



# EMPLOYMENT TRIBUNALS

## Claimant

Mr R Mackinnon

v

## Respondents

CFG Holdings (S) Pte Ltd (1)

Chiropractic First Group Limited  
(in liquidation) (2)

**Heard at:** Manchester (by CVP)

**On:** 4 November 2024

**Before:** Judge Johnson

## Appearances

**For the Claimants:** unrepresented

**For the first respondent:** did not attend

**For the second respondent:** liquidator did not attend

# JUDGMENT AND REMEDY

## Findings made by the Tribunal

- (1) Having heard the evidence of the claimant and considered the documentary evidence available within the hearing bundle previously prepared by the respondents for the postponed final hearing on 15 and 16 November 2024, it is determined that the claimant was employed jointly by the respondents from 7 August 2019 until 16 June 2023.
- (2) The claimant gave notice of his resignation of employment on 17 April 2023 and with the intention that his 3 month notice period would be worked and would end on 16 July 2023.
- (3) He was entitled to resign with immediate effect because of the repudiatory breaches of contract on the part of the respondent where they continuously over many months failed to pay his full contractually agreed wages. The final straw which led to the decision to resign were the several meetings which took place remotely by Zoom and where his employer failed to provide sufficient reassurance that they would honour his contractual payments.

- (4) The decision to resign was for the sole or principal reason that his employer had breached the implied term of trust and confidence, and the claimant did not delay unduly before giving notice of his resignation in April 2023. He had good reason to wait until he received his final salary for March 2023 which was paid late and which he knew would have been withheld had he resigned earlier. Given the poor and at times spiteful behaviour of the respondents in the past, it was also reasonable for the claimant to obtain legal advice and borrow additional funds as it was likely he would face litigation from the respondents.
- (5) The claimant initially agreed to work his 3 month notice period with the respondent when they accepted his notice of resignation. However, they then suspended him during May 2023 without good reason and without paying him his contractual wages. This was a further breach of trust and confidence on the part of the respondents and the claimant was entitled to abridge his notice period which meant that the effective date of termination of employment was 17 June 2023. This arose from and was caused by the unreasonable behaviour on the part of the respondents and the notice was given only after the respondents had been given an opportunity to allow the claimant to continue working.
- (6) The complaint of constructive unfair dismissal was therefore well founded which means it is successful.
- (7) The claimant has mitigated his losses since the effective date of termination and has worked continuously as a chiropractor on a self employed basis and has worked hard to reduce the ongoing partial loss of earnings since his employment with the respondent ended.
- (8) The claimant also presented a complaint of breach of contract in respect of outstanding payments for his notice pay. This complaint was successful.
- (9) The claimant also presented a complaint of unlawful deduction of wages. This complaint was successful.
- (10) The claimant has also presented a complaint of unpaid annual leave entitlement. This complaint was successful.

#### Decision made on Remedy

- (11) Following the decision made in the Tribunal's judgment on liability above, the respondents shall pay the claimant the sum of **£96,426.83 (Ninety-Six Thousand, Four Hundred and Twenty-Six Pounds 83 Pence only)** in full and final settlement of the successful complaints of constructive unfair dismissal, breach of contract/notice pay, unlawful deduction from wages and holiday pay and as discussed in the paragraphs below.
- (12) This judgment is calculated on the following basis, applying relevant just and equitable principles under the Employment Rights Act 1996 and subject to the parties' agreement (where relevant), as applied below:

| <b>UNFAIR DISMISSAL</b>   |                       |
|---|-----------------------|
| <b>A. Basic Award</b><br>1. Completed years of service at date of effective termination = <b>3 years</b><br>2. Weeks' pay = <b>£643 per week gross</b><br>3. Claimant's age at effective date of termination: 52 years, <b>(therefore 1 1/2 week's pay for each completed year)</b><br>4. Calculation for basic award is therefore: <b>(£643 x 3) x 1 1/2 = £2893.50</b>  | <b>Subtotal/Total</b> |
| Subtotal (Basic Award)  | <b>£2893.50</b>       |
| <b>B. Compensatory Award</b><br>1. Past loss of earnings (17 June 2023 until 4 November 2024) = <b>£57,862.00</b><br>2. Plus 25% uplift for respondents' failure to comply with ACAS Code of Practice = <b>£14,465.50</b><br>3. Future loss of earnings (5 November 2024 until 16 June 2025) = <b>£5,000</b><br>4. Plus 25% uplift for respondents' failure to comply with ACAS Code of Practice = <b>£1250.00</b><br>5. Loss of Statutory rights ( <b>£400</b> ) = <b>£400.00</b>  |                       |
| [Subtotal (Compensatory Award)]*  | <b>[£78,977.50]*</b>  |
| *Applying statutory cap <b>£105,707</b> or <b>1 year's gross pay whichever is lower = 1 year's gross pay is £69,000, therefore reduce compensatory award to £69,000. Therefore Revised Subtotal (Compensatory Award)</b>  | <b>£69,000.00</b>     |
| <b>C. Breach of Contract/Notice Pay</b><br>1. The respondents agreed that the claimant could work his 3 month notice pay until 16 July 2023 but then suspended him without pay and without following any disciplinary process.<br>2. The claimant should be paid his notice pay from which remained unpaid for the period of 17 April 2023 until 16 June 2023 when he formally ceased working for the respondents because of their failure to withdraw his suspension.<br>3. The balance of the notice pay which should be paid to the claimant is <b>£8,333.33</b> |                       |
| Subtotal (breach of contract/notice pay)  | <b>£8,333.33</b>      |
| <b>D. Unlawful deduction from wages</b><br>1. Unpaid salary for April 2023 - <b>£5750.00</b>  |                       |

|   |                          |
|---|--------------------------|
| 2. Outstanding London Commission - <b>£1950.00</b><br>3. 'No New Doctors' agreement during initial period working in Chester and commission resulting from respondents recruiting a further chiropractor sooner than agreed - <b>£3,000.00</b><br>4. Partially unpaid wages April 2022 - <b>£750.00</b><br>5. Partially unpaid wages February 2023 - <b>£1,500.00</b> |                          |
| Subtotal (wages claim)  | <b>£12,950.00</b>        |
| <b>E. Holiday Pay</b><br>1. The claimant had 11 days untaken annual leave entitlement for the leave year beginning on 1 January 2023 when his employment ended on 16 June 2023 = <b>£3,250.00</b>   |                          |
| Subtotal (holiday pay)  | <b>£3,250.00</b>         |
| <b><u>GRAND TOTAL (Basic Award £2,893.50 + Capped Compensatory Award £69,000 + breach of contract/notice pay £8,333.33 + unlawful deduction from wages £12,950 + holiday pay £3,250.00)</u></b>   | <b><u>£96,426.83</u></b> |

- (13) This judgment has taken into account the question of recoupment, although given that the claimant began his new chiropractic partnership with his wife as a result of seeking to mitigate his loss of earnings from 17 June 2023, it is unlikely that any recoupable benefits will apply in this case.
- (14) However, for completeness, the relevant information for the purposes of recoupment is as follows:
- a) Prescribed element - **£57,862.00**
  - b) Prescribed period – **16 June 2023 being the Effective Date of Termination and 4 November 2024 when liability and remedy were determined.**
  - c) Total award - **£96,426.83**
  - d) Balance (£96,426.83 - £57,862.00) = **£38564.83**

\_\_\_\_\_  
 Employment Judge Johnson

Date: 4 November 2024

Sent to the parties on:

12 November 2024

For the Tribunal Office

**Note**

**Public access to employment tribunal decisions**

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

**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/>

**Claimant:** Mr R MacKinnon

**Respondents:** 1. CFG Holdings (S) Pte Ltd  
2. Chiropractic First Group Limited (in liquidation)

**ANNEX TO THE JUDGMENT  
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

**The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.**

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2406807/2023**

Name of case: **Mr R MacKinnon** v **1. CFG Holdings (S) Pte Ltd**  
**2. Chiropractic First Group Limited (in liquidation)**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day, the calculation day, and the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 12 November 2024

**the calculation day** in this case is: 13 November 2024

**the stipulated rate of interest** is: **8% per annum.**

For the Employment Tribunal Office