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EMPLOYMENT TRIBUNALS

Claimant: Mrs M Vince
Respondent: Mr and Mrs Glenn Payne, Punchbowl Inn
Heard at: East London Hearing Centre
On: 4 March 2019
Before: Employment Judge Jones (sitting alone)

Representation

Claimant: In person
Respondent: In person

JUDGMENT

The judgment is as follows:

1. The claim was issued outside of the statutory time limit set out in Section 164 Employment Rights Act 1996.
2. It is just and equitable to extend the time under Section 164(2) Employment Rights Act 1996 to allow the claim to be considered.
3. The Claimant is entitled to a redundancy payment. Her redundancy payment is calculated as follows:
 - 3.1 Age at date of dismissal: = 68 years
 - 3.2 Employment from 1995 to 2018 (from October 1995 to 1 January 2018): 22 years;
 - 3.3 Claimant is paid £100.00 per week gross;
 - 3.4 Redundancy pay is paid for a maximum of 20 years;
 - 3.5 The formula is £100.00 per week x 1.5 week's pay for each year worked over the age of 41 x 20 years = £3000.00.

4. The Respondent is ordered to pay the Claimant her redundancy pay in the amount of £3000.00.

REASONS

1. The Claimant issued her Claim Form on 22 November 2018 for redundancy payment. The Claimant was made redundant from her job as cook at the Punchbowl Public Inn by text message on 20 December 2017.

2. The Respondents, Mr and Mrs Payne, took over the running of the Punchbowl Inn in September 2016. Before that, the pub had been run by Mr and Mrs Cardy.

3. The Claimant worked for Mr and Mrs Cardy, beginning her employment in October 1995. She has lived in the village for 43 years. The Punchbowl Inn is a public house in the small village of Paglesham in Rochford. The Claimant lives next door to the pub in the Punchbowl Cottages. The Punchbowl Inn was one of two pubs in the village.

4. Although the Claimant and the other employees at the pub knew that Mr and Mrs Payne were in financial difficulties in 2017, it was not until they received a text message inviting them to a meeting on 20 December 2017 that they were told that they were about to be made redundant. At the meeting, they were told that the pub was closing. The Claimant was not told that she was entitled to redundancy pay. The loss of her job and her income had a devastating effect on her. It was also her unchallenged evidence today that the pub was not only her place of work but also the hub of her social life. She met her child's father at the pub. As well as working there, she went there on family birthdays, family meals, Christmas morning drinks and other significant times of her life. The Claimant's evidence today was that she suffered low mood, anxiety and went through a period of mourning after her dismissal as she had not only lost her job but also her social life. She felt directionless and was unable to function for some months. It took her some time to come to terms with the closure of the pub and the effect that it has had on her and on village life.

5. The Claimant did not find out until she accidentally met a former colleague, Mr Duncan Copper at a wedding in August 2018 that she was entitled to redundancy pay. Mr Cooper informed the Claimant that it was likely that she was entitled to redundancy payment and that crucially, the time she had spent working for Mr and Mrs Cardy's up to September 2016 would be considered by the Tribunal to be part of her continuous employment for redundancy payment purposes because of the fact that the staff had transferred under TUPE to Mr and Mrs Payne. The Claimant knew nothing of TUPE. Mr Cooper later told her that he had been successful with his Tribunal claim. He told her that she too could issue proceedings in the Employment Tribunal to bring a claim for her redundancy payment. The Claimant had not known about the Tribunal or that it was possible to do so. He later told her that he had received a telephone call from Mrs Payne who was quite rude to him because of the claim he was making. That worried the Claimant and may have slowed down her resolve to issue her own claim.

6. The Claimant tried to get legal advice at her local Citizen Advice Bureau in Rochford but failed as it was not open on the days she went there. The Claimant was

reluctant to issue these proceedings as she lives next door to the Respondents. She tried to get some advice but there were no other places where she could get employment advice locally. She sought help online and then from the redundancy payments office who were helpful but told her that she was by then out of time for issuing her complaint at the Employment Tribunal.

7. Mr and Mrs Payne indicated today they are in financial difficulties and that they also suffered emotionally when they had to close the pub. They had reduced the Claimant and her colleagues' hours during 2017, which the staff had agreed to, to help keep the business open but were unable to do so anymore. Mr and Mrs Payne texted everyone on 20 December 2017 to notify them that the business was going to close at the end of the working day on 1 January 2018.

8. The claim was issued on 22 November 2018. In their Response form, Mr and Mrs Payne stated that she would take the opportunity to slow down and retire. They also stated that after meeting a former colleague who told her about his case, the Claimant had '*jumped on the bandwagon*' and issued her claim. Mr and Mrs Payne confirmed that the Punchbowl Inn ceased trading on 1 January 2018. They submitted that as the claim had been issued late it should be dismissed.

The law

9. Section 139 of the Employment Rights Act 1996 (ERA) states that for the purposes of this Act, an employee who was dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:

- 9.1 The fact that his employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed by him; or
- 9.2 to carry on that business in the place where the employee was so employed.

10. Section 164(1) of the ERA states that 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, the payment has been agreed and paid or the employee had made a claim for the payment by notice in writing given to the employer or, a complaint relating to the dismissal has been presented by the employee under section 111 to the Employment Tribunal or a question as to the employee right to, or the amount of, the payment has been referred to the Employment Tribunal.

11. Section 164(2) states that an employee is not deprived of his right to redundancy payment by subsection (1) above, if, during the period of six months immediately following the period mentioned in that subsection, the employee:

- 11.1 Makes a claim for the Claimant by notice in writing given to the employer;
- 11.2 Refers to an Employment Tribunal a question as to his right to, or the amount, of the payment; or
- 11.3 Presents a complaint relating to his dismissal under s.111; and
- 11.4 It appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment.

12. 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:

- 12.1 The reason shown by the employee for his failure to take any such step as is referred in subsection (2) within the period mention in subsection (1); and
- 12.2 All the other relevant circumstances.

13. Section 135 of the ERA states that an employer shall pay a redundancy payment to any employee of his if the employee is dismissed by the employer by reason of redundancy.

Decision

14. The Tribunal had first to consider whether it had jurisdiction to hear the Claimant's complaint.

15. The Tribunal considered the Claimant's reasons for issuing her complaint late. She was dismissed with an effective date of termination of 1 January 2018. Her claim was issued on 22 November 2018.

16. Section 164(1) of the ERA states that she had to issue her claim within 6 months of the effective date of termination. Her claim would have to be issued before 1 July for it to have been in time. The claim was therefore issued outside of the statutory time limit.

17. Under section 164(2) there are certain circumstances in which a tribunal could extend the time within which the claim should be issued.

18. The Tribunal considered the following circumstances: that the Claimant had not changed her employment since 1995 and had lived in the same village for all those years working at the same place. As the Claimant had a good relationship with Mr and Mrs Cardy, she had not felt the need to enquire as to her employment rights during the 20 years she worked for them and even at the time of TUPE transfer to the Mr and Mrs Payne. After her dismissal, in this Tribunal's judgment, the Claimant went through a difficult emotional and possibly psychological period. This was not simply the loss of an ordinary job. This was the place where she had worked and done all her significant socialising for 22 years.

19. The Respondents did not inform the staff at the pub that they were going to be made redundant until the actual day that they decided to do so. Staff were told on 20 December 2018 that the pub would close at the end of the day on 1 January 2019. There was no consultation. They were given just under 2 weeks' notice. The Claimant would have been entitled to 20 weeks' notice.

20. The Claim was not issued within 6 months of the Claimant being dismissed but it was issued within the second six-month period. The reason the Claimant failed to issue her claim within the initial six-month period set out in s.164(1) of the Employment Rights Act was because of her ignorance of her legal rights, inaccessibility of legal advice and because she was initially suffering low mood straight after her dismissal and finding it difficult to motivate herself to find alternative employment for life. The Tribunal found that in particular, the fact that the Claimant lived next door to her place of work and that her life in terms of her social life and

working life changed drastically after her dismissal would have contributed to her low mood and difficulty in motivating herself to find out her rights and take necessary action to issue this claim. When she did start to think about taking legal action she was told by Mr Cooper that he had had an upsetting telephone conversation with Mrs Payne. That would have also added to the Claimant's hesitation in taking legal action as she was acutely aware that she continued to live next door to the pub and she was worried about the possible repercussions of taking legal action against her neighbours.

21. In this Tribunal's judgment, taking into account all the circumstances above and the fact that the Claimant had worked at this job for 22 years, that it is just and equitable to extend time under Section 164(2) ERA to enable the Tribunal to consider the Claimant's claim for redundancy pay.

22. The Tribunal resumed the hearing and gave the parties the decision to extend time under the just and equitable basis to allow it to consider the claim.

23. The Respondents then confirmed that the Claimant had been transferred under Transfer Undertakings (Protection of Employment) Regulations 2006 (TUPE) in 2016 from Mr and Mrs Cardy to Mr and Mrs Payne, the Respondents.

24. The Respondent also confirmed that the Claimant was dismissed and that she did not give notice of termination of her own employment as stated in the Grounds of Response.

25. It is this Tribunal's judgment having heard both parties today that the Claimant was dismissed on the grounds of redundancy as the business ceased trading on 1 January 2018.

26. It is this Tribunal's judgment that the Claimant is entitled to redundancy payment.

27. The Claimant had worked 22 whole years at the Punchbowl Inn having started her employment in 1995 at the age of 46. She ceased to work there because the Respondent ceased trading on 1 January 2018. A redundancy payment is paid for a maximum twenty years. The formula is set out at s.162 of the Employment Rights Act. That sections states that the amount of redundancy payment shall be calculated by:

27.1 Determining the period, ending with the relevant date, during which the employee has been continuously employed;

27.2 Reckoning backwards from the end of that period, the number of years of employment falling within that period, and

27.3 Allowing the *appropriate amount* for each of those years of employment.

28.

28.1 In subsection (1)(c) (above) the *appropriate amount* means one and half weeks' pay for a year of employment in which the employee was not below the age of 41.

28.2 One week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of 22,

28.3 half of a week's pay for each year of employment not within paragraph (a) or (b).

29. Where twenty years of employment had been reckoned under subsection (1) above, no account shall be taken under that subsection of any year of employment earlier than those twenty years. These subsections apply for the purposes of any provision of this part by virtue of which an Employment Tribunal may determine that an employer is liable to pay to an employee the whole of the redundancy payment to which the employee would have had a right apart from some other provision or such part of the redundancy payment to which the employee would have had a right apart from some other provision as the Tribunal thinks fit.

30. The Claimant's date of birth is 3 March 1949. When she started at the Punchbowl in 1995, the Claimant was 46 years old. To calculate the redundancy pay, we take the relevant period of 20 years counting back from 1 January 2018. The multiplier will be 1 and a half weeks for each year of employment as the Claimant was over 41 when she started working at the pub, for the maximum of 20 years. Thus, $20 \times 1.5 \times \text{£}100.00$ per week equal a total of $\text{£}3000.00$.

31. The Claimant is entitled to redundancy payment of $\text{£}3000.00$ and the Respondent is ordered to pay her that amount forthwith.

Employment Judge Jones

Date: 18 March 2019