Case No: 2200903.2017

EMPLOYMENT TRIBUNALS

Claimant: **Mr. E. Clemente**

Respondents: **Eveho Ltd.**

Heard at: **London Central** **On: 19-20 December 2017**
Before: **Employment Judge Goodman**

Representation
Claimant: in person
Respondent: Mr T. Milo, solicitor

JUDGMENT

1. The unfair dismissal claim fails.

2. The notice pay claim fails.

3. The respondent is ordered to pay the claimant £ 3,192.36 arrears of pay. This is taxable in the hands of the claimant.

4. The respondent is ordered to pay a further sum of £888.92. for expenses reasonably incurred arising from employment. The respondent is not liable to pay invoice INV126 or 127 of FX2, the claimant's company**.**

REASONS

1. The claimant was employed by the respondent as managing director from 19 December 2016 until summarily dismissed on 24 January 2017. The respondent is the UK subsidiary of an Italian company, Eveho SRL. The claimant was the respondent's only employee.

2. Following dismissal the claimant presented claims for unfair dismissal, arrears of pay and notice pay.

3. The Tribunal proposed to strike out the unfair dismissal claim for lack of qualifying service. That claim was withdrawn and the claimant was allowed to substitute a claim that he was dismissed for asserting a statutory right, namely to be paid; he withdrew a claim that he was unfairly dismissed for making protected disclosures. There was an amended pleading which stands as a witness statement, subsequently amplified by the claimant.

Evidence

4. The Tribunal heard evidence from the **Eden Clemente**, the claimant, **Francesco Mancuso**, former sole director, and **Edigio Bagnato**, current sole director of the respondent, who attempted to negotiate terms after dismissal. As both sides' witness statements contained material on post-termination settlement negotiations and had not objected to its inclusion, it was understood that they had waived privilege.

5. The claimant and the respondent's solicitor are bilingual in Italian, but the respondent's witnesses have little English, and proceedings were interpreted into Italian throughout for their benefit.

6. There was a bundle of documents containing the contracts, some Companies House material, and many emails and WhatsApp messages in Italian with accompanying translations that had been prepared with online software with occasionally bizarre results. Where particular documents were important but the nuance hard to grasp, the interpreter kindly translated.

7. It was an added difficulty of the case that neither side seemed familiar with the bundle, the index is not itemised, emails are not placed in chronological order, witness statements were not cross referenced to documents, and on occasions parties referred to material that was not in it. The Tribunal has worked as best it could with what it had.

8. The bundle included written statements from three former employees or directors of the Italian company. None of these witnesses attended the hearing. Some of the statements were plainly hearsay, but even when not they described meetings without giving dates or referring to documents in the bundle, so even if agreed (and they were not) they would have had limited value. The Tribunal has not heeded that evidence.

9. At the conclusion of the evidence and after hearing a submission from either side judgement was reserved because all those involved would prefer to read it rather than listen to it delivered orally through an interpreter.

Findings of Fact

10. The respondent's parent, Eveho SRL, is a small company based in Como. Its business is to provide consultancy for Italian companies wishing to export to the UK. Its director (or one of them) and sole owner was Francesco Mancuso.

11. In 2016 Eveho Ltd, the respondent company, was registered at Companies House in London. Francesco Mancuso was the sole statutory director and owned the only share. The registered address was that of an accountant in London. Later that year Mr Mancuso wanted to open a London office and he was introduced to the claimant as someone who could do this and was an IT expert. There was a period of negotiation in September, October and November 2016.

12. The claimant was at the time employed by Namco Ltd as a floor manager in a gaming arcade, working around 38 hours a week though on a zero hours contract. He also operated his own business, FX Information Services Ltd, which involves only him. The income from this venture is intermittent and quite low, judging by the invoices handed in on the second day of hearing.

13. Intermittent Whats App messages from September to the beginning of November show very brief discussions of whether the claimant needed to register as director or could just be secretary, and of opening a UK bank account and taking a serviced office in Baker Street. On 5 November the claimant said his accountant advised he would need to file accounts from SRL at Companies House so as to demonstrate where the incoming money was from. Nothing more is said about becoming a director. However the claimant's evidence is that he had telephone conversations in which he said he would need to be a statutory director, as if any director was resident outside the UK, a bank would refuse to open a business account, and without an account there could be no financial transactions. No email or message records this however.

14. On 4 November Regus (a business providing serviced office accommodation) told the claimant what personal ID and proof of address he should produce to sign the rental agreement, including "certified proof of company's principal place of business including the company's name", but the email makes no mention of needing a statutory director resident in the UK to sign the rental agreement. The claimant told Regus he would be making changes on the Companies House website and opening a bank account, but no email to the respondent after 4 November mentions the office premises, or records that a bank account had to be opened first.

15. The claimant did speak to Eveho's existing accountant and the conversation became fractious, and the claimant told Mr Mancuso he wanted to use his own accountant to file statutory accounts, and as the registered office. The current accountant wanted to be paid to date before releasing the access codes, and that was done. The claimant supplied a form to Mr Mancuso (on 12 December) to register a change of registered office. He did not supply a form for change of director.

16. During the hearing the claimant was asked why his own address was the same as the registered office address of his accountant – he explained that he lived with him there, in residential accommodation behind the office.

17. Meanwhile the claimant prepared a draft service contract (it seems to have been adapted from standard form) and translated it into Italian. Mr Mancuso signed for the company and sent it back on 29th November, but the claimant objected that it provided for the first salary payment on the first 25th of January, rather than 25th December. It was then signed by both, without a meeting, on 5 December 2016.

18. The contract is for one year, at a salary of £35,000 per annum inclusive of any directors' fees, monthly instalments payable on 25th of each month in which it was due, with auto enrolment into a pension scheme, and 30 days

holiday a year inclusive of public holidays. The employee is described as managing director. He was to work 9-6 five days a week. He should devote his whole time, attention and skill to his duties at the company's principal place of business in the UK and such undertake travel abroad as was reasonably necessary for the proper performance of his duties. His duties are not described.

19. On termination, the contract provides for six months notice either side, except in the case of gross misconduct in the course of employment, and other exceptions not relevant to the facts of this case.

20. Clause 11 on intellectual property states that all inventions and know how acquired in the course of employment belong to the company, and that on termination he is to deliver up all software, documents and property of the company.

21. The claimant had given notice to terminate his current employment which ended 16 December, so he started on Monday 19 December.

22. He had told the respondent he was travelling to Italy and was invited to the Christmas party on 16 December to meet the staff but he was unable to attend. However he did go to the respondent's Como office on 20 December where he was able to meet Mr Mancuso during the lunch break. He collected the change of address form which he sent by courier to Companies House in London before travelling on to his parents in Genoa. He remained there until 19 January, when he returned to London.

23. Prior to joining he had started work on the website, for which purpose access to the control panel was transferred to him by Matteo Cucchi, an SRL employee and Mr Mancuso's stepson. This was so the claimant could add customized customer email addresses for an exhibition. The claimant says he then built a parallel website and redirected the respondent's website to his own server, apparently so as to run them in parallel and with a view to abandoning the old website when the new one was ready. The claimant explains that the old platform could not manage a blog and ecommerce too. In evidence he said he had sent the respondent an email with a link to the new platform, but he could not find it in the bundle. It was produced on the second day, part of a chain on 27 December.

24. The claimant says that in pre-contract negotiations he envisaged a budget of £5,000 per month, £3,000 for his salary and the rest for office expenses and the website, and Mr Mancuso said he could find that money for three months. Mr Mancuso's evidence was that he did not understand the claimant would need a substantial budget for the website, as there was one already, and that he was engaging an IT expert. The claimant asserts he told the respondent he would do the pre-contract work on the website upgrade through his own company, FX. The only email about this is on 18 December, where he writes that he will send an invoice for the pre-contract work, and will send another for work to the end of the month, coupled with mention of delays setting up Eveho's accounts.

25. The parties dispute that IT work was to be separately billed. Mr Mancuso saw managing the website as part of the claimant's duties, and that it was

not necessary to outsource it during a period when the claimant had few or no duties to perform for the company. Other than the claimant's email announcing what he was doing, there is no record of such an agreement. In the context of a long and formal service contract having just been signed, rather than an offer letter and statutory particulars (indeed, delayed because the claimant wished each page to be initialled by both sides, not just signed at its conclusion), it is hard to accept that there should be nothing at all, if only by exchange of emails, as evidence of an agreement for substantial further payments to the claimant's company when he was already contracted to spend his whole time on the respondent's business. The 18 December email must be read in the context of perceived practical difficulties in paying the claimant as an employee, not as evidence that there was an agreement for wages and invoices in addition to wages.

26. On 26 December, the claimant emailed Mr Mancuso saying he was sending two invoices for FX2. The first invoice was for work done 18-30 November and is for £1,601.46. The second is for 19-31 December 2016, for "website creation" and is for £1,400. The second of these "relates to the period the agreement entered into with the contract. Of the second invoice the claimant wrote: "As of signed agreements, the 25th should have received the first payment relating to salary from entry into service until the end of the month". He concluded with a complaint that he had not had a nice Christmas. Mr Mancuso replied that he had only been working for 6 days, so was a bit early to complain, and: "this week as the account (meaning a UK bank account) is not open yet I will pay you £1,000 as an expense fund, possibly on your own account, as soon as we open the current account we will make the first payment but also to manage the London branch".

27. The claimant replied complaining that this "situation is what it is because you have never met the practices that you need to do, because you were too busy in the management of the Italian branch. Otherwise today the current account of Eveho UK would have been opened". He was blaming respondent for not having an account with which to pay his salary. Mr Mancuso replied the that he would be paid from 19 December, but in his own name, because he had been hired, and not his company. He also objected to the tone the claimant had adopted and said "I'm looking for branch manager, and he behaved like the last of the most loyal employees.

28. The respondent's Pier Ricci contacted the claimant's accountant on 4th January, and the registered office address changed on 6 January 2017to that of the claimant's accountant.

29. It seems Pier Ricci also contacted the claimant about his invoices, because the claimant replied on 6 January complaining at some length about lack of trust, about delay signing the contract, that he had lost money by leaving his old job when he did, of not being paid on 25 December, and "there only for a week I should have received something". Italian inertia had delayed the change of office and his appointment (as director) and the opening of a London account, and, over four pages, much else besides. He concluded his email by saying: "activate the email address you asked me, but until I get it things will not unlock definitively,

not do anything else because the situation for me momentarily turns out the work done and questioned, lost time, and money spent in advance…which I have not returned at the moment" (presumably returned it should be refunded). He was "not anxious, I'm frustrated, and I feel like I'm ripping counter current. I talked to my accountant to my lawyer, and both advised me to wait until the end of January and if things are not going to go, I'll close my relationships with Eveho and look for a new job, due to the failure to respect the contractual terms and the actual impossibility to perform my duties, caused by a management the London question but was not taken with due care by the organisation". Pier Ricci forwarded this to Mr Mancuso, who emailed the claimant on 10 January reassuring him that he was the right person in the right place, and they were getting there, "the trust placed on you has not changed, you just have to go into director mode and not dependent, I need an operational and independent person… I'm used to paying and do not leave anything pending". He was invited to bill his living expenses to the company, and "I will keep contractual commitments, but I want a manager, and you can be". He would be paid every month, plus authorised expenses.

30. The claimant replied explaining he should be paid on 25th of each month and would take payment for both months on 25th of January. He also explained why he had invoiced, saying he could not accept money in his personal account from an Italian company with whom he had no relationship, his contract was with Eveho Ltd, not RSL. On 25 January he wanted £5,000, made up of £3,500 for the five payroll weeks, "set-aside costs" of £1,000, and £500 for his accountant's fees. He could not have this in his personal account, and it was for the respondent to look at how to pay: "it's up to you to solve". The email is long, and the tone confrontational.

31. On 9 January there were lots of messages exchanged with Mr Mancuso: how the accountant had asked for the operating codes for Companies House, explaining that if the company did not file accounts in time it could be closed down, a point repeated in an email on 14 January. The claimant also mentioned that he was waiting to be paid, and was told he would get his salary on 19 January.

32. On 11 January the claimant sent another email to Matteo Cucchi on technical issues relating to the server, and said:

> "I am pre-announcing that as the situation is very unstable, as far as I'm concerned, if it is not sorted up to January 25, it will cancel everything everything I've done so far (though not yet published) and will return to the situation before my arrival. This means that I will connect to your account for the last time to reset the DNS to its original state, and all new email addresses will be closed. You will need to recreate everything on Wix" (which was the previous platform).

33. Mr Cucchi shared this with Mr Mancuso. It was seen as a threat to take down the website if the claimant was not paid. Questioned about this the claimant has said "it's not a threat, it's what I call a handover" and "it's an information".

34. The respondent's perception of a threat was reinforced by another angry email the claimant sent on 18 January 2017 to two other Italian directors about the departure of Pier Ricci. He did not know what was going on, and did not believe that he was going to be paid on 25 January. He had not been reimbursed for work undertaken to date, he had no money in London to work with, "I cannot continue this way". The email concludes:

    > "if the terms of the contract are not respected, I will automatically be released from January 26, 2017 because of the contractual default of the buyer, and *everything will be closed without further notice*". (emphasis added)

35. Mr Mancuso was already concerned that the claimant seemed to be billing him for work done in the course of employment, as well as wanting salary on top. Fearing that without a website the company was crippled,or even that the claim ant would take over as director, Mr Mancuso took steps to protect his company. He asked me Matteo Cucchi to transfer the website back to the old server, which resulted in the claimant losing access on 19 January, and he had the registered office changed back to his old accountant's address, effective 18 January.

36. Not yet aware of this, the claimant wrote to Mr Mancuso on 19th January saying that she was leaving for London, know what's happening about the budget.

37. 21 January the claimant forwarded to more personnel of eveho-group.com 18 January email complaining he was was not going to be paid his salary. In total 8 people in the group besides Mr Mancuso had seen this.

38. Response Mr Mancuso wrote ", you positively limit, is invited you to fully line. Scratch, and as you continue to write false things, your feelings, you complain in advance who will not be paid… And the deadline will be on 25 January… I invite you to immediately stop all activities on behalf of a very limited and invited interrupted any defamatory activity against Bayer Ltd and a SRL, next week you will be contacted by my legal team to permanently close any relationship with you and proceed illegally against you if I see, from now on, any other false information concerning my companies. I hope you are smart enough to understand that you have to stop it".

39. Mr Mancuso explained evidence that it seemed to be suggested to his business partners that the business was bankrupt.

40. On 24 January the claimant was informed of "immediate termination of the contract". It seems was emailed that he had "never started to work" in London, being initially for most of January, and the and he had also received a copy of his defamatory emails "written with intentions to damage both the image of Eveho Ltd and Eveho SRL".

41. The claimant went back to his old employer and read worked shifts on a zero hours contract. Subsequently he was appointed an events assistant on 23,040 hours per week, starting 6 March 2016(sic). The payslips are suggest this is was in fact 2017.

42. The settlement negotiations took place in March. An offer was made by Mr Mancuso, and then by Mr Bagnato, when he became director. Interesting feature of the claimant's account of these negotiations is not the amount, but the fact that he said he could not lawfully be paid by the respondent, which seems at one stage to have proposed handing over cash. Even when the offer was made to an ACAS conciliator, the claimant insisted it could not be considered because it was not in writing. This is hard to understand, as any conciliated settlement would be recorded on form COT3, signed by each party and would be legally enforceable.

43. Mr Bagnato told the Tribunal that he was substituted as director in March 2017 by emailing the relevant form between himself and Mr Mancuso, and then filing it at Companies House. He is resident in Italy. He had opened an Eveho Ltd company bank account online without difficulty.

Relevant Law

44. Section 104 of the Employment Rights Act 1996 provides that an employee is regarded as unfairly dismissed if the reason, or if more than one, the principal reason, for the dismissal is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right. It is immaterial whether the employee has the right, or whether it has been infringed, but the claimant must be made in good faith. An employee need not specify the right provided it is reasonably clear to the employer what the right claimed to have been infringed was. Relevant statutory rights include rights conferred by the Employment Rights Act for which the remedy is a reference to an employment tribunal. That would include an assertion that the claimant has not been paid.

45. Tribunals often have to consider what was the reason for an employer's action. **Abernethy v Mott Hay and Anderson** explains that a reason is a set of facts or beliefs known to the employer.

46. In this area, as in some whistleblowing and victimisation claims, tribunals should take care where the reason for dismissal is the way in which a right is asserted, rather than the fact that it is asserted. In **Khan v Trident Safeguards Ltd EAT 0621/04,** it was said that the section was "intended to shield an employee from unreasonable behaviour by the employer as a consequence of the employee acting reasonably in accord with his or her statutory rights", but was not intended "to enable an employee to act as they see fit without fear of any possible consequences to continued employment".

47. Gross misconduct, which justifies dismissal without notice, is conduct which fundamentally undermines the employment contract, repudiatory conduct which goes to the root of the contract. **Wilson v Racher 1974 ICR 428, CA.**

Submissions

48. The claimant's case is that he was dismissed for saying he should have been paid on 25th of December, and insisting that he was be paid on 25th January.He blames the respondent for the fact that no bank account was

open so he could not be paid. In his grounds of claim he says "from the date of signature of the contract to my employment contract date I was expecting Mr Mancuso to perform all the legal obligations of the employer, including the shipment companies house of the forms of the change of address and my nomination as new director" and at the 2nd invoice was issued on 26 December "with the intention of giving him a chance to legally pay me back 31 December 2016 as I had noticed that Eveho Ltd still had no business bank account and nothing had been done in order to register Eveho Ltd with the HMRC and insert me into the PAYE system". "He just wrote to me that he no longer wanted me to work for the company and that I had to immediately stop representing it and doing any work, just because I was complaining that I wasn't being paid and I was asking him how he intended to manage the situation".

49. The respondent's case the claimant never performed his duties, as for most of the period he went on holiday to Italy. He took no action to obtain premises or open a bank account, he did not produce a payslip, he transferred the website platform to the UK, though most of the work was done by their Italian staff, and then started threatening to delete information, whereupon the company took action to protect its position. He had been dismissed for gross misconduct. It was not because he complained about arrangements for pay: he had been offered money in December, and told he would be paid in January. Any argument that the claimant could not receive money from an Italian company was spurious: Italy is not subject to sanctions.

Discussion and Conclusion

50. The claimant was employed to open a London office precisely because the Italian parent lacked local knowledge and expertise. The tribunal does not find that the respondent was at fault in its payment arrangements. After initial enquiries in November, the claimant does not seem to have followed up the intricacies of opening a company bank account. Without underestimating the current administrative difficulties faced by anyone with a foreign connection opening an account with a British bank, he did not explain these difficulties, or why it was important to have a locally resident director (if indeed that was important). He did not provide Mr Mancuso with a form to change director. It was in no way clear why the claimant had changed accountant, which led to additional delay. The claimant made no contact with HMRC to register PAYE, and when asked about it, said he could not do this unless he was a statutory director, which will surprise most company payroll departments, large and small, and it is astonishing that he could assert that even a managing director would not have that authority. He did not prepare a payslip for statutory deductions so that he could be paid by transfer from SRL pending opening a UK account. It is not understood why he could not lawfully be paid by transfer from Italy: he had a contract of employment which readily explained the connection, and it is not transfers that are unlawful, but the laundering the proceeds of crime or dealing with sanctioned regimes that this may facilitate. If there were practical difficulties paying the claimant, they cannot be blamed on the respondent. The claimant's lack of business experience probably accounts for his lack of understanding or seeking practical solutions.

51. There was a breakdown of trust over the invoices. The respondent did not

understand the breakdown of work pre-contract, or why the claimant was billing through his company for work after 19 December. The claimant intended the second as a substitute for his pay. The respondent rightly insisted he pay salary to an individual employee, not a company, otherwise here at least HMRC would take a dim view of an apparent attempt to avoid tax and national insurance on employed earnings. The respondent in fact offered £1,000 immediately which the claimant would not accept. The gross sum due for the two weeks from 19-31 December was £1,346.15. That will have been subject to statutory deductions. £1,000 was a fair guess. As for expenses, the claimant could have made a claim. He could also have sent SRL his bank details so a payment could be made on account. All this leads the Tribunal to conclude that both sides were to blame. Further, the respondent offered money pending sorting out what should be paid and how.

52. The respondent did not flatly refuse to pay the FX2 invoices, as early in the new year Mr Ricci was in contact about them.

53. The breakdown in trust led to the claimant writing confrontationally. Mr Mancuso went some way to reassure him as to payment, as well as rebuking him for his tone. It was reasonable for an employer to object to the tone the claimant adopted.

54. It is hard to understand why the claimant did not believe he would not be paid in January. If he insisted on payment from a UK business account, he took no steps to open one, or get a signature on a change of director form, the steps that might prevent payment being made. This is not to say he did not act in good faith, only that objectively there was no reason to believe the employer was not going to pay.

55. All this suggests that the respondent was not refusing to pay the claimant's salary, or in dispute about that. At worst, they had missed the 25 December payroll date, but as the administrative arrangements were for the claimant to make, and as he had been offered money on account, this does not justify a belief that he was not to be paid.

56. The real question is the reason for dismissal. The respondent asserts it reacted to a threat to its business by deletion of the website. The claimant denies there was such a threat. Reading the emails of 11 and 18 January it is entirely reasonable that these were read as a threat. Nor was it an idle threat, as the claimant intended to carry it out, not by deleting what had existed before but by deleting all he had done from 18 November. Given the clause on the contract of employment about property in his activities in the course of employment, and the duty of an employee, particularly a managing director, to act in the company's interests, taking down anything from the website, whoever's work it was, was in breach of duty. The respondent concluded the claimant could not be trusted, and took practical precautions. The last straw was to complain to all who would listen that the respondent did not propose to pay him when the only reason to think they would not was that the claimant had not made any practical arrangements for doing so. This was not the action of a loyal and responsible employee, and could damage the respondent's credit and good standing.

57. Both the threat, and the complaint he made to others about the company's

bad faith, were in breach of the implied terms of a contract of employment, especially of an employee in a responsible position. Plainly Mr. Mancuso could not trust him to carry on his business as contracted.

58. The claimant's remedy for failure to pay (if he was not paid) was not to sabotage either company's effective operation, but to wait to see what happened on 25 January and bring a claim for unlawful deductions if refused payment.

59. The Tribunal concludes that the reason for dismissal was not that the claimant asserted a right to be paid, but that by threatening to take down all or part of the website, and by broadcasting doubt about the employer's solvency, he breached the implied terms of fidelity. The unfair dismissal claim fails, and so does the claim for notice pay. An employer is entitled to dismiss without notice in these circumstances.

60. As for the claim of arrears of pay, the claimant was employed for five weeks and 2 days (37 days). The gross award is £3,547.94. That would have been subject to national insurance deductions, which he need not pay on an award. In 2016/17 national insurance was payable at 12% on weekly earnings over £112 and up to £827. The claimant's gross weekly pay was £673.07. National insurance payable was 12% of £561.07, multiplied by 5.28 weeks, so £355.50 must be deducted. The award is taxable, and he must declare it for tax. There is no reason, having regard to his current earnings level, to think that payment in the current year will place him in a higher tax bracket, so there is no need to gross up. The amount to be paid therefore is £3,192.44.

Expenses

61. There is in the bundle a claim for expenses. Expenses are excluded from claims for arrears of wages by section 27(2) of the Employment Rights Act. Insofar as expenses are recoverable under a contract of employment or other contract connected with employment, the Tribunal has jurisdiction under the 1994 Extension of Jurisdiction Order.

62. The employment contract (clause 1.4) provides that the company shall reimburse executive for reasonable travelling, hotel and other out-of-pocket expenses which he may probably incur in carrying out his duties (other than travel between home and normal place of work) and executive is to produce receipts or other evidence for such expenses.

63. There is a list of expenses prepared by the claimant. These include the cost of travel to Italy and back. There is no evidence that the claimant was required to travel to Italy for the performance of his duties, and he was travelling there to visit his family in Genoa for the Christmas and New Year break. There was a brief meeting with Mr Mancuso on 20 December, but he could have signed the form by email. No award is made for travel cost There is a claim for £250 for his contract, dating from 17 October 2016, paid to C2 Legal Ltd. This is an expense which would normally be paid by the employer. There is a claim for the courier charge of £50.69 for the change of address form, which is allowable as incidental to his work and made on the respondent's behalf. There are payments for IT components during the course of employment of £11.80, £7.98, £50.05. There are

receipts and these are not challenged.

64. Other items relate to the period before employment began. There is a payment of £431.89 for hosting, dated 19 November and £20.38 for a domain name, eveho–group.com, and a component at £66.13 While these payments can be related to the work the claimant carried out in anticipation of the commencement of his employment, and that if so are reasonable expenses met under the contract as managing director, it does not seem that this is the basis of the claim. Instead the claimant maintains he is entitled to bill £1,601.46 for his company FX2, on which there has been no agreement and in which the Tribunal has jurisdiction only if it is "another contract connected with his employment". It has a connection with his employment, but whether he could invoice by contract through FX2, rather than treat it as work done under the contract that had not yet begun, has been disputed, and there is no evidence that this was agreed. The claimant has also given no evidence of what work he did or when, and it is possible the sum on the invoice is as arbitrary as the invoice for the work done in December, which stood proxy for his wages. It is likely that he did some work, on the evidence of the disbursements, but the Tribunal is not able to assess it for want of evidence. It is also reasonably clear that the claimant did very little work during the currency of the contract as he was in Italy for all but a few days; though he may have done some work on the website remotely, he was unable to show what had been built on his website and a link sent to the respondent in the period of January dispute was broken. Taken overall, there is no award for INV 126, for the November work, or (for the avoidance of doubt) for INV 127, but there is an award for the components which are connected with tasks related to employment which he began early.

65. Totalling the items allowed, there is an additional award for employment expenses in the sum of £888.92.

Employment Judge Goodman on 20 December 2017