspondence was in similar terms.

Law

41. Dismissal is defined in the Employment Rights Act 1996 in the context of unfair dismissal claims as follows:

    a. 'For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—

        (a)the contract under which he is employed is terminated by the employer (whether with or without notice),

        (b)he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

        (c)the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

42. The law on express termination of employment is summarised in IDS Employment Law Handbook Contracts of Employment at section 11:

    a. Unambiguous words of dismissal may be taken at their face value without the need to analyse the surrounding circumstances as per *Sothern*. (Further investigation may be required in exceptional circumstances not suggested in this case, such as where the employee's

intellectual capacities are in question, or where words are spoken in the heat of the moment).

b. If words are ambiguous, the Tribunal must look objectively at their meaning and consider all the surrounding circumstances and if the words are still ambiguous, ask how a reasonable employee would have understood them in the circumstances. In *Chapman v Letheby and Christopher Ltd 1981 IRLR 440,* the EAT held that the interpretation of an ambiguous letter should not be a technical one but what an ordinary reasonable employee would understand by the words used.

Arguments

43. The claimant argued that the email of 5 November did not terminate his employment and he was due further sums. He said that the probationary period clause required the respondent to evaluate his performance before he could be dismissed, as was clear from the fact that this was in the same sentence as the dismissal provisions and linked with an 'and'. Therefore, any notice of termination given under that clause was ineffective because there was had not been an assessment of his performance. He argued further that the respondent writing to him to withdraw the offer was not a termination of employment because the respondent could not withdraw the offer once it had been accepted. Once the offer had been accepted, only a termination of employment could end the employment, and this had not been served.

44. The respondent argued that the email of 5 November did terminate the claimant's employment. It said that the text of the probationary period clause was straightforward and standard. Its meaning was than within the probationary period, a shortened period of notice could be given for any reason. If evidence of poor performance were required for termination, it would be expected that this would be set out in the clearest terms. Instead, the clause said that there could be termination without any prior warning or disciplinary hearing. It relied on *McClelland* as authority that a general employment could always be determined on reasonable notice. It followed from this that the fact that an employee was offered a probationary period did not mean that an employer is restricted in being able to terminate employment.

45. The respondent argued that the terms 'withdrawal of offer' and 'termination of employment' meant the same things, particularly in the context where the employee had not yet actually started work. The intention of termination was shown by the email of 5 November then going on to talk about contractual terms of paying one week's notice, which the respondent was entitled to pay under the contract, and saying that the P45 would be issued.

46. The respondent relied on *Sothern* that, where there are unambiguous words, the question of what a reasonable person would understand does not arise. The respondent's position was that the words were unambiguously ones of termination, as per the natural meaning of the words as set out above.

47. If the Tribunal decided the words were ambiguous, the respondent relied on the surrounding circumstances. The respondent wrote to the claimant saying he

should not attend for work on 11 Nov 2024. On the question was what the reasonable person would understand from the words, the natural meaning of the email was that the respondent was terminating the employment, giving notice to which the claimant was entitled, and there would be no further discussion.

Conclusions

Claimant's argument that a purported withdrawal of the offer was not a valid termination of the employment contract

48. We note the claimant's argument that an offer can only be withdrawn before its acceptance, and that the email of 5 Nov 2024 referred to withdrawal of the offer after it had been accepted. However, we consider that the relevant law to apply in this case is whether the words of the email of 5 November effectively terminated the assumed contract of employment following the analysis summarised in IDS Employment Law Handbook Contracts of Employment at section 11. There are either unambiguous words of dismissal or, if not, the question ultimately is how a reasonable employee would have understood the words in the circumstances. We consider that we must look at the impact of the communication between the parties, and not be rigidly constrained by the fact that, technically, an offer can only be withdrawn before acceptance.

49. We consider that the words of the email of 5 November are unambiguous in terminating the employment with immediate effect. In terms of communicating its meaning, withdrawing an offer clearly equates to terminating the employment. This is confirmed by the subsequent reference to paying one week's contractual notice. The statement that a P45 will be issued is unequivocal and communicates that the employment is being terminated. The phrasing indicates that the termination of employment was to take place now, not at some date in the future.

50. Therefore, we consider the respondent's email of 5 November effective to terminate the claimant's employment with immediate effect.

51. If we are wrong on this and the wording of the email is thought to be ambiguous, we note relevant surrounding circumstances:

    a. The respondent thought that the conditions had not yet been met and so withdrawal, rather than termination, was appropriate.

    b. The respondent said the claimant should not attend the workplace.

    c. The claimant knew that the respondent thought the conditions had not been met and so had delayed his start date to 11 November.

52. We do not consider this settles the matter and think it appropriate to consider what a reasonable employee would have understood in the circumstances. We consider the words 'withdrawal of offer' read in the non technical but ordinary sense mean that the employment is not happening; it is stopped. The reference to paying notice clearly refers to a notice payment on termination of employment. The reference to sending a P45 is clearly relating to a termination

of employment. The claimant's evidence on reference to the P45 was that he considered it showed the respondent had made up its mind without discussion. We consider it plain that the making up of the mind to which the claimant was referring was the decision to terminate his employment and that the claimant knew this was the intention of the letter.

53. We consider that the meaning of the letter to an ordinary, reasonable employee is plain. It would be understood that the employment was being terminated. The email was, therefore, effective to terminate the claimant's purported employment.

Claimant's argument that the contract did not entitle the respondent to terminate his employment during the probationary period except following an assessment of his capability for the role

54. We consider that the correct interpretation of clause 12 Probationary Period is that the respondent could terminate the employment on one week's notice without fulfilling any pre condition. There was no requirement on the employer to assess the employee's capability to fulfil his role in order to terminate the employment.

55. The second sentence of clause 12 contains two provisions which are separate from each other:

    a. During the probationary period, the respondent would assess capability to fulfil the role;

    b. During the probationary period, the respondent could terminate the employment on one week's notice.

56. The fact that these two provisions are linked by 'and' cannot be interpreted as meaning that the right to terminate was dependent on the assessment of capability. This is confirmed by the fact that, if assessment of capability had been required, the clause would not have stated that there was no need for warnings or a disciplinary hearing. However, merely reading the second sentence on its own, the inclusion of 'and' does not mean that capability had to be assessed before there could be a termination. It is merely a compound sentence linked by a conjunctive, 'and'. The relationship between the two parts of the sentence is merely that both took place during the probationary period, not that the second part was reliant on the first part.

57. This is a straightforward probationary period clause setting out its purpose of assessment of capability and giving the right of termination on a week's notice. To read more into it, as argued by the claimant, would be exceptional and is not justified.

58. Therefore, the respondent was entitled to terminate without an assessment of capability.

59. We conclude that the respondent effectively terminated the claimant's purported employment with no breach of contract.

60. The respondent paid in lieu of the one week's notice and under clause 14 of the employment contract, it could pay in lieu of this notice, which it did, so that no further sum is due.

61. Accordingly, the claimant's claim for breach of contract is dismissed.

62. As for the claimant's complaints over the failure to deal with grievances and give an appeal, we have already noted that these do not form part of the claim. However, we will make some comments which should be considered *obiter* to assist the claimant in understanding the legal situation. The contract did not give the claimant a contractual right to have his appeal heard, nor to have his grievance dealt with. The contract merely mentioned relevant procedures, so fulfilling the requirements under the Employment Rights Act 1996 to put certain information in contracts of employment. Furthermore, as the claimant's employment had ended, he would have had no entitlement to use the procedures. If the claimant had pursued such a claim, it would therefore have been misconceived.

63. We also dismiss the unfair dismissal claim further to its withdrawal by the claimant.

64. As for the arrears of pay claim, it appears that this was withdrawn by the claimant at the case management discussion and so should be dismissed. If that is not the case, any claim by the claimant for arrears of wages must be unsuccessful on the basis of the conclusions reached on the breach of contract claim above. The claimant's claim for arrears of pay is dismissed.

Employment Judge Kelly

Approved on 6 October 2025

Sent to the parties on
08 October 2025
For the Tribunal

Note
Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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