

THE INDUSTRIAL TRIBUNALS

CASE REF: 5350/18

CLAIMANT: Paul Matthew McCartan

RESPONDENT: Mullartown Contracts

DECISION

The decision of the tribunal is as follows:-

- (1) The correct respondent is Mullartown Contracts Limited. The claim against Mullartown Contracts is dismissed.
- (2) The claimant's claim for redundancy pay is well-founded and the tribunal Orders the respondent to pay to the claimant the sum of £9,500.00 compensation for redundancy pay.
- (3) The claimant's claim for pay in lieu of notice is well-founded and the tribunal Orders the respondent to pay to the claimant the sum of £3,660.00 compensation.
- (4) The claimant's claim for holiday pay is not well-founded and this claim is dismissed by the tribunal.

Constitution of Tribunal:

Employment Judge (sitting alone): Mr J V Leonard

Appearances:

The claimant appeared and represented himself in the proceedings.

There was no appearance by or on behalf of the respondent, the respondent not having presented a response to the claim.

REASONS

1. The tribunal heard oral evidence from the claimant and the tribunal noted the content of the claim form. The tribunal accordingly had to determine the claimant's claims as set forth in the claim form and as clarified to the tribunal. If these were to

be determined by the tribunal to be well-founded, the matter of appropriate remedy required to be determined.

THE TRIBUNAL'S FINDINGS OF FACT

2. In consequence of the oral evidence and documentation before it, the tribunal determined the following facts:
 - 2.1 Mullartown Contracts Limited is a company of limited liability. It was incorporated in or about 1971. It was then sold in or about 2006 to a Mr O'Hare and a Mr Eakins, who became the directors of, and it is understood the shareholders in, the company. The claimant confirmed to the tribunal that he commenced employment with this limited liability company in May 1989. He was not employed by "Mullartown Contracts". The tribunal accordingly determined that the correct respondent was Mullartown Contracts Limited. The claimant remained in employment with the respondent company until early 2018. At this time his gross weekly wage was £380.00 and his nett wage per week was £305.00.
 - 2.2 The claimant's date of birth is 28 July 1966. In early 2018 he had been continuously employed by the respondent company for 28 years and he was aged 51 years.
 - 2.3 The claimant's evidence was that there was a downturn in the respondent's business. The claimant was notified by one of the respondent's directors on 10 January 2018 that he was being "let go". He was given by the respondent a P45 document confirming the employment end date to be 10 January 2018. The claimant confirmed that the two directors of the respondent worked on briefly to complete a housebuilding project, however there was no evidence of any further work being conducted by the respondent. The claimant also confirmed that he had no information that the respondent had gone into liquidation or had been dissolved. However there was no information that it was continuing in business.
 - 2.4 The claimant, with the assistance of his local Citizens' Advice Bureau, made a written request for outstanding money to the respondent, but there had been no response. The claimant indicated that he believed he was due redundancy pay, pay in lieu of notice and also holiday pay. When questioned by the tribunal regarding the latter claim for holiday pay, the claimant confirmed that he had been fully paid all holiday pay up to the New Year 2018, but he felt that he possibly might have been due further holiday pay. The tribunal did not need to determine any further facts.

THE APPLICABLE LAW

3. Article 45 (1) of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order") provides that: "*An employer shall not make a deduction from wages of a worker employed by him unless – (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction*". Article 45(3) of the 1996 Order provides that: "*Where the total amount of wages paid on any occasion by an employer to a*

*worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion". The Court of Appeal in England in the case of **Delaney –v- Staples (t/a De Montfort Recruitment) [1991] ICR 331**, held that there was no valid distinction to be drawn between a deduction from a sum due, and non-payment of that sum, as far as the relevant statutory provision was concerned. Article 59 of the 1996 Order provides that the definition of "wages", in relation to a worker, means: "... any sums payable to the worker in connection with his employment, including - (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise...", subject to certain statutory exceptions which do not apply to the facts of this case.*

4. Article 118 of the 1996 Order provides for rights of employer and employee to minimum notice as follows:-

118.—(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more— (a) is not less than one week's notice if his period of continuous employment is less than two years,(b)is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

5. Article 129 of the 1996 Order provides for the effective date of termination as follows:-

129.—(1) Subject to the following provisions of this Article, in this Part "the effective date of termination" (a) ..., (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect,...(2) Where— (a) the contract of employment is terminated by the employer, and (b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (1)),for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

6. Article 170 of the 1996 Order provides that an employer shall pay a redundancy payment to any employee in the event that the employee is dismissed by the employer by reason of redundancy. Circumstances in which an employee who is dismissed shall be taken to be dismissed by reason of redundancy are set forth in Article 174 of the 1996 Order. This provides as follows: *"For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (a) the fact that his employer has ceased or intends to cease (i) to carry on the business for the purposes of which the employee was employed by him, or (ii) to carry on that business in the place where the employee was so employed, or (b) the fact that the requirements of that business— (i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where*

the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.”

7. Article 197 of the 1996 Order sets out how the amount of the redundancy payment should be calculated with reference to length of service and age of the employee.
8. The Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 provides that an employee may bring a claim for damages for breach of contract of employment or for a sum due under that contract if the claim arises or is outstanding on termination of employment.

The Tribunal's Determination

9. In this case there was no response; accordingly the tribunal is dealing with an undefended claim. The tribunal may only address any claim present on the papers or otherwise clarified in the course of hearing arising out of the claim.
10. In this case, upon the facts, there was clearly a dismissal of the claimant by the respondent. That occurred on 10 January 2018. In respect of such a dismissal, the tribunal is required to determine whether redundancy was the reason for the dismissal. Taking account of the statutory definition of redundancy, as stated above, there is no doubt from the evidence and the factual scenario as outlined by the claimant to the tribunal that the dismissal of the claimant by the respondent falls within the statutory definition of redundancy. Accordingly, the claimant was dismissed by reason of redundancy. In this case the compensation for redundancy is as set out in the schedule below.
11. This dismissal was, upon the facts, without notice or pay in lieu of notice. In this case the compensation due to the claimant from the respondent for pay in lieu of notice is as set out in the schedule below.
12. The claimant contended that he might have been entitled, in addition, to holiday pay but he was not quite certain upon what basis. This claim was made so the tribunal believes on the basis that it might have been connected to the effective date of termination being extended by the period of statutory notice that ought to have been given and that this period should, accordingly, have accrued holiday pay. The tribunal considered this argument but determined that this could not be sustained in law. Accordingly this argument is not upheld by the tribunal.
13. The tribunal therefore finds the claimant's respective claims, firstly, for redundancy pay and, secondly, for pay in lieu of notice to be well-founded. The tribunal Orders the respondent to pay to the claimant the sums calculated as follows:-
 - Redundancy pay (claimant aged 51 years and length of continuous service with respondent 28 years) multiplier = 25 x £380.00 = £9,500.00.
 - 12 weeks' pay in lieu of notice £305.00 = £3,660.00

TOTAL: £13,160.00

INTEREST

14. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 2 July 2018, Belfast

Date decision recorded in register and issued to parties: