

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4106686/17

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Held in Glasgow on 21 February 2018

Employment Judge: F Jane Garvie

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Mrs Caroline Ferry

**Claimant
In Person**

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Stewartfield Events & Catering Ltd

**Respondent
No Appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that the claimant having been dismissed by the respondent by reason of redundancy, the respondent is ordered to pay to the claimant a redundancy payment of £3,996 (Three Thousand, Nine Hundred and
25 Ninety Six Pounds).

REASONS

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Background

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1. In her claim, (the ET1) presented on 23 November 2017 the claimant seeks a redundancy payment. She gave as her dates of employment July 2002 until 22 January 2017. She was employed as a cleaner and kitchen porter with the respondent. She worked an average 30 hours per week and her gross weekly pay was £216. Her date of birth is 11 September 1966.

2. The claim was acknowledged and notified to the respondent under Notices dated 16 December 2017 and both parties were advised that a Final Hearing would take place on 21 February 2018.
- 5 3. The respondent lodged a response, (the ET3) on 3 January 2018. That was acknowledged and accepted on 4 January 2018.
4. The case was referred to Employment Judge Muriel Robison who issued a Notice and Order indicating that, as no defence had been set out at Section
10 6 of the ET3, the response should be dismissed on 15 January 2018 without further Order unless there was any application by the respondent in writing as to why it should not so be struck out. No reply was received.
5. The claimant meanwhile noted she had received a copy of the ET3 which
15 referred to the respondent as Mary Marmion when, in fact, she understood that it was Mhairi Mary Marmion.
6. The file was again referred to Judge Robison who directed that, in future, the
20 claimant should copy any correspondence to the Tribunal Office in terms of Rule 92 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to the respondent and it was confirmed the case would proceed as undefended. It was also noted that the claim appeared to be timebarred and that this issue would be considered on 21
25 February 2018.

The Final Hearing

7. At the start of the Final Hearing there was no one present for or on behalf of
30 the respondent.

Findings of Fact

8. The claimant gave evidence and the Tribunal found the following facts to have been established.

9. The ET1 was presented on 23 November 2017. The ACAS Certificate shows a date of receipt by them of 15 November 2017 and date of issue of 17 November 2017.

10. The claimant worked for Mrs Marmion and her husband but she understood that the employer was the limited company who are the present respondent. On 8 January 2017 the claimant was informed that the respondent was to close and Mrs Marmion informed the claimant that it would close on 22 January 2017. The claimant was to be paid 2.5 weeks` notice which was duly paid as well as holiday pay. She was told that her P45 would be posted to her with directions as to how to claim a redundancy payment. She duly received a letter with the P45, indicating that if she was looking for a redundancy payment she would need to speak to the Liquidator of the respondent. She waited 2 or 3 weeks and was then informed by Mrs Marmion that no Liquidator had been appointed but that she would contact her which she did about a month afterwards. She was then told that the Accountant did not have the correct forms and the claimant should contact her local Jobcentre. The Jobcentre did not have forms and advised the claimant to go online and check the Insolvency Service. At the end of May2017 she received a letter from the Insolvency Service, advising they could not assist her as the respondent was not registered as insolvent.

11. The claimant then contacted again by Mrs Marmion at the beginning of June 2017, advising her that she had received paperwork from the Insolvency Service which she had returned to them. The claimant tried to contact her again over the next few months by telephone and text but got no reply.

12. At the end of September 2017 the claimant discovered that 2 other former employees had also not been paid. They all approached the Citizens Advice Bureau and the first appointment available was October 2017. They were

advised to bring claims to the Employment Tribunal. The claimant understood that one of the other former employees had contacted Mrs Marmion who then contacted the claimant on 9 October 2017, advising her that she had another form to complete and that a meeting was arranged for the next day. That meeting duly took place and the claimant was informed that the respondent did not have the money they required to arrange for a Liquidator to be appointed. It was the claimant's understanding that HMRC had later placed the respondent into liquidation.

13. The claimant initially attempted to lodge a claim but did not have a reference number from ACAS and so there was a delay from 10 October until the claim was submitted on 23 November 2017 after she had obtained the requisite ACAS Certificate.

14. The claimant did not put any claim in writing to the respondent in relation to a redundancy payment.

Relevant Law

15. Section 135 of the Employment Rights Act states:-

“The Right

“(1) An employer shall pay a redundancy payment to any employee of his if the employee –

*(a) is dismissed by the employer by reason of redundancy,
..”*

and

16. Section 164 states:-

“164 Claims for redundancy payment-

(1) *An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date –*

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(a) *the payment has been agreed and paid,*

(b) *the employee has made a claim for a payment by notice in writing given to the employer,*

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(c) *a question as to the employee`s right to, or the amount of, the payment has been referred to an employment tribunal, or*

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(d) *a complaint relating to a dismissal has been presented by the employee under Section 111.*

(2) *An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee –*

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(a) *makes a claim for a payment by notice in writing given to the employer,*

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(b) *refers to an employment tribunal a question as to his right to, or the amount of, the payment, or*

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(c) *presents a complaint relating to his dismissal under Section 111,*

and it appears to the tribunal to just and equitable that the employee should receive a redundancy payment.

5 (3) *In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to –*

10 (a) *the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1),*

(b) *all the other relevant circumstances.”*

Deliberation & Determination

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17. Having heard from the claimant it was clear to the Tribunal that she had made various attempts to obtain a redundancy payment and had indeed had a meeting with the respondent's owners on 10 October 2017.

20 18. While the claimant did not have anything to confirm that she had put an application for payment of a redundancy payment by notice in writing to the employer within the period set out in Section 164(1), namely six months from the period beginning with the relevant date which in this case would be 21 July 2017, she had made various attempts to clarify how she should go about
25 receiving a redundancy payment.

19. In terms of Section 164(2) the claimant is not deprived of the right to a redundancy payment if she has made a claim a redundancy payment by notice in writing given to the employer which she did not do but where she
30 has however, presented a claim to the Tribunal in relation to her entitlement to a payment in terms of Section 164(2)(b) of the Employment Rights Act 1996.

20. Accordingly, the issue for determination was whether it would be just and equitable that the claimant should receive a redundancy payment. In determining that issue the Tribunal has to have regard to what the claimant has done in terms of subsection (2) within the period mentioned in subsection (1). The Tribunal was satisfied that the claimant did refer the issue to a tribunal in terms of subsection (2) within the period of six months immediately following the period mentioned in subsection (1).
21. The Tribunal was satisfied that the claimant had made several concerted attempts to obtain the redundancy payment by making contact with the respondent. While it is unfortunate that she did not put her application in writing to the respondent in terms of Section 164(1)(b) within the six months period she did take steps in terms of Section 164(2) by presenting a claim to the Tribunal within the period of 6 months immediately following the first period namely the first 6 months from the termination of employment.
22. In all the circumstances, the Tribunal was satisfied that it would be just and equitable to make an award of a redundancy payment to the claimant. She had worked for the respondent for 16 years, having commenced employment with them in July 2002 and her employment having terminated on 22 January 2017.
23. The claimant is aged 50 and she had completed 14 years' full service with the respondent as at July 2016 having first been employed by them in July 2002. She earned £216 gross per week and her entitlement to a statutory redundancy payment is therefore £3,996 which is based on her age, the number of complete years of service and her weekly gross pay.
24. Accordingly, the Tribunal was satisfied that the respondent should pay to the claimant a redundancy payment of £3,996.

5 **Employment Judge: F Jane Garvie**
 Date of Judgment: 22 February 2018
 Entered in Register: 23 February 2018
 and Copied to Parties

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