



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

10

Case No: S/4104763/2018

Heard in Glasgow on 15 August 2018 (by way of written submissions)

Employment Judge: Lucy Wiseman

15

Mrs Wendy Grierson

**Claimant
Represented by:
Mr C Laurie -
Solicitor**

20

Austins (Dalbeattie) LLP

**First Respondent
Represented by:
Ms M Grandison -
Judicial Factor**

25

**Secretary of State for Business,
Energy and Industrial Strategy
Employment Tribunal Section**

**Second Respondent
Represented by:
Mrs Faith White**

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35

The Tribunal decided the second respondent shall pay to the claimant the sum of **Four Thousand, One Hundred and Twenty One Pounds (£4,121)** in respect of a redundancy payment; and the first respondent shall pay to the claimant the sum of **Five Hundred and Fifty Two Pounds (£552)** in respect of notice of termination of employment.

E.T. Z4 (WR)

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 21 May 2018 seeking payment of a redundancy payment and notice pay. The claimant, in the claim form, explained the one partner running the firm in which she worked, had been declared personally insolvent, and that the Law Society had instructed the closure of the firm.
2. The first respondent did not enter a response, although correspondence was subsequently received from the Judicial Factor, Ms Grandison, as set out below.
3. The second respondent was joined as a party to the proceedings, and entered a response.
4. The Hearing today was dealt with by way of written submissions which are set out below.

Claimant's submissions

5. Mr Laurie submitted there were two bases in terms of section 166 Employment Rights Act upon which the claimant's claim for redundancy was based. He submitted it was accepted that under reference to section 166(8) the LLP of Austins (Dalbeattie) LLP had not been subject to an application for winding up. Accordingly the alternative leg of the section 166 claim was that the employee had taken all reasonable steps to recover payment from the employer, and that the employer had failed to pay all in terms of section 166(1)(a).
6. Mr Laurie referred to a letter dated 7 August 2018 which had been sent to Ms Grandison, Judicial Factor, and to her response dated 8 August (both of which were attached to the submission). He invited the Employment Judge to note that the Judicial Factor confirmed the insolvency of Austins (Dalbeattie) LLP and the Judicial Factor acknowledged the demand for a redundancy payment as set out in the letter of the 7 August. The letter from the Judicial Factor further confirmed the Judicial Factor, standing in place of the employer, lacked

the resources to settle the redundancy claim. Mr Laurie submitted that in those circumstances the provisions of section 166(1) were satisfied.

7. Mr Laurie invited the Tribunal to make an award to the claimant in respect of a redundancy payment and payment of notice of termination of employment.

5 **First Respondent's submissions (that is, the correspondence received from the Judicial Factor)**

8. I noted the Employment Tribunal received a letter dated 15 June 2018 from Ms Cath Russell, Solicitor for the Judicial Factor Ms Morna Grandison. The letter noted the claimant's claim had been sent to the former offices of Austins (Dalbeattie) LLP and had been forwarded to the office of the Judicial Factor in circumstances where the premises of the respondent had been repossessed. The letter advised that on the 16 February 2018 Ms Morna Grandison had been appointed Judicial Factor on an interim basis, with the appointment being made permanent on the 20 March 2018. The letter confirmed that at the time of Ms Grandison's appointment the office had closed and there were no employees working there.

9. Ms Russell confirmed one of the two members of the LLP had been sequestrated on the 7 February 2018, and had had his practising certificate suspended by the Law Society of Scotland. The second member of the LLP was a limited company of which the first member was the sole director and shareholder, and in those circumstances the respondent company was no longer able to trade. Ms Russell confirmed that on the basis of the information available, the former firm appeared to be insolvent. Ms Russell confirmed the Judicial Factor would not enter the proceedings.

25 10. Ms Russell responded on the 8 August, to Mr Laurie's letter of the 7 August. Ms Russell accepted the letter of the 7 August as a demand for a redundancy payment to be made. Mr Russell confirmed there were no monies in the firm to make payment and little prospect that the Judicial Factor would be in a position to pay any creditors.

11. Ms Russell also confirmed that if the Insolvency Service contacted the Judicial factor, they would confirm they were not in a position to settle any claim because they consider the firm is insolvent.

Second Respondent's submissions

5 12. Ms White, for the second respondent, entered a response to the claim. The response noted the claimant was pursuing a claim against the second respondent for a payment from the National Insurance Fund in terms of sections 166 and/or 182 Employment Rights Act. The second respondent did not admit the first respondent was insolvent within the meaning of sections
10 166 and 183 Employment Rights Act.

13. Ms White noted the claimant's employer had not responded to requests for confirmation that the claimant had been dismissed by reason of redundancy the amount of liability and confirmation that the employer was unable to make payment. Accordingly the second respondent considered it reasonable in this
15 case not to make payment to the claimant unless the Tribunal was satisfied the claimant was entitled to receive a redundancy payment and the employer then refused or failed to pay.

14. The response continued to state the claimant must rely on the Tribunal to decide whether a payment is due to her under section 135 Employment Rights
20 Act from her former employer. If so, and the employer failed to comply with the award within a reasonable time, and the claimant notified the second respondent of this, the second respondent would be able to consider making a payment under sections 166 and 167 of the Act.

15. I, having considered the submissions and correspondence from the parties,
25 made the following material findings of fact.

Findings of fact

16. The claimant was employed by the first respondent, a solicitor and estate agency firm, as a Legal Secretary from the 13 October 2003 until the termination of her employment on the 8 February 2018.
- 5 17. The claimant earned £317 gross per week, giving a net weekly take home pay of £276.
18. The first respondent LLP was run by one member who was sequestrated on the 7 February 2018. The second member of the LLP was a limited company of which the first member was sole director and shareholder. The first
10 respondent was, in those circumstances, unable to continue to trade.
19. The first respondent ceased trading and closed on the 8 February 2018. The claimant's employment terminated on the 8 February 2018 for reasons of redundancy.
20. The claimant commenced alternative employment on the 26 February 2018
15 and is earning £252 per week.

Discussion and Decision

21. The claimant seeks payment of a redundancy payment. I had regard to section 135 Employment Rights Act which provides that an employer shall
20 pay a redundancy payment to an employee of his, if the employee is dismissed by the employer by reason of redundancy.
22. I also had regard to section 139 Employment Rights Act which provides that
25 for the purposes of that Act, an employee who is dismissed, shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was so employed.

23. I was satisfied, having had regard to the claim form, the response of the second respondent and the submissions and correspondence, that the claimant's employment was terminated by the first respondent on the 8 February 2017, for reasons of redundancy, in circumstances where the employer ceased to carry on the business for the purposes of which the claimant had been employed.
24. The claimant was dismissed for reasons of redundancy and is entitled to a redundancy payment.
25. I next had regard to section 166 Employment Rights Act which comes under the general heading of Payments by Secretary of State. The section provides that where an employee claims that his employer is liable to pay to him an employer's payment and either the employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and the employer has refused or failed to pay it, or the employer is insolvent, the employee may apply to the Secretary of State for a payment under this section. The term "employer's payment" means a redundancy payment which the employer is liable to make to the employee.
26. This section requires two conditions to be satisfied: (i) the employer must be liable to pay to the employee, an employer's payment and (ii) the employee must have taken all reasonable steps to recover the payment from the employer and the employer has refused.
27. I have set out (above) the fact the claimant was dismissed by the employer for reasons of redundancy and is entitled to a redundancy payment (that is, an employer's payment). I was satisfied the claimant had taken all reasonable steps to recover the payment from the employer in circumstances where she had asked the employer for payment and been told he had no money, and where a demand had been made of the Judicial Factor which had been refused.

28. I decided, having had regard to the above points, that the second respondent shall pay to the claimant a redundancy payment of £4,121 (being 13 weeks x £317 gross per week).
29. The claimant also seeks payment of notice of termination of employment. The claimant was entitled (section 86 Employment Rights Act) to 14 weeks' notice of termination of employment. The claimant was not given any notice of termination of employment. I was satisfied the claimant's complaint was well founded.
30. The claimant is entitled to 14 weeks' notice of termination of employment. The claimant however is under a duty to mitigate her loss. The claimant obtained alternative employment on the 26 February 2018. I accordingly calculate that 2 weeks' notice of termination of employment is due to be paid to the claimant, being the period between the date of dismissal and the date the claimant started alternative employment. I calculate the payment of notice to be £552 (being 2 weeks x £279 net per week).
31. I decided the payment of notice is to be made by the first respondent because the first respondent is not insolvent as defined by section 183 Employment Rights Act.
32. I acknowledged, having had regard to the terms of the letter of the 8 August from the Solicitor to the Judicial Factor, Ms Russell, that they will be unable to settle any claim because they consider the first respondent insolvent. I also noted the second respondent, in the ET3, did not admit the respondent was insolvent in terms of sections 166 or 182 Employment Rights Act. Mrs White, for the second respondent, however, had not had an opportunity to consider or comment upon the letter of the 8 August by the time of this hearing.
33. The claimant will, in terms of section 182 Employment Rights Act, be able to apply to the second respondent for payment of the award of notice should it not be paid by the first respondent. The claimant also had a right, in terms of section 188 Employment Rights Act, to bring a complaint to an Employment Tribunal should the second respondent fail to make such payment.

34. I, in conclusion, decided:

- the second respondent shall pay to the claimant a redundancy payment of £4,121 and

5

- the first respondent shall pay to the claimant notice pay of £552.

10

15 Employment Judge: L Wiseman
Date of Judgment: 17 August 2018
Entered in register: 22 August 2018
and copied to parties

20

25

30

35

5

10

15

20