EMPLOYMENT TRIBUNALS

Claimant: Dmitrij Jakubovschij

Respondent: Adugs Foods Ltd

Heard at: Watford Employment Tribunal (by video) **On:** 6&7 November 2025
Before: Employment Judge Taft

REPRESENTATION:

Claimant: Mr Sadygov (Apprentice Solicitor)
Respondent: Mr Giani (Counsel)

JUDGMENT

1. The complaint of unfair dismissal is well-founded. The Claimant was unfairly dismissed.

2. The complaint of breach of contract is well-founded. The Claimant was wrongfully dismissed without notice in breach of contract.

3. The complaint in respect of holiday pay is not well-founded.

4. When the proceedings were begun, the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars.

REASONS

Introduction

1. This is a claim for unfair dismissal, wrongful dismissal and unpaid accrued holiday pay arising out of the termination of the Claimant's employment with the Respondent.

2. There was initially a dispute as to whether employment began in June or September 2021, with unusually the Claimant suggesting that employment began later. During the hearing, the Claimant conceded that employment began in June.

3. The Claimant says he was dismissed without notice and without fair reason on 16 August 2024. The Respondent says he resigned without notice. The Claimant says that the Respondent did not pay him in respect of accrued but untaken holiday at the date of termination. The Respondent says that there was no accrued but untaken holiday at the date of termination. The parties agree that the Respondent did not provide the Claimant with a written statement of employment particulars.

4. The Respondent had attempted to bring a contract claim but all matters said to be a breach of contract on the part of the Claimant fall within Article 5 of the Extension of Jurisdiction Order 1994. The Employment Tribunal does not therefore have jurisdiction to consider that claim.

Issues

5. The key issue in this case is whether or not the Claimant was dismissed. At the conclusion of submissions, the Claimant's representative began to talk about constructive dismissal. I stopped him because he had not identified constructive dismissal as an issue when we discussed them at the start of the hearing. We had heard no evidence on constructive dismissal, and the Respondent had by then already concluded submissions. It was simply far too late to be introducing this as an issue. The Claimant then conceded that his claim was one of express dismissal alone.

6. If the Claimant was dismissed, the Respondent did not plead a reason for dismissal. Whilst the Respondent's Counsel sought to suggest that the matters pleaded in the section of the ET3 referring to its attempted contract claim were a pleaded reason for dismissal, they were not: they refer to matters occurring after dismissal. The Respondent did not apply to amend its response to assert a reason for dismissal. It was agreed therefore that if I were to find that the Claimant was dismissed, he was unfairly dismissed.

7. Further, given that the Respondent did not suggest that the Claimant had committed gross misconduct, it was further agreed that if the Claimant were dismissed, he was wrongfully dismissed without notice.

8. Both parties agreed that the Claimant was entitled to statutory holidays of 5.6 weeks under the Working Time Regulations 1998. The issues before me were how much holiday the Claimant had accrued in the holiday year ending with the termination of his employment, and how much holiday he had taken in that holiday year.

Law

9. Section 86 Employment Rights Act 1996 provides that where an employee has been employed for between two and twelve years, his employer is required to give him one week's notice per complete year of continuous employment.

10. Section 95 defines dismissal. As one might expect, an employee is dismissed if his contract is terminated by the employer, with or without notice. If express words such as "you are dismissed" or "I have resigned" are not used, I must look to the words that are used, and the surrounding circumstances, to ask myself whether a reasonable employer or employee would have understood the words and actions to amount to a dismissal or resignation.

11. Section 98 provides that it is for an employer to show the reason for a dismissal and that it falls within one of the potentially fair reasons within S98(2) or is some other substantial reason of a kind to justify dismissal. I need not go on to discuss s98(4) because the Respondent does not adduce a fair reason for dismissal.

12. Regulations 13 and 13A Working Time Regulations 1998 together provide the right to 5.6 weeks holiday per year, or 28 days for an employee who, like the Claimant, works 5 days per week. Regulation 13(3) provides that the worker's leave year begins either on such date as is provided in a relevant agreement or on the date employment began and each subsequent anniversary.

13. Regulation 2(1) defines a relevant agreement as

> *"a workforce agreement which applies to* [the worker]*, any provision of a collective agreement which forms part of a contract between* [the worker] *and his employer or any other agreement in writing which is legally enforceable as between the worker and his employer."*

14. Regulation 14 provides that an employee is entitled to compensation for any leave he has not taken in the leave year in which his employment ends. Reg

14(3) provides a formula to calculate that entitlement so that he is entitled to the proportion of the annual entitlement that has accrued less any days taken.

15. It is trite law that credibility of a witness is assessed by examining what they say about the matter in issue and assessing that against contemporaneous documents where they exist. Judges are not assisted by hearing evidence about other matters – for even if a witness may lie about one matter, it does not necessarily mean that they are lying about everything.

Evidence

16. I heard evidence from the Claimant and from Eduards Livmanis, Alggirdas Zavackas, Karolina Kutkaite, Emilija Livmane, Dali Kurtanidze and Artis Seikstuls for the Respondent, who were among twelve witnesses who had provided statements. Because there was confusion over which witnesses Respondent was calling, I reviewed some statements for witnesses who were not called. I gave very little weight to those statements from witnesses who were not called.

17. There was a bundle from the Respondent of 364 pages, including the statements. I reviewed those documents to which I was referred. The Claimant had also submitted a bundle but the only document I considered from that bundle was the Claimant's supplemental statement. The Respondent had also submitted pay documents and a holiday schedule. I reviewed a payslip from 5 July 2021 and the holiday schedule, after that was said to be agreed by the Claimant.

18. I restricted both advocates' cross examination to the issues in question: whether or not the Claimant resigned or was dismissed, what holiday he had accrued and what holiday he had taken in the holiday year. I had to remind both on more than one occasion that their cross examination should be so restricted in order that we were able to conclude evidence in time for me to give judgment during the two-day hearing.

19. Evidence from the Respondent's witnesses was problematic in that much of what was said in oral evidence about the key issue of whether the Claimant was dismissed or resigned was not contained in their written statements. All the statements contain a paragraph confirming that the Respondent's representative prepared them based on information provided by the witnesses. But all the witnesses giving evidence claimed to have written the statements themselves. The fact that a matter confirmed in oral evidence is not contained in a witness statement does not necessarily affect credibility: what affects credibility is where evidence is inconsistent with a statement or

documents or where evidence given by two witnesses about the same matter is inconsistent.

Findings of Fact

20. The Respondent is owned and run primarily by Eduards Livmanis. He has family members working in the business – his sister and wife assist with administrative matters.

21. The Claimant commenced employment with the Respondent on 25 June 2021. We see that from the joining statement and from the payslip dated 5 July 2021 that shows he had by then earned £2000. The Claimant was not given a statement of particulars either then or at any time throughout his employment.

22. Emilija Livmanis says that there was a holiday policy in a staff handbook. She said that this indicated that the Respondent's holiday year followed a calendar year. That document was not adduced in evidence.

23. By July 2024, the Claimant's role was that of sales manager, running a team of sales agents. He had set up a WhatsApp group to communicate with those sales agents. The Claimant had the use of a company car, which he needed for business travel. I make no further findings on what happened during the Claimant's employment because that is not needed to determine the question of whether Claimant was dismissed.

24. The Respondent's holiday records show that the Claimant was on holiday for two days in January 2024, eight days in April, seven days in May and five days in July.

25. In July 2024, Claimant went on holiday for a week. During that holiday he injured his ankle. He contacted Mr Livmanis to inform him that he could not drive, though he offered to work from home. Mr Livmanis indicated that the Claimant should take sick leave.

26. Mr Livmanis was not happy with the Claimant's performance. In oral evidence, Mr Livmanis said that whilst he had performance concerns, the Claimant would have been given opportunity to improve and that he envisaged giving the Claimant a year to demonstrate improvement.

27. The Claimant returned to work in mid-August. Mr Livmanis asked him to come in on Friday 16 August to train up a new sales agent. This was not the Claimant's usual working day because he worked Sunday to Thursday.

28. The Claimant had not been at work long before Mr Livmanis asked to speak to him. He asked the Claimant to return his car keys. The conversation became heated.

29. The Claimant says that Mr Livmanis asked for his keys and asked him to write a resignation letter and that he refused. The Claimant says that Mr Livmanis then told him he was dismissed and asked him to return the rest of his company property – a laptop, tablet and scanner.

30. Mr Livmanis agrees that he asked to speak to the Claimant and asked him to give back his company car keys. He said in oral evidence that he asked for the car keys to push the Claimant to improve his performance.

31. In his witness statement, Mr Livmanis says that the Claimant stormed out and left the premises for thirty minutes before returning, handing him the keys and told him he was not working for the Respondent any more. He said that Claimant told him to *"fxxx off"*. The statement goes on to say that Mr Livmanis followed the Claimant to ask him to stay and hand over his work and that the Claimant repeatedly told him to *"fxxx off"*.

32. In oral evidence, Mr Livmanis said that when the Claimant returned after thirty minutes, he went into the office and dropped the keys and said he was leaving. He didn't mention the foul language detailed in the statement. He admitted that he asked the Claimant to write a resignation letter but said that this was because the Claimant had resigned. He said that his wife Inna and sister Emilija witnessed the conversation.

33. Inna Livmane did not give oral evidence but did provide a statement. That statement does not indicate that she witnessed the conversation on 16 August.

34. Emilija Livmanis did give oral evidence about 16 August, though again her statement does not cover the conversation. Her statement says that *"it came as a surprise to learn that the Claimant had resigned"*. This is odd wording if she indeed witnessed the conversation in which he resigned, even accounting for the fact it is a statement not in her first language.

35. In oral evidence Emilija Livmanis said that she overheard the conversation due to the open door between her office and the office in which Claimant and Mr Livmanis were speaking. She said that the Claimant threw the keys on the table and said he was leaving. She didn't mention the foul language described in Mr Livmanis' statement. She then said that the Claimant didn't resign by her understanding of what that meant – which would be to write a formal letter -

but he walked out. When I asked her what he said exactly and in which language, she said that they spoke in Russian and that he said he was leaving before correcting herself to say resigning was a better translation.

36. The Claimant points out that he couldn't have used own car for work because he didn't have insurance for business purposes. This was part of the reason he understood that Mr Livmanis was dismissing him when he asked for the company car keys. The Claimant says that he could not afford to resign because he had financial commitments including his mortgage and a property purchase.

37. I prefer the evidence of the Claimant as to what happened on 16 August because Eduards and Emilija Livmanis are inconsistent - they were inconsistent between their statements and oral evidence, in some cases inconsistent within what they said in oral evidence and in some cases inconsistent with each other.

38. On 16 August, the Claimant sent a WhatsApp message to the sales agent group

> *"Thanks to everyone for nice working time spent together, but unfortunately my and Adugs way split today. Hope I haven't done anything bad to anyone and thank you for your support"*

39. That does not assist us because it does not say whether the Claimant was dismissed or resigned.

40. Karolina Kutkaite gave evidence about a conversation she had with the Claimant on 18 August. Her witness statement prepared in English says that the Claimant told her he had resigned, that Mr Livmanis was dissatisfied with his performance and that he no longer wanted to work with the Respondent. She said that the Claimant regularly contacted her by phone after that and that he was satisfied with his decision to leave.

41. In oral evidence with the assistance of a Lithuanian interpreter, she said that the Claimant told her he had left because he had had enough. On further questioning, she said that he said he was leaving and didn't want to continue working for the Respondent. When pressed that this was not the same, she said that the reason for the difference may be due to language.

42. I do not accept Ms Kutkaite's evidence because of her inconsistencies. I am not satisfied that the Claimant told her that he left because he had had enough or that he decided to leave.

43. Artis Seikstuls gave evidence about the Claimant attending to collect his belongings on 18 August, when he spoke to staff in the cold room. He was clear that the Claimant did not give his reason for leaving, i.e. whether he resigned or was dismissed.

44. Dali Kurtanidze gave evidence about a phone call on 18 August in which she said the Claimant told her that he resigned. She did not say this in her witness statement. She didn't say it until the very end of her evidence when I asked her exactly what he had said. Before that, she had talked about her impression from what the Claimant had said about being happy to move on. I do not accept her evidence on this point - I do not accept that the Claimant told her that he had resigned.

45. Algirdas Zavackas gave evidence with the assistance of a Lithuanian interpreter that, a few days after 16 August, the Claimant told him he had left – that he hadn't said that he resigned but that he had left the job.

Conclusions

46. I find that Claimant was dismissed. He did not resign. Mr Livmanis might not have used the word dismissed or its Russian equivalent, but he asked the Claimant to write a resignation letter. When he refused, he told him to return company property – not just the car keys but all company property. In circumstances where the Claimant had not resigned, a reasonable employee would have understood that meant he was dismissed.

47. I find that all of the Claimant's messages and conversations as described in my findings of fact above are consistent with a dismissal. It is not surprising that a senior employee does not want to tell his subordinates that he was dismissed. He used neutral language in the 16 August message and did not give a reason for leaving in the 18 August meeting. That is consistent with professionalism, as Mr Sadygov put it. It does not indicate one way or another whether or not he was dismissed or resigned.

48. The witnesses who gave evidence about later phone calls to a large extent focused on the fact that Claimant did not want to return to the Respondent. That again is consistent with a dismissal: it is not surprising that an employee who had been dismissed in the circumstances the Claimant described would not want to return, and that he might put a positive spin on that when speaking with ex colleagues, particularly those who were subordinate to him.

49. I have found that the Claimant was dismissed without notice, i.e. wrongfully dismissed. He had three complete years' service – from June 2021 to August

2024. He was entitled to a week's notice for each complete year, i.e. three weeks.

50. The Claimant was unfairly dismissed because the Respondent has neither pleaded a fair reason for dismissal nor adduced any evidence of a fair reason for dismissal. Mr Livmanis expressly stated that he did not intend to dismiss the Claimant for reason of capability.

51. No "relevant agreement" set out the holiday year. It may have been the practice of Respondent to work in calendar years, but Regulation 2(1) defines a relevant agreement as a written agreement. No such agreement was adduced in evidence. I therefore find that the holiday year commenced on the anniversary of the Claimant's employment. The final holiday year commenced on 25 June 2024 and lasted until 16 August 2024 – 52 days.

52. That is 14.25% of the holiday year – 52 of 365 days. 14.25% of 28 days is 3.99 days, which should be rounded up to 4. The Claimant had taken 5 days in July 2024 so there was no untaken holiday accrued at termination.

53. Were I wrong about the holiday year, 1 January 2024 to 16 August 2024 is 228 days. That is 62.47% of the holiday year. 62.47% of 28 days is 17.5 days. The Claimant had taken 22 days in 2024 so there was no untaken holiday accrued at termination.

54. The parties agreed there was a failure to provide written particulars.

Approved by:

Employment Judge Taft

1 December 2025

Judgment sent to the parties on:

5 December 2025

For the Tribunal:

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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.

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