



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4123073/2018**

**Hearing Held at Dundee on 31 January 2019**

**Employment Judge: Mr A Kemp (sitting alone)**

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**Mr R Clark**

**Claimant  
Represented by:  
Ms S Ramsay  
Solicitor**

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**MaItalia Travel Limited**

**First Respondent  
(No appearance)**

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**Secretary of State for Business, Energy and  
Industrial Strategy**

**Second Respondent  
Represented by:  
Mr C Johnson  
Technical Officer**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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1. The Claimant was dismissed by the First Respondent on 1 December 2017 on the ground of redundancy, and is entitled to payment of a statutory redundancy payment of ELEVEN THOUSAND AND TWO POUNDS FIFTY PENCE (£11,002.50) from the First Respondent.

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2. The Claim against the Second Respondent is sisted for a period of two months.

E.T. Z4 (WR)

## REASONS

### Introduction

5 1. The Claim made was for a statutory redundancy payment. The First Respondent did not enter any appearance. The Second Respondent, the Secretary of State, sent a written submission within its Response Form and did not appear at the Final Hearing. No evidence was led for the Respondents.

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2. The Claimant gave evidence clearly and candidly, and I accepted what he said. He spoke to a bundle of documents that his solicitor had prepared. He submitted after the hearing written evidence on the date of the commencement of his employment.

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### The issues

3. The issues that arose in the case were:

- (i) What was the reason for the termination of employment?
- 20 (ii) If that was redundancy, what was the amount of the statutory redundancy payment to which the Claimant was entitled?
- (iii) What if any order should be granted against the Second Respondent?

### The Facts

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4. The Tribunal found the following facts established:

5. The Claimant is Ross Clark. His date of birth is 26 July 1971.

30 6. The Claimant was employed by the First Respondent from April 1995, as a Manager.

7. His gross monthly salary was £2,471 which is the weekly equivalent of £570.23.
8. On 1 December 2017 he was dismissed from his employment by notice given by the First Respondent's director, Franco Bazzi, in an email that day. It referred to "present financial pressures".
9. The First Respondent was the UK subsidiary of an Italian company called Mecca Viaggi, which was owned or controlled by Mr Bazzi. Mr Bazzi is an Italian national, resident in Italy. Mecca Viaggi sold tours, some of which were in the UK. The First Respondent was established to support the provision of those tours, but did not deal with customers directly. Its source of income was from Mecca Viaggi.
10. In November 2017 it was clear to the Claimant that the First Respondent was in severe financial difficulty. Funds to pay suppliers were not forthcoming from Mecca Viaggi, and Mr Bazzi was difficult to communicate with. After receiving the email dated 1 December 2017 he consulted the First Respondent's accountants, and then an insolvency practitioner, but no formal insolvency proceedings were commenced as there were no funds to do so. The only other employee of the First Respondent was also dismissed without notice by email on 1 December 2017. The First Respondent abandoned its office premises at 51 Niddry Street, Edinburgh. It ceased to trade on or around 1 December 2017. The Claimant was not paid salary for November 2017, nor his entitlement to notice, although no claim therefor is made in the present proceedings.
11. A statutory demand for payment of a statutory redundancy payment, amongst other sums, was sent on behalf of the Claimant to the Respondent's solicitors on 8 May 2018. They replied on 21 May 2018 to state that they were not in receipt of instructions, and had also not been paid for their services. On 28 May 2018 a letter of demand for the statutory redundancy payment was sent by the Claimant's solicitors to the registered address of the Second

Respondents at 8 Charlotte Street, Perth, as well as delivery by sheriff officer; to Mr Bazzi at his home address at Vale Dandolo 32, Rimini, Italy 47900, and to Mr Bazzi by email to the email account he held [bzz@meccaviaggi.com](mailto:bzz@meccaviaggi.com). The email was not sent successfully as the account was closed. No reply was received to the letters.

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12. No statutory redundancy payment has been paid to the Claimant.

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13. No evidence that the First Respondent is insolvent as defined in section 166 of the Act was presented. The Claimant had taken all reasonable steps to recover the statutory redundancy payment from the Second Respondent prior to raising the present Claim.

### **The Law**

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14. Section 135 of the Employment Rights Act 1996 ("the Act") provides that an employer shall pay a redundancy payment to the employee if dismissed by the employer by reason of redundancy. Section 136 sets out the circumstances in which there is a dismissal, which includes at (a) termination by the employer with or without notice. Section 139 defines redundancy, and includes the fact that the employer has ceased to carry on the business for the purposes of which the employee was employed.

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15. There is a presumption of redundancy under section 170(2) of the Act.

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16. A person seeking to claim a statutory redundancy payment requires to undertake one of the steps set out in section 164 of the Act, (b) of which refers to a notice in writing to the employer.

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17. The calculation of the sum to which a person is entitled by way of statutory redundancy payment is set out in section 162 of the Act.

18. Section 166 sets out the provisions which apply in relation to the Second Respondent, to whom an application for payment may be made in the circumstances set out there.

5 **Discussion**

19. It was clear that the Claimant was dismissed by virtue of the email of 1 December 2017.

10 20. It was also clear that the Claimant was dismissed on the ground of redundancy, as the First Respondent ceased to trade on that date, and both of its two employees were dismissed. It was not necessary to engage the presumption.

15 21. The Claimant sent a written notice in accordance with the terms of section 164(b) of the Act and is therefore entitled to a statutory redundancy payment.

22. The Claimant was 46 years of age at the date of termination. He had then 22 years of continuous service. His gross annual salary was £29,652 as  
20 evidenced by his wage slip, the weekly equivalent of which is £570.23.

23. The statutory redundancy payment calculated in accordance with section 162 of the Act is £11,002.50. That is the sum awarded to the Claimant and payable in the first instance by the First Respondent.

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24. No order is made against the Second Respondent at this stage. The Response Form indicated that the Second Respondent wished the present Judgment to be made first, after which the application for payment against it will be considered. In the event that the First Respondent fails to make  
30 payment of the statutory redundancy payment, which appears to be a certainty, the Claimant may apply to the Second Respondent for that payment. In the event of a delay or refusal to do so, the Claimant may then apply to the Tribunal for such further order as he wishes, which shall be

considered at that stage. The Claim against the Second Respondent is sisted for that purpose, in accordance with the overriding objective in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Regulation 2, for a period of two months.

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**Employment Judge:****Alexander Kemp**

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**Date of Judgment:****05 February 2019****Entered in register:  
and copied to parties****05 February 2019**