



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Mrs Julie McAvoy (1)
Miss Sandra Gilbert (2)

AND

Respondent

Mr G W Sear and Mrs S A Sear
formerly trading in partnership as
Mount Pleasant Care Home

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin **ON** 26 October 2018

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimants: Both in person

For the Respondent: Mrs Sear

JUDGMENT

The judgment of the tribunal is that:

1. Mrs McAvoy is entitled to a statutory redundancy payment of £2,640.00; and
2. Miss Gilbert is entitled to a statutory redundancy payment of £6,063.75.

REASONS

1. In this case the two claimants seek a declaration that they are entitled to a statutory redundancy payment. That is their only claim. The respondent denies the claims.
2. I have heard from each claimant, and I have heard from Mrs S Sear of the respondent.
3. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent is a partnership namely Mr G W Sear and his wife Mrs S A Sear who formerly traded together as the Mount Pleasant Care Home in St Agnes, Cornwall (“the

- Home”). They are an elderly couple and Mr Sear was a resident of the Home. They were apparently required by the CQC to close the Home in March 2018.
5. The first claimant is Mrs Julie McAvoy who was born on 1 May 1973. She commenced employment on 13 September 2013. Mrs Sear of the respondent wrote to Mrs McAvoy on 16 March 2018 to this effect: “I regret to inform you that due to retirement Mount Pleasant care home will be closing on 24 March 2018. The period of paid notice you are entitled to is one month. Due to the length of service you are entitled to 5.5 weeks redundancy, I calculate this to be £2,640. I thank you all for your care and hard work during your employment here. Should you require any assistance or reference please do not hesitate to ask.” Mrs Sear then sent her a subsequent letter dated 23 March 2018 to the effect that the respondent was unable to pay the redundancy payments immediately and that they would be paid “within a reasonable period of time”.
 6. Mrs McAvoy remained in employment for the four weeks of her notice period. She worked for one week until the home closed on 24 March 2018, and then went on a week’s prearranged holiday. She was absent on certified sickness absence for the last two weeks of her notice period. The effective date of termination of her employment was 13 April 2018. At that time her contractual hours were 40 hours a week at £12.00 per hour, which was £480.00 per week gross.
 7. There is a dispute between the parties as to what happened towards the end of Mrs McAvoy’s notice period. The respondent contends that Mrs McAvoy was not available to work out her notice and for this reason she is not entitled to a redundancy payment. The respondent accepts that she did not write to Mrs McAvoy at any stage to suggest that if she were to leave her employment during her notice period then she might lose her right to a statutory redundancy payment. The statutory redundancy payment remains unpaid.
 8. The second claimant is Miss Sandra Gilbert who was born on 14 April 1966. She commenced employment on 17 April 2001. Mrs Sear also wrote to Miss Gilbert informing her that the Home was to close on 24 March 2018. Her letter was dated 19 March 2018 and she was given 12 weeks’ notice and her redundancy payment was calculated at £5,486.25. She also received a subsequent letter from the respondent dated 23 March 2018 confirming that the respondent could not afford to pay the redundancy payment at that time but would do so within a reasonable time.
 9. Miss Gilbert worked for a week until the Home closed on 24 March 2018. There is a dispute between the parties as to what happened next. The respondent asserts that the claimant refused to work out her notice when she was told that she would need to care for Mr Sear. Miss Gilbert objected because she felt that two members of staff were required to care for Mr Sear. In any event the parties agree that Miss Gilbert’s effective date of termination of employment was 24 March 2018. The respondent also accepts that she did not write to Miss Gilbert notifying her that failure to work out her notice period might affect her entitlement to a statutory redundancy payment. The statutory redundancy payment remains unpaid.
 10. At the time of the termination of her employment Miss Gilbert was employed as a Senior Care Assistant at the hourly rate of £7.50. She worked 11 shifts of seven hours every fortnight which comes to £577.50 per fortnight or £288.75 gross per week.
 11. Having established the above facts, I now apply the law.
 12. The reason for the claimants’ dismissals was redundancy. The statutory definition of redundancy is at section 139 of the Employment Rights Act 1996 (“the Act”). This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) “the fact that the requirements of (the employer’s) business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish”
 13. Section 142 of the Act provides as follows: “(1) subject to subsection (3), an employee is not entitled to a redundancy payment where – (a) he is taken to be dismissed by virtue of section 136(3) by reason of giving to his employer notice terminating his contract of employment on a date earlier than the date on which notice by the employer terminating

- the contract is due to expire, (b) before the employee's notice is due to expire, the employer gives him a notice such as is specified in subsection (2), and (c) the employee does not comply with the requirements of that notice. (2) The employer's notice referred to in subsection (1)(b) is a notice in writing – (a) requiring the employee to withdraw his notice terminating the contract of employment and to continue in employment until the date on which the employer's notice terminating the contract expires, and (b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment. (3) An employment tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal, it appears to the tribunal, having regard to – (a) the reasons for which the employee seeks to leave the employment, and (b) the reasons for which the employer requires him to continue in it, to be just and equitable that the employee should receive the payment. (4) In subsection (3) "appropriate payment" means – (a) the whole of the redundancy payment to which the employee would have been entitled apart from subsection (1), or (b) such part of that redundancy payment as the tribunal thinks fit."
14. The respondent did not write a letter to either Mrs McAvoy or to Miss Gilbert which complies with the provisions of section 142 of the Act, and it is not the case therefore that either claimant loses her entitlement to a statutory redundancy payment by reason of not working out her statutory notice, whatever the reason for that.
 15. Mrs McAvoy was aged 45 at the time of the effective date of termination of her employment on 13 April 2018 and had completed four years' service at that time. Her gross weekly pay was £480.00. Her statutory redundancy payment is (5.5 x £480.00) or £2,640.00. I declare that Mrs McAvoy is entitled to a statutory redundancy payment in the sum of £2,640.00.
 16. Miss Gilbert was aged 51 at the time of the effective date of termination of her employment on 24 March 2018 and at that time had completed 16 years' service. Her gross weekly pay was £288.75. Her statutory redundancy payment is (21 x £288.75) or £6,063.75. I declare that Miss Gilbert is entitled to a statutory redundancy payment in the sum of £6,063.75.
 17. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 10; a concise identification of the relevant law is at paragraphs 12 and 13; how that law has been applied to those findings in order to decide the issues is at paragraph 14; and how the amount of the financial award has been calculated is at paragraphs 15 and 16.

Employment Judge N J Roper

Dated: 26 October 2018