



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4107186/2023

Hearing Held by CVP on 14<sup>th</sup> February 2023

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Employment Judge O'Donnell

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**Mr E Hassan**

**Claimant  
In Person**

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**Commsworld Ltd**

**Respondent  
Represented by:  
Mr Katz  
(Litigation consultant)**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that the respondent acted in breach of contract by terminating the claimant's contract of apprenticeship before the end of its term. The claimant is awarded the sum of £25000 (Twenty-five thousand pounds) as compensation for this breach of contract.

### REASONS

#### Introduction

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1. The claimant has brought a complaint of breach of contract in respect of the early termination of his contract of apprenticeship with the respondent.

2. The respondent accepts that the claimant was engaged under a contract of apprenticeship but argue that the early termination of the contract was lawful.

Evidence

- 5 3. The Tribunal heard evidence from the following witnesses:-
- a. The claimant.
  - b. Simon Ironside, the respondent's head of systems who managed the claimant.

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4. There was an agreed bundle of documents prepared by the parties. A reference to page numbers below is a reference to the pages of the agreed bundle.

Findings in fact

- 15 5. The Tribunal made the following relevant findings in fact.
6. The claimant was engaged by the respondent as a graduate apprentice in cyber security from 5 September 2022 until his contract terminated on 29 September 2023.
- 20 7. The claimant secured this role when he replied to an advert on a website for apprenticeship roles. A copy of the advert was at pp50-51. The role involved studying at Edinburgh Napier University alongside working for the respondent with a view to securing a BEng (Hons) degree in cyber security.
- 25 The describes the work involved in the role in the following terms:-
- a. Working with the Security Operations and the wider Security and Compliance function.
  - b. Participate in the delivery of security projects.
  - 30 c. Support vulnerability and penetration testing on new and existing environments.
  - d. Assist internal teams with protecting the integrity of internal assets.
  - e. Basic Security alert and Report management.

8. The claimant commenced his apprenticeship on 5 September 2022 and the contract was for a 3 year fixed term expiring on 5 September 2025. The claimant had a basic salary of £18000 per annum and there was a 3% pension contribution from the respondent.
9. The claimant was placed in the respondent's Systems teams and managed by Simon Ironside. This team was responsible for the respondent's IT systems including their own internal servers and servers used to provide services to external customers. The respondent provides various IT services to customers and clients including internet connectivity, email systems, IT support and other related services.
10. The work done by the claimant in his first year related to security of the respondent's internal IT systems and he was not used to provide similar services to external customers.
11. A progress report (pp76-78) was completed towards the end of the claimant's first year. It showed that he had passed all of the learning modules for that year and there were positive comments from the university and the respondent. The report was signed by the different parties on different dates; the claimant signed on 12 July 2023, the respondent signed on 27 July 2023 and the university signed on 15 September 2023.
12. A learning agreement for the claimant's second year was at pp105-106. In terms of the employer related objectives for year two of the apprenticeship, the agreement recorded the following:-
- a. Routine port scanning and reporting results and assisting with any remediation.
  - b. Delivering the necessary management documentation to support security practises (sic) in line with company ISO accreditation standards.

- c. Preparing and delivering ad-hoc security training for Systems team and wider company.
- d. Establishing and maintaining a security risk register in a standardised format, and host regular reviews.

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13. By letter dated 27 July 2023 (p79), the claimant was invited to attend a review meeting with Mr Ironside to discuss areas of concern, actions going forward and whether the respondent would be able to continue to support the claimant's studies.

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14. The claimant attended the meeting with Mr Ironside on 31 July 2023. A note of the meeting is at pp80-81. Mr Ironside started the meeting by raising certain issues around the claimant's performance and these were discussed. At p81, it records him telling the claimant that there is an issue as to whether the respondent can support his placement into the next year. Mr Ironside states that he has been reviewing the requirements of the apprenticeship along with the remit, workload and scope of the Systems team. He goes on to state that the scope and structure of the team has changed and that he does not believe that they can adequately support the claimant's learning. No detail is given as to what these changes are said to be and why these mean they cannot support the claimant going forward.

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15. The claimant asks Mr Ironside what this means and he replies that they cannot continue with his placement.

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16. Mr Ironside followed this meeting with a letter dated 31 July 2023 (p82) confirming that the claimant's contract would terminate on 29 September 2023. The letter makes reference to the discussion of the claimant's performance and goes on to state that the *"current structure, size and scope of the Systems team is unlikely to be able to facilitate the right environment for your learning"*. It goes on to state that, having considered all these factors, the respondent could not continue to support the claimant's graduate apprenticeship.

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17. The claimant appealed the decision but this was unsuccessful.
18. The claimant had received a loan from the respondent to purchase a bicycle to travel to work as part of the company's "cycle to work" scheme and he was paying this off by instalments deducted from his wages. At the termination of his contract, the outstanding sum was £677.66 and this was written off by the respondent.
19. After the termination of his contract, the claimant took up full-time studies. He took a loan to assist with his living expenses and supplements his income by doing casual work or work in the gig economy. The amounts earning by the claimant since the termination of his contract with the respondent are set out in payslips or documents from the gig economy provider at pp97-101.

#### 15 Decision

20. It has long been recognised in the law that a contract of apprenticeship is not a contract of service (that is, a contract of employment). The primary purpose of a contract of apprenticeship is not that the apprentice provides their work to an employer in return for payment but, rather, that the apprentice is provided with training in order that they are able to gain the necessary skills and experience to be able to take up a particular trade or profession.
21. Contracts of apprenticeship exist for a limited term, most often for a specific period of time but other triggers for the end of the contract can exist (for example, the achievement of a particular qualification).
22. One of the most significant differences between a contract of apprenticeship and a contract of employment is that there are very limited circumstances in which the former can be lawfully terminated earlier than the expiry of the term of the contract. A contract of employment can be lawfully terminated by an employer giving the requisite notice but that does not apply to contracts of apprenticeship. In general, there requires to be repudiatory conduct on the

part of the apprentice for an employer to terminate their contract early. The contractual principle of frustration can also apply to contracts of apprenticeship.

5 23. In the present case, the respondent relies on the case of *Wallace v CA Roofing Services Ltd* [1996] IRLR 435 for the proposition that a contract of apprenticeship can be lawfully terminated early if the employer's business has changed to such a degree that the employer can no longer teach the apprentice what they had agreed to teach.

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24. The Tribunal pauses to note that, in *Wallace*, the English High Court was not determining whether it was lawful for an apprenticeship to be terminated early in such circumstances. The issues being determined in that case were whether there was a contract of apprenticeship between the parties and whether that contract could be determined early by reason of redundancy.

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25. The reference to changes to the employer's business leading to an early termination is made at paragraph 14 of the judgment where Sedley, LJ quotes (with approval) an extract from a textbook in the context of setting out the special features of contracts of apprenticeship:-

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*In the leading textbook, Fridman's Modern Law of Employment (1963), the principles of law governing apprenticeship are set out in an appendix. The special character of the contract of apprenticeship is illustrated in this passage:*

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*'If the master's business is so changed that he cannot properly teach the apprentice the trade, business or profession that was intended to be taught during the continuance of the apprenticeship the contract will end, but this result will not follow if the master's new business is such that he can still teach the apprentice what he originally bound himself to teach.'*

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*Fridman sets out further examples of terminating events, but concludes:*

5 *'In the absence of any of the foregoing reasons for the termination of the contract it will end only by the effluxion of time when the period of the apprenticeship has come to an end.'*

10 26. The Tribunal was not provided with any cases in which the issue of a change in the nature of a business was found to provide a lawful reason for the early termination of a contract of apprenticeship but, equally, it was not provided with any cases where it was held that this was not a lawful reason.

15 27. In these circumstances, the Tribunal proceeds on the basis that what was quoted by Sedley, LJ in *Wallace* is a correct statement of the law.

20 28. However, the Tribunal considers that it has not been provided with sufficient evidence in the present case to be able to conclude that the respondent's business had changed to such a degree that the claimant could no longer be taught what the respondent had undertaken to teach him.

25 29. The Tribunal has a number of concerns with the quality and sufficiency of the evidence lead by the respondent to support their argument. The Tribunal bears in mind that the burden of proof in this case lies with the claimant but where the respondent is seeking to advance a particular argument in defence there needs to be evidence that supports that argument.

30 30. First, in setting out their reason for termination, the respondent relied on a list of clients whose business they had lost (pp102-103) in arguing that the tasks which they could provide to the claimant as part of his learning were such that he could not be taught what had been proposed. It was their submission that the claimant needed to be exposed to work done for these clients to achieve his learning objectives and once these clients were lost then it was not possible for the claimant to be given work which achieved those objectives.

31. However, this list was prepared for the purposes of this litigation only a week before the final hearing. It provides no information about when these clients were lost other than to say they were lost over the 12 month period from February 2023 to February 2024. When asked by the Tribunal, Mr Ironside  
5 could not give any indication of the dates when these clients were lost other than to say most of them were lost in the latter half of 2023. This is significant given that the claimant was informed of the termination of his contract at the end of July 2023. If the majority of the clients were lost after this date then this fact cannot have been in the respondent's knowledge and  
10 so cannot have been contributed to the decision to terminate the claimant's contract. There is a clear inference to be drawn that this is an *ex post facto* explanation for the claimant's termination.
32. There is also the fact that the loss of these clients was not specifically  
15 mentioned as a reason for the early termination at the meeting on 31 July 2023 or in the letter confirming the claimant's termination. The notes of the meeting (p81) and the letter (p82) make a broad reference to the scope and structure of the Systems team changing and that the respondent could not facilitate the claimant's learning as a result but give no specific detail of what  
20 it was that prevented the claimant from learning. It certainly makes no reference to the loss of external clients and the Tribunal considers that if the loss of these clients was such an issue then the respondent would have mentioned it at the time. Again, the inference to be drawn is that the reference to the loss of clients is an *ex post facto* explanation.  
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33. The Tribunal also notes that the letter of termination states that the  
respondent had "*considered all these factors*" which, when the letter is read as a whole, is a clear reference to the issues raised about the claimant's performance. Whilst the respondent did not seek to rely on performance as  
30 a reason for dismissal at the hearing (although it is pled in the ET3), it is quite clear that this was a factor in the decision being made at the time. The issue of performance is not something which would justify the early termination of a contract of apprenticeship.



34. In these circumstances, the Tribunal is not satisfied that there is any evidential basis on which it could conclude that the loss of these clients was in any way connected to the termination of the claimant's contract at the time the decision was made, let alone being the reason for termination at that time. Rather, the Tribunal is of the view that this has been used as an explanation after the fact.
35. The Tribunal finds that the claimant's performance was one of the reasons for the termination at the time but this does not justify early termination. The other reason, which the Tribunal will address in more detail below, was the broad and unspecific suggestion that the Systems team could no longer facilitate the claimant's apprenticeship.
36. Second, the loss of clients undoubtedly meant that there was a reduction in the amount of work which the respondent needed its staff to carry out but this does not automatically mean that the claimant could not be taught the skills which his apprenticeship was intended to teach. What is being described by the respondent is more akin to a redundancy situation but that is not a lawful reason for the early termination of an apprenticeship.
37. The Tribunal notes that it was not in dispute between the parties that the claimant spent all of his first year working on tasks relevant to the respondent's internal systems and he did not do any tasks which related to the services provided to external clients (either those which were lost or those which had been retained). Further, the claimant achieved his learning objectives for his first year on the basis of the work carried internally for the respondent.
38. There needs to be evidence that the tasks which the claimant would undertake in the latter years of his apprenticeship required the continuing presence of the various external clients before the Tribunal can conclude that the loss of these clients meant that the respondent could no longer teach the claimant was intended to be taught in the apprenticeship. There was no such evidence led before the Tribunal.

39. This leads into the third and final point which is that the Tribunal considers that the quality of the evidence about what the claimant could no longer be taught was lacking.

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40. There needs to be evidence from which the Tribunal can conclude that the claimant could no longer be taught what it was intended he would be taught in the remainder of his apprenticeship (whether this was as a result of the loss of external clients or because of any other change to the respondent's business). It is not enough for the respondent simply to make general assertions to this effect; the Tribunal needs evidence of what it was the claimant was to be taught and why this is no longer possible.

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41. Unfortunately, the evidence led by the respondent amounts to not much more than general assertions and no detail was given as to what it was the claimant could not learn.

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42. The Tribunal was taken to the learning agreement for year 2 of the claimant's apprenticeship which sets out the employer related objectives at p106. None of these made any reference to external customers, nothing was put to the claimant in cross-examination that these could not be achieved without being able to carry out tasks for external customers and Mr Ironside gave no evidence (either in his evidence-in-chief or cross-examination) that these objectives could not have been achieved because of the loss of the various customers.

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43. Indeed, the Tribunal considers it striking that when the claimant put the objectives at p106 to Mr Ironside in cross-examination, his response was not that these could not be achieved but that there was not enough activity to sustain the claimant's position. Again, this is more akin to a redundancy situation and not a situation where the claimant can no longer be taught what had been intended.

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44. No other evidence was led by the respondents or put to the claimant as to what it was the respondent could not teach him in the latter years of his apprenticeship. The case that was put to the claimant was that, in the absence of these external customers, he could not be exposed to new tasks and so would not develop his competencies but no detail of this was put to him in terms of what tasks he could no longer be exposed to or why the tasks he could be given would not develop his competencies.
45. In this context, the Tribunal notes the evidence of Mr Ironside that there were internal cyber security tasks of a more complex nature but that these could not be given to an apprentice of the claimant's experience because of the risks if any mistakes were made. The Tribunal draws the inference from this is that there were more complex internal tasks which could have been given to the claimant as he developed his skills and experience that did not rely on external customers. This undermines the case which the respondent sought to advance.
46. No evidence was led at all about the learning objectives for year 3 of the apprenticeship and so the Tribunal can reach no conclusions at all that these objectives could no longer be achieved.
47. In these circumstances, and taking account of all the matters set out above, the Tribunal does not consider that there is sufficient evidence from which it could conclude that there was such a change in the respondent's business that it could no longer teach the claimant what it had undertaken to teach him.
48. Indeed, on the face of it, the learning objectives for year 2 were all ones which would have been achievable by the claimant in carrying out tasks for the respondent internally (for example, preparing and delivering cyber security training for the respondent's staff is clearly a wholly internal piece of work as is establishing and maintaining a security risk register).

49. For these reasons, the Tribunal does not consider that there was a lawful reason for the early termination of the claimant's contract of apprenticeship and finds that the respondent acted in breach of contract in doing so.

5 50. Turning to the issue of remedies, the Tribunal considers that the claimant would have continued to have been engaged by the respondent for the remainder of his contract. There was no evidence to suggest that there was anything else which would have lawfully terminated the apprenticeship before the expiry of the fixed term.

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51. The claimant has, therefore, lost the earnings he would have received for the remainder of the contract. He was paid up to 29 September 2023 and the contract would have continued to 5 September 2025, a period of 1 year and 11 months. The claimant was paid £18000 a year gross and so he has lost earnings of £34500.

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52. The claimant's contract also included an employer's pension contribution of 3% of basic salary and the claimant has also been deprived of this. The monetary value of this contractual benefit amounts to £1035.

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53. Any earnings which the claimant has received since the termination of his contract with the respondent should be deducted from the loss of earnings in order that the claimant does not receive a windfall. These earnings amount to £2132.92.

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54. The claimant also had an outstanding loan written off by the respondent. The Tribunal considers that the claimant should give credit for this; if the claimant had continued with his apprenticeship then there is no evidence to suggest that he would not have had to repay the loan in full and he would have a windfall if this is not taken into account. The sum written off was £677.66.

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55. The respondent led no evidence and made no submissions that the claimant had failed to mitigate his loss. The burden of proving a failure to mitigate lies

on the respondent and this has not been discharged. The Tribunal does not, therefore, make any deduction from the award in terms of mitigation.

56. The total net loss to the claimant is £32724.42. The amount the Tribunal can award in a breach of contract of claim is capped by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 at £25000 and so the Tribunal awards the sum of £25000 as compensation for breach of contract.

57. The claimant had sought sums under a number of other heads of damages but these are rendered academic by the application of the cap.

Employment Judge Peter O'Donnell  
**Employment Judge**

19/2/24  
**Date of Judgment**

**Date sent to parties**

20/02/2024