



# EMPLOYMENT TRIBUNALS

*Claimant*  
Ms N McHugh

*Respondent*  
Dr William Arnett

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON 24<sup>th</sup> August 2017

EMPLOYMENT JUDGE GARNON ( Sitting Alone )

### *Appearances*

Claimant: Ms A Topping , daughter

Respondent No Attendance

## JUDGMENT

**The judgment of the Tribunal is**

- 1. the claimant is entitled to a redundancy payment of £ 2544.30 payable by the respondent.**
- 2. For the avoidance of doubt , I find the claim form includes the following claims both of which are well founded**
  - 2.1 wrongful dismissal (breach of contract). I award damages of £ 113.08 to be paid by the respondent to the claimant .**
  - 2.2. compensation for untaken annual leave .. I order the respondent to pay compensation to the claimant of £339.24.**

## REASONS

### 1.The Facts

1.1 The claimant , born 16<sup>th</sup> December 1955 , was employed as a cleaner at a medical practice initially by a Dr Mair from 1<sup>st</sup> January 2002. Her employment continued without any break in service after Dr Mair's retirement when Dr Arnett took over the practice . On 11<sup>th</sup> November ( not October as stated in her claim form) 2016 the claimant was told by the practice manager , Ms Brenda Cassidy , Dr Arnett was being struck off. He ceased trading. All clinical staff were found other roles by the NHS . The claimant was dismissed. Her pay at termination was £113.08 per week gross and net for a 16 hour week . She was given no notice of termination , no redundancy payment and nothing for her accrued but untaken annual leave.

1.2 . She contacted ACAS and was advised to try resolving the matter amicably by writing to Dr Arnett which she did on 23<sup>rd</sup> November asking for her redundancy pay and other entitlements. She received no response.

1.3. Her claim form only ticks the box in part 8.1 for a redundancy payment , but the text in part 8.2 plainly claims notice and holiday pay. The claimant, like many people, thought that by ticking the redundancy payment box , she was claiming all sums to which she was entitled on dismissal by reason of redundancy.

1.4. On 5<sup>th</sup> January 2017 the claimant commenced Early Conciliation (EC). Dr Arnett did not respond to ACAS either . An EC certificate was issued on 5<sup>th</sup> February 2017. She was not advised to present a claim to the Tribunal as a matter of urgency. Rather she was told to try contacting the Insolvency Service of the Secretary of State (SoS). She thought she would have to pay a fee if she issued proceedings, and no-one advised her about remission.

1.5. She contacted the SoS on 15<sup>th</sup> March and was told she should submit a claim to them for consideration. They sent forms for her to complete online. She completed and sent them only to be told eight weeks later (mid May ) they could not help her because Dr Arnett was not insolvent . She was only then advised to present a claim to the Tribunal and told she would probably qualify for full remission of fees.

1.6. She presented her claim on 7<sup>th</sup> June 2017. To this day the respondent has presented no response form.

## **2. The Relevant Law and Conclusions**

2.1. Redundancy is defined in s 139 of the Employment Rights Act 1996 ( the Act) which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact the employer has ceased to carry on the business for the purpose of which the employee was employed by him either generally or in a particular place. If dismissal is for that reason the employee is entitled to a statutory redundancy payment calculated by a formula in s162.

2.2. Section 164 contains

(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

(a) the payment has been agreed and paid,

(b) the employee has made a claim for the payment by notice in writing given to the employer,

(c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or

(d) a complaint relating to his dismissal has been presented by the employee under section 111.

(2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—

(a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under section 111,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal] shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.

(5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2).

2.3. With effect from 6<sup>th</sup> April 2014 Section 207B provides for extension of time limits to facilitate conciliation before institution of proceedings, thus:

*(2) In this section—*

*(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

*(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when a time limit set by a relevant provision expires, the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”*

2.4. Applying ss (3). the claim needed to be presented before midnight on 10<sup>th</sup> June 2017 and was so the redundancy payment claim is in time. If it were not, she made a claim for the payment by notice in writing given to the employer, Dr Arnett within the first six months .

2.5. Because she was given no notice, the relevant date is extended by 12 weeks for calculating the redundancy payment. The claimant had at termination 15 years continuous employment. During each such year she was over the age of 41. Her redundancy payment is 1.5 weeks gross pay for each of those years so she is entitled to 22.5 weeks pay @ £113.08 = £ 2544.30

2.6. The other claims have to be brought before the end of the period of three months beginning with the effective date of termination, or within such further period as the Tribunal considers reasonable in a case where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of that period of three months. There is ample case law eg. Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, to the effect time limits are just that—limits not loose targets . Reasonably practicable means reasonably “do-able”. The burden of proving it was not reasonably do-able rests on the claimant.

2.7. Fault on the part of a claimant's adviser may be a relevant factor. Much will depend on the type of adviser involved. As Lord Denning put it in Dedman *‘If a man engages skilled advisers to act for him - and they mistake the time limit and present [the claim] too late - he is out. His remedy is against them.*

2.8. Bad advice from some third parties may show it was not reasonably practicable to present a claim in time. For example, in Dixon Stores Group v Arnold EAT 772/93 the claimant was told by an employment adviser at a Jobcentre not to issue until the outcome of an unemployment benefit appeal. The tribunal held it had not been reasonably practicable to present in time. On appeal, the EAT noted that in Rybak v Jean Sorelle Ltd 1991 ICR 127, EAT, and London International College Ltd v Sen 1993 IRLR 333, CA claimants who had been wrongly advised by tribunal employees had successfully claimed this made it not reasonably practicable to present within the time limit. In Rybak the EAT drew a distinction between bad advice given by an employee of the tribunal, and where the claimant has been wrongly advised by a solicitor, union official, CAB adviser or other third party who are asked - whether for a fee or not - to advise on the prosecution of a claim. Tribunal employees are servants of a body charged by Parliament with resolving employment disputes and relied upon by others .

2.9. In Drewery v Carphone Warehouse Ltd ET Case No.3203057/06, ACAS informed a claimant there was little point in pursuing a tribunal claim until after his internal appeal. He was not told of the three-month time limit and presented his claim out of time. The tribunal found it was not reasonably practicable to have presented in time. While his own ignorance of the time limit would not have excused his late claim, he had reasonably considered ACAS to be an authoritative body and relied on its advice.

2.10 The claimant gave evidence today, accepted her claim was out of time and confirmed all I have set out in part 1 above . She is an ordinary citizen without Union or legal advice, trying to navigate the maze of procedures imposed by the EC and fees regimes The advice she was given by various civil servants, though doubtless well intentioned , was totally wrong . There was no basis for presuming that because Dr Arnett was struck off that he was insolvent . The claimant was sent “up a blind alley” by

being told to apply to the SoS who compounded that be taking so long to tell her they could not help.

2.11 I find it was not reasonable practicable for this claim to have been presented in time and she presented promptly when she learned what she should have learned at the outset had she been given correct advice by people whose task it is to do so. .

2.12. In calculating her wrongful dismissal entitlement , her notice period under s 86 was 12 weeks , but she obtained an equally well paid job after one week Her damages for breach of contract are net pay for 1 week= £113.08

2.13. She worked a 5 day week, Her annual leave entitlement under the Working Time Regulations 1998 was 5.6 weeks = 28 days . By the date of actual termination the proportion of the leave year, which was the calendar year, which had expired meant she would by then have been entitled to 25 days . She took the 6 bank holidays up to then and 4 other days. She is to be compensated for 15 days= 3 weeks @ £113.08 = £339.24 .

T M Garnon EMPLOYMENT JUDGE

JUDGMENT SIGNED ON 24<sup>th</sup> August 2017

HANDED OR SENT TO THE PARTIES ON 24<sup>th</sup> August 2017

P Trewick

24 August 2017

FOR THE TRIBUNAL OFFICE