



EMPLOYMENT TRIBUNALS

Claimant: Mr K Whitehead
Respondent: Architectural Base Consultancy Limited
Heard at: Newcastle (by CVP) **On:** 23 & 24 June 2025
Before: Employment Judge Robertson (sitting alone)

Representation

Claimant: In person
Respondent: Mr A Mayhew, Director

WRITTEN REASONS

Introduction and request for Written Reasons

1. These are the Written Reasons for my decision in this case. I am supplying them following the respondent's request dated 29 September 2025.

2. For ease of reference, the decision was that:

2.1 the respondent's application to strike out the claimant's case on the ground of failure to comply with the Tribunal's case management orders was refused;

2.2 the claimant's complaint of unfair dismissal was well-founded and succeeded;

2.3. the respondent was ordered to pay the claimant compensation for unfair dismissal in the total sum of £4,248.00.

3. I begin by apologising for the delay in supplying the Written Reasons. I heard the case over two days on 23 and 24 June 2025. I announced my decision on both liability and remedy orally with brief reasons at the end of the hearing on 24 June 2025. I prepared the written judgment confirming the decision and sent it to the administration at the Newcastle Employment Tribunal the same day, 24 June 2025. The judgment advised the parties of their right to request written reasons for the decision.

4. I am now aware that regrettably, the Newcastle Tribunal did not send the judgment to the parties until 16 September 2025.

5. The respondent requested Written Reasons on 29 September 2025. The request was not referred to me at that time. It was referred to me on 20 November 2025 but I was not advised that the referral had been made and did not see it. It was re-referred on 31 December 2025. I became aware of the referral (and, therefore, the request for Written Reasons) on 12 January 2026 and I have prepared the Written Reasons as soon as was possible thereafter. I regret the delay, and apologise on behalf of the Tribunal for it.

The claim and hearing

6. The claimant, Kyle Whitehead, was employed by the respondent, Architectural Base Consultancy Limited, as an Architectural Technician from 16 March 2020 until his dismissal in October or November 2024. As I will explain, the date and circumstances of the dismissal are disputed. By a claim form presented on 8 December 2024 the claimant complains that he was unfairly dismissed within section 98 of the Employment Rights Act 1996.

7. I heard the claim over two days by CVP on 23 and 24 June 2025. The claimant appeared in person at the hearing and gave evidence. The respondent was represented by Alan Mayhew, Director, who gave evidence and also called evidence from his co-Director, Philip Harris.

Application to strike out the claim

8. At the start of the hearing I heard an application by Mr Mayhew on behalf of the respondent for the claim to be struck out (under rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024) because of the claimant's failure to comply with the Tribunal's case management orders. Those had required the claimant to serve a schedule of loss by 20 January 2025, for the parties to disclose documents by 3 February 2025 and agree a hearing bundle by 17 February 2025 and to send each other witness statements by 3 March 2025.

9. Mr Mayhew said that the respondent had complied (or had been in the position to comply) with the case management orders but the claimant had not complied with any of them. He had received 98 pages of documents from the claimant only the Friday before, 20 June 2025. He had not received the claimant's witness statement and because the claimant had not confirmed he was ready to exchange witness statements, he had not sent the claimant the respondent's witness statements. He said that as a result, the respondent had not been able to prepare for the hearing.

10. The claimant told me that he had sent his documents to the Tribunal on 28 March 2025. (I established from the case file that the Tribunal had received the documents on that date but had not contacted the claimant about them.) He had not heard anything from the Tribunal that this was not acceptable, but he accepted that the case management orders required them to be sent to the respondent and he had not done that. On 21 May 2025 he had sent the solicitors then acting for the respondent, Mincoffs, at their request, copies of the documents and he had nothing more to send.

11. Mr Mayhew acknowledged that the claimant had sent the documents to the respondent's solicitors. The solicitors advised that the documents were not what

the order required but as they had already submitted a strike-out application to the Tribunal on 10 May 2025, they and the respondent should await the Tribunal's decision on the application before looking at them. Even then, he said, the solicitors had not forwarded the documents when ceasing to act and he had only seen them when receiving them direct from the claimant three days before the hearing.

12. I looked at the claimant's documents. I noted that up to page 47, they were mainly medical records which did not appear to me to be controversial. Pages 57 to 67 appeared to be there to refute the respondent's contentions about the claimant's past performance and not to be relevant to the issues before me. I could see nothing in the rest of the documents which would have taken the respondent by surprise. I noted also that the respondent was itself in breach of the case management orders by failing to send its witness statements to the claimant by 3 March 2025; the Tribunal's directions of 23 December 2024 did not require simultaneous exchange.

13. The fundamental question in my mind, in accordance with the overriding objective, was whether a fair trial was still possible. In my judgment, it was. The issues in the case were straightforward and within a small compass, the witness statements were quite short and the number of documents small. In my view, although the claimant had not fully complied with the case management orders, strike-out of the claim would be disproportionate. I ordered the parties to send each other their witness statements immediately and I adjourned the hearing from 11.45am until 2pm to allow the parties to read and consider them.

Findings of fact

14. I turn then to my findings of fact. The respondent is a small architecture practice. In the period leading up to the events in this case it had four employees including the two Directors, Mr Harris and Mr Mayhew, and the claimant. The claimant, Mr Whitehead, was employed by the respondent as an Architectural Technician from 16 March 2020. He was not provided with a written statement of terms of employment.

15. On 10 September 2024 the claimant underwent surgery for a serious knee injury. The surgery was arranged at short notice when a cancellation became available. It would require the claimant to have sick leave from work and a significant period of several weeks for recovery and the claimant would be unable to drive.

16. The claimant understood that his absence would cause difficulties for the respondent. In an exchange of emails on 11 September 2024, immediately after the surgery, the claimant told Mr Harris that he had a sick note from his surgeon for six weeks, and had been warned of risks to his recovery and to take time to rest. Notwithstanding this, the claimant offered to use six days' accrued holiday to cover the immediate absence and thereafter to work from home, his role being predominantly desk-based. Whilst expressing concern about the appropriateness of working from home, Mr Harris agreed to this.

17. In his evidence, the claimant told me that Mr Harris refused to allow him use of a work computer to work from home or to give him the software licence key so he could use his own computer. In their evidence, Mr Harris and Mr Mayhew said

that they offered him a work PC but the claimant said he preferred to use his own machine. I prefer the respondent's evidence. I note that in the contemporaneous correspondence, the claimant at no time asked for equipment or a licence key, even when on 23 October 2024 he said he was ready to resume work at home the following day, and I regard it as inconceivable that he would not have mentioned it if he lacked or had been refused any necessary equipment.

18. On 18 September 2024, Mr Harris sent a follow-up email asking the claimant if he would be starting work as intended the following day. The claimant, regrettably, did not directly respond to this but instead sent the respondent, without any explanation, a fit note for two weeks from 17 to 30 September 2024 "covering my absence". The fit note stated that the claimant was not fit for work. I accept the claimant's evidence that he was in pain and in no state of mind to correspond with Mr Harris or work from home, and I accept also that the fit note stated he was not fit for work, but I consider that to send a fit note without explanation was unfortunate given what he had proposed on 11 September 2024.

19. Mr Harris did not know if this meant the claimant was no longer intending to work from home and sent a one-line email on 19 September 2024 asking if that was the case. The claimant did not reply and on 20 September 2024 Mr Harris sent a further email strongly objecting to the claimant's behaviour and suggesting that in view of his attitude, the claimant should start looking for another job. Again, the claimant did not reply. He did not return to work, in the office or from home.

20. The claimant contended in his claim form that Mr Harris's email of 20 September 2024 was a dismissal but he did not pursue this contention during the hearing. He accepted that he had not treated it as a dismissal at the time.

21. The surgeon had not provided the promised fit note following the surgery (the fit note from 17 September was from the claimant's GP) and there was further delay as the surgeon was on leave but on 25 September 2024, the claimant received the sick note for eight weeks from the date of the surgery and forwarded it by email to the respondent the same day. Unfortunately, for an unknown reason the respondent did not receive the email and fit note. The claimant was unaware of this and assumed it had been received.

22. Equally unfortunately, and surprisingly, given the effect of his absence on the business, and although the first sick note had expired on 30 September 2024 and they had had no contact from the claimant thereafter, Mr Harris and Mr Mayhew did not try to contact the claimant about his absence or intentions for over three weeks until matters came to a head on 23 October 2024.

23. On 23 October 2024 the claimant emailed the respondent to say that he was ready to resume work the next day, 24 October 2024, but would want to work from home if it suited business needs. Later the same day, Mr Harris replied. He said this:

"Kyle

I had assumed that you had left.

The only sick note that we received ran out at the end of last month.

You made no effort previously to contact us or work from home since your last email dated 18 September 2024 leaving me personally to have to do many extra hours to cover your agreed work at a very stressful time.

Which is no surprise given your lack of commitment/work ethics and previous written warnings.

I am now near the end of this work and we have no further work that could be done from home.

Good luck in your future, I will forward your P45 at the end of this month.”

24. The claimant responded later the same day:

“Alan/Phil

I suggest you check your emails as mentioned, dated 25/09/2024 I had an 8-week sick note from surgery date.

All this information will be passed to my solicitor.

You’ll be hearing in due course.”

25. The claimant also sent Mr Harris the same day a copy of the email and fit note of 25 September 2024. Contrary to Mr Mayhew’s submissions, I do not accept that the fit note, which as I have said was backdated so it covered a period of eight weeks from the surgery, was prepared later than the date it bears (although I acknowledge some overlap in the dates covered by it and the first sick note). I find that the fit note was provided to the claimant on 25 September 2024 and forwarded by him to the respondent by email the same day but for some reason (and unknown to the claimant) was not received.

26. Mr Harris wrote to the claimant on 25 October 2024. He said that the respondent had not received the fit note of 25 September 2024 and expressed surprise that it had been issued for so long a period. He criticised the claimant for not keeping him updated or contacting him in any way during his absence and said that this had placed him in a difficult position. He said that working from home did not suit the respondent’s business, he was strongly critical of the claimant’s behaviour and job performance and issued what he called “a last written warning” for not keeping him informed and for mistakes in drawings, but proposed that the claimant should work from home for a week and return to the office on 4 November 2024. He enclosed some work for the claimant to undertake from home.

27. This letter was rather curious. It made no mention of Mr Harris’s earlier letter of 23 October 2024. I noted that the respondent had not included the letter of 23 October 2024 in their disclosure of documents for the hearing nor did Mr Harris or Mr Mayhew refer to it in their witness statements. I infer that they regretted the letter – Mr Mayhew described it in submissions as “ill-tempered” - and hoped that it would be forgotten.

28. The claimant did not reply to Mr Harris’s proposal in the letter of 25 October 2024. He did not respond at all. He did not return to work. I accept his evidence that this was because he considered he had been dismissed by Mr Harris by way of the email of 23 October 2024. He said in evidence that Mr Harris had already suggested that he should look for another job and he asked how often he should

accept Mr Harris telling him he was sacked. He had overlooked it once and was not prepared to do it again. Nonetheless, I find that his failure to communicate his decision to the respondent was regrettable.

29. The claimant's fit note expired on 5 November 2024. Having had no further contact from him, Mr Harris wrote to the claimant on 13 November 2024 terminating his employment for gross misconduct in the form of unauthorised absence and refusal of reasonable instructions to return to work. There was no disciplinary process followed in reaching this decision and no appeal was offered or requested. The only further contact between the parties was the claimant's letter of 18 November 2024 requesting his P45 and payment of outstanding SSP.

30. The claimant was sent his P45 (which gave an incorrect termination date of 31 October 2024) in December 2024. The claimant had by then taken up alternative employment on 10 November 2024.

Discussion and conclusions

31. Those are the facts I have found. The first issue for me is when the claimant was dismissed. The claimant says that he was dismissed by way of Mr Harris's email of 23 October 2024. He says that Mr Harris had already advised him on 20 September 2024 to start looking for another job and on 23 October 2024 Mr Harris told him that he had assumed he had left, wished him well for the future and said his P45 would be sent to him. He took it that he had been dismissed and he did not respond to Mr Harris's proposals for returning to work as he had already been dismissed.

32. Mr Mayhew accepts that Mr Harris's email was ill-tempered but says it came from frustration about the claimant's failure to keep in contact. He says that the claimant knew what Mr Harris was like and could have sought clarity about the respondent's position. He submits that the respondent made clear to the claimant in the email of 25 October 2024 that he remained in employment and was being invited back to work. The claimant was then dismissed on 13 November 2024 following his further failure to return to work.

33. I find that the claimant was dismissed on 23 October 2024. I do not consider that Mr Harris's words were ambiguous. The claimant took it that he had been dismissed and, in the circumstances, I do not consider that any reasonable employee in the claimant's position would have taken Mr Harris's email to mean anything else.

34. It is true that there was no use of the word "dismissed" but Mr Harris told the claimant that he had assumed he had left and despite knowing that the claimant was proposing to return to work, wished him well for the future and advised him that his P45 would be sent to him. Objectively that was a dismissal and the claimant interpreted it that way. Although thereafter on 25 October 2024 Mr Harris invited the claimant back to work, it was too late. The claimant had already been dismissed. It may be that Mr Harris acted out of frustration about lack of contact and under the misapprehension that the claimant's absence had not been covered by a fit note, but the fact was that the claimant had been dismissed. I do not find that there was any obligation on the claimant to check whether Mr Harris meant what he had said before accepting that he had been dismissed, nor was there any obligation on him to check with Mr Harris what he

had meant on receiving the letter of 25 October 2024. It is notable that Mr Harris did not retract the letter of 23 October 2024 or apologise for it, but effectively ignored it, as I have found in the hope it would be forgotten.

35. I find, therefore, that the claimant has established that he was dismissed by the respondent within section 95(1)(a) of the Employment Rights Act 1996 on 23 October 2024.

36. The respondent's case has been that it did not dismiss the claimant on 23 October 2024. It accepted that it dismissed him, but not until 13 November 2024. It has not sought to argue that there was any potentially fair reason for the dismissal as found by the Tribunal on 23 October 2024 within section 98 of the 1996 Act. It is for the respondent to show that it had such a potentially fair reason, and it has not done so. I find, therefore, that the claimant was unfairly dismissed by the respondent.

Remedy

37. I turn then to the issue of remedy for unfair dismissal. The claimant confirmed that he sought compensation. An award of compensation for unfair dismissal under section 118 of the Employment Rights Act 1996 consists of a basic award calculated under section 119 and a compensatory award under section 123.

38. The claimant's gross salary was £28,000 per year, equating to £538.00 per week. He was aged 28 and had four completed years' service at dismissal. The basic award is therefore four weeks at £538.00 per week: £2,152.00. The respondent has not contended that there should be any reduction in the basic award for the claimant's conduct.

39. As to the compensatory award, in the period immediately before and after his dismissal, the claimant received full pay until 18 September 2024 and statutory sick pay from then until 31 October 2024, during which time he was covered by a fit note. He commenced new employment at a higher rate of pay on 11 November 2024.

40. I find it is just and equitable to award compensation for the claimant's loss of earnings for the period of 10 days from 1 to 10 November 2024. Based on the claimant's net monthly pay of £1,897.97, this amounts to £520.00. I award £500.00 for loss of statutory rights. This amounts to a total compensation award of £1,020.00. The Recoupment Regulations do not apply to any part of this award as the claimant did not claim relevant benefits. The respondent has not contended that there should be any reduction for contributory fault.

41. Finally, the respondent did not provide the claimant with a written statement of terms of employment. I consider it appropriate to award two weeks' pay at £538.00 per week, amounting to £1,076.00, under section 38 of the Employment Act 2002 for that failure. Having regard to the respondent's small size, I do not consider an award of the higher amount of four weeks' pay would be appropriate.

42. I therefore award compensation for unfair dismissal in the total sum of £3,172.00, made up of (1) a basic award of £2,152.00 (four weeks' pay at £538.00 per week); and (2) a compensatory award of £1,020.00 (loss of earnings

of £520.00 net for the period 1 to 10 November 2024 and loss of statutory rights of £500.00). I further make a award under section 38 of the Employment Act 2002 of £1076.00 (two weeks' pay at £538.00 per week). These total £4,248.00.

Approved by: **S D Robertson**

Employment Judge Robertson

20 January 2026

Notes

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.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/