



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Minshaw

First Respondent: Autentico Paint UK Limited

Second Respondent: The Secretary of State for Business, Energy and Industrial Strategy

Heard at: Ashford

On: 21 September 2018

Before: Employment Judge Pritchard

Representation

Claimant: In person

First Respondent: No appearance

Second Respondent: No appearance

JUDGMENT

- 1 The Claimant is entitled to a redundancy payment. The First Respondent is ordered to pay the Claimant the sum of £3,667.50.
- 2 The First Respondent failed to pay wages referable to holiday pay to the Claimant and the First Respondent is ordered to pay the Claimant the sum of £1,093.71.
- 3 The First Respondent failed to give the Claimant itemised pay statements in accordance with section 8 of the Employment Rights Act 1996 referable to the period March 2017 to March 2018.

REASONS

- 1 By way of an ET1 presented on 11 July 2018, the Claimant made claims for a redundancy payment, holiday pay, and complained that she had not been given itemised pay statements. The First Respondent did not present an ET3 response. Online Companies House records shows that the First Respondent remains an active company. The Second Respondent presented an ET3 response on 15 August 2018 stating that the Secretary of State treated the Claimant's application for a redundancy payment as being made under section 166(1)(a) of the Employment Rights Act 1996

and the Claimant must rely on the Tribunal to decide whether a payment is due to her under section 135 of the Act from her former employer.

- 2 The Claimant was born on 7 September 1965. She commenced employment with Ericarde Limited on 11 September 2012. In September 2017 her employment transferred under the Transfer of Undertakings Regulations to the First Respondent. Her employment ended on 30 March 2018 at which time her weekly gross wage was £517.00.
- 3 In February 2018, the Claimant was informed by the First Respondent that all of its assets had been sold to Autentico Paint Nederland BV. The Claimant was paid until the end of March 2018 when her employment terminated. The Claimant was not required to work during the final period of her employment. The premises where the Claimant worked closed down. Despite promises by the First Respondent to look into the question of a redundancy payment, and despite requests by the Claimant, no redundancy payment has been made.
- 4 Having heard what the Claimant had to say, and having considered the document she placed before me, I am satisfied that she was dismissed by reason of redundancy as defined in section 136 of the Employment Rights Act 1996.
- 5 The Claimant is entitled to a redundancy payment calculated as follows:

$$7.5 \times £489.00 = £3,667.50$$

- 6 Ericarde Ltd ceased providing the Claimant with itemised pay statements after February 2017 but continued to pay the Claimant's wages directly into her bank account. The Claimant reasonably believes that the wages paid represented the net sums payable after deductions for income tax and National Insurance. The First Respondent continued to pay the Claimant in this way after the transfer of her employment. The Claimant is understandably concerned that Ericarde Ltd and/or the First Respondent might have failed to account to HMRC for the deductions made to her wages. I hope HMRC are able to rectify the Claimant's position with regards to its Income Tax and/or National Insurance records. (I note here that Ericarde Ltd issued a P45 showing that her employment ended with that employer on 31 May 2017: I am satisfied that, as the Claimant asserts, this is incorrect and that the Claimant's employment with Ericarde Ltd ended in September 2017 upon the transfer of her employment to the First Respondent. I am also satisfied that the P45, which was shown to me, in any event incorrectly records the total pay to the purported leaving date.
- 7 The Claimant was not permitted to take holiday in the first year of her employment and, impermissibly, Ericarde Ltd paid her in lieu. Thereafter, the itemised pay statements provided until February 2017 showed an entry marked "Holiday Fund Balance" in the sum of £1,093.71. This sum remains unpaid by Ericarde Ltd and the First Respondent. The Claimant reasonably believes this is an entitlement to wages for holiday pay which she has not received.

Date: 21 September 2018