

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No S/4102715/2016

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Held at Glasgow on 3 March 2016

Employment Judge: F Jane Garvie

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Mr James MacAulay

**Claimant
No Appearance**

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**Redundancy Payment Service
Secretary of State for Business, Energy
& Industrial Strategy**

**First Respondent
No Appearance**

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**John Hardie Jnr As Personal Representative
Of The Late John Hardie t/a
Langlands Road Garage**

**Second Respondent
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant is entitled to a redundancy payment of **Six Thousand, Six Hundred and Seventy Five Pounds (£6,675)** and that the Second Respondent is ordered to pay the claimant the said redundancy payment and the claim continues to be sisted/stayed against the First Respondent.

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REASONS

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1. In its Judgment dated 24 January 2017 the Tribunal found that it did not have jurisdiction to consider certain of the complaints brought by the claimant but that it did have jurisdiction to consider the complaint in relation to a redundancy payment and the claim was continued to enable the parties to provide their written responses as to whether a Rule 21 Judgment should be issued against the Second Respondent and the proceedings sisted or stayed against the First Respondent and they should do so within 14 days of the date of the Judgment which was issued on 25 January 2017.

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2. By letter dated 27 January 2017 the First Respondent advised they would have no objection to a Rule 21 Judgment being issued against the Second

Respondent and, as stated in its response, (the ET3) if the Tribunal found that the employer was liable and failed to comply with the award then the Department would be able to consider making a redundancy payment under Sections 166 and 167 of the Act. The letter continued, however, that as the
5 employer was not insolvent as defined in Section 163 of the Act no payments in respect of holiday pay, arrears of pay and notice pay could be paid by the Secretary of State from the National Insurance Fund. As indicated above, the Tribunal had already found that it did not have jurisdiction to consider these complaints as they were not presented
10 timeously.

3. That letter was acknowledged on 10 February 2017 and it was also noted there had been no response from the Second Respondent. Copies of the correspondence were sent to the Second Respondent under cover of a letter also dated 10 February 2017. Separately, a further letter was sent to
15 the Second Respondent, pointing out that the Second Respondent was to reply by 20 February 2017. No reply was received.

4. By e-mail dated 13 February 2017 the claimant's solicitor submitted that it would be appropriate for a Rule 21 Judgment to be issued against the Second Respondent in relation to the redundancy payment.

20 5. That letter was acknowledged on 28 February 2017 and copied to the Second Respondent.

6. In all the circumstances, given there has been no reply from the Second Respondent and given the position as set out in the Judgment and Reasons dated 24 January 2017 the Tribunal has concluded that a Rule 21 Judgment
25 in terms of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 should be issued against the Second Respondent. This is on the basis that the claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £6,675 which is calculated on the claimant's age at dismissal, (49 years) when he had

completed 11 full years' service with the employer and was earning a gross weekly pay of £445.

7. Accordingly, the Second Respondent is ordered to pay to the claimant the said redundancy payment of £6,675.

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15 Employment Judge: F Jane Garvie
Date of Judgment: 09 March 2017
Entered in register: 10 March 2017
and copied to parties

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