EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001459/2025

Held in Edinburgh via Cloud Video Platform (CVP) on 29 October 2025

Employment Judge M Robison

Mr J Wilson	**Claimant** **In Person**
Sisaltech Ltd	**Respondent** **Represented by:** **Mr D Milne -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claims are not well-founded and are dismissed.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 10 June 2025 claiming unfair dismissal, wrongful dismissal and breach of contract. He subsequently confirmed that he is not pursuing a claim of unfair dismissal because he did not have two years' service with the respondent.

2. A list of issues was agreed between the parties, the essential issues for determination being as follows:

    a. Did the respondent breach the claimant's contract of employment (relying on the failure by the respondent to follow a contractual disciplinary policy and procedure prior to terminating the claimant's employment and in particular, the failure to issue a warning, conduct a performance review or capability meeting and to follow a fair consultation process)?

    b. Does the respondent have a contractual disciplinary policy and procedure, and if so was it breached?

c. Was the claimant's contract of employment terminated in accordance with the terms of his contract?

3. The Tribunal heard evidence on oath from the claimant and from Mr John Ferguson, founder and CEO of the respondent.

Findings in fact

4. The Tribunal finds the following relevant facts approved or agreed.

5. The respondent makes sustainable installation products for thermal and acoustic insulation of building. It was established in October 2014. By May 2025, it had five staff.

6. The claimant commenced employment with the respondent on 1 September 2023 as a marketing executive, the claimant having signed a contract of employment on 31 August 2023.

7. The contract stated at paragraph 18 under the heading discipline, at 18.2 that "the disciplinary rules applicable to your employment are set out in the Company Disciplinary Policy and Procedure. This policy does not form part of your terms and conditions of employment. A copy will be provided to you with this contract of employment".

8. No such disciplinary policy/procedure ever existed.

9. Under paragraph 19, termination of employment, it stated at 19.2 that "after successful completion of any probationary period, your employment may be ended by you giving the company one month's written notice. The Company will give you one month's written notice….".

10. John Ferguson had, on occasion, brought certain matters relating to the claimant's performance to the claimant's attention informally.

11. In or around March 2025, the respondent engaged a corporate marketing officer, Darcie Tanner. She had some concerns regarding the claimant's performance which she raised in an e-mail to John Ferguson dated 29 April 2025.

12. On 2 May 2025, John Ferguson telephoned the claimant to advise that a decision had been made to terminate his employment. The claimant was advised that this was because the respondent did not believe that the claimant could provide the level of marketing required for the respondent to achieve its vision in relation to growth. The claimant was advised that he was being given one month's notice. He was not required to work for that month.

13. The claimant responded asking for two months' notice because he did not believe that he could find another job within one month. John Ferguson, believing that to be a reasonable request, said he would ask the board.

14. On 4 May 2025, the claimant e-mailed John Ferguson to advise that, "given that I was not subject to any warnings, performance issues, or consultation process, and that my position is being directly replaced, I believe the decision constitutes a dismissal rather than a genuine redundancy and may give rise to a claim for unfair dismissal. While I do not yet have two years' of service, the lack of process, the replacement of my role, and the reputational implications for the company create a situation I would prefer to resolve swiftly and professionally…I propose to settle this matter fully, without resource to ACAS or an employment tribunal, for a payment equivalent to three months' gross basic salary….I am prepared to sign a settlement agreement…."

15. John Ferguson replied by e-mail dated 6 May 2025, stating that there had been no mention of redundancy and "the fact is simply that the board do not believe you will be able to deliver what is required going forward. Darcie has highlighted several areas of your performance which she has asked you to improve on multiple times and there has been no improvement. I was currently pushing for your request of two months but I'm pretty sure that won't happen if you go down this route…"

16. In subsequent telephone discussions trying to reach an agreement, John Ferguson said that he wanted to resolve the matter amicably and that he was happy to give him a good reference.

17. The claimant was paid one month's notice, accrued holidays and accrued commission and salary in full.

Tribunal deliberations and decision

18. The claimant in this case makes claims for wrongful dismissal, and separately for breach of contract. These claims relate to the termination of the claimant's employment. The claimant accepted that he could not claim unfair dismissal because he did not have the requisite two years' service. He confirmed that he is no longer pursuing stigma damages.

19. The claimant believed that he had been wrongfully dismissed in breach of contract because of the failure of the respondent to undertake any procedure at all in connection with his dismissal. He said that the decision was pre-meditated but that he had received no warnings, there were no meetings and there was no consultation with him or opportunity given to him to improve.

Contractual status of disciplinary policy

20. The claimant argued that his treatment was in breach of his contract, specifically that it was in breach of the respondent's disciplinary policy. The claimant did not however specifically recall receiving a copy of the disciplinary policy. While he did recall receiving some documents during his induction, he described them as a handbook and was not sure whether that included the disciplinary policy. In any event, he did not have a copy and no copy was lodged.

21. It became apparent that no copy was lodged because none existed. This was the evidence of John Ferguson who explained that in such a small company their terms of engagement with staff were only on the basis of the contract issued. I accepted his evidence about that, because that was plausible for such a small company with so few staff and because the claimant was in any event unsure what documents he had been issued with and was not able to produce it.

22. The claimant however argued that the absence of any procedure despite a reference to it in the contract of employment made his treatment all the more unfair.

23. Another reason why I accepted John Ferguson's evidence was because the existence or otherwise of a policy did not make any difference in this case. That was because the contract made it clear that, even if one had existed, it did not form part of the terms and conditions of employment, that is it was not contractual.

24. Relying on the relevant case law (most recently *Wood v Capita Insurance Services* 2017 UKSC 24), Mr Milne argued that, applying ordinary principles of contractual interpretation, that a reasonable person would understand that the disciplinary procedure was not part of the contract of employment. I considered it to be clear from the contract of employment that any disciplinary policy which might exist or be followed was not in any event contractual.

25. Mr Milne therefore argued that the respondent could dismiss the claimant lawfully without following any procedure at all, subject only to the provision of notice.

Wrongful dismissal (failure to comply with disciplinary procedures)

26. A claim for wrongful dismissal, which is essentially a claim for damages for breach of contract, might give rise to a valid claim for damages where there had been a failure to follow a contractual disciplinary procedure. That would relate only to the period necessary for the respondent to comply with the requirements of any procedure.

27. In this case there was however no procedure laid down in contract. As is common in any event, the contract states in terms that, even if there was a disciplinary procedure, it did not form part of the claimant's contractual terms of employment.

28. Accordingly there was no breach of the claimant's contract, because there was no obligation or contractual requirement for the respondent to issue any formal warning, or to conduct a performance review, capability meeting or investigation before termination or even to consult the claimant or give him an opportunity to respond. There was no contractual requirement for the respondent to conduct itself in that way and the fact that termination occurred summarily without process, warning or support is not a breach of any express term of the contract.

Wrongful dismissal (failure to pay notice)

29. Otherwise, a claim of wrongful dismissal will only be successful where there is found to have been a failure to pay notice in breach of a provision requiring notice.

30. Damages are usually limited to the period between dismissal and the point at which the claimant's contract could lawfully been brought to an end, that is whatever the contractual notice period was.

31. In this case, on the termination of employment, the only contractual requirement was for the company to give one month's written notice.

32. The respondent did give the claimant one month's notice, for which the claimant was paid in full. Although the contract states that it should be given in writing, in this case notice was given verbally. To that extent only it might be said that there is a breach of contract, because notice was given verbally, but not in writing. However, as Mr Milne pointed out, even if that were the case, then there can be no losses which flow from any failure to provide notice in writing because he was paid his full notice pay.

33. The only contractual requirement on termination was for one months' notice which was paid, along with all of the other sums which the claimant was due on termination.

Breach of contract (breach of implied term of trust and confidence)

34. The claimant also argued that the decision to dismiss him and to replace him with another marketing executive was premeditated and a breach of the implied term of trust and confidence. Mr Ferguson accepted in evidence that he had decided to dismiss the claimant and to replace him with another marketing executive and perhaps self-evidently, he had decided to dismiss him before he told him that he

was dismissed. The respondent was of course entitled to act in that way since it could not be said that to do so was a breach of contract.

35. The claimant argued that to dismiss him in this way was a breach of trust and confidence and that the respondent was, despite his length of service, still under an obligation to follow a fair process and that even without a policy the respondent was obliged to comply with the legal duty to act in a fair and reasonable manner, which he said was “the cornerstone of a wrongful dismissal claim".

36. The difficulty for the claimant is that the argument about the manner of dismissal amounting to a breach of the implied term of trust and confidence has been considered by courts at the highest levels, including the Supreme Court, and it has been decided that the implied term of trust and confidence does not apply to the manner of the dismissal. This is because the implied term of trust and confidence is essential to the preservation of the employment relationship but is not relevant for and does not apply to the way that that relationship is terminated because there is no ongoing relationship. The seminal case which deals with that is *Johnson v Unisys Ltd* 2001 ICR 480, in which the House of Lords (equivalent to the Supreme Court) confirmed this stating that the manner of termination of employment is governed not by wrongful dismissal but by unfair dismissal under the Employment Rights Act 1996 where two years’ service is generally required.

37. There were subsequently a number of decisions of the Supreme Court (in particular *Eastwood v Magnox Electric plc* 2004 ICR 1064) where the courts have suggested that the implied duty of trust and confidence does apply to the actions of the employer before the dismissal. This is to be contrasted with what gets called *the Johnson exclusion*, and was referred to by Mr Milne, who argued that the conduct in this case was firmly in that category. I agreed with him. In fact in this case the claimant relies specifically on the fact that the respondent did not take any steps before dismissing him, so it could not be said that the way that any disciplinary procedure was applied to the claimant before dismissal was a breach of the implied term, or caused the claimant any loss.

38. As I understood it, the claimant argued that those cases related to unfair dismissal but in fact those cases were very particularly not dealing with unfair dismissal because they were dealing with the common law concept of wrongful dismissal.

39. Mr Milne relies on statements of Lord Dyson in *Edwards v Chesterfield Royal Hospital* 2011 UKSC 58, which is also a decision of the Supreme Court, and which he says sets out this principle most clearly: “It is now well established that an employment contract is subject to an implied term that the employer and employee may not, without reasonable and proper cause, conduct themselves in a manner

likely to destroy or seriously damage the relationship of confidence and trust between them: *Malik v Bank of Credit and Commerce International SA* 1997 IRLR 462. In *Johnson v Unisys Ltd* 2001 IRLR 279, the claimant sought to rely on an alleged breach of this implied term, not as a foundation for a statutory claim for unfair dismissal or as a foundation for a claim for damages unrelated to dismissal, but as a foundation for a claim at common law for damages for the manner of his dismissal. But the House of Lords refused to extend the implied term to allow an employee to recover damages for loss arising from the manner of his dismissal because….such a development of the law would be contrary to the intention of Parliament that there should be such a remedy, but that it should be limited by the statutory code regarding unfair dismissal now to be found in the Employment Rights Act 1996….[this principle was] was reaffirmed by the majority of the House of Lords in *Eastwood v Magnox Electric plc* and *McCabe v Cornwall County Council* 2004 IRLR 763….Loss arising from the unfair manner of a dismissal is not therefore recoverable as damages for breach of the implied term of trust and confidence: it falls within what has been called the '*Johnson* exclusion area'."

Breach of contract (references)

40. As I understood it, there was another claim which was being made by the claimant and in particular, the claimant claims that John Ferguson "threatened" that purusing the legal route could affect the claimant's reference for future employment. As I understood it the claimant suggests that this was also a breach of contract, although it was not specifically referenced in the list of issues.

41. Mr Milne argued that John Ferguson's evidence should be accepted, that no threat was issued, but even if the claimant's evidence was to be preferred, it was not clear that it was a threat. Rather this was what he had taken Mr Ferguson to mean, but it was clear that no threat was issued, only that his was what the claimant had understood from what had been said, that he was suggesting that he would not give him a good reference. In any event, Mr Milne argued, the tribunal had heard no evidence about any losses which flow from a breach like that so even on the claimant's case he is not entitled to any damages. Further, relying on relevant case law, he argued that the respondent is not under any obligation to provide a reference even if they are asked which in any event has to be factually accurate. The claimant's claim Mr Milne argued was premature because he had not suffered any losses because would only be if the respondent had provided an inaccurate reference that the claimant could pursue any claim.

42. I agreed with Mr Milne that there was no valid claim being pursued in regard to the reference. While it is therefore not material, I preferred the evidence of Mr Ferguson which was entirely plausible, that is that his reference to "that route" did mean the

"legal route". That was what the claimant was suggesting he would do and having originally sought two months' notice he was then suggesting three, when he was entitled only to one. I did not view this as anything to do with the dismissal but even if the claimant's interpretation of what was said was right, then this conduct was post termination

43. and could not be argued as a breach of trust and confidence since the relationship had already come to an end.

Conclusion

44. Accordingly, none of the claimant's claims are well-founded and are therefore dismissed.

Date sent to parties **11 November 2025**