EMPLOYMENT TRIBUNALS

Claimant: Ms Munkh-Erdene Surenjav

Respondent: DTDB Limited

Heard at: Southampton Employment Tribunal via CVP

On: 30 January 2026

Before: Employment Judge Hay

Representation
Claimant: in person
Respondent: Charlie De Thibault, Director, DTDB Limited

JUDGMENT

1. The claim of breach of contract for non-payment of overtime is not well founded and is dismissed.

2. The claim for wrongful dismissal by failing to make a payment in lieu of notice is not well founded and is dismissed.

JUDGMENT having been given orally at the hearing and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Procedure Rules 2024 before the judgment was published, the following reasons are provided:

REASONS

Background

1. By claim presented on 2 May 2025 Ms Surenjav alleged wrongful dismissal by a failure to pay notice pay, and breach of contract for failing to pay overtime she alleged was due but not paid.

2. She was employed from 2 Feb 2025 when she signed a 1 year fixed term contract in role as junior data scientist. This was later amended to a permanent contract before reverting to one year when it became apparent she did not have correct visa for a permanent contract. At the start of the hearing Ms Surenjav confirmed that the contract dated 2 February 2025 was the "correct" contract relevant to her claim.

3. That contract included clause 3.3 which required employees to log "all working hours in the timesheet designated by the company (currently ClickUp)".It also included clause 4.4 re "Overtime" which explained the annual salary was based on 37.5 hour week and stated that if an employee requested or needed to work additional hours they must "*first discuss and agree this with the Director".* The contract added "*Any overtime planning and compensation (or time off in lieu arrangements) will be clarified and confirmed in writing in advance ensuring that any extra hours remain compliant with legal minimum wage requirements*".

4. Notice periods were covered in section 9 of the contract which included clause 9.1 which read *"Either party may terminate this contract with 4 weeks written notice"* and clause 9.2 which read "*we may terminate your employment immediately with payment in lieu of notice*". It also included clause 9.4 "*we may dismiss you without notice and without pay in lieu in cases of gross misconduct*".

5. On 17 April 2025 she was dismissed for gross misconduct having admitted submitting inaccurate timesheets. The respondent initially offered Ms Surenjav the opportunity to work her 4 week notice period, and then supplemented that with an offer of payment of 2 weeks salary in lieu of notice but with no requirement to work. She rejected both options and instead presented ET/1 on 2 May 2025.

6. The parties presented two bundles, one of 183 pages, and another of approx. 50 pages, along with witness statement from the claimant and Mr Di Thibault. The case was listed for two hours and Judge Hay informed parties of a strict timetable to accommodate oral evidence, submissions (arguments as to why they should win) and deliberation time. The parties agreed to the timetable and confirmed they could stay in the hearing after the official end of the Tribunal day, and until approximately 5pm, in order to get a decision.

7. Judge Hay reminded the claimant that because Ms Surenjav had not been employed by the respondent for 2 years or more the Tribunal she could not bring an unfair dismissal claim, and so any complaints about the procedure the respondent used when they dismissed her were of limited relevance and were not a basis for a claim to the Employment Tribunal. Ms Surenajva confirmed she understood this.

Findings of Fact

8. At the start of her evidence the claimant confirmed she was asserting breach of clause 9.1 (an entitlement to 4 weeks' notice) on the basis she had not committed gross misconduct and had not "falsified" her records.

In addition she alleged breach of clause 4.4 referring to overtime because she believes she worked 82.5 hours in excess of her contracted hours.

9. During her evidence Ms Surenajv admitted working more hours than she had logged on respondent's system because the records showing she worked 37.5 hours were entered by her. Although she said in evidence those records, which she had entered, were accurate she also said that she regularly worked 10-12 hours a day. She explained this was because she often needed to work longer hours in order to get her work done, and her preference to completing tasks on the day they were given to her. She had also made repeated requests for disclosure of records which would enable her to show the hours she worked. Judge Hay accepted this evidence showed the claimant did work in excess of her contractual 37.5 hours per week.

10. Ms Surenjav also confirmed that she understood any entitlement to undertake those hours or to be paid for them whether in money or in time off in lieu needed to be discussed and agreed in advance as per clause 4.4 of the contract. She conceded she did not seek agreement to those additional hours in advance.

11. Mr Di Thibault explained why the company had a policy requiring additional hours to be agreed in advance and why it was important that employees indicated if the work could not be done in the time allotted to it. He explained DTDB was a fully remote and flexible hours company which means employees can work when it suits them to do so. This meant that an employee working "out of hours" (understood to be outside the typical 9am – 5pm pattern) would not be a "red flag" for the company, but that the company did need to use "Click Up" the recording and monitoring application, to track their hours. This enabled him, as a manager, to track their hours and manage their time. He said that if he had known about an employee doing a lot more hours than they were contracted "*I would look into finding a solution to better manage your time".*

12. He also explained that the hours recorded on Click Up were used for client billing, and as evidence justifying DTDB's invoices, so it needed to be accurate. this would indicate that he would need to implement better time.

13. Judge Hay accepted this explanation from Mr Di Thibault, which was supported by screenshots of Click Up records and corresponding invoices. She acknowledged that the respondent needs to know that its workers are capable of doing the work in the time allocated to them, and to address it if not. Judge Hay further acknowledged the respondents also need accurate records to bill clients, whether the bills are directly generated by the reference to the computer logs of hours or otherwise. That is because unless the company can know by either experience or educated guess work how long a task will take to complete they cannot quote for that work to a client; they cannot know how many staff they need to meet any contractual obligations they have for clients; and they cannot ensure that they comply with relevant employment and health and safety rules about hours of work. That therefore meant accurate and reliable time keeping records of the time taken for staff to complete the work is fundamental to the company's ability to operate. It was also relevant that this is a

company with a workforce which is fully remote and fully flexible and so the reliability of timekeeping records is fundamental to the business and is reflected in clause 3.3.

14. In addition Judge Hay noted note Mr Thibault's immediate answer when asked why it was so important for employee to say that if the work cannot be done in the time allotted then he (Mr Di Thibault) needs to address time management for his employees. He was a sensible and conscientious employer whose first concern was not the only the business but ensuring that workers could do what they are asked.

15. Judge Hay concluded that the respondent was not in breach of contract by not authorising or paying the claimant the additional hours she worked because she had not notified them or obtained agreement to those additional hours being done. By simply doing the hours she prevented the company from properly managing itself. That means she was in breach of clause 4.4 and so is not contractually entitled to payment for those additional hours.

16. Ms Surenjav further admitted recording but not working her contracted hours on those limited occasions in April 2025. The relevant period in April was school holidays and she had to care for her child. She had some holiday time off approved, which she then cancelled after learning that the Director was also on leave at that time, before submitting Click Up records showing she was working when she later admitted she was not. She confirmed she did not have permission to do that. Although Judge Hay observed that Ms Surenjav might feel it was not unfair of her to do that when she had previously done overtime hours for which she was not paid, the contract of employment did not allow Ms Surenjav to make that choice. Even if Ms Surenjav does not think it was dishonest, it was inaccurate of her to submit those hours if she didn't work them. It was also a breach of clause 3.3 of her employment contract.

17. There was contemporaneous evidence of a meeting between the claimant and the respondent in which Ms Surenjav admitted this mis-recording of her hours. It was agreed that the respondent treated that as gross misconduct.

The applicable law:

18. Wages due under the contract of employment: In *Arnold v Britton and others* 2015 AC 1619 SC the court said "*when interpreting a written contract the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean" to quote Lord Hoffmann in Chartbrook Ltd and anor v Persimmon Homes Ltd and anor 2009 1 AC 1101, HL. And it does so by focusing on the meaning of the relevant words… in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the*

[contractual agreement], (iii) the overall purpose of the clause and the [agreement], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.'

19. The EAT confirmed this approach applies to pay terms within an employment contract in the case of *Campbell v British Airways plc* EAT 0015/17.

20. Notice pay: Section 86 of the Employment Rights Act 1996 says that every person who has been continuously employed for one month or more is entitled be given notice by their employer: s86 (1). Relevant notice periods are:
    a. At least one week for someone continuously employed for less than two years: s86 (1) (a)
    b. For someone continuously employed for between two and twelve years, at least one week's notice for each year of employment: s86 (1) (b)
    c. Not less than 12 weeks' notice if employed for 12 years or more: s86 (1) (c)

21. Section 88 of the Employment Rights Act 1996 provides that an employer is liable to pay an employee for their normal working hours during that period of notice provided the employee is
    a. able and willing to work during the notice period, or
    b. incapable of work due to sickness or injury, or
    c. absent from work for a pregnancy or parental leave, or
    d. on holiday.

22. There is no statutory entitlement to be paid notice pay but where an employer fails to give notice as required by section 86, the right to be paid for notice, had it been properly given, will be taken into account in assessing the employer's liability for breach of contract: s 91 (5) Employment Rights Act 1996.

23. However, s86 only applies if there is no express notice term in the employment contract itself, or if the specified period is less than that in s86. Since the amount of notice to which either party was entitled is stated in the contract (at section 9) and is not less than that in section 86 the express term of the contract will be applied.

24. Gross misconduct: employers have a discretion to determine what amounts to "misconduct" and a range of reasonable responses when it is found to have occurred: *Iceland Frozen Foods Ltd v Jones* 1983 ICR 17 EAT. Dismissal does not have to be the last resort: *Quadrant Catering Ltd v Smith* EAT 0362/10.

The decision

25. The terms and requirements of the contract relating to pay were clear. Any hours in excess of the 37.5 per week that Ms Surnejav was contracted for had to be discussed and agreed with the Director. They were not. Therefore under the terms of the contract she is not entitled to be paid for hours she did in excess of the 37.5 hours per week she was contracted for. This breach of contract claim fails and will be dismissed.

26. The respondent was entitled to treat the claimant's admitted submission of inaccurate working records via the Click Up system as gross misconduct. The Law allows a range of reasonable responses to be taken by an employer to alleged or proved misconduct. Looking objectively or neutrally at what the claimant admits she did: She had asked for holiday, had it approved, then cancelled it, then not worked the hours she should have, but nevertheless submitted a record suggesting she had worked them. That looks dishonest because it looks like she had planned to take time off work and so booked holiday but then cancelled that when she learned the Director would be absent, then claimed she was working when in fact she was not. The booking then cancelling of holiday made it look deliberate, and the claimant admitted that she submitted a record of hours she knew were inaccurate. Whilst she might have had a good reason for not being able to work on those days as a single parent to a child on school holidays, that was not a reason for claiming she was working when in fact she was not.

27. Whilst other employers might not have treated that as gross misconduct, given the importance to this respondent of accurate and honest recording of hours, it cannot be said that it was unreasonable of this employer to do so. Because the respondent was entitled to treat this as gross misconduct there was no requirement to provide a notice period or payment in lieu of notice under clause 9.4 of the employment contract.

28. Whilst Judge Hay recognises that to the claimant that might seem unfair given all the unpaid overtime the respondent company had benefitted from, no "offsetting" applies and the contract does not permit her to unilaterally (on her own) decide to offset unpaid overtime against hours she is should be paid for but not work. She might have been able to offset those additional hours had she discussed and agreed it in advance as clause 4.4 required her to do, but she did not.

29. The claim for wrongful dismissal re non-payment of notice fails and is dismissed.

30. Ms Surenjav also claimed for distress and fact that Ms Surenjav has not been able to find work since dismissal. These are not employment rights given to her by any statute under which she has brought her claims and so are dismissed.

Employment Judge Hay
Date 19 February 2026

JUDGMENT & REASONS SENT TO THE PARTIES
ON 02 March 2026