Case No: 6015358/2025

EMPLOYMENT TRIBUNALS

Claimant: **SURYA DHAKAL**

Respondent: **FINTRU LIMITED**

Heard at: **West Midlands** **On: 5TH and 6TH March 2026**

Before: **Employment Judge Steward**

Representation
Claimant: In Person
Respondent: Ms O'Lone

JUDGMENT

The decision of the Tribunal is:

1. The claim of unfair dismissal fails.

REASONS

Introduction

1. The Claimant was employed by the Respondent as an associate from the 6th December 2021 to the 16th April 2025. As a non-UK national the Claimant was employed initially by way of a graduate visa between 6th December 2021 to 4th April 2023 and thereafter on a 2-year new entrant skilled worker visa up until the date of his dismissal on the 16th April 2025.

2. In April 2024 the Home Office significantly increased the salary thresholds for sponsored workers. The specific increase depended on the SOC code to which the worker was classified most appropriate. These were policy decisions of the government and were completely outside of the Respondents control.

3. The Home Office recognised that if a worker was already in the sponsored route the new thresholds would be a significant jump and therefore transitional arrangements applied. These transitional arrangements meant that employers did not use the new 2024 salary rates but instead applied a 25% increase of the previous going rates (Table 2). Table 2 still resulted in an increase in the salary required but not as significant of an increase. The Claimants role was reclassified SOC code 2431 management consultants and business analysists. Following the Home Office changes the Claimant no longer met the eligibility criteria to be eligible for a skilled worker visa in the UK.

4. The Claimant met with Orla Flanagan HRBP and Karen Burns Mobility Specialist on the 15.1.25, 31.1.25 and 6.2.25 to discuss the expiry of the visa and what the options were open to him. This included a meeting with the Respondents external immigration consultants as well as the potential to relocating to the Republic of Ireland and remaining as an employee within the group.

5. By letter dated the 17.2.25 the Claimant was invited to a formal meeting to discuss the expiry of his visa and the impact of the changes to Home Office salary thresholds would have on his right to work in the UK. This meeting was conducted by Eddie Vandivar a senior associate and Orla Flanagan attending for HR. During this meeting the Claimant confirmed he did not want to pursue living and working in the Republic of Ireland.

6. Following this meeting the Respondents clarified matters relating to the correct classification of the Claimants role as per the HO SOC codes from immigration specialists and considered whether to extend the Claimants skilled work visa for a period of 5 months. This would have made no difference to Claimant being eligible for the skilled workers visa after this point. The Claimant was informed by letter on the 27.2.25 that his employment would terminate on the 16.4.25 The Claimant was informed of his right to appeal which he chose to exercise on the 3.4.25. The appeal hearing was conducted on the 11.4.25 by Jamie Foote Executive Director and the original decision was upheld.

7. The Respondents position was that the claim of unfair dismissal only arising from the Respondent's decision to terminate the Claimants' employment on grounds that after 16th April 2025 he no longer held a valid right to work in the UK and as a result of Home office changes in April 2024, he was not eligible for continued sponsorship.

8. The Claimant based much of his case on the letter received from the Home Office dated the 26th March 2025 (Pg 169) The Claimant believes that this letter is authority that no employee should be dismissed if they do not meet the new Home Office salary thresholds. The Claimant also said that it was unreasonable for the Respondents to end the employment as

alternatives could have been considered such as forfeit of the pay increases and bonus payments. The Claimant also said that the timing of the changes was in April 2024 but he was not told about the situation until January 2025 which disadvantaged him. He also said it was not proportionate to bring the employment to an end when they did and his period on the skilled work visa could be extended to allow him to find alternative work.

9. The Tribunal heard from the Respondents three witnesses and the Claimant and was helped by focused written and oral submissions.

Relevant Law -Unfair Dismissals

10. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111.

11. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

12. Illegality/contravention of regulation or enactment as well as '*some other substantial reason*' ('SOSR') are potentially fair reasons for dismissal.

13. The Court of Appeal confirmed, in the case of *Whitbread Plc v Hall [2001] EWCA Civ 268*, the band of reasonable responses test applies not only to the substantive decision to dismiss but also to the procedure applied by the employer to reach that decision.

14. In *Polkey v AE Dayton Services Ltd [1987] IRLR 503,* the House of Lords underscored the importance of fair procedures. Lord Bridge stated that:-
"An employer having prima facie grounds to dismiss … will in the great majority of cases not act reasonably in treating the reason as sufficient for dismissal unless he has taken the steps, conveniently classified in most of the authorities as "procedural", which are necessary.

Findings of fact

15. I accept that following the Home Office changes the Claimant no longer met the criteria to be eligible for a skilled worker visa in the UK. 'Transitional arrangements' applied and employers did not use new 2024 salary rates but instead applied a 25% increase of the previous going rates. When this was applied to the Claimant his salary did not meet that salary threshold. Continued sponsorship on a new visa post April 2025 was therefore not possible.

16. The Claimant based much of his case around the letter he got from the HO dated the 26th March 2025. The Claimants case is that this letter establishes an authority that no employee should be dismissed if they do not meet the new HO salary thresholds. This letter from the HO was triggered by an email sent to the HO on the 17th March 2025 by the Claimant. I have not seen this email. I do not know therefore what the context of that email was or what the HO was responding to.

17. The Claimant believes that people already in the route should not be dismissed *'People already in the route who qualified for the 25th percentile going rates should not be dismissed on the basis that they now need to be paid at the median rate' (Pg 169)*

18. However, those who qualify for the 25th percentile going rate are those who were already sponsored prior to the changes. Those people should be assessed again at the lower rates in Table 2 ie the previous median rates with a 25% uplift. This would appear to be what the 25% percentile relates to. They should not be assessed at the new median rate and therefore they should not be dismissed because they do not meet the new median rate. The Respondent did not apply the new median rates for the Claimant. The Claimant was assessed under the adjusted rate in the Table 2 which were the old rates with a 25% uplift. This advice was provided by experts Smith Stone Walters (Pg 141-145) They were specifically referred to the para above from the HO letter dated the 26th March 2025. They answer this at page 142. The Respondents seek further clarification at Pg 142 which is answered by the immigration experts at 141. I am satisfied that the Respondents have addressed the points raised and relied on in the letter of the HO to the Claimant dated the 26th March 2025. The experts Smith Stone and Walters have specifically addressed the issue raised by the Claimant as per the comment in the letter from the HO dated the 26th March 2025 above. I do not know what the original question was to the HO by the Claimant, but the advice given by the experts at Pgs 141-145 is detailed, logical and specifically addresses the point raised by the Claimant. I prefer this evidence and the interpretation of the Claimants position by the experts Smith Stone and Walters on behalf of the Respondents rather then what appears to be general advice in the HO letter dated the 26th March 2025 .

19. The Claimant accepted in cross examination that he had taken no steps between October 2024 and January 2025 to understand the prevailing situation regarding the expiry of his visa. The Claimant would have been aware to the changes proposed by the HO and I accept the evidence of the Respondents that they had to process the changes and monitor the any further changes. They emailed the Claimant on the 17.12.24 and requested that he 'take the required steps to extend your permission to live and work in the jurisdiction of your employment prior to this date'

20. The Respondents then make enquiries of Smith Stone Walters (SSW) on the 9.1.25 to enquire about the Claimants status. They make another enquiry on the 31.1.25 with SSW and ask them to meet with the Claimant to discuss the options that he may have. This takes place in due course. Post this meeting the Respondents schedule another meeting with the Claimant to discuss options. This was organised at the start of February

2025. Its ascertained that his visa could be extended upto the 15th September 2025 but at a cost of £4499.90 to the Respondents.

21. The Respondents emailed the Claimant on the 11.2.25 setting out this potential option and the cost and refer to other potential options suggested by the Claimant. They stated they would consider the options and return to him. They wrote to the Claimant on the 17.2.25 and invite him to a formal meeting to consider matters. This meeting took place on the 19.2.25 and was attended by the Claimant, Eddie Vandiar, Krissy Smyth and Orla Flanagan. Various options were discussed including the potential of forgoing bonus and benefits, remaining on the current salary and relocation to LetterKenny. The option of extending the visa for 5 months is ruled out. It would not change the outcome for the Respondents, and the cost of the extension was not viable. The option not to take pay increases and bonuses was also not viable. I accept this was never an option as outlined by the Respondents and explored in the evidence. There would be no guarantee that the Claimant would get a salary increase or a bonus? To ask for payments to be forfeited that the Claimant may receive would not be tenable and would not be fair on other workers etc.

22. I accept that the Respondents have monitored the situation about the HO changes and then have made every effort to explore the legal situation as pertaining to the Claimant. Even as late as April 2025 (Pgs 141-144) the Respondents were still taking advice on the Claimants legal position and the points he had raised. They had contacted him to start the process In December 2024 some 4 months before the expiry of the visa and they had arranged meetings with the Claimant with SSW and themselves to explore the Claimants options. All the options that were explored were not tenable but the process that the Respondents adopted was a fair one including the appeal process.

23. I do accept that the Respondents explored the Claimants proposals and were genuine in their approach. It would have been unlawful and unethical to increase the Claimants salary to bring him within the scope of the transitional salary thresholds. It would also have been unfair on the Claimants colleagues to be paid more than them in the band of the associate role. There would have been no benefit to the company extending the visa until September 2025. It would have cost at least £5000 to include the time to process the application internally. The Claimant was not revenue generating and the decision to terminate his employment would have been taken later. The Claimant did not want to relocate to the Republic of Ireland.

Conclusion

24. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

25. I accept that the Claimant was fairly dismissed.

26. The Respondents had a fair reason for the dismissal. This was the expiry of the Claimant's right to work in the UK and the inability to continue to sponsor him after the date due to the increase in the HO salary threshold for sponsorship.

27. I accept that the process and the decision were reasonable in all the circumstances. Dismissing for some other substantial reason was a fair reason. The options provided by the Claimant were either unlawful unethical and/or unreasonable. The claim fails.

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Employment Judge **Steward**

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Date 18.3.2026

Judgment & Reasons Sent to Parties

18.3.2026

For the Tribunal Office

Curtis Burr