



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr Gregory Smith

AND

**Respondent**  
Sensing Evolution SA

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY**  
By Cloud Video Platform (CVP)

ON

9 February 2024

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Mr Daniel Moreira, Chief Financial Officer

### JUDGMENT

**The judgment of the tribunal is that the claimant succeeds in his claim for breach of contract, and the respondent is ordered to pay the claimant the net sum of £13,362.57.**

### RESERVED REASONS

1. In this case the claimant Mr Gregory Smith brings a monetary claim for breach of contract against his former employer Sensing Evolution SA. The respondent denies the claim.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which I was referred are in a bundle provided by the parties, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mr Daniel Moreira, the respondent's Chief Financial Officer, on behalf of the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The Facts:
6. The respondent is Sensing Evolution SA, which is a Portuguese company which is registered in Leiria in Portugal. It is a software company which specialises in products

- relating to audiology. The respondent wished to develop and distribute its products in the United Kingdom. The claimant Mr Gregory Smith was employed as the respondent's Sales and Operations Director with effect from 2 May 2022. He was based in Cheltenham in England.
7. The respondent prepared and the parties signed a detailed written contract of employment which was dated 4 April 2022. The relevant terms were these. The claimant was employed as Sales and Operations Director with effect from 2 May 2022. His place of work was described as his "territory", but there was a requirement to travel within the United Kingdom if necessary. The agreed salary was £65,000 per annum plus expenses. There were various benefits including a company car and a contributory pension. The notice provisions required the claimant to give three months' notice of the termination of his employment.
  8. There was a specific provision in the contract of employment entitled "Governing Law and Jurisdiction". This provision stated: "This contract of employment is governed by the laws of England and Wales and any claim/dispute arising from its construction or enforceability will be governed by and in accordance with those laws. This extends to non-contractual disputes or claims. Each party irrevocably submits that the Courts of England and Wales will have jurisdiction over any claims and attempts to resolve all controversies or claims of whatever nature arising from this contract's construction or enforceability or any breach of it."
  9. The respondent's intention was to develop its business in England and Wales, and an English company was subsequently formed. This company was incorporated on 28 April 2022 and is called Evollu (UK) Limited, and its registered office is in Stockport. It is still an active company. It is not an associated company of the respondent and is owned and controlled by one Mr Collins. In October 2022 the respondent signed a Software Licence and Distribution Agreement with Evollu (UK) Limited.
  10. It seems that the respondent was assisting to fund Evollu (UK) Limited to some degree, and it had arranged for this company to pay the claimant's salary including making the necessary statutory deductions for tax and national insurance. Mr Moreira says that in February 2023 he asked Mr Collins to transfer the contract of employment between the respondent and the claimant to Evollu (UK) Limited, but he accepts that this was never done.
  11. In any event during June 2023 Evollu (UK) Limited failed to pay claimant his salary as agreed, with the result that the claimant resigned his employment with the respondent on three months' notice. He agreed to work out his notice in exchange for his normal pay. It seems that the sum of £13,362.57 was agreed as the amount outstanding for salary expenses and pension payments for that period of three months. Mr Moreira proposed to the respondent's Board of Directors that this sum should be lent to Evollu (UK) Limited in four equal monthly instalments, so that the claimant would be paid the sums due to him. The respondents' Board declined to do so on the basis that it had no liability to the claimant, on the basis that the debt was owed by Evollu (UK) Limited.
  12. The claimant now asserts that the respondent is in breach of contract having failed to pay this sum, and he seeks compensation.
  13. Having established the above facts, I now apply the law.
  14. The Law:
  15. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") and the claim was outstanding on the termination of employment.
  16. Jurisdiction:
  17. Although the respondent is a Portuguese company which is registered in Leiria in Portugal, I am satisfied that this tribunal has jurisdiction to hear this claim. The dispute relates to a contract of employment with a British national who was based in Cheltenham to carry out employment in the United Kingdom. The contract of employment in question expressly incorporates the Employment Rights Act 1996, and expressly provides that it is subject to the jurisdiction of the courts of England and Wales.
  18. Judgment:

19. The respondent asserts that it is not liable to pay the claimant the sums due to him effectively on the basis that it is Evollu (UK) Limited which is liable to pay the debt. The respondent relies on two reasons. The first is that it entered into the contract of employment on behalf of Evollu (UK) Limited. The second (alternatively) is that the contract of employment was novated by agreement between the parties so that effectively Evollu (UK) Limited became the claimant's employer, and the relevant contract of employment should be seen as substituting Evollu (UK) Limited for the respondent.
20. I reject these arguments for the following reasons. In the first place Evollu (UK) Limited was not in existence at the time of the creation of the contract of employment between the parties. It is a detailed written contract of employment which appears to have been prepared on behalf of the respondent by professional advisers. There is no suggestion in that written contract of employment that the respondent was making it on behalf of any third party, nor that it would be substituted for any third party by agreement in the future.
21. Secondly, the claimant disputes that he agreed that the contract would be novated with Evollu (UK) Limited and there is no documentary evidence either that this happened, or that the claimant agreed to it. Even if the claimant did receive his salary through Evollu (UK) Limited, this would appear to be as a payroll agent on behalf of the respondent using an English company to discharge the necessary statutory deductions in this country such as tax and National Insurance. It does not mean of itself that the claimant necessarily therefore became an employee of Evollu (UK) Limited. This is consistent with the claimant's understanding that the respondent chose to do this in order to simplify the banking arrangements so that it did not have to pay the claimant from a Portuguese bank every month.
22. The claimant therefore succeeds in his claim for breach of contract against the respondent for his lost pay and benefits during his notice period of three months.
23. The amount of the claim is agreed between the parties at £13,362.57. The claimant worked out his three months' notice and did not receive any alternative sums in mitigation. The respondent failed to pay the claimant net salary and expenses in the sum of £3,768.15 for July 2023; £4,008.87 for August 2023, and £4,301.40 for September 2023. This is a subtotal of £12,078.42. The respondent also failed to make pension contributions of £256.83 per month for each of the five months from May to September 2023. This is a subtotal of £1,284.15.
24. The respondent therefore failed to pay the claimant the total net sum of £13,362.57 which was in breach of contract, and the respondent is ordered to pay that sum to the claimant.

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Employment Judge N J Roper  
Dated 9 February 2024

Judgment sent to Parties on 20 February 2024

For the Employment Tribunal