



EMPLOYMENT TRIBUNALS

Claimant: Miss Emma Bunn

Respondent: Ms Polly Aitken trading as Lingwood Kindergarten

Heard at: Norwich (by video)

On: 4 October 2024

Before: Regional Employment Judge Foxwell

Appearances

For the claimant: Mr F Clarke (Counsel)

For the respondent: In person

RESERVED JUDGMENT

Under section 163 Employment Rights Act 1996 it is determined that the claimant is entitled to a redundancy payment of **£4987.50**.

REASONS

1. Having gone through early conciliation between 30 August and 11 October 2023, the claimant, Miss Emma Bunn, presented a claim for a statutory redundancy payment on 5 November 2023 against her former employer, Ms Polly Aitken (the respondent), who had been in business on her own account under the trading name “Lingwood Kindergarten”.

2. The respondent filed a response acknowledging that she had employed the claimant and that the claimant’s employment had ended following the sudden closure of the kindergarten in or about March 2023. The respondent raised some questions about the calculation of a redundancy payment relating to the number of years to be taken into account and the calculation of the relevant rate of pay. She also mentioned that she did not have the means to pay a redundancy payment.

3. The claim came on for hearing before Employment Judge Warren on 22 May 2024 by video but had to be postponed and relisted because of technical difficulties. It is that relisted hearing that came before me today. Unfortunately, we experienced further technical difficulties this morning but we overcame these and there was an effective hearing at which both parties were able to be heard.

4. It transpired that the facts were agreed.
5. The respondent had originally been unsure about when the claimant's employment had begun as she had bought the business as a going-concern when the claimant was already employed in it. In light of disclosure the claimant had provided of P60s going back to 2007 however the respondent accepted the claimant's evidence that her employment had begun on 1 June 2006.
6. Similarly, the parties agreed that the claimant's employment ended at the end of March 2023 (29 March 2023) when it was clear that the kindergarten was unlikely to reopen for some while, having been closed suddenly because of what Ms Aitken described as a technical error with its Ofsted registration. It was clear from Ms Aitken's account that at that time she hoped that the kindergarten would reopen, but there was no firm date for this and, in fact, this has not happened.
7. In these circumstances I am satisfied that the claimant's employment ended by reason of redundancy and it is clear from the texts that the claimant and respondent exchanged at the time that this is what they thought too.
8. Against that background I find that the claimant had 16 full years of continuous service at the date when her employment ended. She was born in July 1985 and was aged 20 and 21 at the beginning of the first and second years of her employment. Under the scheme for statutory redundancy payments she is entitled to $\frac{1}{2}$ a week's pay for each of these years and 1 week's pay for the remaining 14 years, giving a total entitlement of 15 weeks.¹
9. The parties agreed that the claimant was contracted to and worked 35 hours a week during term time excluding an unpaid 20 minute break; I find that these were her normal hours. They also agreed that the claimant was paid the National Living Wage which stood at £9.50 per hour at the date of her dismissal. Accordingly, the claimant's weekly pay at that time was £332.50.
10. The respondent pointed out that the claimant was not paid for weeks outside of term time but I am satisfied that I can discount these unpaid weeks when calculating a week's pay for the purpose of a statutory redundancy payment.²
11. I am satisfied that this claim was presented within the statutory time limit as extended by the early conciliation provisions.³
12. Based on the facts set out above and applying the statutory formula I declare that the claimant is entitled to a redundancy payment of £4,978.50 (15 x £332.50).

Regional Employment Judge Foxwell

4 October 2024

¹ Section 162(2) of the Employment Rights Act 1996

² Section 223(2) of the 1996 Act

³ Section 164 of the Act and section 18A of the Employment Tribunals Act 1996

Sent to the parties on:17/10/2024

For the Tribunal:

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