



# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Mrs G Flood

AND

Mr Peter Gash

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 8 February 2017

Before: Employment Judge Johnson

### *Appearances*

For the Claimant: In person

For the Respondent: No attendance and no appearance

## JUDGMENT ON REMEDIES

The respondent is ordered to pay to the claimant damages for breach of contract in the sum of £3,164.60.

## REASONS

- 1 This matter came before me this morning for consideration as to what (if any) remedy should be awarded to the claimant, pursuant to the default judgment promulgated in her favour by Employment Judge Buchanan on 11 January 2017. The claimant attended in person and gave evidence under oath. The respondent did not attend. No one attended on his behalf. The respondent has not entered a response to the claim form, which was presented to the Employment Tribunal by Mrs Flood on 12 December 2016.
- 2 In that claim form, the claimant claimed damages for breach of contract. The claimant alleges that she was entitled to three months notice at the rate of £273 per week. She further alleges that she was entitled to remain in the

accommodation which was provided to her under the terms of her contract, until that notice period expired. The claimant was not paid any notice pay by the respondent. She was required to leave her accommodation after one month, rather than three months. She therefore claims the cost of the two months rent which she has had to pay.

3 The claimant confirmed to me under oath that the contents of her claim form ET1 are accurate and correct. The claimant provided me with a copy of her contract of employment with MK Leisure (Newcastle) Limited, which clearly states that her employment commenced on 3 March 2015 and that she was entitled to be paid a salary of £300 per week. The claimant confirmed that her net pay, after deduction of income tax and national insurance contributions, amounted to £273 per week. The claimant was informed by the respondent on 23 July 2016 that she was being made redundant with immediate effect. She was told by the respondent that she had one month to find alternative living accommodation. She did not receive any notice pay. The claimant, who was then aged 62, approached the local authority and managed to obtain what she describes as an "old person's bungalow" at a rental of £78.70 per week. The claimant claims damages at that weekly rate for the eight weeks, for which she says she was contractually entitled to remain in the accommodation provided by the respondent.

4 The claimant managed to obtain alternative employment on 3 August 2016, earning £74.10 per week. Those earnings should be deducted from her claim for notice pay.

5 In the default judgment promulgated on 11 January 2017, Employment Judge Buchanan drew the claimant's attention to the contractual jurisdiction of the Employment Tribunal which is set out in the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Article 3 of the Order gives the Employment Tribunal jurisdiction to hear complaints of breach of contract, provided that the claim is not one to which Article 5 applies. Article 5 states:-

"This article applies to a claim for breach of a contractual term of any of the following descriptions –

- (a) a term requiring the employer to provide living accommodation for the employer;
- (b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation."

6 I am satisfied that the claimant's claim is not excluded by the provisions of Article 5. The claimant is not seeking to enforce the relevant term in her contract which entitles her to living accommodation whilst employed by the respondent. I am satisfied that the claimant's claim is a simple complaint of breach of contract. Damages payable following a breach of contract have the purpose of putting the claimant (ie the innocent party) into the position she would have been in had the respondent performed his obligations according to that contract. The claimant is thus entitled to an amount of money equivalent to that that she would have

received, had the contract not been wrongfully terminated. The measure of damages should be assessed on the basis of the respondent's contractual liability at the date of dismissal. The claimant can only claim that which would have been due to her, had the contract been properly performed. In the claimant's circumstances, that includes her contractual right to notice pay and her contractual right to accommodation until the end of her notice period.

- 7 The claimant's entitlement to notice pay is 12 weeks @ £273, which totals £3,276. There should be deducted from that 10 weeks pay @ £74.10 which amounts to £741. The total compensation payable for notice pay is therefore £2,535.
- 8 The claimant has paid eight weeks rent at £78.70, which she would not have had to pay had the respondent complied with his obligations to allow her to remain in the accommodation for the full three month notice period. Eight weeks at £78.70 amounts to £629.60. I order that sum to be paid by way of damages by the respondent to the claimant for breach of contract.
- 9 The total sum ordered to be paid by the respondent to the claimant as damages for breach of contract is £3,164.60.

**EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON  
14 February 2017  
JUDGMENT SENT TO THE PARTIES ON  
15 February 2017  
AND ENTERED IN THE REGISTER  
G Palmer  
FOR THE TRIBUNAL**