



EMPLOYMENT TRIBUNALS

Claimant: Mr J Stretch

Respondent: Mr S Howard t/a Mobri Bakery

HELD AT: Sheffield

ON:

18 June 2018

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person assisted by Ms T Rawson

Respondent: No attendance or representation

JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. On or around 23 July 2017 the undertaking in which the claimant was employed transferred to the respondent. Pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 the claimant's continuity of employment with effect from 12 July 2005 was preserved.
2. On 1 March 2018 the respondent dismissed the claimant by reason of redundancy. The claimant was given notice that his contract of employment would terminate on 31 March 2018 which date was the effective date of termination of his contract of employment.
3. By reason of the preservation of the claimant's continuity of employment pursuant to the 2006 Regulations, the claimant's contract of employment is deemed to be for the period from 12 July 2005 (being the date upon which he commenced employment with the individual from whom the respondent acquired the undertaking) to 31 March 2018 (being the effective date of termination).
4. By reason of the length of the claimant's continuity of employment, he had a statutory entitlement to not less than 12 weeks' notice to bring his contract of employment to an end. Accordingly, the respondent wrongfully dismissed the claimant because, in breach of contract, the claimant was only given one month's notice.

5. The respondent has failed to pay the claimant for the work that the claimant undertook in February and March 2018. The respondent thus has made an unlawful deduction from the claimant's wages.
6. There being in place no relevant agreement, the claimant's annual leave year for the purposes of the calculation of his holiday pay entitlement runs from 12 July to 11 July in each year. For the holiday year commencing on 12 July 2017 the Claimant (who worked six days a week) had taken 19 days holiday.
7. As at the date of termination of the contract of employment the claimant was 59 years of age, had completed 12 complete years of service and earned the sum of £300 per week gross and £267 per week net.

REMEDY

The claimant is entitled to the following:-

1. **Redundancy**

The respondent shall pay to the claimant a redundancy payment in the sum of £5,400.

2. **Unlawful deduction from wages**

The respondent shall pay to the claimant the sum of £2,400 being eight weeks' wages which have been unlawfully deducted for the work undertaken by the claimant in February and March 2018.

3. **Wrongful dismissal/breach of contract**

The respondent shall pay to the claimant the sum of £1,698 which is calculated as follows:-

- a. 12 weeks' net pay by way of notice entitlement - £3,204 **less the amounts at 3 a. and 3 b. below being:**
- b. 4 weeks' pay earned by the claimant between 1 and 31 March 2018 - £1,068;
- c. **And** 6 weeks' Job Seekers Allowance in the sum of £73 per week - £438

Net amount due by way of damages for wrongful dismissal - £1698

4. **Holiday pay**

The claimant had accrued 7.5 days of holiday pay untaken at the effective date of termination. The respondent shall therefore pay to him the gross sum of £375 by way of compensation.

5. The respondent shall pay to the claimant the sum of £9,873 within 14 days of the date upon which this Judgment is sent to the parties (which date is noted below).

Employment Judge Brain
Date 02/07/2018

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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