



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4103196/2020 (A)

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Held in Glasgow on 23 October 2020

Employment Judge: D Hoey

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Ms Audrey Hollingworth

**Claimant
Represented by:
Herself**

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Bluebell Tea Room Ltd

**Respondent
Represented by:
Not present**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The respondent shall pay to the claimant:

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- a. damages of **£525.44** in respect of 2 week's notice pay due to the claimant;
- b. a redundancy payment in the sum of **£1,970.40**, the claimant having been dismissed by reason of redundancy; and
- c. holiday pay amounting to **£420.35** in respect of untaken and unpaid holidays due to the claimant.

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REASONS

Introduction

1 In a claim form presented on 5 June 2020 the claimant claimed a redundancy pay, unpaid notice pay and accrued holiday pay. Early conciliation had

E.T. Z4 (WR)

commenced on 26 May 2020 with the ACAS early conciliation certificate issued on 29 May 2020.

The claim is undefended

5 2 No response form/ET3 was lodged on behalf of the respondent. The claim was therefore undefended.

Hearing fixed

10 3 In the absence of a response from the respondent, while the rules would allow a judgment to be issued if it were possible to do so from the information provided, a remote hearing had been set down for today. Due to technical issues the remote CVP hearing was converted to a telephone hearing.

15 4 The claimant was able to fully participate and the Tribunal was satisfied that the arrangements for that hearing had been conducted in accordance with the Practice Direction dated 11 June 2020, and ascertained that the appropriate notice as to that hearing was on the cause list. It was satisfied that the hearing had been conducted in a fair and appropriate manner.

20 5 The respondent was given the opportunity of participating in the hearing, which was a public hearing, but chose not to do so.

Issues

6 The issues to be determined in this case are as follows:

25 a. **Notice pay:** is the claimant due 2 week's pay in respect of her statutory notice entitlement (given she was employed for 5 complete years and was given 3 week's notice)?

b. **Redundancy payment:** was the claimant dismissed by reason of redundancy and is she due a redundancy payment and if so how much should be awarded?

5 c. **Accrued but unpaid holiday pay:** As at the end of her employment, had the claimant accrued holidays for which no payment had been made and if so how much should be awarded?

Findings in fact

7 The Tribunal makes the following findings in fact from the evidence presented
10 to the Tribunal, which evidence had not been disputed.

8 The claimant was engaged as cook/waitress and was employed for over 5 complete years.

9 On 29 November 2019 the claimant was given notice that the business would cease to trade. It would (and did) close with effect from 21 December 2019.

15 10 The claimant worked until 20 December 2019.

11 The respondent ceased to trade from 21 December 2019. At that stage the claimant had accrued 1.6 week's holidays which had been untaken and unpaid.

20 12 The claimant took advice from ACAS and asked the respondent for her redundancy payment, the remainder of her notice which was 2 week's pay (since she had 5 complete year's service and had only been given 3 week's notice) and the outstanding holiday pay due to her. The respondent did not pay the sums due.

25 13 The company was in the process of being struck off the companies house register but this had been paused. The claimant would advise companies house as to her application before the Tribunal.

14 The claimant secured another role from 27 January 2020.

15 The claimant's gross pay with the respondent was £8.21 per hour and she worked a minimum of 32 hours per week.

16 The claimant was aged 58 as at her dismissal.

5 **Law**

Notice pay

10 19. Under section 86 of the Employment Rights Act 1996, an employee is entitled to be given a minimum period of notice to terminate the contract of employment (unless the employer was entitled to terminate the contract without notice, such as in cases of gross misconduct).

15 20. For the claimant, given she has 5 complete years of employment, she is entitled to 5 week's statutory notice. Failure to pay notice pay (whether in full or in part) results in there being a breach of contract.

20 21. Under the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 a Tribunal can award a claimant damages for breach of contract where the claim arises or is outstanding on termination of employment. The cap of the award that a Tribunal can make is currently £25,000.

Unlawful deductions

25 22. In terms of section 13 of the Employment Rights Act 1996, it is unlawful to pay to an employee, by way of wages, a sum less than that which is properly payable in terms of the contract of employment. The Tribunal is able to make a declaration as to what the unlawful deduction was and order the respondent to pay to the claimant said deduction.

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Holiday pay

23. The law in this area stems from the Working Time Directive and is found in the Working Time Regulations 1998. Regulation 13 sets out the entitlement to annual leave, namely 4 weeks per year. Regulation 13A sets out the entitlement to the additional leave period of 1.6 weeks a year. Thus all workers are entitled to 5.6 week's leave per year.

24. Regulation 14 deals with the calculation of pay where holidays have accrued and remain untaken as at the end of employment. It contains a formula to calculate what is due as at the end of employment (essentially the proportion of untaken leave that has accrued to the relevant date) and requires the employer to pay to the employee a payment in lieu of the leave that has accrued (where the amount of accrued leave is more than the amount taken).

Redundancy payment

25. Redundancy is defined in section 139 of the Employment Rights Act 1996 as arising where the dismissal is wholly or mainly attributable to the fact the employer ceases or intends to cease to carry on the business for the purposes she was employed or in the place she was employed or where there is a cessation or diminution of the requirements for employees to carry out work of a particular kind or to carry out work of a particular kind in the place they were employed.

26. Under section 163 of the Employment Rights Act 1996, where an employee has been dismissed by reason of redundancy, they may be eligible for a statutory redundancy payment. An employee must have a minimum of 2 year's complete service and the payment is calculated according to the formula set out at section 162 of the 1996 Act, whereby the employee receives 1.5 week's gross pay for every year of employment in which they were not below 41, 1 week's gross pay for each year of employment when they were below 41 but not below 22 and 0.5 week's gross pay for each year they were below 22. The cap on a gross week's pay for someone dismissed in December 2019 is £525. A maximum of 20 years can be taken into account.

Decision and reasons

5 27. I shall deal with each claim in turn.

Notice pay

17 The claimant was entitled to 5 week's notice as she had been employed for
10 5 complete years. As she was only given 3 week's notice she is entitled to
payment of 2 week's notice pay. Said sum was due to the claimant and had
not been paid.

18 One week's gross pay is £8.21 times 32 hours which is £262.72. The
claimant's notice pay entitlement that is outstanding is therefore £525.44.
15 This is the sum awarded. It is awarded gross given the effect of the taxation
rules to ensure the claimant is awarded a sum that reflects the sum she lost.
She had not secured an alternative role during the notice period.

Redundancy payment

20 19 From the information before the Tribunal the respondent ceased to carry on
business in the place the claimant was employed and she was dismissed for
that reason. She is therefore entitled to a redundancy payment as she was
dismissed because of redundancy.

20 Applying the formula set out in the Employment Rights Act 1996, as the
25 claimant was 58 at the date of dismissal with 5 complete year's service, the
multiplier is 7.5.

21 The redundancy payment due to the claimant is therefore 7.5 times her gross
weekly pay of £262.72 (8.21 x 32 hours) which is £1,970.40.

30 **Unlawful deductions/shortfall in holiday pay**

22 As at the date of termination of the claimant's employment she had accrued 1.6 week's holidays, for which no payment had been made.

23 She is therefore due holiday pay in the sum of £262.72 times 1.6 which is £420.35.

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Summary

24 In summary the respondent shall pay to the claimant:-

(1) Notice pay in the gross sum of £525.44;

10 (2) Redundancy pay in the sum of £1,970.40; and

(3) Holiday pay in the sum of £420.35

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20	Employment Judge:	D Hoey
	Date of Judgment:	23 October 2020
	Date sent to parties:	26 October 2020