



EMPLOYMENT TRIBUNALS

Claimant: Mr S Grimsley
Respondent: Centrex Maintenance Limited
Heard at: Ashford
On: 2 January 2019
Before: Employment Judge Pritchard

Representation
Claimant: In person, assisted by his partner Ms T Laker
Respondent: No appearance

JUDGMENT

1. The Respondent breached the Claimant's contract of employment by failing to give the full statutory notice pay required by section 86 of the Employment Rights Act 1996 and the Respondent is ordered to pay to the Claimant the sum of £1,252.80.
2. The Claimant is entitled to receive from the Respondent a redundancy payment in the sum of £2,349.00. The Respondent is ordered to pay this sum to the Claimant.
3. The Respondent failed to provide the Claimant with a written statement of employment particulars and the Respondent was therefore in breach of its duty under section 1(1) of the Employment Rights Act 1996. The Respondent is ordered to pay the Claimant a sum equivalent to four weeks' wages in the sum of £1,252.80.
4. The Claimant's claim for holiday pay is dismissed upon withdrawal.

REASONS

1. The Claimant appeared in person assisted by his partner, Ms Laker. The Respondent failed to appear. I caused telephone enquiries to be made as to the Respondent's absence. My clerk reported that having spoken to someone at the Respondent, she had been informed that the director dealing with the matter was away skiing. I noted that the Respondent had

failed to comply with the Case Management Order I had issued in August 2018. Upon a search of Companies House, I further noted that the Respondent had entered into a CVA on 10 September 2018. I formed the view that, in the circumstances, it was unlikely that the Respondent had any intention of appearing. I had regard to Rule 47 and the overriding objective in Rule 2 and decided to proceed in the Respondent's absence.

2. The Claimant claimed a redundancy payment and the balance of his notice pay. It appeared that the Claimant had been compensated for his accrued but untaken holiday at the termination of his employment and his claim for holiday pay was withdrawn.
3. I heard evidence from the Claimant under oath. I was referred to a number of documents placed before me by the Claimant.

Findings of fact

4. The Respondent was contracted to Amey to fulfil street light maintenance services. Amey was in turn contracted to Kent County Council. The Claimant, having seen an advertisement on the internet, successfully applied for employment with the Respondent for the general maintenance of highways. He commenced employment with the Respondent on 30 July 2012. Eventually his job involved the maintenance of street lighting. He worked 7 a.m. to 4 p.m. five days each week.
5. In 2018, the Claimant was informed by Amey that its contract with KCC would end on 31 August 2018 but that the Claimant's name would be placed on a TUPE list. It was thought that the contract thereafter would be awarded to Bouygues. The Claimant attended what he described as a TUPE meeting with members of Amey's management on 10 May 2018. Amey told the Claimant he would have TUPE rights when the contract transferred. The Claimant thereafter spoke to John Wilmot of the Respondent on the same day who told the Claimant that his employment would end on 18 May 2018.
6. A member of Amey's management suggested that the Claimant should nevertheless attend work after his pre-arranged holiday (12 May 2018, returning on 29 May 2018). However, there was no work for the Claimant when he returned to work on 29 May 2018 and the Respondent made no contact with him. When the Claimant managed to speak to John Wilmot on 30 May 2018, he was told he should "sign on". I find that the Claimant was dismissed on 10 May 2018 with one week's notice and that his employment ended on 18 May 2018.
7. At relevant times the Claimant's gross weekly pay was £313.20.
8. The Claimant accepts that he received and was paid for one week's notice (10 May 2018 to 18 May 2018).
9. The Claimant accepts that he was paid the wages shown in his payslip processed on 22 June 2018 which he thought was probably referable to outstanding holiday pay. The Claimant therefore withdrew his claim for holiday pay.

10. Despite requests by the Claimant for a written contract of employment/written statement of employment particulars, he was never provided with one.

Applicable law

Notice pay

11. Section 86 of the Employment Rights Act 1996 provides that the minimum notice to be given by an employer to an employee to terminate the contract of employment of an employee who has been continuously employed for one month or more:
- a. Is not less than one week's notice if his period of continuous employment is less than two years;
 - b. Is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years;
 - c. Is not less than twelve weeks' notice if his period of continuous employment is twelve years or more
12. A claim for notice pay is a claim for breach of contract; see Delaney v Staples 1992 ICR 483 HL. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.

Redundancy payment

13. Section 139(1)(b)(i) of the Employment Rights Act 1996 provides that 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 requirements of the employer's business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.
14. In Murray v Foyle Meats Ltd [1999] ICR 827, Lord Irvine approved of the ruling in Safeway Stores plc v Burrell [1997] ICR 523 and held that section 139 of the Employment Rights Act 1996 asks two questions of fact. The first is whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs.
15. Under section 155 of the Employment Rights Act 1996, an employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date

16. Under section 163 of the Employment Rights Act 1996, for the purposes of a reference to an Employment Tribunal for a determination as to an employee's right to a redundancy payment or the amount of a redundancy payment, an employee dismissed by his employer shall, unless the contrary is proved, be presumed to have been dismissed by reason of redundancy.
17. A redundancy payment is calculated by reference to a statutory formula which is readily accessible on internet sites and which will not be repeated here.

Written statement of employment particulars

18. Section 1 of the Employment Rights Act 1996 provides that an employer must provide an employee with a written statement of employment particulars not later than two months after the beginning of employment containing the particulars set out in that section and as further described in sections 2 and 3. Section 4(1) provides that if there is a change in any of the matters particulars of which are required by sections 1 to 3, an employer must provide an employee with a written statement containing particulars of the change at the earliest opportunity and in any event not later than one month after the change.
19. Section 38 of the Employment Act 2002 provides that if in a case to which the proceedings relate (which includes proceedings relating to redundancy payments) the Tribunal finds in favour of an employee and, when the proceedings were begun the employer was in breach of his duty under section 1(1) or 4(1) of the Employment Rights Act 1996, the Tribunal must, unless there are exceptional circumstances which would make an award or increase unjust or inequitable, award the employee two weeks' pay (subject to the cap specified in section 227 of the Employment Rights Act 1996). If the Tribunal considers it just and equitable in all the circumstances, the Tribunal may award four weeks' pay (subject to the cap specified in section 227 of the Employment Rights Act 1996).

Conclusion

20. I concluded that the Claimant was dismissed by reason of redundancy. The Claimant referred me to an email dated 4 May 2018 from Paul Barrett of Amey to the Respondent stating that staff currently provided by the Respondent would no longer be required from 18 May 2018. The Claimant was dismissed with effect from 18 May 2018. This strongly suggests that the Respondent no longer required employees to carry out work of a particular kind, namely those carrying out street lighting duties such as the Claimant.
21. In any event, the presumption in section 163 of the Employment Rights Act 1996 would lead to the same conclusion.
22. The Respondent did not make a redundancy payment to the Claimant, yet he is entitled to one.
23. The Respondent failed to compensate the Claimant for the balance of his

notice period (four weeks).

24. The Respondent failed to provide the Claimant with a written statement of employment particulars despite the Claimant requesting a contract of employment on several occasions, including requests to the Respondent's Finance Director. It is just and equitable in the circumstances for the Claimant to be awarded four weeks' pay.

Employment Judge Pritchard

Date 2 January 2019