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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Cooper  
**Respondent:** Sian and Glenn Payne Partnership  
**Heard at:** East London Hearing Centre  
**On:** 29 October 2018  
**Before:** Employment Judge Brown

## Representation

**Claimant:** In person  
**Respondent:** Sian and Glenn Payne (Owners)

# JUDGMENT

The judgment of the Tribunal is that:

1. The Respondents shall pay the Claimant a redundancy payment of £2,700.
2. The Claimant's claims for unlawful deductions from wages and holiday pay were presented out of time and are dismissed.

# REASONS

## Preliminary

1 By a claim form presented on 2 August 2018, the Claimant brought complaints of failure to pay redundancy payment, failure to pay holiday pay and notice pay against the Punchbowl Inn. The Claimant had undergone early conciliation through ACAS between 4 June 2018 and 4 July 2018. The Claimant's employment ended on 31 December 2017 and the Respondents defended the claim.

2 All parties attend the hearing today. They agreed that the correct name for the Respondent was Sian and Glenn Payne – Partnership. The parties agreed that the

Claimant was born on 16 September 1954. The Claimant explained, at today's hearing, that his claim was primarily for a redundancy payment. He said that he accepted that he had brought his complaints for notice pay and unlawful deductions from wages out of time.

3 The Respondents initially contended that the Claimant had brought all his complaints out of time. They said that there was a time limit of six months for bringing a redundancy payment claim to the Employment Tribunal. I explained that, pursuant to *s18 Employment Act 1996*, a claim for a redundancy payment was one of the claims in respect of which the Claimant was required to undergo early conciliation through ACAS. As a result, he had the benefit of an extension of time under *s207B Employment Rights Act 1996*. By *s207B(4) Employment Rights Act 1996*, if a time limit set by a relevant provision would expire during the period beginning with the date a Claimant contacts ACAS and ending one month after the early conciliation period ends, the time limit instead expires one month after early conciliation ends. Given that the time limit for presenting a redundancy pay claim is 6 months, under *s164 Employment Rights Act 1996*, the primary time limit in this case would have expired on 30 June 2018. That date fell within the period of early conciliation.

4 By *s207B Employment Rights Act 1996*, the time limit for presenting a complaint in relation to a redundancy payment was therefore extended to one month after the end of the early conciliation period. The early conciliation period ended on 4 July 2018 and the Claimant presented his complaint on 2 August 2018. The claim for a redundancy payment was therefore in time.

5 The Claimant did not seek to argue that his claims for holiday pay and unlawful deductions from wages were presented in time, or that time should be extended for them.

6 I discussed the issues with the parties at the outset of the hearing.

7 In the Respondents' response' the Respondents had said that the Claimant was employed for 15 months. The Claimant contended, in his ET1 claim form, that he had been employed continuously for 35 years.

8 At start of the hearing, the Claimant produced an agreement for the sale of the Punchbowl Inn business from the transferor to the Respondent transferees. The agreement provided, at Clause 13 that employees would be TUPE transferred. The agreement for sale also included a schedule of employees to be transferred. It recorded that the Claimant was one of the employees to be transferred and that his continuous employment started on 2 October 1995. The Respondents accepted that, in those circumstances, the Claimant's continuous employment had started on 2 October 1995. The Respondents also accepted that the Claimant was not dismissed before the transfer of the business pursuant to the agreement of the sale and that the Claimant had been TUPE transferred to the Respondents.

9 Accordingly, I decided that the Claimant had been continuously employed for at least 20 years before the date of his dismissal. The parties agreed that the Claimant was dismissed on 31 December 2017. It was not in dispute that the reason that the Claimant was dismissed - and that all other employees' employment ended on that day - was that the business ceased to trade. It was clear, therefore, that the Claimant was redundant within the definition of redundancy in *s139 Employment Rights Act 1996*, in that his

employer ceased to carry on the business for the purposes of which the employee was employed and that his dismissal was wholly attributable to that fact.

10 The parties agreed that the Claimant was paid £90 gross per week before his dismissal. Given that there was no dispute that the Claimant was dismissed on 31 December 2017, that he was dismissed when the business ceased to trade, that the Claimant had been employed for 20 years continuously before his dismissal and was born on 16 September 1954, I decided that the Claimant was entitled to a redundancy payment calculated in accordance with s162 *Employment Rights Act 1996*.

11 I therefore ordered the Respondents to pay the Claimant a redundancy payment calculated as follows:  $20 \times 1.5 \times £90 = £2,700$ .

Employment Judge Brown

12 December 2018