



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101895/2023

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Held in Glasgow on 15 May 2023

Employment Judge M Sutherland

10 **Mrs Karen Carson**

**Claimant
In Person**

15 **George Schneider t/a The New Bazaar**

**Respondent
No appearance and
No representation**

20 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that -

1. The Claimant is entitled to holiday pay in sum of £471.78 (gross).
2. The Claimant is entitled to notice pay in sum of £526.14 (gross).
- 25 3. It is for the Respondent to make any deductions for any tax and employees' national insurance due on these sums and to account to HMRC.

REASONS

Introduction

1. The Claimant presented complaints for holiday pay and notice pay which were resisted by the Respondent.
- 30 2. A final hearing was listed for today to determine all issues including remedy and was conducted by video (CVP).

3. All parties were asked to participate in a prior test of the CVP equipment. The Claimant participated but the Respondent did not. The Respondent advised the clerk that they would not be participating in either the test or today's hearing because of a bereavement but did not seek a postponement of today's hearing. In the circumstances the decision was made to proceed the with hearing in his absence.
4. The Claimant gave evidence on her own behalf. She lodged a copy of her last pay slip. She made brief oral closing submissions. She was supported at the hearing by her husband.
5. The following issues fall to be determined in these claims –
- a. Was the Claimant's period of continuous employment 12 years or more?
 - b. What notice, if any, was given of termination?
 - c. How much leave had accrued in the final leave year?
 - d. How much paid leave had the Claimant taken in the final leave year?
 - e. Were any days to be carried forward from previous years?
 - f. What leave was accrued but untaken as at the termination date?
 - g. What is the relevant rate of pay?

Findings in fact

6. The Tribunal makes the following findings in fact:
7. The Respondent business operated a pub in Dumfries. The Claimant had worked there as a bar person since 10 April 2005. She was not provided with a written contract of employment or a written statement of terms. After the covid lockdowns she worked 18 hours a week which increased to 20 hours about once a month (when there were events on Saturday nights). She was paid £9.50 an hour.
8. The Claimant took 1 week's holiday at the start of April 2022.

9. In 2021 she has been told that the pub was being put up for sale. On 30 July 2022 she was told by telephone that the pub had been sold, that it would no longer operate as a pub, and that her work would cease on 7 August 2022 (because the pub was closing). Around 1 week later she was told there was scope for it to stay open longer and following discussion with her it was agreed that her work would cease on 2 October 2022.
10. The Claimant continued to work until 2 October 2022. The pub closed thereafter and has remained closed.
11. On 20 October 2022 the Claimant received payment in sum of £451 gross in respect of wages accrued to 2 October (47.5 hours) and redundancy pay in sum of £3,626. She did not dispute the calculation of the wages received or the redundancy pay. She was not provided with and did not seek a statement of reasons for dismissal. She was not provided with a statement of calculation of redundancy pay. She did not bring any complaint in respect of these issues.

15 **Observations**

12. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
13. The Claimant gave evidence that she had worked for the Respondent since 2005. It was put to the Claimant that the Respondent asserted that she commenced employment in 2007. She stated that she had previously worked in the Labour Club and when it closed she started work for the Respondent immediately thereafter. She had checked and the labour club closed in 2005 and not 2007.
14. The Claimant gave evidence that she was first told that the pub would close on the last Saturday in July. It was put to the Claimant that the Respondent appeared to be asserting that she was told this before 4 July (such that she had worked her 3 months' notice by 4 October). The Claimant disputed this

stating that she was not told this until end July. There was no reason to doubt her credibility or reliability.

Relevant Law

15. Under the Working Time Regulations 1998 (WTR) workers are entitled to 5.6 weeks' annual leave. Annual leave must be taken, and may not be replaced by a payment in lieu except upon termination in the final leave year. Where there is no relevant written agreement the leave year begins on the anniversary of an employee's start date. A week's holiday pay is calculated with reference to the average gross pay in the 52 weeks preceding termination.
16. Under the Section 86 of the Employment Rights Act 1996 an employer is required to give not less than 12 weeks' notice of termination where an employee has 12 years or more continuous service.

Claimants' Submissions

17. The Claimants' brief oral submissions were that she was not given notice of termination because it was given orally and not in writing.

Decision

Holiday pay

What was the annual leave year?

18. Where there is no relevant written agreement, an employee's leave year begins on the anniversary of their appointment. There was no relevant written agreement and accordingly her leave year began on 10 April in each year.

How much leave had accrued in her final leave year?

19. The Claimant had accrued 2.69 weeks (25 weeks (10 April to 2 October)/52 weeks x 5.6 weeks)

How much paid leave had the Claimant taken in the final leave year?

20. The Claimant had not taken any leave during the final leave year (her 1 week in April 2022 arose in the previous leave year).

Were any days to be carried forward from previous years?

5 21. There was no assertion or evidence regarding any carry forward.

What leave was accrued but untaken as at the termination date?

22. As at her termination date she had accrued but untaken 2.69 weeks leave.

What is the relevant rate of pay?

10 23. For 12 weeks a year the Claimant worked 20 hours a week. For the remainder the Claimant worked 18 hours a week. The Claimant's average weekly pay was £175.38 ($\text{£}2,280 (12 \times 20 \times \text{£}9.50) + \text{£}6,840 (40 \times 18 \times \text{£}9.50) / 52$ weeks).

24. The Claimant is accordingly due holiday pay in sum of £471.78 (gross) (2.69 weeks x £175.38).

Notice pay

15 *What was the Claimant's period of continuous employment?*

25. The Claimant's period of continuous employment was more than 12 years. The Claimant is accordingly entitled to 12 weeks' notice of termination.

What notice, if any, was given of termination?

20 26. A party to a contract of employment may terminate it orally (i.e. does not require to terminate it in writing) unless the contract provides otherwise. The issue is whether the words spoken should reasonably have been understood as terminating the contract. On 30 July 2022 the Claimant understood that her contract of employment was coming to an end on 7 August 2022. Following discussion it was then agreed that it would come to an end on 2 October and that is what transpired. The Claimant knew, or ought reasonably to have understood, that on 30 July 2022 she was being given notice of termination of her contract which by agreement expired on 2 October 2022. The Claimant

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was entitled to 12 weeks' notice (30 July to 23 October 2022). The Claimant worked and was paid until 2 October. The Claimant is accordingly entitled to a payment in lieu of the balance of her notice period of £526.14 (3 weeks (3 October to 23 October) x £175.38).

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10 **Employment Judge: M Sutherland**
Date of Judgment: 16 May 2023
Entered in register: 16 May 2023
and copied to parties