

THE INDUSTRIAL TRIBUNALS

CASE REF: 38815/21

CLAIMANT: Anne O’Kane
RESPONDENT: Model Group (NI) Limited

JUDGMENT

The unanimous judgment of the tribunal is that the claimant is awarded £10,021.89 for notice pay, £424.00 for holiday pay, £1387.62 for arrears of pay, and £427.66 for pensions contribution, totalling £12,261.17.

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Crothers
Members: Mr A Kerr
Mr B Heaney

APPEARANCES:

The claimant was represented by Ms E McIlveen, Barrister-at-Law, instructed by Mills Selig Solicitors.

The respondent had not lodged a response and there was no representation by or on behalf of the respondent at the hearing.

THE CLAIM

1. The claimant claimed amounts in respect of notice pay, severance pay, holiday pay, arrears of pay, and pension contributions.

ISSUE

2. The issue before the tribunal was whether the claimant was entitled to payments in respect of three months’ notice pay, six months’ salary in respect of a severance payment, and amounts in respect of outstanding holiday pay, arrears of salary, and pension contributions.

SOURCES OF EVIDENCE

3. The tribunal heard evidence from the claimant and received a bundle of documents duly supplemented during the hearing. The bundle included the claimant's witness statement. The respondent did not lodge a response with the tribunal in respect of the claim and there was no representation by or on its behalf at the hearing.

FINDINGS OF FACT

4. Having considered the evidence insofar as same related to the issues before it, the tribunal made the following findings of fact, on the balance of probabilities:-

- (i) The claimant was employed by the respondent at all material times from 18 January 2021 at the Court and Model Care Homes until the effective date of termination of her employment on 13 April 2021. On that date the claimant noticed that her name had been removed from a key portal run by the Regulation and Quality Improvement Authority (RQIA) where she had been named as the registered provider. There was no evidence before the tribunal as to the precise reason or reasons for her dismissal, although she had raised various important issues in her role as Regional Operations Director which, she claimed, had been largely ignored in some instances. The tribunal is satisfied that the claimant did not resign as indicated by George Houghton on behalf of the respondent on 5 May 2021. On the morning of 5 May 2021, the claimant had emailed George Houghton inviting him to "*see correspondence from Sinergy*". His reply in the early afternoon states as follows:-

"Further to you email, I would like to advise you that your voluntary notice came to an end on 30 April 2021 and that from that date you now work for Naveed and Stuart.

Going forward, please take instructions from my representative Fraser Brice, and note that the handover will be 5.00 pm on Friday 7 May 2021.

Please can you also cease using the Model Group email address immediately".

- (ii) The tribunal is also satisfied, on the evidence, that there was no relevant transfer prior to 13 May 2001 affecting the claimant under the Transfer of Undertakings Regulations. The tribunal accepts the claimant's evidence that she was replaced by another employee on 13 May 2001 as the registered provider of the relevant homes. Such continued registration is a legal requirement.
- (iii) The only evidence before the tribunal relating to the terms of the claimant's contract of employment was an email from Fraser Brice on 1 December 2020 which contains the following:

“Dear Anne

We are pleased to offer you a permanent position with the Model Group NI.

Title Regional Operations Director

Salary £60,000 per annum REVIEW DATE NEEDED

Annual Leave 6 weeks plus statutory days.

WORKING HOURS – to be flexible Monday to Friday 8 hours a day, I do understand there will be a need for on call duties,

Sick Leave 12 weeks at full pay

Notice period 3 Months by either side

Severance Package 6 months’ salary

Pension Contribution Continuation of the existing FSHC package

Car a lease car can be provided or you may claim cost on your own vehicle either way it would have no tax cost to yourself.

Bonus the bonus system in place with FSHC would be continued and a future bonus system will be explored early next year.

A full contract will follow if this offer is acceptable to you.

We envisage that for the first part on 2021 the two home that will be in operation will be the Model and the Court and that you will be based there also you will be actively involved in the growth of the company when we look at further acquisitions.

I look forward to your response to this offer.

*Regards
Fraser Brice”*

A fulsome written contract was never provided by the respondent to the claimant.

- (iv) There was insufficient evidence before the tribunal to substantiate the claimant’s claim for a severance payment. However, the tribunal was satisfied, on the evidence, regarding the claimant’s calculations and entitlement to notice pay, arrears of pay, holiday pay and unpaid pension contributions. The claimant was also made aware of the tribunal’s maximum jurisdiction of £25,000 in relation to a breach of contract claim.

THE LAW

5. The tribunal considered the relevant provisions of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994, and Article 45 of The Employment Rights (Northern Ireland) Order 1996.

SUBMISSIONS

6. The tribunal had the benefit of helpful written submissions from the claimant's counsel. These are attached to this decision.

CONCLUSIONS

7. The tribunal having carefully considered the evidence before it and having applied the relevant principles of law to the findings of fact, concludes as follows:-

- (i) The tribunal is satisfied that the claim was presented in time in accordance with the Schedule to the Industrial Tribunals and the Fair Employment Tribunal (Early Conciliation: Exceptions and Rules of Procedure) Regulations (NI) 2020. However, having considered the evidence relating to the claimant's claim for a severance payment, the tribunal is not satisfied that it has sufficient evidence before it to substantiate such a claim.
- (ii) The tribunal is satisfied that it is appropriate to rely on the claimant's net pay of £3,340.63 in her payslip of 30 April 2021 to ground her claim for three months' notice pay in the net sum of £10,021.89.
- (iii) The claimant was entitled to six weeks' holidays (30 days) plus statutory days. The holiday year ran from April to March. The claimant accrued 2.5 days holiday each month (30 days ÷ 12). She worked all of April and up to 13 May 2021 (1.5 months). She was entitled to a total of 3.75 days for this period (2.5 x 1.5). She had however taken one day's holiday during this period, leaving a balance of 2.75 days.

Net pay in April 2021 of £3,340.63
x 12 ÷ 52 ÷ 5 =
net pay daily rate of £154.18 x 2.75 = £ 424.00

- (iv) The claimant is owed 9 working days pay from 1 May to 13 May 2021.

This is calculated at the daily
net rate of £154.18 x 9 = £1,387.62

- (v) The tribunal is also satisfied, on the evidence, that the respondent did not pay pension contributions into the claimant's pension scheme for the period 18 January to 13 May 2021. Payslips were not available for either January or May 2021. However, the tribunal is satisfied that the claimant worked from 18 January to 31 January and 1 May to 13 May, totalling 27 days. The tribunal is further satisfied that it is appropriate to adopt the average figure suggested of £109.41 and £110.07 respectively to reflect the respondent's pension contribution for January and May.

The average figure is £109.74
÷ 30 days in a month x 27 = £98.77

The accumulative pension loss is
£109.41 + £109.41 + £110.07 + £98.77 = £427.66

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

Employment Judge:

Date and place of hearing: 23 & 24 June 2022, Belfast.

This judgment was entered in the register and issued to the parties on: