EMPLOYMENT TRIBUNALS

Claimant: MR T DUPERNEX

Respondent: THE GREATER SHARE SC LIMITED

Heard at: by CVP from the Central London Tribunal **On: 8 November 2023**

Before: Employment Judge Woodhead

Appearances

For the Claimant: Representing himself

For the Respondent: Mr Ogg (Counsel)

JUDGMENT

The Claimant's claim for breach of contract (notice pay) is not well founded and is dismissed.

REASONS

THE ISSUES

1. This was a claim for notice pay. The issues to be determined by the Tribunal were agreed between the parties and are in the appendix to this Judgment. The Respondent confirmed at the hearing that it no longer relied upon 2.1 and 2.2 of the list of issues but 2.2. had some relevance to 2.3 on which it did rely.

THE HEARING

2. This claim was listed for a hearing of one day. The Claimant had been a private practice solicitor (albeit with no experience of employment law) for a number of years. I sought to put the parties on a level footing by explaining the hearing process and what was required. I made clear that the Claimant could ask any questions if something was unclear.

3. The Claimant gave evidence and Ms Dana Kathleen Bezerra (Chief Executive) gave evidence for the Respondent. They both produced written witness statements and were cross examined on their evidence.

4. There was an agreed hearing bundle of 87 pages. I read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that I relied upon when reaching my decision below.

5. Both parties provided written submissions/skeleton arguments which they supplemented orally. The Respondent provided a further bundle of authorities totalling 268 pages (page numbers in that bundle are referenced with the prefix "**BA**"). The Claimant's evidence was heard first so the Respondent made submissions first and the Respondent had the opportunity to briefly reply to the Claimant's verbal submissions.

6. The Respondent having added a simplified submission based on the case of *Alfred C. Toepfer v P. Cremer [1975] 2 Lloyd's Rep. 118,* I gave the Claimant a break after hearing the Respondent's oral submissions to refine his own submissions.

FINDINGS OF FACT

7. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.

8. Having considered all the evidence, I find the following facts on a balance of probabilities.

9. By way of context and background, the Claimant commenced employment with the Respondent on 5 December 2022 as Head of Investor Relations.

10. In this judgment "IR" refers to the Respondent's Investor Relations function. The Respondent is a subsidiary of The Greater Share Foundation which is a UK registered charity. Within this, the Respondent operates a private equity 'fund of funds' where its investors donate between 50 – 100% of their profits to a cohort of eight NGOs/charities. Additionally, each of the private equity funds in which the fund of funds invests also donate all of their associated 'carry' (effectively, their profit) and fees to the eight NGOs/charities.

11. In his role, the Claimant was responsible for overseeing the fundraising process. This encompassed formulating and executing the go-to-market strategy for fundraising, engaging key stakeholders and being accountable for achieving the Respondent's fundraising targets. The funds raised would be invested in the fund of funds.

12. On 4 May 2023, having flown from the USA (where she is based) to the UK, Ms Bezerra met the Claimant at Bain & Company's offices with the purpose of issuing him with notice of the termination of his employment pursuant to his contract.

13. I accept that one of the reasons for her travelling to the UK was that, out of respect, she wanted to give notice in person. She had a similar meeting with another member of the then UK based IR function (an IR Manager), on 3 May 2023, to give them notice of the termination of their employment.

14. The Claimant denied that any disciplinary matters had been raised with him prior to the meeting but he acknowledged that his probationary period had been extended. I accept Ms Bezerra's evidence that the Claimant had fallen short of raising any funds; failed to attract new investors; and did not secure contributions from existing contacts. I accept that despite the Respondent's efforts to support the Claimant's performance, no discernible improvement was noted. I also accept that the Claimant knew about these performance concerns. Consequently, due to the Claimant's poor performance, the Board of the Respondent, decided to close the IR function in London, move it to the USA and terminate the Claimant's employment.

15. The Claimant said that he did not know about his colleague (the IR Manager referred to above) being given notice the previous day. Ms Bezerra had intended to give notice to the Claimant, who was more senior, before the IR Manager but the Claimant had cancelled the meeting she had scheduled so she had to put her meeting with the Claimant back to 4 May 2023.

16. Ms Bezerra did not, prior to the meeting, know the period of notice to which the Claimant was entitled and she had not seen a copy of his notice provision at that stage. Her position, which I accept on the balance of probabilities was that at the meeting with the Claimant on 4 May 2023 she informed the Claimant that his employment was being terminated and his contractual notice period would commence from that day. I accept on the balance of probabilities that she did not make reference to what she understood to be the length of the Claimant's contractual notice entitlement (albeit the Claimant's recollection is that she mentioned notice of one month). In any event I do not find that there was any intention or any suggestion made to the Claimant that the Respondent intended to give him any more than his contractual notice period.

17. The Parties agreed that the applicable and relevant notice provisions were as follows (page 39-40):

> *Probationary Period*
>
> *4.1. Your employment with the Company is subject to a probationary period of 3 months. During this period, the Company will monitor your performance and conduct.*
>
> *4.2. At the end of the probationary period, the Company will review your performance and conduct and, if the Company finds them to be satisfactory, the Company will confirm your appointment. Your probationary period will continue until you receive written confirmation of your having passed the probationary period.*
>
> *4.3. At any time during your probationary period, the Company may terminate your employment by giving you four week's notice in writing. If you wish to terminate your employment during the probationary period, you must give the Company four week's notice in writing.*
>
> *4.4. The Company reserves the right to extend your probationary period to enable it to better assess your performance and conduct. The*

Company will inform you if it intends to do this.

18. For completeness the applicable clauses in the Termination of Employment provision of the employment contract were as follows:

> *16. Termination of employment*
>
> *16.1. The notice periods applicable during your probationary period are set out in clause 4.*
>
> *16.2. Following successful completion of your probationary period, the Company may terminate your employment by giving you three months written notice.*
>
> *16.3. Following successful completion of your probationary period, you are required to give the Company three months written notice.*
>
> *16.4. The Company reserves the right, solely at its discretion, either on the giving or receipt of notice, or during the period of notice (whether given or received), to terminate your employment with immediate effect by notifying you that we are exercising our right under this clause and that we will make you a payment in lieu of your basic pay (as at the date of termination) only for all or the unexpired part of your notice period above, less deductions required by law. You shall have no right to receive a payment in lieu of notice unless the Company has exercised its discretion under this clause.*
>
> *16.5. If the Company decides to pay you in lieu of notice and later becomes aware that prior to the termination of your employment, you acted in repudiatory breach of contract, you shall be required to repay any payment made in lieu of notice to the Company and will not be entitled to any further payment in lieu.*

19. Leaving aside for the time being the contractual provisions, it would have been good employment practice for notice to have been communicated to the Claimant in writing immediately after the in person meeting or for the Claimant to have been issued with a letter at the meeting confirming what had been said. It would also have been good employment practice for Ms Bezerra at the meeting to have confirmed to the Claimant the date of his last day of employment ("**the Termination Date**") and to have also put this in writing.

20. The Claimant did not challenge or question that Ms Bezerra had issued him with notice at their meeting on 4 May 2023.

21. The Claimant accepted in evidence that he treated himself from that day, 4 May 2023, as being under notice of termination of his employment and that he did various things consistent with an understanding, on his part, that he was under notice of termination. For example, he cancelled a meeting with a colleague on either 4 or 5 May telling them he had been given notice (page 59). He also accepted in cross examination that the Respondent would have taken his conduct at the meeting with Ms Bezerra and subsequent to that meeting as indication to the Respondent that he accepted that he was under notice of

termination (he discussed handover with Ms Bezerra on 9 May 2023 (page 58), checked with her if he should attend a Leadership Team Management on 10 May 2023 (page 59) and sent emails on 12 and 16 May 2023 indicating that Ms Bezerra should attend the meetings given that he was due to be leaving).

22. The Claimant checked his contract of employment to verify its notice provisions on 16 May 2023. It was on that day that he realised that he had an entitlement to 4 weeks' notice and that the contract provided at 4.3 (my emphasis added) "*4.3. At any time during your probationary period, the Company may terminate your employment by giving you four week's notice in writing.*"

23. The next day (17 May 2023) the Claimant sent Ms Bezerra a message on MS Teams which led to a short call later that day at around 15.00hrs (page 73) in which the Claimant indicated that he believed he was owed written notice and that, since it had not been provided, his notice period had not commenced.

24. There was a further call between them on 18 May 2023 in which Ms Bezerra checked her understanding of the Claimant's position and in which he reaffirmed his belief that he did not consider notice had been served until he had received written notice. The following exchange of emails then ensued (in each case R is Ms Bezerra and C is the Claimant and for brevity greetings and sign off are omitted):

> ***From: R to C***
> *Sent: Thursday, May 18, 2023 4:14 PM*
> *Subject: Follow up*
>
> *In light of recent conversations, you will recall that we spoke in person on Thursday, May 4th at which time I served notice. Accordingly, your last date of employment will be June 4th.*

25. It is worth noting here that Ms Bezerra here got the notice period wrong. 28 days from 4 May 2023 was 1 June 2023 not 4 June 2023 and in this email she appears to have been working to a one month notice period. I accept her evidence that she was seeking advice on this from the three founders of the Respondent who had recruited and put in place the Claimant's contract of employment before she had commenced employment with the Respondent. In any event the emails continued (this is my understanding of the sequence of the email exchanges and the apparent anomaly in the times of sending, on my understanding, is due to Ms Bezerra being in the USA):

> ***C to R***
> *Sent: Thursday, May 18, 2023 11:42 AM*
> *Subject: Re: Follow up*
>
> *As discussed, you were required to give notice in writing under the employment contract. Absent any prior written notice, this is that notice, and accordingly the four weeks' notice is triggered from today and my last day with Greater Share shall be 15 June.*

R to C
Sent: Thursday, May 18, 2023 10:46:59 PM
Subject: RE: Follow up

The content of your e-mail is disappointing. It was absolutely clear to you that you were being given notice of the termination of your employment on Thursday 4 May (and I understand that you relayed that message to Emily subsequently) so I am somewhat surprised that you are now saying that your employment terminates on 15 June. To be clear, it does not. You were given oral notice on Thursday 4 May and there can have been no doubt in your mind that notice was being served at that time. As a result, your last day of employment will be Thursday 1 June (and not Sunday 4 June as stated in my e-mail of earlier today). I fully expect you to facilitate a smooth transition of your IR function by such date and I will be in touch in the coming days of what I expect in that regard. We are prepared to make an ex gratia payment for the period of 2-4 June but only on the basis that you agree that your employment contract terminated on Thursday 1 June. Please confirm your agreement to this by no later than Monday 22 May; if we don't receive such a confirmation then we will proceed with your last day of employment as Thursday 1 June but with no ex gratia payment.

26. The email correspondence continued as follows (again, the emails appear to be out of order because, on my understanding, Ms Bezerra was in the United States):

C to R
Sent: Friday, May 19, 2023 3:29 AM
Subject: Re: Follow up

I would strongly suggest that you take legal advice on this if you have not done so already. Per my employment contract notice is required to be served in writing.

I would also suggest that direct communication on this remains between you and me (or your lawyers as appropriate) rather than between me and Paul in order that you can control the discussions.

R to C
Sent: Friday, May 19, 2023 11:34 AM
Subject: RE: Follow up

I can confirm that my e-mail sent to you yesterday followed the taking of legal advice. Our position is very clear. While my correspondence is directly with you, the board of Greater Share are fully aware of the correspondence and have asked me to express their own disappointment with the position that you are taking and they have asked that you reconsider your position. Our position remains that you have until Monday 22 May to accept our offer after which such offer will lapse.

C to R
Sent: Friday, May 19, 2023 8:54 AM
Subject: Re: Follow up
Follow Up Flag: Follow up
Flag Status: Completed

Just to be clear on the legals, can you confirm if your legal advice stated that you acted in accordance with the contract and that notice was validly served before yesterday?

R to C
Sent: Friday, May 19, 2023 12:17 PM
Subject: RE: Follow up

We have made our position perfectly clear. We communicated the termination of your contract on Thursday 4 May. You have not sought to dispute this. That means that your last day of employment is Thursday 1 June. I suggest that you reflect on our offer and let me know by no later than Monday 22 May as to whether you wish to accept it.

C to R
Sent: Friday, May 19, 2023 1:02 PM
Subject: Re: Follow up
Follow Up Flag: Flag for follow up
Flag Status: Flagged

For the avoidance of doubt, I have at no time accepted that termination of my employment was served in accordance with the terms of the contract, irrespective of what we thought as I hadn't checked the terms of my employment contract at that point. This does not mean that you have served notice in accordance with the contract, and neither have I waived this contractual provision. Accordingly, this looks a lot like you're trying to commit a breach of contract, unless you've received legal advice to the contrary.

I have acted in good faith in pointing this out to you sooner rather than later.

I would therefore similarly encourage you to reflect on the approach being taken - I think it would be cleaner all round if there was acceptance that a mistake was made and we agree a 15 June final day with any additional payments (e.g. for untaken holiday pay etc per UK law) calculated as at that date. We can then proceed with dealing with handovers.

This is the position which we will get to anyway, unless you've received legal advice which contradicts this. If you have received such legal advice, please do let me know and we can agree a different position as it's not my intention to do anything more than enforce the terms of employment.

I would hope that you're not negotiating in bad faith on the basis that you've received legal advice which doesn't support your approach.

As a separate point, at the moment it doesn't look like you intended the notice you served yesterday to have been effective from yesterday, and we know that you didn't give notice on 4 May. There is a risk that the aggressive line you're taking keeps my period of employment open, which I don't think is in Greater Share's interest and will result in a later date being agreed. Can we bring this matter to a close and agree that the email which I sent yesterday at 4.42pm BST constitutes notice, or is this still a matter of dispute?

Please let's just stick to the law on this.

27. I note here that the Claimant's comment that "*There is a risk that the aggressive line you're taking keeps my period of employment open, which I don't think is in Greater Share's interest and will result in a later date being agreed"* was inconsistent with the position he had taken on 18 May 2023 when he said "*As discussed, you were required to give notice in writing under the employment contract. Absent any prior written notice, this is that notice, and accordingly the four weeks' notice is triggered from today and my last day with Greater Share shall be 15 June*". In any event, the correspondence went on:

C to R
Sent: Wednesday, May 24, 2023 6:36 AM
Subject: Next steps

I think it would make sense if we can bring the discussion about notice to a resolution now and agree a position (which will not be that written notice was served on 4 May as this is factually inaccurate). What's your thinking at this point?

R to C
Sent: Wednesday, May 24, 2023 4:36 PM
Subject: RE: Next steps

We have made our position perfectly clear. We provided you with notice on 4 May. At no point have you disputed that you received notice on this date; the only point that you appear to dispute is that such notice was not in writing and therefore is an ineffective notice. While we acknowledge that your contract of employment refers to written notice, we believe that that wording is included purely so as to avoid any doubt as to whether notice was served. In this instance there is no doubt that notice was served albeit orally rather than in writing. As a result your last day of employment at Greater Share is Thursday 1 June. In that regard we hereby exercise our rights under clause 16.4 of your contract of employment to terminate your notice with immediate effect. We hereby exercise our right under such clause and will make a payment to you in lieu of your basic pay for the unexpired part of your notice period less

any deductions required by law.

May I take this opportunity to thank you for all your help in recent months; we wish you every success with your future endeavours.

C to R
Sent: Wednesday, May 24, 2023 4:48 PM
Subject: Re: Next steps

I understand your position, but I don't understand the legal basis for your position. The contractual provisions are clear.

Please note that I will be referring this dispute to ACAS as regrettably we seem unable to reach a mutual understanding of the law.

One point on your email below - you state that you believe my last day of employment to be 1 June, but that you're terminating my employment today under clause 16.4. Clearly I don't agree that notice was served on 4 May and therefore the 1 June date is irrelevant, but can I confirm that your intention is for me to cease employment today (which is the effect of clause 16.4), in which case I will not be in a position to further handover/support GS's work?

Separately, could you also confirm the number of days of holiday pay which you believe I would be due if the last day of employment were 1 June (again, I dispute this date, for the reasons set out in various emails, but let's use it as a yardstick). By my calculation I have taken 6 days of annual leave since joining GS on 5 December 2023 (28, 29, 30 Dec, the morning of 7 March, 6 April, the morning of 2 May, 3 May). Can you please confirm your calculation of the number of days owed (I appreciate this may take some time to work out)?

Clearly the holiday pay figure may change depending on the final date which is agreed for the end of my notice period as these accrue on a pro rata basis.

I've cc'd my personal account to enable you to respond if the intention is for clause 16.4 to be effective as we can then continue to correspond once my email account is disabled overnight.

R to C
Sent: Wednesday, May 24, 2023 6:54 PM
Subject: RE: Next steps

Our intention is for your employment to cease today regardless of the determination of your date of notice. We will revert on holiday entitlement in due course. We will seek to continue to correspond with you via your gmail account.

28. The Claimant's employment therefore ended on 24 May 2023 and he was paid

in lieu, under clause 16.4 of the contract, of the period up to and including to 1 June 2023 (the date four weeks on from 4 May 2023 when Ms Bezerra met with the Claimant to tell him the Respondent was terminating his employment on notice).

29. As per this email correspondence, the Respondent's position was that the reference to notice 'in writing' was simply to ensure that there was no doubt as to notice having been given. The Respondent said that there was in fact no doubt between the parties following the meeting on 4 May 2023 given how the Claimant then acted. It was not in dispute that the Respondent did not, on 4 May 2023, tell the Claimant what his last day of employment was. However, the Respondent submitted that it was sufficient to tell the Claimant, as I find Ms Bezerra did on 4 May 2023, that he was under notice of termination from that date because the Claimant could then, by reference to his contract of employment, determine his last day of employment. Further the Respondent pointed to the occasion, referenced in the email correspondence above where on 18 May 2023 at 11:42 am (page 77) the Claimant had calculated his last day of employment based on notice starting to run from that date. The Claimant accepted this in cross examination. The Respondent said that this showed that a termination date of 1 June 2023 was clear as at 4 May 2023 when Ms Bezerra had her meeting with the Claimant.

30. The Claimant argued that, notwithstanding that he had been given oral notice of termination on 4 May and had understood himself to be under notice from that point, he was not in fact under notice because he had not been given written notice. He said that it was only on 16 May 2023 when he checked his contract of employment that he realised that he had not, in his view, been validly issued with notice because notice had not been put in writing.

THE LAW AND SUBMISSIONS BY THE PARTIES

31. The claim is for breach of contract pursuant to The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, which provides by Article 3(a), amongst other things, that such a claim must be a claim "*which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine*". This is such a contractual claim.

32. The Employment Rights Act 1996 at Section 86 provides for the period of notice that an employee is entitled to but does not stipulate the form in which notice must be given. Subsequent provisions of that Act deal with rights during the notice period and entitlements in respect of the notice period.

33. The Respondent's defence of the claim relied in part on the doctrine of estoppel and I accept the Respondent's submissions that, notwithstanding it being unusual for Tribunals to hear arguments concerning estoppel, the Tribunal has the jurisdiction to consider an estoppel defence. As the Respondent noted in its submissions, the EAT in ***Nosworthy v Instinctif Partners UKEAT/0100/18/RN*** (BA11) held that an Employment Tribunal may consider arguments based on rescission (resulting in the setting aside of an agreement: paragraph 51) and an argument that a clause is in restraint of trade (paragraph 84). The Respondent therefore said that the Tribunal must have jurisdiction to hear any defence 'which

a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine', just as it has jurisdiction to hear specified contractual claims falling within that definition.

34. The Respondent set out full, or in their terms 'complex', submissions as to why the Claimant's claim should not succeed under estoppel by representation based on the description of the applicable law in *Chapter 9 of The Law of Waiver, Variation and Estoppel by Sean Wilkin KC and Jarim Ghaly (3rd Edition)*. Those submissions dealt with each of the elements of estoppel by representation which I refer to as the "**Wilkin Elements**". *Chapter 9 of The Law of Waiver, Variation and Estoppel* includes the following summary:

> *"An estoppel by representation will arise between A and B if the following elements are made out. First, A makes a false representation of fact to B or to a group of which B was a member. Second, in making the representation, A intended or knew that it was likely to be acted upon. Third, B, believing the representation, acts to its detriment in reliance on the representation. Fourth, A subsequently seeks to deny the truth of the representation. Fifth, no defence to the estoppel can be raised by A."*

35. The Respondent also pointed to the very similar definition in *Spencer Bower: Reliance-Based Estoppel1 at 1.18 (Piers Feltham, Tom Leech KC, Peter Crampin KC, Joshua Winfield (5th Edition))*:

> *"1.18 Under the doctrine of estoppel by representation of fact: where one person ('the representor') has made a representation of fact to another person ('the representee') in words or by conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with intention (actual or presumptive) and with the result of inducing the representee on the faith of such representation to alter his position to his relative detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making any averment substantially at variance with his former representation, if the representee objects thereto, save to the extent that the court mitigates that result to avoid injustice, and unless that estoppel would unjustifiably subvert the policy of a rule of law.*
>
> *The following elements must therefore be established in order to constitute a valid estoppel by representation of fact:*
>
> *(1) The alleged representation of the party sought to be estopped was a representation of fact;*
> *(2) The precise representation relied upon was in fact made;*
> *(3) The case which the party is to be estopped from making contradicts in substance his original representation;*
> *(4) The representation was made with the intention (actual or as reasonably understood) and the result of inducing the estoppel raiser to alter his position on the faith thereof to his detriment;*
> *(5) The representation was made by the party to be estopped, or by some person for whose representations he deemed in law responsible,*

and was made to the estoppel raiser, or to some person in right of whom he claims.".

36. However, in oral submissions the Respondent also advanced a simplified argument focused on a case referred to in Chitty on Contracts (34th Edition) being ***Alfred C. Toepfer v P. Cremer [1975] 2 Lloyd's Rep. 118***.

37. I accept the Respondent's position that the facts of Toepfer are fairly complicated and related to a commercial shipping dispute but that in broad terms the key factual background to an understanding of the practical relevance of the case is that if a force majeure event occurs (a ship is flooded and cannot get where it needs to go) then the sellers had to give notices to the buyer. In *Toepfer* the sellers gave notice but it was the sellers who then later sought to say their own notice was invalid.

38. The Respondent pointed out that it is also helpful to understand and quote, for context, the following passage from Lord Denning's judgment in ***Toepfer*** (BA45 at page 122 of the applicable law report):

> *From the point of view of a buyer in the string, it is to his advantage to put the date of default at July 10, 1973, because his damages would be the difference between the contract price of $216 per kilo and the market price of $635 per kilo: whereas, from the point of view of a seller in the string, it is to his advantage to put the date of default back to May 10, 1973 ($338) or June 12, 1973 ($485): or even on to July 11 ($585). The contest in the present case is between the buyers who want to put the date of default at July 10, 1973; and the sellers who want to put it at some other time.*

39. I was referred to the following passage in Lord Denning's judgment in this case BA46 at page 123 of the applicable law report and emphasis added):

> *"There is yet another point. The sellers themselves invoked the force majeure clause and gave the extension notice, naming, a range of ports, namely, " Mississippi River Port(s)". Can they be permitted to say that it was a bad notice? I think not. By giving the notice, the sellers represented that it was a good notice which entitled them to an extension of the contract period. The buyers accepted it as a good notice. At any rate they did not challenge it. I venture to suggest that, if the market price had fallen, the sellers would have still said it was a good notice. It is only because the market price has risen that they seek to say it was a bad notice. In these circumstances we should apply the principle applied by this Court in Panchaud Freres S.A. v. Etablissements General Grain Co., [1970] 1 Lloyd's Rep. 53. <u>It is this: When one person has led another to believe that a particular transaction is valid and correct, he cannot thereafter be allowed to say that it is invalid or incorrect where it would be unfair or unjust to allow him to do so. It is a kind of estoppel. He cannot blow hot and cold according as it suits his book. So in this case, seeing that the sellers put forward the notice as valid for their own purposes-and induced the buyer to accept it as valid-they cannot now turn round and say it is invalid</u>."*

40. The Respondent, in oral submissions, also pointed to the following passage in LJ Scarman's judgment in the same case (BA50-51 at pages 127-128 of the applicable law report and emphasis added):

> *Mr. Lloyd, Q.C., for the sellers, submitted that upon its true construction cl. 22 of the contract required that the notice should nominate the particular port or ports from which shipment had been intended: it was not enough to indicate, as the notice did, a range of ports from which a choice would later be made. The notice did not, he submitted, declare the existence of an intention to ship from any specific port or ports. I recognize the force of this contention: the words of the clause, construed literally, do appear to support it. But I reject this construction of the clause as being too restrictive. I think the clause is capable of a construction that enables a seller who has not finally decided upon his particular port or ports of shipment but has decided to ship from one or more of a defined group of ports to claim the protection of the* clause.
>
> *[…]*
>
> *But, if the clause must be construed as Mr. Lloyd submits, it is not, in my judgment, open to the sellers so to contend. It was their notice; and the buyers accepted it. Had the buyers challenged it, the Court would have had to investigate its validity: but they did not, and whether we be in the conceptual territory of waiver or estoppel does not seem to me to matter. The sellers cannot now be heard to challenge the validity of a notice which they gave and the buyers have accepted. Though the facts were very different, the principle of the matter is as asserted by the Master of the Rolls in Panchaud Freres S.A. v. Etablissement General Grain Co., [1970] 1 Lloyd's Rep. 70, and in my judgment covers this case.*

41. The Respondent also referred me to ***Morton Sundour Fabrics Ltd v Shaw (1966) 2 ITR 84***; ***Burton Group Ltd v Smith [1977] IRLR 351***; and ***Haseltine Lake & Co v Dowler [1981] IRLR 25*** and in particular the following passage of ***Morton*** at BA221:

> *The notice may be a peremptory notice, sometimes referred to as a dismissal without notice, but if it is to operate on a future day the notice must specify that date, or at least contain facts from which that date is ascertainable.*
>
> *As a matter of law an employer cannot dismiss his employee by saying "I intend to dispense with your services at some time in the coming months." In order to terminate the contract of employment the notice must either specify the date or contain material from which that date is positively ascertainable.*
>
> .

42. The Respondent said that based on this authority (which should be contrasted with the Claimant's claim because in *Morton* the employee was only warned he would be dismissed and was not actually dismissed) the Claimant had been given valid verbal notice because he knew he was being given notice on 4 May 2023 and he was then able to calculate the effective date of the termination of

his employment by reference to his contract of employment. The Respondent pointed out that the Claimant accepted in evidence that if he looked at his contract of employment then he would know that his last day of employment would be 1 June 2023. The Respondent further argued that he did in fact perform the calculation, albeit by reference to a later date, on 18 May 2023 when he calculated on 4 weeks from that date as being 15 June 2023 (page 77).

43. The Respondent also drew contrast to the circumstances in this claim with those in ***Burton*** ("*the actual date of termination applicable to your individual case will be notified to you as soon as a decision on this point is available*") and ***Dowler*** *("in that case, eventually, we will have to dismiss")* neither of which was held to be a dismissal. In those cases, in contrast to the Claimant's, no date had been specified and no material from which that date could be positively ascertained had been given.

44. As regards any requirement for notice to be in writing, the Respondent said that the contractual wording was not intended to impose a condition precedent for the exercise of the notice clause. The Respondent said the contract would require stronger language for that (such as a specific clause providing that notices cannot be given except in writing). It is not in dispute that this employment contract does not include wording of that nature. The Respondent said that the contract referenced notice in writing to avoid any dispute as to whether notice had been given but here there was no such dispute because, for a period of 13 days, the Claimant had understood himself to be under notice of termination. The Respondent pointed to Chitty on Contracts in support of this assertion (BA33-34):

> *When interpreting a clause in a contract which lays down a procedure for termination of the contract, the court will have regard to the commercial purpose which is served by the termination clause and interpret it in the light of that purpose. 300 Strict or precise compliance with the termination clause may no longer be a necessary pre-requisite to a valid termination. 301 However, any notice must be sufficiently clear and unambiguous in its terms to constitute a valid notice 302 ; but it is a question of construction in each case whether the notice must actually be communicated to the other party and whether it takes effect at the time of dispatch or of receipt. 303 The terms of the contract may further provide that notice can be given only after the occurrence of a specified event 304 ; or that a specified period of notice be given; or that the notice is to be in a certain form (e.g. in writing); or that it should contain certain specified information; or that it should be given within a certain period of time. Prima facie the validity of the notice depends upon observance of the specified conditions. 305 However, a consideration of the relationship of the notice requirements to the contract as a whole and regard to general considerations of law, may show that a stipulated requirement, for example, that notice be given "without delay", 306 was not intended to be a condition precedent to the exercise of the right to terminate so that a failure to comply with its terms would not invalidate the notice (unless the other party was seriously prejudiced thereby), but would give rise to a claim for damages only.* 307
>
> *Waiver of defects in notice*

Where the requirements of notice have not been complied with, the party giving the notice may still be entitled to rely on it if the other party has expressly or by conduct waived the defect in the notice. 308"

45. The Respondent argued that if it was found that that the Claimant is not estopped and that the oral notice was sufficient, the Respondent says that Mr Dupernex's damages should be limited to nominal damages of £1. That is on the basis that in a wrongful dismissal case:

45.1 It is assumed the employer would have performed the contract in the way least burdensome to himself, and would have minimised his obligations to the employee by giving due notice to terminate the contract at the earliest opportunity: (BA231) ***Lavarack v Woods of Colchester Ltd [1967] 1 QB 278, [1966] 3 All ER 683***;

45.2 Following the failure to follow the procedure laid down in the contract for giving notice (namely the requirement to give notice in writing), damages should be awarded on the basis that notice could lawfully have been given on the day when the necessary procedures, if followed, could have been concluded (BA256) ***Gunton v Richmond-upon-Thames London Borough Council [1980] IRLR 321***; and, (BA267) ***Janciuk v Winerite Ltd 1998 IRLR 63 (EAT)***, in which the President of the EAT stated that in such cases "*the assumption that must be made is that the employer would have dismissed the employee at the first available moment open to him*".

45.3 Ms Bezerra's evidence at paragraph 4 of her witness statement was that she would have given written notice the same day she gave oral notice if she had realised that written notice was required. This would have the result that the Claimant has suffered no loss, and is accordingly entitled to nominal damages of £1 only.

46. I note that *Janciuk* also provides: "*Therefore, in a simple wrongful dismissal case, the Court does not ask what might have happened had the employer known that he had no right to determine the contract summarily, and then calculate compensation on a loss of a chance basis. The assumption is that the employer would have chosen to have terminated the contract lawfully at the very moment that he had brought [or sought to bring] the contract to an end unlawfully in breach of contract*."

47. If I did not accept that principle in ***Gunton*** is applicable for any reason, the Respondent said it relied on two further submissions on quantum:

47.1 First, the principle in ***Lavarack v Woods***, and the fact that the purpose of damages is to put a claimant into exactly the same position as if the contract had been duly performed, means that any damages should be paid net of tax. The Claimant's calculation at page 9 of the bundle is therefore incorrect (namely that one may take his £175,000 annual salary, divide that by 365 and multiply by 20 days to arrive at the sum of £9,589.04). Rather, given that any sum to be awarded in damages will fall below the tax-free threshold of £30,000 in the Claimant's hands, the

Tribunal should reduce any damages by the amount that the Claimant would have paid in tax. Given the Claimant's salary, any gross sum awarded by the Tribunal should be reduced by the relevant marginal rate of income tax, being the 'additional rate' of 45%. If the Tribunal finds the Claimant is entitled to 20 days' pay, that means he should be awarded £5,273.97.

47.2 Second, the Tribunal should also consider whether notice was validly given at an earlier date when considering the amount that the Claimant is entitled to in damages. In particular, on 18 May 2023, Ms Bezerra emailed the Claimant stating [77]: "*You were given oral notice on Thursday 4 May and there can have been no doubt in your mind that notice was being served at that time. As a result, your last day of employment will be Thursday 1 June (and not Sunday 4 June as stated in my e-mail of earlier today).*" The Respondent said this is sufficient written notice for the purposes of the Claimant's contract of employment. On that footing, the Claimant is entitled to 14 days' pay, namely to 15 June 2023, which is 14 days fewer than the date to which he was in fact paid, 1 June 2023. On that footing, the gross amount the Claimant would be entitled to is £6,712.33, and the net amount to be awarded by the Tribunal would be £3,691.78.

48. The Claimant argued, and I quote his written submissions in full because they are brief:

> FAILURE TO PROVIDE WRITTEN NOTICE OF TERMINATION
>
> *1. In contravention of clause 4.3 of the employment contract (bundle p.39), written notice was not provided to the Claimant on 4 May 2023 (Dana Bezerra witness statement, paragraph 14 "had I realised at the time that the Claimant's contract of employment required notice to be given in writing, I would have course have made sure that [it was]").*
>
> *2. Written notice was not provided to the Claimant until 24 May 2023 (hearing bundle pps 82-83, "our intention is for your employment to cease today")*
>
> *CASE LAW*

49. In verbal submissions the Claimant specifically referred me to ***Janciuk*** (BA268) and the passage that starts "*3. Some contracts of employment require the employer to follow a disciplinary procedure before notice of dismissal can be given*"). In citing this passage the Claimant said that it was not a case comparable with his own because even if the employer in that case had followed the correct disciplinary processes – economically the employee would have been in the same position whereas he (the Claimant in this case) was worse off). His written submissions continued:

> *1. The Respondent has referred to the case Janciuk v Winerite Ltd 1998 IRLR 63 (EAT) to support the assertion that the Tribunal should assume*

that I would have been dismissed by email at virtually the same time I was given oral notice. I distinguish this case on its facts. In this instance, Mr Janciuk was dismissed with two weeks' pay in lieu of notice. Under his contract he was entitled to one week's notice and the opportunity to defend himself in a disciplinary hearing.

2. The case of Janciuk v Winerite is therefore is not a sound analogy as the Tribunal found that even if the employer had followed the correct disciplinary procedure Mr Janciuk's employment was unlikely to have been extended beyond the additional week for which he had already been paid, above his contractual one week's notice, through the PILON. Economically, therefore, Mr Janciuk would in all likelihood have been in the same position whether or not the terms of the contract been fully complied with.

3. This is not the case in relation to this claim. Notice in writing was not served on 4 May 2023. It was served on 24 May. The difference from an economic perspective is therefore of 20 days of salary and accordingly I am in a worse economic position due to the Respondent's failure to pay for the full period of four weeks' notice from the 24 May 2023.

50. In response to this point the Respondent said that all that mattered was the ratio of ***Janciuk v Winerite*** i.e. that the assumption that must be made is that the employer would have dismissed the employee at the first available moment open to him.

51. In oral submissions the Claimant made the following further arguments:

51.1 Valid notice was not served on 4 May 2023 (because it was not in writing);

51.2 Valid notice was also not given on 18 May 2023 because:

51.2.1 As referenced in my findings of fact, the Claimant asserted that Ms Bezerra's intention was for it to have retrospective effect from 4 May (not for it to have effect from 18 May 2023). He said it was not her intention to serve notice on 18 May 2023, it was just to stick to a position that they served notice on 4 May 2023.

51.2.2 On that date the Respondent gave the wrong notice period in that it specified the wrong date (4 June 2023 not 1 June 2023) creating uncertainty on the date of expiry.

51.3 Notice was only validly given on 24 May 2023 when his employment was terminated with immediate effect.

51.4 As regards the Respondent's assertion that the Claimant had represented to the Respondent that he accepted that he had been given valid notice the Claimant said he had not because he was initially under impression that notice had been validly given on 4 May. However, he had not checked contract at that point (and neither had Ms Bezerra). He said both

he and the Respondent were labouring under the false apprehension that valid notice had been given. He went further in saying that his conduct was based on a false representation by the Respondent that valid notice had been given and it was only when he checked the contract on 16 May 2023 that he realised that valid notice had not in fact been given and on realising the deficiency in the Respondent's notice he raised it with them within 24 hours. He said it was not his conduct that caused the Respondent to fail to read the contract of employment and said that Ms Bezerra had been 'lackadaisical' and had 'not met the standards of reasonably competent CEO'.

51.5 He sought to distinguish ***Toepfer*** by arguing that he had not changed his position based on "economic winds" it was simply that new facts had come to his attention namely the specific requirement of his contract of employment for notice to be in writing.

51.6 Counsel for the Respondent had pointed to the philanthropic nature of the Respondent's undertaking. The Claimant said that was not a defence and had no bearing on the requirements of his contract of employment. He said that the philanthropic nature of the Respondent's undertaking did not give them the right to breach employment law when its suits them. He said that would be a shocking development and create uncertainty in the sector. I agree with the Claimant that that the nature of the Respondent's undertaking does not mean that a different test in law applies to them but that was not the nature of the Respondent's submission which was simply to draw a contrast between the nature of the Respondent's undertaking and what they categorised as a frivolous claim. For the avoidance of doubt I do not find that there was any sense that the Respondent actively sought to breach employment law when it suited them.

51.7 He said that it was a condition precedent for notice to be given in writing but did not expand on this point.

51.8 He also pointed to the following passage in ***Lavarak*** *(BA241):*

> *see Best C.J. in Richardson v. Mellish 2 ; and Erle C.J. and Keating J. in Inchbald v. Western Neilgherry Coffee, Tea, and Cinchona Plantation Co. Ltd.i; Chaplin v. Hicks.4 This loss of a chance is a regular head of compensation. Thus, a hairdresser's assistant, who is wrongfully dismissed, is entitled to compensation for the loss of the chance of earning tips, even though he has no legal right to them: see Manubens v. Leon. Likewise, when a man had a good chance of receiving a pension under a contributory pension scheme, he was entitled to compensation for the loss of it, even though the employer had a right to discontinue the scheme: see Bold v. Brough, Nicholson & Hall Ltd.*

51.9 He accepted the Respondent submission that if he were entitled to damages for breach of contract then the Respondent's position on tax was correct.

51.10 He said he was entitled to an award on a net of tax basis as per his witness statement of £5,273.97.

51.11 He alluded to a costs order application and said that the Respondent's solicitors and counsel could not be accused of being cheap. The Respondent's counsel clarified that he and the Respondent's solicitors had been acting on a pro bono basis.

ANALYSIS AND CONCLUSIONS

52. It is of course of fundamental importance that employees are entitled to enforce the terms of their contracts of employment. However, the Claimant's assertion that he was not intending to do 'anything more than that' belies a degree of opportunism in the way he then acted after checking his contract of employment and noticing the words "in writing" in clause 4.3. In the circumstances he found himself in the Claimant, having noticed the precise contractual wording, sought to insist on a technicality. The only practical purpose of him insisting on notice 'in writing' was to restart the clock on notice of termination (to his benefit in terms of notice pay). There was no other practical purpose in him insisting on notice pay given that he accepted in evidence that:

52.1 he had treated himself from 4 May 2023 as being under notice of termination of his employment (and, if he had checked his contract earlier, would have known his effective date of termination);

52.2 he had done various things consistent with an understanding, on his part, that he was under notice of termination;

52.3 that the Respondent would have taken his conduct at the meeting with Ms Bezerra and subsequent to that meeting as indication to the Respondent that he accepted that he was under notice of termination.

53. Counsel for the Respondent pointed out an irony which was that Ms Bezerra flew from New York to the UK out of respect for the Claimant so that she could give him notice personally. Had she not done so she would have sent an email and, most likely, the Respondent would not have had to answer this claim. However, Ms Bezerra could have given notice in person and done so in writing as well. The Respondent's consternation at the position the Claimant subsequently adopted itself also belies the fact that, as I have said, it would have been good practice for the Respondent to check the contract terms and confirm the last day of employment in writing to the Claimant (at the meeting or immediately afterwards).

54. The Respondent's central objection is that, having delayed 13 days to question whether he had been given valid notice, it would be unfair for the Claimant to be permitted, having waited nearly half his notice period, to benefit from the Respondent's mistake. The Respondent conceded that, had the Claimant raised the issue on the night of 4 May 2023 or on 5 May 2023, then that would have been reasonable and the Respondent would not have been entitled to say that it had relied on the Claimant's acceptance of its technical mistake.

55. I do not consider that the Claimant:

    55.1 deliberately delayed in checking his contract of employment (albeit there was no evidence to suggest that he could not have checked earlier); or

    55.2 was himself at fault for not having raised at an earlier point the question of whether valid notice had been served.

56. However, opportunistic or not, the question is whether in law the Claimant is right to assert that valid notice was not issued under the contract on 4 May 2023 or at a later date as alleged and whether in law he is entitled damages for breach of contract.

Verbal notice on 4 May 2023 was effective

57. I do not consider that the reference to notice in writing created a condition precedent. I consider that valid oral notice was issued to the Claimant on 4 May 2023 by Ms Bezerra.

58. I repeat again part of Chitty on Contracts to which the Respondent referred me (emphasis added):

> The terms of the contract may further provide that notice can be given only after the occurrence of a specified event 304; or that a specified period of notice be given; or that the notice is to be in a certain form (e.g. in writing); or that it should contain certain specified information; or that it should be given within a certain period of time. Prima facie the validity of the notice depends upon observance of the specified conditions. 305 However, a consideration of the relationship of the notice requirements to the contract as a whole and regard to general considerations of law, may show that a stipulated requirement, for example, that notice be given "without delay", 306 was not intended to be a condition precedent to the exercise of the right to terminate so that a failure to comply with its terms would not invalidate the notice (unless the other party was seriously prejudiced thereby), but would give rise to a claim for damages only. 307

59. In the circumstances of this case I do not consider that the relationship of the notice requirements to the contract as a whole and with regard to general considerations of law in this area suggest that notice in writing was a condition precedent (or that notice could not validly be given orally (notwithstanding the wording of the contract)). As I note above, employment legislation has not sought to mandate notice in writing and in this case I do not consider that the Claimant was prejudiced by the notice being verbal rather than in writing. Based on what he was told he was able to determine when his employment would come to an end without difficulty.

60. The Claimant in verbal submissions made reference to formal practice in commercial finance transactions where written notice and other formalities are required. I do not consider that is a fair comparison. The nature of this

employment relationship and the circumstances were very different. The Claimant was verbally told by his employer's CEO that he was being given notice of the termination of his employment (meaning that there can have been no doubt to the Claimant that this was the Respondent's true intention). This was the most immediate means of communicating that message. In contrast, where two corporate bodies engage in a large commercial or financial transaction they need to be more particular as to the means of giving notice. This might be because they need to ensure that those individuals or departments within their organisation are quickly made aware of the notice and can then take action or because there is greater potential for delay, confusion or misunderstanding as to what is intended.

61. Had the Claimant checked his contract of employment on 4 May 2023, he would have clearly understood that his employment was going to end on 1 June 2023. There was no suggestion by the Respondent that it was giving long notice or short notice – Ms Bezerra made clear enough to the Claimant that his notice would run from that date and that his employment would end after his contractual notice period. The requirements of ***Morton*** were satisfied because even though the effective date of termination was not specified, the Claimant had the material from which he could positively ascertain the date.

Did the Claimant waive the error/is he estopped from relying on the error?

Toepfer

62. I also consider that even if verbal notice was defective, as per Chitty on Contract, the Respondent was entitled to rely on the Claimant's conduct in the subsequent 13 days as waiving the defect in the notice.

63. I accept the Respondent's submission that the Court of Appeal's decision in *Toepfer* provides that a waiver of a defect in notice is in fact an estoppel (by representation) and that it is authority, in and of itself, which prevents the Claimant from relying on the Respondent's mistake in the circumstances of this particular case.

64. Of course in this claim it is not the giver of notice (the Respondent) who is seeking to rely on invalid notice it is the receiver of that notice (the Claimant). This in my view makes the position in *Toepfer* more stark and the Respondent acknowledged this. However, I nonetheless accept that *Toepfer* is authority for the position that here, where the Claimant has led the Respondent to believe that notice had been validly given "*he cannot thereafter be allowed to say that it is invalid or incorrect*" because it would be unfair or unjust to allow him to do so and he should be estopped from doing so.

65. I agree with the Respondent that it is a test of unfairness or injustice and that here the Claimant was attempting to take a technical point to his own advantage.

66. I do not agree with the Claimant's arguments that both he and the Respondent were labouring under a misapprehension that valid notice had been given and that means that valid notice was not given. The Claimant at the meeting on 4

May 2023 plainly and simply knew that the Respondent was bringing his employment to an end under the notice provisions of his contract.

67. I also do not accept the Claimant's argument that he was misled by a false representation by the Respondent as to valid notice having been given. I accept that in an employment relationship the employer usually has the greater power but here the Claimant was perfectly able to check his contract, as he later did. It was a contract into which he had only recently entered.

Wilkin Elements

68. *Toepfer* being authority for this finding I do not strictly need to go on to consider the Wilkin Elements which formed part of the Respondent's complex submissions (verses their simplified submissions based on *Toepfer*). However, I accept the Respondent's submissions on the Wilkin Elements as further establishing that the Claimant is estopped from relying on the Respondent's error.

69. **(1) False representation of fact** - The Claimant made a false representation by by accepting notice (and without objecting or querying it at the meeting on 4 May 2023 or soon after) and in his subsequent conduct (such as telling his colleague that he had been given notice, discussing handover with Ms Bezerra on 9 May 2023 and getting her involved in meetings pending his departure). He made the representation by his conduct and made the representation to, amongst others, the Respondent's CEO. Therefore the requirement for the representation being made to the appropriate representee is also satisfied. I consider that the representation was clear and unequivocal (it is very unlikely that any reasonable person would have interpreted the representation differently and thought that he had not accepted that he was under notice). The Claimant's representation was also false because, on the Claimant's case at least, he had not been given notice because it was oral notice only.

70. **(2) Knowledge and intention** – Knowledge and intention are required in the alternative. I am satisfied that subjectively the Claimant intended that his representation by conduct be acted upon in that a reasonable person would believe that he held the requisite intention (given how he acted when given notice and in the days immediately after).

71. **(3) Reliance -** It is clear that the Claimant's representation was made to the Respondent/it's CEO, that the Respondent/its CEO believed it was true and held that belief reasonably (Ms Bezerra believed she had given notice at the meeting on 4 May 2023 and, because of the Claimant's conduct, believed that he had accepted it) and (3) the Respondent/it's CEO acted in reliance on the representation in that it/she did not issue written notice to the Claimant. Had the Respondent known that valid notice had not been issued then it would have issued valid notice immediately.

72. **(4) Detriment -** The Respondent is clearly subject to a detriment or prejudice if the Claimant is permitted to resile from the representation (he would have a wrongful dismissal claim and be entitled to a remedy).

73. **(5) Defences** - There are no defences available to the Claimant.

74. **(6) Relief** - As the Claimant is estopped, the Respondent has the benefit of the Claimant being bound to the terms of his representation and/or is estopped from denying its truth and his claim fails because he is deemed to no longer be asserting that the Respondent failed to provide valid notice on 4 May 2023.

Notice would also have been effective on 18 May 2023

75. For completeness I consider that, if I am wrong and valid notice was not in fact issued on 4 May 2023 or the Claimant is not estopped, then I find that valid notice was issued on 18 May 2023 to bring the contract of employment to an end on 1 June 2023 (albeit it was of course in fact ended on 24 May 2023 with immediate effect).

76. I do not agree with the Claimant's analysis that Ms Bezerra's 18 May 2023 email did not constitute valid written notice because Ms Bezerra's intention was for it to have retrospective effect from 4 May (not for it to have effect from 18 May 2023) or because it was not her intention to serve notice on 18 May 2023, it was just to stick to a position that they served notice on 4 May 2023.

77. The Claimant's position ignores the fact that Ms Bezerra would have been giving notice (albeit short notice) and the Respondent was also entitled under the contract of employment to pay in lieu of any unserved period of notice.

78. Even if Ms Bezerra that day had again erroneously referred to a period of notice of 1 month, she corrected herself in her email that day at 10:46:59 pm and her email was clear when she said "*your last day of employment will be Thursday 1 June (and not Sunday 4 June as stated in my e-mail of earlier today)*".

79. The Claimant himself said in an email on 18 May 2023 at 11:42 am "*As discussed, you were required to give notice in writing under the employment contract. Absent any prior written notice, this is that notice, and accordingly the four weeks' notice is triggered from today and my last day with Greater Share shall be 15 June*."

80. However, for the reasons I have explained, I do not consider the Claimant's claim to be well founded and it is dismissed.

Employment Judge Woodhead

Date 15 January 2024

Sent to the parties on:

15/01/2024

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment- tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case

Appendix

AGREED LIST OF ISSUES

1. Was the Respondent in breach of clauses 4.3 and 16.4 of the Claimant's contract of employment?

2. If so, did the Claimant by his conduct:

~~2.1. accept the oral notice given to him on 4 May 2023; and/or~~

~~2.2. waive his right to written notice; and/or~~

2.3. act in a way that he is estopped from claiming that notice was not validly given?

3. If the Respondent was in breach of contract, what amount should the Claimant receive in damages?

3.1. The Claimant's case is that he is entitled to payment of his basic pay in respect of the period 1 June 2023 to 21 June 2023.

3.2. The Respondent's case is that he is entitled only to nominal damages of £1.