



EMPLOYMENT TRIBUNALS

Claimant

Mr D Fuller

Respondent

(1) HaiX Ltd
(2) Mr Leo Aghili-Kordmahale

v

Heard at: Watford
On: 27 November 2024
Before: Employment Judge Talbot-Ponsonby

Appearances:

For the Claimant: Raoul Downey (Counsel)
For the Respondent: Eaindra Cho (litigation consultant)

JUDGMENT having been sent to the parties on 4 January 2025 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This is a claim by Mr Daniel Fuller for non-payment of wages, holiday pay and notice pay arising out of his employment with the respondent, HaiX Limited, for the period from 16 August to 13 October 2023. The respondent's position is that the claimant was not employed by it and no money is due. The claimant originally also brought a claim for unfair dismissal but this is not now pursued as set out below.

Claims and issues

2. At the start of the hearing, there was a brief discussion of the issues. The following were agreed to be the issues relevant to the case:
 - 1 Was the claimant employed by the respondent?
 - 2 If so, what were the terms of his employment?
 - 3 What should the claimant have been paid? What was he paid?
 - 4 Did the respondent fail to provide a written statement of employment particulars as required by s.1 Employment Rights Act 1996?
 - 5 If so, what remedy is appropriate under s.38 Employment Act 2002?

- 6 What is a week's pay for the claimant?
- 7 What remedy is the claimant entitled to?
3. It was recognised by both parties that the principal issue was the question of whether the claimant was employed by the respondent.

Procedure, documents and evidence

4. The claim was heard at Reading Employment Tribunal by Cloud Video Platform on 27 November 2024. The claimant was represented by Mr Downey, counsel, and the respondent by Ms Cho.
5. Mr Aghili-Kordmahale was also named as the second respondent. As set out below, the claim against him was not pursued and references in these reasons to "the respondent" should be treated as being the HaiX Limited.
6. I was hindered to start with as I did not have all the relevant documents; it transpired that some had been filed on 8 November 2024 but unfortunately not sent to me. These were identified fairly quickly.
7. The respondent had also sent a hearing bundle and a bundle of witness statements to the claimant shortly before the start of the hearing on 27 November. This included supplemental witness statements from two of the respondent's witnesses, Mr Aghili and Mr Muppala. The hearing was therefore adjourned briefly for me to look at the documents I had not previously seen and for Mr Downey to consider the documents served this morning.
8. On resuming, Mr Downey accepted that everything in the hearing bundle had been previously disclosed, and that the claimant took no issue with that. The claimant did object to the new witness statements. I heard an oral application by Ms Cho on behalf of the respondent for permission to rely on these additional statements. I refused permission for this and gave brief oral reasons for this decision, which are not repeated here.
9. In relation to the unfair dismissal claim, Mr Downey conceded, rightly, that the claimant does not have the requisite length of service to bring a claim in unfair dismissal and so this is not pursued. The judgment will therefore record that the claim in unfair dismissal is dismissed on withdrawal. This leaves only the claim for non-payment of wages, notice and holiday pay.
10. It was likewise conceded that claim is not pursued against the second respondent and the judgment will record that this claim is also dismissed on withdrawal.
11. On the claimant's behalf, I had witness statements and heard oral evidence from the claimant, Mr Ryan Marugah and Ms Soraya Qaroune; for the respondent, had statements from Mr Aghili-Kordmahale, Mr Muppala and Mr Rothwell. I heard oral evidence from Mr Aghili-Kordmahale; Mr Muppala's and Mr Rothwell's statements were both very brief and Mr Downey had questions to ask of them in cross examination.

12. I had a skeleton argument from Ms Cho and heard submissions from Ms Cho and Mr Downey. I am grateful to them both for their assistance in this matter.

Fact finding

13. The claimant has experience in business development and sales. He saw an advertisement posted by Mr Aghili-Kordmahale on LinkedIn on behalf of the respondent, and contacted Mr Aghili-Kordmahale on 10 July 2023 to apply for the role. He then applied again 18 July 2023, also through LinkedIn.
14. Under the heading “Job description”, the LinkedIn advertisement read, “A Unique Opportunity as a Sales Executive to join an amazing AI company ,...]” and, following the sub-heading “Benefits”, “Healthy basic salary of £50,000/year, High commission, and career growth to Senior Sales Manager”. Mr Aghili-Kordmahale was identified as the relevant person to contact.
15. Mr Aghili-Kordmahale messaged the claimant on 18 July 2023 and between them they arranged a telephone call arranged for 2pm on 19 July. On that call, Mr Aghili-Kordmahale and the claimant discussed the respondent company, the role the claimant would take on, what tools were available for prospecting, and similar matters. The claimant said that he was told by Mr Aghili-Kordmahale that during probation, he would receive 20% commission, but thereafter it would reduce to 10%.
16. Thereafter, there was a second call to meet the sales team. The claimant states in his witness evidence that, after this call, he was offered the role by Mr Aghili-Kordmahale. There was a discussion about when the claimant would start with the respondent, as the claimant had holiday arranged; it was agreed he would start on 16 August 2023.
17. The respondent’s case, as set out in Mr Aghili-Kordmahale’s witness statement, was that the claimant was not employed by the respondent because, for the 2 months he was working for the respondent, he was in fact undergoing an extended interview process and he might, if successful, be offered employment at the end of this.
18. In his oral evidence, Mr Aghili-Kordmahale asserted that he had explained this to the claimant during the claimant’s second interview. I do not accept this.
19. First, the grounds of resistance are very terse – the ET3 simply states “This person was never employed by us, no contract was offered as he did not meet our criteria for employment and never passed the final stage of the interview process no PAE or NI was paid so how can this person have been employed by us”. There is no acknowledgement here that the claimant actually spent 2 months working for the respondent at all.
20. Second, Mr Aghili-Kordmahale’s witness statement, while he does set out his position about the supposed extended interview, does not mention that he allegedly explained this to the claimant at either of the telephone interviews.

21. Third, this was not put to the claimant while he was cross examined.
22. I therefore find that, as asserted by the claimant, he was offered a position with the respondent at the second interview, and a start date of 16 August 2023 was agreed. I will address below in my conclusions whether this was an offer of employment or an extended interview.
23. On 26 July, Mr Aghili-Kordmahale then sent an email to the claimant. This reads:

“Firstly I would like to congratulate you and welcome you to the HaiX family.

Your official start date will be the 16th of August 2023 @10am, the next six weeks will be your probation/final interview stage and while in your probation/final stage of interview you will be on 20% commission, as explained in the interview with a target of £15000 MRR.

When you successfully complete your probation/final stage of the interview, we will offer you a basic salary of £50,000 with a 10% commission with 1/4ly bonuses available for those that achieve above quota figures.

We will also get your email set up with your signature and send you over some templates we use with good effect for some verticals.

Kind regards,

Leo Aghili”

24. This is consistent with the claimant having been offered, and accepted, the position at the previous telephone interview.
25. The claimant replied to Mr Aghili-Kordmahale’s email, saying:

“Thank you for the email confirming all this. I’m looking forward to joining HaiX!

[...]

For the probation period, can you remind me if there is a training salary or is it the normal basic salary?

[...]”

26. The claimant never received a response to his question about the salary. In his oral evidence stated that, he found the sentence about probation / final stage interview confusing but, in the context of two telephone interviews and the first sentence of the email, he understood Mr Aghili-Kordmahale’s email to be an offer of employment.
27. As agreed, the claimant started working for the respondent on 16 August 2023. On 18 August, he was provided with an email address (Daniel.Fuller@Haix.ai) and instructions on how to set up his mail handling software to send and receive emails. Also on 18 August, the claimant was sent a non disclosure agreement to sign and asked to provide 2 references. The claimant refused to sign the NDA without first having seen his written

contract of employment. No effort appears to have been made by the respondent to follow up on this, or the references.

28. The claimant states that, having started work with the respondent, he was undertook some training and also started substantive work, trying to identify prospective customers.
29. During his time with the respondent, the claimant tried to identify prospective customers, made sales calls, arranged meetings, and attended a several trade shows.
30. The claimant explained that, as well as attending meetings with Mr Aghili-Kordmahale, he arranged and attended them himself, some with Mr Aghili-Kordmahale. He stated that he was frustrated because, at one such video call that the claimant had arranged, Mr Aghili-Kordmahale talked so much that the claimant was unable to demonstrate the software and so a possible sale was lost. On another occasion Mr Aghili-Kordmahale congratulated the claimant by email on a deal that he had secured.
31. I was taken to evidence from the claimant's diary about meetings. I do not accept the respondent's contention that every diary entry was for training; I accept the claimant's evidence that some were meetings at the start of the day, to check diaries; at the end of the day was a catch-up meeting; and during the day some entries were noted which were meetings with prospective clients, some arranged solely by the claimant. I do not accept that outside these times, he was necessarily not working; he explained that he would be investigating possible leads, and possibly attending calls that had not been diarised. I therefore accept that he was working full time for the respondent.
32. During this time, the claimant was waiting to receive his written contract of employment from the respondent. He states that he had asked Mr Aghili-Kordmahale for this several times. He states that Mr Aghili-Kordmahale always sought to avoid the conversation, saying "every time it came up by giving me comments like "it's coming", "it should be with you by now", "I'll get remind HR to send it over" ".
33. On 9 October 2023, the claimant sent an email to Mr Aghili-Kordmahale asking for a contract of employment for signature. Mr Aghili-Kordmahale did not reply to this.
34. At the trade shows in London, the claimant met Mr Muppala, the managing director of the respondent. On 10 October 2023, the claimant asked Mr Muppala what was happening with his contract of employment and when he could expect to receive it. The claimant states that Mr Muppala appeared to be surprised that the claimant and others did not have written contracts of employment, and that he would ask Mr Aghili-Kordmahale about it.
35. The next day, the claimant met Mr Muppala again and asked if there was any update; in his evidence, he states:

"He said to me, he hasn't spoken to Leo yet and I said, "but you run the company". He advised that yes, he does but he needs to speak to Leo first. I left it

at that as it was getting late. He promised he would speak to Leo, so I went home.”

36. Mr Muppala gave only a very brief witness statement, essentially stating that the respondent has no money, and does not address these meetings at all.
37. The claimant states that, on 12 October 2023, he arranged to have a meeting with Mr Aghili-Kordmahale at 1pm so that he could ask about his contract of employment. His description of this call is as follows:

“I called the meeting to ask about my contract again as it was exactly eight weeks of employment by Haix, but still no contract or salary payment. The call was very quick. Leo got angry when I asked about the contract again. He kept telling me to get a deal on the table, and then he would give me the contract and salary. Previously, on week five, he had told me I had passed probation and that I would be receiving my contract soon. He had also recently congratulated me for getting a deal across the table, there was also the big Fanzat deal which in his words “is in the millions”. I could understand him being a bit emotional as he recently had a family member in hospital, which is why he wasn’t able to make it to the event. Understanding this, I asked Leo to stop for a second, take a breath and calm down. This is when he got very angry! He aggressively shouted something, but it wasn’t clear as he hung up halfway through saying it.”

38. Mr Aghili-Kordmahale then sent the claimant a message by WhatsApp telling him to take the rest of the week off.
39. The claimant gave a very detailed explanation of his final day working for the respondent, 13 October 2023, but in essence:
- (a) Mr Aghili-Kordmahale excluded the claimant from the morning meeting,
 - (b) the claimant asked in the group WhatsApp chat why Mr Aghili-Kordmahale was excluding him;
 - (c) Mr Aghili-Kordmahale replied, “I asked you to take the rest of the week off”
 - (d) The claimant responded “I have 2 GTKYC calls this morning. I’ll be out the afternoon.”
 - (e) Mr Aghili-Kordmahale then sent the claimant a private WhatsApp message. The WhatsApp conversation then went as follows:

“[13/10/2023, 10:06:36] Leo Aghili Haix AI: Your not coming in

[13/10/2023, 10:07:02] Leo Aghili Haix AI: I’ve asked you to take the week oh and you’re not listening

[13/10/2023, 10:07:34] Leo Aghili Haix AI: Now your trying to cause disruption

[13/10/2023, 10:07:53] Dan Fuller: I'm trying to work

[13/10/2023, 10:50:45] Leo Aghili Haix AI: No your just ignoring my instructions, that’s strike two

[13/10/2023, 11:03:49] Leo Aghili Haix AI: Ok now you're just treating me with contempt and it's not on.

[13/10/2023, 11:17:15] Dan Fuller: Do you see how threatening you're being over these messages? I am just trying to do my job and get paid. I have done nothing wrong here.

[13/10/2023, 11:35:54] Leo Aghili Haix AI: You were rude with me yesterday, then you tried to bring Raj into the conversation circumventing my authority, so I told you to take the rest of the week oh, not aggressive. You clearly ignored me then tried to disrupt the morning meeting then you pulled the rest of the team into your mess. You clearly not listening and this concerns me

[13/10/2023, 11:36:07] Leo Aghili Haix AI: Now your trying to cause disruption to the

team

[13/10/2023, 11:38:07] Leo Aghili Haix AI: You've just over stepped you no longer work for Haix and do not expect a reference from us either the way you've dealt with things have been so very disappointing. All the best

[13/10/2023, 12:10:30] Dan Fuller: I was never rude to you. You barely even let me speak and raised your voice at me so I asked you to calm down, you then got angry and hung up. I spoke with Raj because you were avoiding the situation and being rude to me

[13/10/2023, 12:10:36] Dan Fuller: How?

[13/10/2023, 12:12:59] Dan Fuller: I havent done anything wrong Leo. I have worked hard here and shown full support from day 1. Can you please explain to me why you are so defensive, angry and rude to me for trying to work and to get paid? If you read everything back, I have been polite, patient and positive.

It seems you have overreacted to me asking a simple question, when will I see a contract and get paid. This is a very normal thing to ask from a business you work for.

[13/10/2023, 12:51:22] Leo Aghili Haix AI: 1. You were rude and rubbed me up the wrong way.

2. You tried to play silly buggers by trying to circumvent my authority.

3. I told you to do some thing and you ignored me.

4. You tried to disrupt the morning meeting.

5. You tried to bring the team into this situation by posting in the team chat(not very professional).

6. You should have rescheduled your meetings yourself not asked the team to help you again dragging them into this.

7. Then you post into the team chat that you will work when you like and in a nutshell what I say doesn't matter.

No quite sure who you think you are or what game you're trying to play with me but it didn't wash.

8. You've not shown that you can close a deal within these six weeks so we are letting you go.

Good enough for you.


[13/10/2023, 12:55:52] Leo Aghili Haix AI: No I'm not stupid the only reason you called Raj was because you've spent some time with him and got on well that he might be able to help some way. A little snaky don't you think?

[13/10/2023, 12:57:51] Leo Aghili Haix AI: Anyway I do truly wish you all the best and when the two you've got on the table bring some money in you will get what's owed as I am not an arse. Again you will be paid on these two that are on the table, however from this point on I really am not going to spend any more time or energy on this.

[13/10/2023, 13:11:10] Dan Fuller: 1. I have never been rude as you can see from all of our messages. I only asked simple questions which you reacted negatively to.

2. Don't really know what you mean by that, I am asking simple questions.
3. You told me to get deals, I tried. You blocked me from doing what you told me to do. I was trying to do my job.
4. I tried to join the morning meeting. You have made out that I tried to disrupt it out of nowhere.
5. I haven't brought the team into this at all. I was simply asking can I join the meeting. Does anyone want the leads I am now not allowed to have a meeting with today. As instructed by you.
6. You told me to close deals, then told me not to work. I was asking if anyone would like a nice lead from an event. Working as a team.
7. I'm on commission, I can work when I want. I am not on a salary so you don't own me. You have provided no contract.
8. You blocked a deal of mine by talking the whole hour so we couldn't do the demo. Thanks for that. You even said to me in training, two ears, one mouth. Use them in that order.

The good enough for you at the end of that message shows your tone of these messages and I hope you understand mine. I have done nothing wrong. I have worked hard for HaiX and haven't been paid, I ask for payment, you kick me out of everything and blame me

 I know what you're doing and it is wrong.

[13/10/2023, 13:12:27] Dan Fuller: Not at all. He is the CEO of a company that I work for. When management refuses to talk to me because they are getting emotional, why wouldn't I talk to the higher up? Yes, Raj and I do get on really well. That is not snakey at all.

Seriously, how do you not see the way you are talking?

[13/10/2023, 13:13:11] Dan Fuller: I will hold you to that.

[13/10/2023, 13:16:24] Leo Aghili Haix AI: 😊 you are really showing your ignorance here. A CEO works on the business not in The business and the directors run their said departments with autonomy, only giving reports to the CEO.

[13/10/2023, 13:19:06] Leo Aghili Haix AI: Oh and formulating strategies with department heads to achieve department goals as well

[13/10/2023, 13:19:34] Leo Aghili Haix AI: Not dealing with an unhappy member of stah

[13/10/2023, 13:20:22] Leo Aghili Haix AI: I'm not having any more discussions with you about this, I clearly dogged a bullet with you.

[13/10/2023, 14:03:16] Dan Fuller: I understand that in a big company but this is a start up. We all work together as a team to grow the company. Plus, Raj has said to me a few times that he wants to be more involved. It sounds like you don't want him to be. I wonder what you are hiding from him.

[13/10/2023, 14:04:41] Dan Fuller: I was never unhappy until you started being rude and disrespecting your colleague for asking basic questions like when do I get paid, can I have a contract? You didn't even let me see a contract at all after 8 weeks of working with you and HaiX AI

[13/10/2023, 14:05:57] Dan Fuller: You've missed out. You even said so many times how happy you were with me being in the team and the work I was doing. You are only like this because I asked you to pay me. Once again, I have done nothing wrong here. This is basics of employment, I thought you would know about this with all your experience or are you showing your ignorance here 😊”

40. I find that, by his message timed at 11:38, Mr Aghili-Kordmahale dismissed the claimant forthwith.
41. I will comment below about the claimant's message timed at 13:11.
42. By an email dated 7 November 2023, the claimant raised a grievance with Mr Aghili-Kordmahale and Mr Muppala, complaining that he had been told he had passed his probation at week 5, he and never been provided with a written contract and he had never been paid his salary. Mr Aghili-Kordmahale wrote to the claimant on 13 November 2023, rejecting this claim.
43. The claimant's unchallenged evidence was that he took no holiday during the time he worked for the respondent and I accept this.
44. The evidence from Mr Ryan Marugah and Ms Soraya Qaroune was consistent with that from the claimant.

Law

45. Section 230(2) of the Employment Rights Act 1996 (“ERA”) provides, so far as relevant:

“[...]

- (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

[...]

(5) In this Act “employment”—

- (a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and
- (b) in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.

[...]”

46. The starting point for assessing whether there is a contract of employment is the judgment of MacKenna J in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433, QBD. The following conditions need to be satisfied for there to be a contract of employment:

- (a) the individual agrees that, in consideration of a wage or other remuneration, he or she will provide his or her own work and skill in the performance of some service for the employer
- (b) the individual agrees, expressly or impliedly, that in the performance of that service he or she will be subject to the other’s control in a sufficient degree to make that other an employer
- (c) the other provisions of the contract are consistent with its being a contract of service.

47. The first element requires personal performance: the employee cannot arrange for someone else to carry out the relevant work.

48. The second element requires that, in practice, the employer can direct what the employee does or does not do. Although employees may have specialist skill or knowledge that means that the employer may not be able to give detailed directions, it is necessary that the employer remains some form of ultimate control.

Conclusions

49. I now turn to the issues.

1. Was the claimant employed by the respondent?

50. As I have set out above, I have found that the arrangement between the claimant and the respondent was entered into at the end of the second interview.

51. At that time, the information the claimant had was:

- (a) He had responded to an advertisement for a job described as a sales executive at a salary of £50,000
- (b) He had been offered, and accepted, this position, and a start date was agreed.

52. Mr Aghili-Kordmahale stated in his oral evidence that he had explained at this interview that the claimant was being offered a long “final stage” interview but, for the reasons given above, I have found that this point was not raised at that time.

53. The email sent on 26 July 2023 reads:

“Hi Fuller,

Firstly I would like to congratulate you and welcome you to the HaiX family.

Your official start date will be the 16th of August 2023 @10am, the next six weeks will be your probation/final interview stage and while in your probation/final stage of interview you will be on 20% commission, as explained in the interview with a target of £15000 MRR.

When you successfully complete your probation/final stage of the interview, we will offer you a basic salary of £50,000 with a 10% commission with 1/4ly bonuses available for those that achieve above quota figures.

We will also get your email set up with your signature and send you over some templates we use with good effect for some verticals.

Kind regards,

Leo Aghili.”

54. The first paragraph is indicative of someone being employed, rather than someone who is still under consideration for employment.

55. The references in the second and third paragraphs to “probation/final interview stage” are ambiguous: a probation stage is usually indicative of the first few weeks or months of employment, before the employer confirms that the employment is permanent. A final stage of interview would probably not amount to not employment.

56. The claimant, in his oral evidence, stated that he was confused by these references and also by the reference to salary; that is why he responded asking a question about the salary, to which Mr Aghili-Kordmahale did not respond.

57. Accordingly, this email does not change the position. The claimant had been offered, and accepted, a position of employment; an ambiguous email sent later does not change this. I do not know whether the ambiguity was accidental or whether Mr Aghili-Kordmahale was deliberately trying to muddy the waters so as to seek to avoid paying his employees; that point was not put to him, so I make no finding on this issue. It was put to him that he did not tell his employees that they would be working unpaid; I do find that he did not tell them this, and that they were misled.
58. My view is reinforced by the other circumstances of the case.
59. First, the job advertisement on LinkedIn makes no reference to an extended trial period of 6 to 8 weeks, effectively unpaid.
60. The explanation given by Mr Aghili-Kordmahale was unconvincing. He sought to say that he had applied for a job where he was required to put together a 20-30 minute presentation in his own time; the entire process took approximately 6 weeks, at the end of which he was told that someone more experienced had been offered the job, He therefore claimed that he had instituted a process where prospective employees spent 6-8 weeks with his new firm, watching more senior employees and being trained and (in his words) “upskilled” and, if they showed themselves competent, they would be offered a permanent position.
61. He appeared unwilling to accept that there was a significant difference between being expected to prepare a presentation for interview, which is a relatively common occurrence, and actually working for the benefit of a company for an extended period of time.
62. I accept the claimant’s evidence that he was doing genuine work for the benefit of the respondent, identifying prospective customers, making marketing calls, arranging and meetings on his own initiative, not just shadowing others.
63. Indeed, according to the claimant’s evidence, most of his colleagues were new starters like him. If they were none of them employed, and none authorised to act on behalf of the respondent, it begs the question of just who there was other than Mr Aghili-Kordmahale for the claimant to shadow.
64. Looking at the question of control, it was clear that Mr Aghili-Kordmahale did have supervisory control over the claimant and other employees. While the claimant had significant autonomy, Mr Aghili-Kordmahale expected him to attend meetings in the morning to review the day’s diary, and a catch-up meeting at the end of the day.
65. I note the comment made by the claimant in his WhatsApp message at 13:11 on 13 October 2023,, “I’m on commission, I can work when I want. I am not on a salary so you don’t own me. You have provided no contract.”. However, this was the one occasion on which the claimant made this point, and I am of the view that it was born out of frustration at the way Mr Aghili-Kordmahale had been treating him.
66. I note also that earlier in the same exchange of messages, at 11:38, Mr Aghili-Kordmahale said to the claimant, “You’ve just over stepped you no

longer work for Haix”. This appears to be an acknowledgement of the fact that (contrary to Mr Aghili-Kordmahale’s stated position) the claimant did in fact work for the respondent.

67. Similarly, in the response to the claimant’s grievance, Mr Aghili-Kordmahale wrote, “By the end of your 7th week, recognising your potential, I offered you the opportunity to continue working on a commission-only basis at a rate of 20%.”. The words “continue working” again imply that the claimant was already working for the respondent.

68. Accordingly, I am satisfied that the claimant was employed by the respondent. The contract was entered into orally at the time of the second telephone interview and the claimant was employed from 16 August 2023 until he was dismissed on 13 October 2023.

2. If so, what were the terms of his employment?

69. The relevant term that I need to identify is whether the claimant was entitled to a salary. Although Mr Aghili-Kordmahale denied that the claimant was employed at all, he readily agreed that, had the claimant been employed, it would have been at a salary of £50,000 per annum. Accordingly, I find that this was the claimant’s annual salary.

3. What should the claimant have been paid? What was he paid?

70. The claimant should have been paid his salary for the 2 months he was employed. He was paid nothing.

71. He was also dismissed summarily, and is entitled to be paid for the notice he did not receive.

4. Did the respondent fail to provide a written statement of employment particulars as required by s.1 Employment Rights Act 1996?

72. Despite repeated requests by the claimant, orally and in writing, the respondent never provided the claimant with a written contract of employment or a written statement of his employment particulars .

5. If so, what remedy is appropriate under s.38 Employment Act 2002?

73. This is not a case where most of the information was provided to the claimant, or the obligation to provide the statement of particulars was overlooked. This is an egregious case of default by the employer, where the employee has repeatedly asked for this information and the employer repeatedly failed to comply with its obligations.

74. Accordingly, I find that it is just and equitable that the respondent should pay the claimant the higher amount pursuant to section 38 Employment Act 2002, that is to say 4 weeks’ pay.

6. What is a week’s pay for the claimant?

75. For a gross salary of £50,000, the claimant’s net pay after tax and national insurance would be £38,210. This amounts to weekly net pay of £734.81, which is capped at £700.

7. What remedy is the claimant entitled to?

76. The claimant is therefore entitled to the following sums:

- (a) The gross sum of £8,333.33, being 2 months' salary
- (b) The gross sum of £961.54, being notice pay for one week
- (c) The gross sum of £961.54, being 5 days' holiday pay
- (d) The sum of £2,800 pursuant to section 38 of the Employment Act 2002, being 4 weeks' pay at the statutory cap of £700 per week

77. The total amount ordered to be paid is £13,056.41. Deductions may be required in respect of tax and national insurance where the sums have been calculated gross.

Approved by:

Employment Judge Talbot-Ponsonby

Date: 28 January 2025

Reasons sent to the parties on
31 January 2025

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For the Tribunal office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>