



EMPLOYMENT TRIBUNALS

Claimant: Mr Joshua Thompson

Respondent: MXTreality Limited

Heard at: London Central Employment
Tribunal (by CVP)

On: 9 and 10 October
2025

Before: Employment Judge A Close

REPRESENTATION:

Claimant: Mr Joshua Thompson

Respondent: Mr Toby Pettinger

JUDGMENT

The judgment of the Tribunal is as follows:

Unfair dismissal

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
2. The respondent shall pay the claimant a compensatory award of £2,281.83.

Profit share

The claimant's complaint of breach of contract in relation to profit share is not well-founded and is dismissed.

Backdated pay - June 2024

1. The claimant's claim for breach of contract in relation to the failure of the respondent to pay backdated pay in June 2024 is well-founded.
2. The respondent is ordered to pay the claimant £2,500. This sum is expressed as a gross amount with the expectation that the respondent will pay it to the claimant after deduction of tax.

Failure to provide payslips

The claimant's claim that the respondent failed to provide him with payslips for the period between August and November 2024 in accordance with section 8 of the Employment Rights Act 1996 is well-founded and succeeds.

The claimant's claims in relation to the failure to pay a statutory redundancy payment and bonus entitlements pursuant to his contract of employment were withdrawn by the claimant and are dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as a Programme Manager between 1 July 2018 and 25 November 2024.

Hearing

2. The respondent had not complied with the Tribunal's directions prior to the hearing. It had not disclosed its documents to the claimant, had not produced a bundle or a witness statement for Mr Pettinger, its only witness.
3. The claimant had produced a witness statement and had prepared a bundle for use at the hearing.
4. Despite the respondent's failure to comply with the directions neither party sought an adjournment and both parties wished to proceed and I agreed that it was in the interests of justice to do so. It was agreed that, as the respondent had not exchanged any witness statements with the claimant in relation to its only proposed witness, Mr Pettinger, that the respondent could rely upon its ET3 form as the evidence in chief of Mr Pettinger. We relied upon the claimant's bundle for the documents.
5. I heard evidence at the hearing from the claimant and Mr Pettinger, the Managing Director of the respondent. I also considered the claimant's witness statement and the documents to which I was referred within the bundle.

Issues

6. At the start of the hearing and during the course of the hearing the issues were narrowed to the following three claims:
 - 6.1. Unfair dismissal.
 - 6.1.1. What was the respondent's reason or principal reason for its dismissal of the claimant for the purposes of section 98(1) of the Employment Rights Act 1996 ("ERA 96")? The respondent says it was redundancy.
 - 6.1.2. Did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant for the purposes of section 98(4) of the ERA96? In particular whether:

- 6.1.3. the respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - 6.1.4. the respondent adequately warned and consulted the claimant;
 - 6.1.5. the respondent took reasonable steps to find the claimant suitable alternative employment;
 - 6.1.6. the dismissal of the claimant was within the range of reasonable responses.
- 7. Breach of contract
 - 7.1. Whether there was a contractual obligation of the respondent to pay the claimant a profit share of £10,000 at the end of 2023;
 - 7.2. If so, was that contractual obligation breached and was such failure outstanding on the termination of employment?
 - 8. Breach of contract
 - 8.1. Whether there was a contractual obligation to pay backdated pay to the claimant of £2,500 in June 2024?
 - 8.2. If so, was that contractual obligation breached and was such failure outstanding on the termination of employment?
 - 9. Failure to provide payslips
 - 9.1. Whether the respondent was in breach of its obligations to provide itemised payslips to the claimant before or at the time he was paid between August and November 2024 pursuant to section 8 ERA 96?
 - 10. The claimant clarified that he did not bring claims relating to entitlement to a statutory redundancy payment and any other entitlement to bonus except in relation to profit share.

Findings of fact

- 11. The claimant started work for the respondent as a Programme Manager on 16 June 2018 and the parties entered into a written employment contract dated 16 June 2018.
- 12. Both parties agree that there was some discussion around profit share in 2022 and 2023 but the terms of that profit share were not finalised or formally implemented. The profit share was not mentioned in the written employment contract.
- 13. On 12 January 2024 Mr Pettinger sent the claimant an email [P34 B]. That email proposed that the claimant's pay would increase from £50,000 to £55,000 by mid-year 2024 but that the increase would, at that time, be back dated to the start of the year. It was also proposed that the claimant's salary would then increase to £60,000 by the end of 2024 but, again, that such increase would be backdated to the mid-year.
- 14. On 6 June 2024 the claimant informed the respondent of health issues, namely depression and that he was undergoing investigations/assessment for ADHD and Autistic Spectrum Disorder.
- 15. Towards the end of 2024 the respondent faced severe financial difficulties with the loss of several key projects/programmes. This was accepted by the claimant.
- 16. Mr Pettinger concluded that it was necessary for it to make redundancies because of the consequent loss of revenue. As there were no ongoing projects/programmes for the claimant to manage, Mr Pettinger concluded that there was not sufficient ongoing work for the role of Programme Manager and that this should be made redundant. The claimant was the only employee performing this role and therefore he was in a pool of one.

17. I accept Mr Pettinger's evidence that the respondent did not have any alternative employment to offer the claimant at this time.
18. Mr Pettinger concluded that notice of termination should be given immediately to the claimant and that it should not consult with him because it was concerned about the security of client data and the claimant continuing to have contact with clients.
19. On 11 November 2024 the claimant attended a meeting with Mr Pettinger. He was informed that his role was redundant and that his employment was to be terminated but was reminded of his 6-week notice period. The claimant was told to log off and to leave immediately.
20. On 10 October 2024 the claimant was sent a letter from Mr Pettinger relating to his redundancy[59B]. It stated that the claimant was entitled to 6 weeks' notice and that the termination date would be 21 November 2024. The letter referred to the claimant's entitlement to accrued holidays and statutory redundancy ("SRP") and to the claimant's right of appeal.
21. On 14 October 2024 the claimant asked Mr Pettinger for clarification as to the amounts to be paid in relation to SRP and accrued holidays.
22. On 21 October 2024 [64/65B] Mr Pettinger sent the claimant a further letter, which was an updated version of that previously sent on 10 October 2024. He informed the claimant his SRP would be £4,200.
23. On 22 October 2024 the claimant sent Mr Pettinger a letter of appeal [72B]. The claimant stated that the process had been unfair in that there was no consultation or consideration of alternative employment and because of unfair selection for redundancy. The claimant also alleged that he was made redundant shortly after he informed the respondent about difficulties with his health.
24. On 24 October 2024 Mr Pettinger sent the claimant a letter confirming the outcome of the appeal. He said that the role of Programme Manager was made redundant because of insufficient work, that there was only one role of Programme Manager and there was no suitable alternative employment available. Mr Pettinger stated that the claimant's selection for redundancy had nothing to do with his health difficulties.
25. The claimant's employment terminated on 21 November 2024.
26. The claimant received an SRP of £4,200 after his employment terminated.
27. The claimant did not receive payslips from the respondent for August, September, October or November 2024 until January 2025.
28. The respondent's financial difficulties continued and worsened. It subsequently made its other staff redundant at the end of April 2025 at which time it ceased trading.

The law and reasons

Unfair dismissal

Potentially fair reason for dismissal (section 98(1) of the ERA 1996)

29. I have concluded that the principal reason for the termination of the claimant's employment was redundancy. I have accepted Mr Pettinger's evidence in this regard as he was the decision maker. That the reason for termination was redundancy was not disputed by the claimant within this claim.

Whether the respondent acted fairly in all the circumstances

30. How Tribunals should consider fairness/reasonableness in the context of a dismissal for redundancy was set out in *Williams v Compair Maxam Limited* [1982] IRLR 83. In general terms, employers acting reasonably will give as much warning as possible of impending redundancies to employees, consult them about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job.
31. At the hearing I confirmed to the parties that in considering the reasonableness of the respondent's actions I would apply the "band of reasonable responses test". In other words that I would not substitute my own view of reasonableness and would only consider whether the respondent's decisions and actions were within the range of those that a reasonable employer could make.
32. Applying the law to the facts of this claim: -

Selection

- 32.1. I have concluded that the respondent acted within the band of reasonable responses by drawing the pool for selection to the role of Programme Manager or, in other words, drawing it to a pool of one. Mr Pettinger was able to explain that the programmes carried out by the respondent on behalf of its clients had ceased and, in his words, there was nothing left for the Programme Manager to manage. I have accepted this evidence.
- 32.2. I acknowledge that the claimant did not agree with this decision and he gave evidence that he would have chosen otherwise. However, this is not what the law requires me to consider. The fact another employer or the claimant himself would have made a different decision is not relevant.

Warning and Consultation

- 32.3. This is where I conclude that the respondent failed in its obligations to the claimant. The respondent failed entirely to warn or consult with the claimant before informing him of its decision on 11 November 2024. The fact that the claimant held a position of responsibility and would have had to have been removed from systems and client contact, applies to many jobs. In my judgment it does not remove an obligation to consult and I have concluded that it was outside the band of decisions that a reasonable employer would have taken to dismiss the claimant without such warning or consultation having taken place.
- 32.4. However, I accept that the respondent was facing severe financial difficulties and note that this was not disputed by the claimant. I find that if consultation had taken place with the claimant by the respondent it would not have made any difference to the ultimate decision to dismiss the claimant given the severe financial difficulties faced by the respondent but that it would have extended the period over which the claimant was employed by a further 3 weeks.

Suitable alternative employment

- 32.5. I accepted Mr Pettinger's evidence and have found there were no such suitable alternatives to offer/consider.

Dismissal was within the range of reasonable responses

- 32.6. I conclude that dismissal was within the band of reasonable responses. The respondent was in financial distress, it had a need to cut costs, the role

of Programme Manager was directly affected by the lack of work and there was no alternative employment to offer the claimant. I do not consider that any other viable alternatives were available to the respondent except to dismiss the claimant.

33. In these circumstances I have found that, because of the respondent's failure to consult with the claimant, that the dismissal of the claimant was unfair and that the claimant's claim for unfair dismissal is well-founded.

Compensation for Unfair Dismissal

Basic award

34. The claimant received an SRP. As I have found that the claimant was dismissed for redundancy, I do not conclude that the claimant is entitled to an additional basic award by virtue of section 122(4) ERA 96.

Compensatory award

35. As stated, I have found that consultation would not have made any difference to the ultimate outcome, namely that the claimant would still have been dismissed by reason of redundancy. Therefore, I conclude that the claimant's losses should be limited to the period over which his employment would have continued if consultation had taken place, that is the period of three weeks.
36. As the claimant's employment terminated on 21 November 2025, if he had worked for an additional three weeks he would still have been entitled to a salary of £55,000 and not £60,000, as this would only have taken effect at the end of the year. I have therefore calculated salary loss on this basis.
37. As mentioned, the respondent had failed to comply with the Tribunal's directions and had not provided any documents of its own, including in relation to the claimant's pay. The only relevant document in the bundle to which I was referred was the claimant's schedule of loss, which he had compiled. In the absence of any other pay slips or other evidence from the respondent I have accepted the relevant figures put forward by the claimant in his schedule of loss.
38. I have found that the claimant's total net weekly pay at the relevant time was £760.61 based upon the following, within the claimant's schedule of loss:
- 38.1. Net weekly pay - £734.94
 - 38.2. Weekly employer's pension contributions - £22.09 (£1148.53/52)
 - 38.3. Company private medical insurance - £3.58 (£186/52)
 - 38.4. Total: £734.94 + £22.09 + £3.58 = £760.61 per week.
39. In these circumstances three week's pay amounts to 3 x £760.61 which totals **£2,281.83**.
40. In relation to loss of statutory rights, I do not find that the claimant should receive any payment in this regard given my finding that his statutory rights would have been lost three weeks later in any event. I would add that the ACAS code of practice does not apply where there is a redundancy situation and therefore an uplift in compensation is not applicable here.
41. Therefore, the total compensation I have ordered to be paid by the respondent to the claimant is **£2,281.83**. The claimant did not receive any jobseekers allowance or income support at the relevant times and therefore the recoupment provisions do not apply.

Profit share

42. The claimant claimed that he was contractually due profit share in the sum of £10,000. However, the claimant was not able to explain how this was calculated and did not adduce any evidence as to the profitability of the respondent. However, the claimant said such profit share should have been payable at the end of 2023. Mr Pettinger stated in evidence that no profit share was due and, in any event, there was not sufficient profit.
43. I concluded that the evidence in relation to the profit share was vague and unspecific from both parties. I have found that there were general discussions between the claimant and the respondent about a potential profit share for the claimant but no firm parameters for its determination were agreed and that, ultimately, it did not become a contractual obligation between the parties. In any event I accepted Mr Pettinger's evidence that even if any profit share was ultimately agreed it would have been subject to the respondent's financial performance and would not have been payable because there was not sufficient profit. The claimant did not lead any evidence to the contrary.
44. I therefore conclude that no profit share was payable to the claimant and accordingly the claimant's claim fails.

Backdated pay

45. In this regard, both parties agreed that the claimant's salary increased to £55,000 mid 2024 but that he did not receive the backdated element of pay, as per the email of 12 January 2024. The claimant says this backdated element of pay should have been £2,500 because the increase in salary for the full year was £5,000 and therefore the additional pay for half the year, backdated, would be £2,500 gross.
46. In evidence Mr Pettinger stated that the email of 12 January 2024 and the promises in relation to pay increases and back pay should be read as meaning that they would only be made if the respondent could afford it. In relation to the back pay the claimant said was due of £2,500 mid 2024 Mr Pettinger said that the respondent was facing financial difficulties at the time and therefore could not afford to pay it to the claimant.
47. It is clear that the agreement in the email dated 12 January 2024 in relation to the increase in salary to £55,000 was acted upon. I find that that is clear evidence that the whole agreement, including in relation to back pay, became agreed and a binding contractual obligation. I do not find that the wording in the email dated 12 January 2024 was sufficiently clear to make payment conditional upon the claimant's financial performance. The respondent acted in accordance with the first part of this obligation and increased salary from £50,000 to £55,000 but did not pay the second part of the obligation namely to make a payment of backpay. I find that at this point in time i.e. June 2024, the respondent ought to have paid the claimant £2,500 gross and the failure to do so was a breach of contract. This sum remained outstanding on the termination of the claimant's employment.
48. I have therefore ordered that the respondent pays the claimant £2,500 less appropriate deductions.

Payslips

49. It was agreed by the respondent that payslips for August to November 2024 were not provided to the claimant by the respondent on or before the date he was paid.

Consequently, the respondent was in breach of section 8 ERA 96 and I have made a declaration to that effect.

Reconsideration

50. Mr Pettinger sent an email to the Tribunal dated 10 October 2025 seeking a review of the Tribunal's Judgment. This was made on the basis that my Judgment was premised upon the basis there was a "requirement for three weeks' consultation" but that there is no such minimum period of consultation as required by law in redundancy situations involving less than 20 employees, such as the present case.
51. I have treated this as a request for a reconsideration pursuant to rule 68 of the Employment Tribunal Procedure Rules 2024.
52. As may be seen from the written reasons above I did not conclude that the dismissal of the claimant was unfair because the respondent had not consulted with the claimant for a minimum of 3 weeks. Instead, I concluded that the dismissal was unfair because the respondent had not carried out any consultation with the claimant at all.
53. The relevance of the 3-week period is in relation to compensation for unfair dismissal only. Ultimately, I concluded that even if consultation had been conducted, it would not have made any difference to the decision to dismiss the claimant. However, I found that, if consultation had been carried out, as it should, that it would have prolonged employment for a further 3 weeks. It was on this basis that I awarded the claimant an additional 3 weeks pay, which is calculated as set out above.
54. In these circumstances I have concluded that, according to rule 70(2) there is no reasonable prospect of the Judgment being varied or revoked and have therefore refused the application on this basis.

Employment Judge A Close

24 January 2026

JUDGMENT SENT TO THE PARTIES ON

18 February 2026

FOR THE TRIBUNAL OFFICE