EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
DR R GAUSDEN	**AND**	**UNIVERSITY OF PORTSMOUTH**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 2ND / 3RD FEBRUARY 2026

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **IN PERSON**

FOR THE RESPONDENT:- **MR H WILLIS (COUNSEL)**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that:

i) He was unfairly dismissed is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a claim of unfair dismissal. The tribunal has heard evidence from the claimant, and on his behalf from Mr Tony Crabtree; and for the respondent from Professor Homagni Choudhury and Ms Stephanie Campbell. In addition there is a bundle of 149 pages which I have read and considered.

Summary

2. The central dispute in this case is how the claimant's employment terminated. The respondent contends that it did not dismiss him, but that it was terminated by reason of his resignation and/or by mutual agreement. The claimant accepts that he agreed the date and terms of his retirement "in conversation" in the circumstances set out below; but that he had never given formal written notice in accordance with clause 23 of his contract of employment and had never in fact resigned. It follows that if he did not resign the purported acceptance of his resignation was a nullity, and was in reality a dismissal, which was necessarily procedurally and substantively unfair.

3. There is little or no dispute of fact between the parties, but very significant disputes of interpretation, particularly in relation to the effect of what was agreed orally and/or the meaning and effect of the termination clause in the claimant's contract of employment.

Contractual Termination –

4. The claimant's case rests at least principally, if not entirely, on his interpretation of the meaning and effect of Clause 23 of his contract of employment, which provides that:

   "Your employment shall be terminable……by your giving the institution two months' notice in writing or by the institution giving you three months' notice in writing."

5. The parties submissions as to the meaning and effect of this provision are set out in the conclusions below.

Facts

6. The claimant was employed by the respondent as a Senior Lecturer in the School of Accounting, Economics and Finance, within the Faculty of Business and Law. His line manager Professor Choudhury was the Head of the School of Accounting, Economics and Finance.

7. On 19th December 2023 the claimant and Professor Choudhury held a Professional Development Review meeting. One of the purposes of such meetings is to understand the member of staff's intentions, so as to allow teaching commitments to be planned and allocated for the following academic year. At that time the claimant was on a 0.6 FTE contract which included teaching commitments. Prior to the meeting the member of staff completes a form. In it the claimant indicated that his objective was either to reduce his working hours, or to become an unpaid visiting fellow (which would of necessity involve him retiring) with a final decision being made by July 2024. During the meeting the claimant indicated that he no longer wished to continue teaching in the academic year 2024/2025; but would wish to continue with non- teaching responsibilities. He put forward two options, firstly of reducing to 0.2 FTE with no teaching responsibilities, or retirement and becoming an honorary / visiting fellow. The claimant suggests that he left the meeting with the impression that

the first option was likely to be agreed. The respondent disputes this, but neither party suggests that any final agreement was reached in this meeting; and it is agreed that following the meeting Professor Choudhury was going to consult and consider the options.

8. There was a meeting on 18th January 2024, which was primarily concerned with discussing an OH report, and neither party contends that there was any significant discussion or agreement at that meeting as to any of the issues before me.

9. There was a follow up meeting on 1st February 2024, which is the critical meeting for my purposes. The respondent's position is that it was explained to the claimant that the respondent could not grant a 0.2 FTE non-teaching contract; but that it could agree to the proposal that he retire and be recommended for the position of visiting fellow. The claimant agreed to this and suggested that his last working day would be the 31st August 2024, with which Professor Choudhury agreed. Thus it is not in dispute that during the meeting the claimant orally agreed, "in conversation" as he puts it, that he would retire on 31st August 2024.

10. That outcome was confirmed by Professor Choudhury in an email of 2nd February:

Dear Robert,

Further to our discussion yesterday, I am writing to confirm with you that we have agreed that your end date will be 31st August 2024. We will make a nomination to the Faculty for you to remain associated with us in an honorary capacity as Visiting Fellow from 1st September 2024.

I will inform HR about your end date of 31st August 2024; they will then be able to advise you about any outstanding leave and to work out the effective last working day and advise/sign-post you to the contact/support on any queries you may have with your pension.

May I take this opportunity to record my sincere thanks and gratitude, on behalf of the School and the Faculty, for your immense contributions to the ECFIN SG previously, our new AEF School more recently and the wider Faculty and University over more than two decades of your association with the University. Personally, for me, you have been an excellent colleague and friend since I joined in October 2021 and I thank you for all your support, collegiality and for sharing your experience and serving as a sounding board to me. Of course we will celebrate your achievements and contributions properly nearer the time and I will make an announcement to the School about your retirement when HR has processed the retirement request.

To which the claimant replied the same day*:*

Dear Homagni,

Always a pleasure to talk to you.

Thank you for the generous comments in your message.

Best regards,

11. The parties invite the tribunal to draw different conclusions from this correspondence. The claimant asserts that it was a "neutral" response which neither confirmed nor expressly disputed the contents of Professor Choudhury's email; and on any analysis does not constitute explicit agreement to or acceptance of its contents. In his evidence he states that he deliberately submitted a "*bland non-committal reply, making absolutely no reference to retirement, such that there was no way in which this correspondence could be interpreted as a statement of resignation*". The respondent asserts firstly, that both parties agree that Professor Choudhury's email included an entirely accurate summary of what had been agreed, and that the natural inference from the absence of any dispute is that the claimant was agreeing to its contents and to Professor Choudhury notifying HR and setting the process of retirement in motion. In evidence the claimant accepted that it would, with hindsight, have been much better and clearer if he had told Professor Choudhury that whilst that was an accurate account of the agreement, that he did not agree to Professor Choudhury sending it to HR and starting the resignation/retirement process as he wished to retain the option of changing his mind before formally and finally agreeing. However he asserts that that does not alter the fundamental proposition that his email did not constitute explicit agreement to anything in Professor Choudhury's email. This is discussed in the conclusions below.

12. As set out in the email, at 14.38 on 2nd February Professor Choudhury copied the emails to Sally Sullivan stating –"*FYI- please liaise with HR to process*". By a letter dated 6th March 2024 the claimant was notified by HR that it had received notification of his intention to retire and giving information about the next steps. The first sentence of the letter starts "*Thank you for notifying me that you wish to retire.. with effect from 31st August 2024*." The claimant describes this as a "*complete untruth*". He spoke to HR on 7th March 2024 and followed up with an email in which he stated :-

    Thank you for your message and the very useful telephone conversation that we held this morning.

    Please may I confirm that, at a meeting with my line manager on 1st February 2024, I was informed that his preference was for me to assume the status of a visiting scholar, rather than to allow me a 20 per cent fractional contract. This is a decision which I accepted and it was agreed that my final date as a paid member of staff at the University would be 31st August 2024.

    However, I was not seeking any formal confirmation/communication of this decision until later in the calendar year. This is for two reasons: the minor possibility that I have a change of mind and seek to retain my 60 per cent working arrangement; the possibility that the University offers another severance scheme or invites applications for voluntary redundancy, which I would want to ensure that I am eligible for.

Consequently, I am requesting that the letter that I received from Fiona Hnatow be removed from the system.

May I apologise for the inconvenience but please understand my caution when taking such a big decision.

13. The events thereafter are not critical for my decision but in summary they are that firstly Professor Choudhury set out his understanding of what had been agreed in an email on 7th March 2024. In his reply the claimant stated that; " *Just to clarify, I don't have an issue with the decision that was reached, which I gracefully accepted. Rather the issue is with the timing of notification to HR. I have an element of concern that if there are redundancies being issued over the course of the next two to three months then I might miss out on a reasonable payment if my retirement has already been formally announced to HR*".

14. This resulted in further correspondence between Professor Choudhury and Ms Campbell in which it was agreed that the respondent's position was that the claimant's resignation had been communicated and accepted and that it would not be revisited. This was set out in an email from Professor Choudhury to the claimant on 8th March 2024:-

Thank you for your email and for clarifying that you still wish to retire on the 31st August 2024. In my response, I will explain the UoP staff leavers Procedure and your references to UoP redundancies.

After we met in January 2024 and agreed on 1st February 2024 on your retirement leave date, I emailed you dated 2nd February confirming your retirement date and I advised you that HR will process the request, which you acknowledged. I then followed the UoP staff leaver procedure.

The Staff Leavers Procedure outlines "Your line manager should provide a copy of the resignation letter/email to Human Resources (HR) when you are leaving the University, in order that the resignation may be acknowledged and a Leaver's Pack sent out to you and copied to your line manager. Once notification of your resignation or retirement has been received in the People Operations Team , we will contact you to acknowledge receipt". This includes a letter from Fiona Hnatow, Chief People Officer.

I have discussed this matter with HR today and whilst we understand you will be aware of the Reset programme however, if there are any future structural changes these are unlikely to affect you because you have already resigned from the University and have an agreed leave date. This will not change that we will make a nomination to the Faculty for you to remain associated with us in an honorary capacity as Visiting Fellow from 1st September 2024

15. Thereafter a meeting between the claimant and Professor Choudhury, at which the claimant was accompanied by Mr Crabtree, took place on 21st March 2024, at which the position set out above was confirmed. There were thereafter a number of meetings between the claimant and Professor Choudhury and Ms Campbell but the

position did not alter. On 16th May 2024 the claimant submitted a grievance which was subsequently not upheld, and an appeal which was also not upheld.

16. Reset / Voluntary Redundancy – For completeness sake I will set out the parties position in respect of voluntary redundancy. As is set out in the claimants email to Professor Choudhury one of his concerns was that the premature announcement of his resignation would prevent him from applying for voluntary redundancy in the event that it was offered. The respondent was engaged in a process called "Reset" which would involve both voluntary and compulsory redundancies; and the claimant wished to be eligible at least to apply for voluntary redundancy. The respondent's position, as set out to the claimant, was that whether or not he was treated as not having formally tendered his resignation and/or was permitted to withdraw would not in fact effect his eligibility for voluntary redundancy, as the criteria included the line manager certifying that the member of staff applying had not indicated any intention to retire in the following twelve months which the claimant had orally in any event. He was not therefore eligible, and could not become eligible and in fact an application he submitted was turned down. It contends that as a result the formal notification to HR of his intention to retire had no bearing on or effect on his eligibility for voluntary redundancy.

17. As a result the claimant's employment came to an end on 31st August 2024.

Conclusions

Termination

18. The primary issue in the case is the identification of the correct legal analysis of the termination.

19. Clause 23 - Central to that question is the claimant's interpretation of clause 23 of the contract of employment. He essentially contends that that clause limits the means by his contract could be terminated, to notice being given by one party or the other in writing. There was no other mechanism by which it could come to an end. As he does not accept that he ever gave notice in writing to the respondent it follows that he did not resign.

20. The respondent submits that this is fundamentally incorrect as a matter of law. Clause 23 simply provides a mechanism by which either party can unilaterally terminate the contract by giving written notice. It does not prevent termination by any other means, in particular by one party orally giving notice which is accepted by the other; or by mutual agreement. It follows that even if he did not give written notice (which the respondent does not in any event accept) that that does not prevent the contract from being terminated by resignation or mutual agreement. Put simply, the claimant is treating the clause not simply as providing a contractual mechanism by which either party can unilaterally terminate the contract, but as a contractual bar to the contract being terminated in any other way, which it neither is, nor purports to be. My conclusions as to this are set out below.

21. In the circumstances of this case (there is for example no question of frustration arising) there are in my judgement three means by which the contract could have terminated:

i) Termination by mutual agreement;
ii) Resignation;
iii) Dismissal

22. During the hearing I formulated a number of questions which were sent to the parties in respect of the first two possibilities. They are:

i) Did the claimant and Professor Choudhury orally agree the terms and date of the claimant's resignation at the meeting on 1st February 2024 ; and if so

ii) Was that sufficient to constitute actual notice of the claimant's intention to retire on 31st August 2024; and if not

iii) Did Professor Choudhury's email to HR on 2nd February 2024 attaching his email correspondence with the claimant constitute written notice; and if so

iv) Did the claimant's email of 2nd February give actual or implied consent to Professor Choudhury to notify HR in writing; and if so

v) Did that constitute notice in writing within the meaning of clause 23 of the claimant's contract of employment ; and/or

vi) Did the claimant's email of 7th March 2024 (and/or subsequent correspondence to similar effect) constitute written notice confirming that an oral agreement had been reached on 1st February 2024

23. Mutually Agreed Termination / Orally Agreed Resignation – The first two questions above concern the linked issues of whether the parties had reached a mutually agreed termination and/or an orally notified and agreed resignation on 1st February 2024.

24. In their closing submissions both parties accepted that the answer to the first question was "yes". They disagreed as to the second. The respondent submits that there is no issue that in the meeting on 19th December 2023 that the claimant informed Professor Choudhury that:

i) He did not wish continue teaching in the 2024/25 academic year;
ii) That he suggested the two options of, firstly moving from 0.6 FTE contract to a 0.2 FTE contract with no teaching responsibilities; or secondly to retire and become an honorary / visiting fellow retaining a formal link with the university.

25. Equally it is not in dispute that in the meeting on 1st February 2024 that:

    i) Professor Choudhury informed the claimant that 0.2 FTE non-teaching contract was not one that the university could agree;

    ii) But that his retirement accompanied by "a nomination to the Faculty for you to remain associated with us in an honorary capacity as Visiting Fellow from 1st September 2024", could be agreed;

    iii) That the claimant orally agreed to that option and himself proposed the termination date / last working day of 31s August 2024 with which Professor Choudhury agreed.

26. In addition the claimant has never resiled from that position or ever contended that the agreement had not been reached. It follows that both parties agree that an oral agreement had been reached on 1st February 2024. The claimant's only contention as to why this was not a concluded agreement is that he maintains that the contract could not be terminated in this way as Clause 23 prevented it, which for the reasons set out above the respondent does not accept.

27. If the respondent is correct, the contract was capable of being brought to an end by mutual agreement and/or an accepted oral resignation. In support of the submission that one or other of these was the cause of the termination the respondent points to the following factors:

    i) The suggestion that claimant no longer wished to perform teaching duties, and that there would need to be some agreed contractual variation, came from the claimant not respondent;
    ii) The two options including resignation/retirement came from the claimant not the respondent;
    iii) It was open to the claimant to reject the offer of retirement with a recommendation for visiting fellowship at the meeting on 1st February 2024 if he wished to; but he specifically agreed and proposed his own retirement date;
    iv) When the claimant was given a further opportunity to change his mind or at least seek to delay the process the following day he did not take it.
    v) This is not a case in which at any stage any alteration in the claimant's contractual terms or duties, let alone resignation / retirement was suggested or driven by the respondent. At all times it was responding to proposals made by the claimant, both as to the fact of and timing of his retirement, which it accepted.

28. In the circumstances this can only be regarded as a mutually agreed termination; or at very least an oral resignation which was accepted by the respondent. If this is correct he was not dismissed and it follows that his claim is bound to fail.

29. As set out above the claimant contends that this agreement made "in conversation" is not sufficient to constitute any binding mutually agreed termination and or resignation. The reason for this is his interpretation of the effect of clause 23 of the contract of employment; as set out above.

30. In my judgement the respondent is correct both as to the law and facts. I cannot see that clause 23 limits the capacity of the parties to orally agree to terminate the contract by agreement; and as a matter of fact it is clear that the means by which the agreement was reached was a proposal made by the claimant which the respondent accepted. In those circumstances, whether it is described as termination by mutual agreement, or oral resignation which was accepted by the respondent it is in my view clear that the contract was not terminated by dismissal, and it follows that the claimant's claim must fail on the basis of the answers to the first two questions.

31. I will deal with the rest of the questions for completeness sake in the event that I am wrong as to the conclusions set out above but I can deal with them relatively briefly.

32. In my judgement questions three and four and five can be taken together. Professor Choudhury's email is obviously in writing and necessarily constitutes notice in writing in my judgment; and will constitute notice from the claimant if he consented to it being sent. The real question concerns issue iii). The respondent submits that consent can necessarily be at least implied by the claimants response. Professor Choudhury informed him that he intended to notify HR of the claimant's retirement, and the natural and correct inference is that unless the claimant objected that that was what he would do; and the claimant replied without objection. The only reasonable conclusion from the absence of objection is that he did not in fact object, and was consenting to Professor Choudhury doing so.

33. The claimant contends that it is correct that he did not object, but not because he agreed but because he considered any notification by Professor Choudhury to be of no contractual effect. He contends that that is why his reply on the 2nd February to Professor Choudhury was "neutral" and neither explicitly agreed or disagreed. He understood from his reading of the contractual term that he could not resign without himself formally notifying the respondent in writing, and that any communication from Professor Choudhury would at best be an informal notification of a proposal which he would need to formalise in writing later, leaving him the option of not resigning/retiring if he wished to. There was therefore no need to object. In my judgement it is somewhat remarkable that the claimant, who is an academic economist and not a lawyer at all, or in particular an employment law or contract specialist, should have been so certain of the correctness of his position in a field entirely outside his academic discipline that he placed total reliance on it rather taking the simple precaution of objecting. One option open to me would be to conclude that this cannot be correct, and that at the time the claimant was in fact consenting, and the assertion that he was not is a retrospective fiction. However the claimant has in these proceedings been transparently honest and in the circumstances I accept his explanation that he was not intending to consent.

34. However that does not in my judgement alter the fact that he necessarily permitted Professor Choudhury to communicate to HR the fact of and terms of his resignation. In my judgement that is necessarily implicit consent. It follows that if Professor Choudhury had the claimant's implicit consent to communicate on his behalf that that was notification in writing with the meaning of clause 23 in any event.

35. Thus in my judgement the claimant's claim would also have been dismissed on this basis in the alternative; that in the circumstances Professor Choudhury's email did constitute notification in writing with the meaning of clause 23.

36. In respect of issue vi) the communication is very curious in that it both confirms the agreement to resign but seeks to resile from it, at least as constituting formal agreement. Had it been necessary to do so, and given that this is at very least written confirmation of the oral agreement, I would in the circumstances have considered this written notice of resignation within the meaning of clause 23.

37. It follows that, for the reasons set out above, in my judgement the claimant's claim of unfair dismissal must be dismissed on the basis that he was not dismissed by the respondent.

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Employment Judge Cadney
Dated: 26 March 2026

Reasons sent to parties on
17 April 2026

Jade Lobb
For the Tribunal Office