



EMPLOYMENT TRIBUNALS

Claimant: Mr L Norman
Respondent: LPW (Europe) Ltd
Heard at: East London Hearing Centre (by telephone)
On: 09 August 2021
Before: Employment Judge Housego
Representation
Claimant: Olivia Tolson of FRU
Respondent: Dominic Lyndon, of the Respondent

JUDGMENT

The Respondent is ordered to pay to the Claimant the sum of £4,467.00.

REASONS

1. The Claimant was made redundant by the Respondent. He was given 12 weeks' notice, as he had been with them about 20 years. His notice expired on 20 March 2020. He did not work any of those 12 weeks, being signed off as not fit for work for the whole period. He was paid statutory sick pay ("SSP") for those 12 weeks.
2. The Claimant was not paid a redundancy payment, and brought a claim for a redundancy payment in this Tribunal. That claim was heard on 24 November 2020. His claim was dismissed, as it was found that he had rejected an offer of suitable alternative employment. The exact reasons are immaterial.
3. At that hearing the fact emerged that he had been paid only SSP during his notice period, and the Judge (Judge Elgot) observed that this was not correct, and he should have been paid full pay during his notice period. The

Claimant says, and I accept, that the Judge indicated that she could not deal with this, as it was not pleaded, and he would need to lodge a new claim, and without delay.

4. The Claimant contacted his former employer on 26 November 2020 (by email to Dominic Lyndon), without response. He sent a follow up email on 28 November 2020, which again met with no response. He sent Dominic Lyndon a 3rd email on 30 November 2020, again without receiving any reply. He then tried to telephone Dominic Lyndon, but his calls were not answered. He then called another person, Jack Moon, who told him that they would not pay, and he would have to go back to the Tribunal. He started the Early Conciliation (“EC”) process on 03 December and the certificate arrived on 14 January 2021. The claim was filed the same day.
5. I heard oral evidence from the Claimant. Mr Lyndon asked him questions, and chose to rely on submissions. Ms Tolson had provided a skeleton argument which I summarised for Mr Lyndon, as although he had received it at 08:45 he had not yet read it.
6. Mr Lyndon says that the Respondent wanted Mr Norman to work his notice period, and as he could not, as medically certified as unfit to do so they paid him SSP only.
7. In discussion Mr Lyndon accepted that the correct notice pay should have been full pay, and that SSP was paid in error, the Respondent thinking that if there was a sick note that was all Mr Norman was entitled to receive.
8. The issue is then whether it was reasonably practicable for Mr Norman to have claimed in time, and if not whether the claim was presented in such further period as was reasonable.
9. I accept Mr Norman’s evidence that the first he knew of the fact that the notice pay was not correct was when Judge Elgot told him of this, on 24 November 2020. First, he was a credible witness. Secondly his evidence is entirely plausible - since he had brought an ET claim for a redundancy payment, had he thought his notice pay was too low he would have claimed it at the time. I also accept his evidence that he put in his claim on his own, and thought it meant he was claiming all he might be due out of the ending of his employment.
10. Mr Lyndon says that Mr Norman knew, or should have known that his pay during his notice period was too low, as he had the contract documentation which told him that he was entitled to 12 weeks’ notice. This is indeed so, but the documentation to which Mr Lyndon referred was not said to say that the entitlement was to full pay during that notice period, even if off sick.
11. Mr Lyndon points out that Mr Norman had advice from the CAB, from Acas, and from the Free Representation Unit, and says that he should have known, and (by implication) if he did not it was the representatives’ fault, and that is not something that falls within the definition of “*not reasonably practicable*”.

12. Mr Norman was seeking advice about a redundancy payment. He had no reason to think that his notice pay was inaccurate. He had no reason to ask for advice about his notice pay, and I accept his evidence that he did not. It was reasonable for him not to ask for advice – it was an “*unknown unknown*” so far as he was concerned, and there was no reason for him to make enquiry about it.
13. Equally, there was no reason for advisers to check that the correct notice pay had been paid. Employers are to be expected to pay the correct amount, and there was no reason for any of those helping Mr Norman to check.
14. Even if his advisers had been at fault (and I find they were not), the CAB is a help and advice agency staffed by volunteers. Their work is hugely valuable, but it is unfair on them to impose the same consequences on those they help as when a legally qualified adviser is involved. Acas are not a representative. There was no reason for them to ask Mr Norman to check. Mr Norman was put in touch with FRU by the CAB. Ms Tolson was highly competent in her presentation, and is a law graduate, but not yet other than a FRU volunteer. She also should not be saddled with the burdens of those fully qualified. Accordingly, even if any of them had been at fault that would not be any reason to say that it was reasonably practicable for Mr Norman to claim in time.
15. The final point is that it is inconsistent for the Respondent to say that they failed to pay full pay during the notice period because they were ignorant of that obligation, but Mr Norman knew or should have known. I find that he did not know, prior to 24 November 2020. If they, the employer, did not know, it is unreasonable for them to say that Mr Norman should have done. The Respondent has a human resources and payroll function. Mr Norman was a truckwash operator, and not someone who can reasonably be expected to analyse legal documents and know employment rights in detail. Mr Norman was entitled to expect his employer to do it right, and he is not to be criticised for not checking up. He had no reason to doubt that his pay was other than correct.
16. I apply the test as set out in Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490 (12 December 2019). This case plainly meets the tests set out in that case.
17. The claim was submitted within a further period as was reasonable. A claim does not have to be submitted immediately. It was entirely reasonable for Mr Norman to ask the Respondent to pay – it was, they say, a genuine mistake by them and it was reasonable to ask them to correct it. When he received no reply he started the EC period, within a reasonable period. During that time the clock stops. He issued the claim the same day as he received the certificate. He could not do anything until he became aware of the entitlement, and so the period between the end of 3 months and 24 November 2020 was a further period during which it was reasonable for him not to file his claim (as it was not possible for him to do so until he knew he had such a claim). The period until 14 January 2020 was reasonable. Since it was issued the day the EC certificate was issued the period is 24 November 2020 – 03 December 2020 (the start of the EC period), and in

that time Mr Norman was asking for the Respondent to correct its error, as was reasonable.

18. Accordingly, I decide that it was not reasonably practicable for Mr Norman to lodge his claim within the 3 month period, and that it was lodged in a further period that was reasonable.
19. The Respondent does not dispute that Mr Norman should have been paid at full pay, not SSP, as that is a legal requirement.
20. Therefore, the claim succeeds.
21. In his notice period Mr Norman received £1,131 gross and £1,482 net. The net is larger than the gross because of income tax refunded.
22. His gross pay should have been £5,598 in his notice period. (The net figure is believed to be £4,479.60). I decide to award the gross amount of £5,598, less the amount received, £1,482 (£4,467). The Respondent will not now be able to run the payment through its payroll (it will not have him as an employee, and will not know his tax code). Also, the gross and net figures for the SSP indicate that the calculation may not be straightforward. It will be for Mr Norman to account for any tax due on the sum awarded.

Employment Judge Housego
Date 09 August 2021