



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4120362/18 Held at Aberdeen on 13 December 2018

Employment Judge: Mr J M Hendry (sitting alone)

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Miss Carla Kelman

Claimant
In Person

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Seaton Community Enterprise Ltd

Respondent
No Appearance

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that the claimant's claim for a redundancy payment is well-founded and that the respondents shall pay to the claimant the sum of Nine Hundred and Forty-Three Pounds and Fifty Pence (£943.50) as a redundancy payment: the other claims being time-barred are dismissed.

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REASONS

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1. The claimant raised Employment Tribunal proceedings on 18 September 2018 against her former employers seeking a redundancy payment and other payments including failure to pay notice.

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2. The proceedings were not defended.
3. The case proceeded to a hearing on 13 December. It would appear from the papers that the claims might be time-barred.
- 5 4. The claimant helpfully lodged with the Tribunal a number of documents including her payslips and correspondence with Seaton Community Enterprise Limited. The claimant gave evidence, and I make the following findings.
- 10 5. The claimant left school and began work at the Timber Kinder Garden Nursery run by the respondents on 29 August 2012. She completed various qualifications and ultimately was employed as a Supervisor at the Nursery.
- 15 6. On 29 January 2018 at about 5 o'clock the claimant and others were called to an office where a Director of the Company, Alan Grant advised her, and other staff that the Nursery no longer had the funds to continue and was immediately closing. He advised her that she would be made redundant. The claimant had previously handed in her notice on 15 January and was due to
20 leave on 9 February. On 31 January the claimant received her monthly wage and this did not include her overtime, her redundancy payment or the seven days left on her notice period.
- 25 7. On 28 June the claimant contacted Mr Grant and asked for an update on when she could expect to be paid and was told that no payments could be made until the building owned by the Company was sold. The claimant contacted Mr Grant again on 12 July and was told that no progress had been made in relation to the sale of the building. The claimant received a letter from the respondents on 17 August advising that they were not in funds to
30 pay creditors and that the claimant should make an application to the National Insurance Fund. The letter indicated that the Board was considering insolvency of the Company.
- 35 8. The claimant had been handed at the time of her redundancy a letter advising of the closure and indicating that she should contact the Department of Work

and Pensions for any statutory claims. A further letter was received by the claimant on 17 August advising that there were no funds available.

9. The claimant delayed making an Employment Tribunal claim. She was
5 unaware of Employment Tribunal procedures but heard “on the grapevine”
some point in June or July that another employee had made a claim to the
Employment Tribunal. This prompted her to take action. She did not as,
suggested by the respondents take any steps to contact the Department of
Work & Pensions to find out if they would pay the outstanding sums of
10 redundancy etc or seek legal advice or research her legal rights on the
internet.

Decision

- 15 10. I found the claimant a wholly credible and honest witness. She gave her
evidence in a straightforward manner. I had no doubt that she was legally
due the sums that she was seeking.
- 20 11. In relation to a redundancy payment the time limit for raising a claim is six
months. The claimant would have expected her redundancy payment to be
paid on 31 January when she normally received her monthly wages and
accordingly time starts from then in relation to time limits. She applied to
ACAS for a Conciliation Certificate on 21 July just within the six months period
and accordingly the claim for redundancy payment is in time. The claimant
25 is therefore entitled to a redundancy payment.
- 30 12. Regrettably the test the Tribunal has to apply in relation to the other payments
is whether or not it was reasonably practicable for these claims to be made
in time. The time limit for these claims is three months. Whilst I sympathise
with the claimant waiting to hear from her former employers about payment
of these sums she should have had regard to her own position. Indeed, in
fairness to the respondents they had suggested she contact the Department

for Work & Pensions in January. Had she done so she would have no doubt discovered that she would have to raise Employment Tribunal proceedings before they could consider the claims.

5 13. Ignorance of the law requires to be reasonable and the claimant ought to have researched her rights and made the other claims within the three months period. There is an abundance of information available on the internet and a few moments research would have alerted the claimant to her rights. I noted that she had used a Government website to correctly calculate her
10 redundancy payment. It is with considerable regret that I therefore dismiss those claims. However, such claims can be raised at the Sheriff Court through the small claims procedure as they are debts. However, that may not be necessary as I understand from the latest correspondence that there has been progress in selling the property and that accordingly as a creditor
15 the claimant might eventually might be paid.

14. I noted that the claim had been raised by Seaton Community Enterprise whereas the papers clearly demonstrated that the respondents are a limited Company and accordingly the respondent's designation has been amended
20 accordingly.

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	Employment Judge:	James Hendry
30	Date of Judgment:	21 December 2018
	Entered in Register:	24 December 2018
	And Copied to Parties:	