



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: S/4105271/16 Held at Inverness on 3 February 2017**

Employment Judge: Mr J M Hendry (sitting alone)

10 **Mr Daniel Kinnear**

CLAIMANT
Represented by:
Mr D Hutchison -
Solicitor

15 **Marley Eternit Ltd t/a Marley Contract Services**

RESPONDENT
No Appearance

20 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that:

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1. the Claimant was employed by the Respondent under a fixed-term contract of apprenticeship which lasted from 20 October 2014 until its termination by the Respondents with effect from 7 June 2016;
 2. the contract of apprenticeship was for a fixed period of four years ending in November 2018;
 3. the Respondents shall pay to the Claimant the sum of Twenty Five Thousand
30 Pounds (£25,000) in damages for breach of the contract of Apprenticeship.
 4. the Respondents shall pay the Claimant the sum of £160 as reimbursement of the Lodging Fee paid to the Employment Tribunal Service.

35 **E.T.Z4(WR)**

REASONS

1. The Claimant in his ET1 seeks damages from the Respondent Company in relation to the early termination of his contract of apprenticeship. No ET3 was validly lodged by the Respondent Company.
- 5 2. The case proceeded to a Hearing at the Employment Tribunal office in Inverness on 3 February 2017.
3. I heard evidence from the Claimant and considered the bundle of documents lodged on his behalf (JB1-26). I also had sight of the Employee Handbook
10 which was lodged on the day of the hearing.
4. As the case was undefended the issue for the Tribunal was what sum if any the Claimant was entitled to by way of damages.
- 15 5. I found the Claimant a credible and reliable witness who answered questions in careful and thoughtful way.
6. I made the following findings:-
 - 20 1. On 20 October 2014 the Claimant was employed by Marley Contract Services as an Apprentice Roof Tiler. The Claimant received a letter on 7 March 2014 (JB16) confirming his appointment. The letter indicated that on completion of the Apprenticeship the Claimant would obtain a Certificate of Completion of a Modern Apprenticeship in Construction
25 Roofing Occupations.
 2. The Claimant received a letter from David Nicol, the Respondent's Contract Manager in Inverness on 2 December 2014 (JB15) confirming that the Claimant had successfully completed his initial six month
30 assessment period.
 3. The Claimant received a contract from the Respondents (JB11) which was signed on 17 October 2014. The contract was for a fixed period of four years. It was expected to end in November 2018.

4. The Claimant was trained in roofing using predominately concrete roof tiles or 'Marley' products.

5. Because of a downturn in work the Claimant was advised in about July 2016 that he was being made redundant. The Claimant received a letter the following week dated 13 June 2016 (JB17). The letter was headed: "*Termination of Employment*" and stated:

10 "*Due to the current situation in the construction industry we have unfortunately no alternative than to terminate your employment due to the downturn in our workload. You are entitled to one week's notice which will commence Monday 13 June 2016. Your last day of employment with the company will therefore be Friday 17 June 2016.*"

15 6. The Claimant appealed the termination of his employment. He was advised by letter of 24 June 2016 that the Respondent Company had rejected his appeal.

20 7. The Claimant attempted to obtain work. The job vacancy situation is poor and in particular there is little construction work at present. He signed on with various agencies. He contacted Roofing firms in Inverness and in the Inverness area to try and complete his apprenticeship. He discovered that as he was over 21 companies would have to pay him a higher rate of the minimum wage and therefore they only wanted to employ apprentices or staff who were between 18 and 20 or if possible under 18 in order to pay reduced rates. There were no vacancies for apprenticeships. It is unlikely that the Claimant will be able to finish his Apprenticeship and gain a qualification as a Roofer. If qualified he would have been more likely to obtain work in the future at an increasing salary dependent on his experience.

25 8. The Claimant accordingly signed on with a number of agencies and
30 obtained work. By the date of the Tribunal he had earned £1389. He
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hoped to be able to apply and join the Royal Mail but no recruitment had occurred. He had previously worked for them through an agency.

5 9. At the date of termination the Claimant was paid £5.30 per hour by the Respondent company. He worked 39 hours per week. His gross weekly wage was £206.70 and his net weekly wage was £198.50. On 17 June 2016 the Claimant still had 122 weeks left of his apprenticeship to run. The Claimant would have been paid a minimum of £198.50 per week over the remaining 122 weeks. This would amount to £24,217.

10 10. The Claimant paid the Employment Tribunal Service £160 to lodge proceedings.

15 Submissions

11. Mr Hutchison submitted that the Claimant was an Apprentice and had in effect a fixed term contract. The Respondent company having contracted to employ him for the duration of his Apprenticeship was in breach by dismissing him. He had taken steps to try and continue his Apprenticeship but had been unsuccessful. The Claimant was entitled to reasonable damages which should be assessed with reference to his likely earnings for the duration of the contract.

20 Decision

25 12. It seemed clear to the Tribunal that the Claimant was an Apprentice and as such was entitled to be trained by the Respondent company and employed by them until the Apprenticeship finished. In this case that would be until November 2018. It seems from the correspondence that no heed was paid by the company to the Claimant's particular status in the company.

30 13. I accept that given the current downturn in the economy and the Claimant's age he will be unlikely to now be able to find an employer to take him on to finish the Apprenticeship. One of the reasons being that the

type of Apprenticeship he was doing seems to have been very tailored to the sort of roof products the Respondent company uses.

5 14. The Claimant seeks damages based on payment of the wages he would otherwise have earned. The Claimant has however mitigated his loss and will continue to try and do so. I will take a broad brush approach and assess the chances of the Claimant obtaining comparably well paid employment (really at the Minimum Wage) or higher at 20%. I must also consider his continuing loss. He is likely to obtain hourly paid ad hoc work.
10 In the eight months since his dismissal he has earned £1389. His future losses might stretch over some years as he will now be disadvantaged in the labour market by not having his roofing qualification. This means that when construction work is available even if he could obtain employment it would not be at the higher rate of pay that a qualified tradesman would
15 command.

20 15. The Claimant was unable to put any exact figure on his future losses but even if these were modestly estimated at two or three thousand pounds per year for say four or five years they would amount to between eight and fifteen thousand pounds per year. The maximum a Tribunal can award is capped at £25,000. If one applies the 20 per cent chance of employment to the wage loss it leaves immediate wage loss alone at over £20,000. Even taking into account his likely earnings his future loss brings out a
25 figure higher than £25,000. Accordingly I will find the Claimant entitled to reasonable damages capped at that sum.

30 Employment Judge: Mr JM Hendry
Date of Judgment: 02 March 2017
Entered in Register: 03 March 2017
and Copied to Parties