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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case Number: 4113359/2018**

**Held in Glasgow on 2 November 2018**

**Employment Judge: J D Young (Sitting Alone)**

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**Mr Stephen Friend**

**Claimant  
In Person**

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**Clydeview Care Home Ltd**

**Respondent  
Not Present and  
Not Represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that:-

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- (1) that the respondent shall pay to the claimant the sum of **Two Thousand and Four Pounds and Seventy Five Pence (£2004.75)** as the amount due to him by way of redundancy payment.
- (2) the Tribunal does not have jurisdiction to consider the claim made for notice pay as it was not presented to the Tribunal within the appropriate time limit and that claim is dismissed.

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**REASONS**

**E.T. Z4 (WR)**

1. In this case the claimant presented a claim to the Employment Tribunal claiming (1) pay in lieu of notice in respect of the termination of his employment with the respondent on 29 March 2018 and (2) a redundancy payment. He stated that these sums were due as he worked as a staff nurse  
5 between 7 July 2014 and 29 March 2018 with the respondent. He advised that the respondent Care Home was closed on 29 March 2018 as “they no longer had anyone residing there”. He was “verbally informed” of the closure but did not receive any written notice of termination of employment. He attempted to contact his employer to no avail.
- 10 2. The ET1 raised by the claimant was served on the respondent. No response was received from them. This Preliminary Hearing was fixed to determine the issue of time bar.

### **Preliminary Hearing**

- 15 3. At that time the claimant gave evidence. He confirmed that his period of employment with the respondent was from 7 July 2014 until 29 March 2018. At that time the respondent business effectively came to an end because there were no further residents within the care home property.
4. He never received any formal or written notice of closure but was simply advised that he would “not be needed” the following week and thereafter by  
20 the Director Mrs Khand.
5. An e-mail was then sent to the claimant from Mrs Khand who indicated that she awaited former residents paying bills and until that time would be unable to make any outstanding payments to the claimant (and others). That e-mail contained a link to ACAS and some advice in respect of claims.
- 25 6. The claimant sought advice from ACAS and the Citizens Advice Bureau. Their advice was to make application to the Insolvency Service and he made some enquiry in April 2018. The advice from the Insolvency Service was that as no formal application had been made by the respondent for insolvency they could not process his claims.

7. He found further employment at the end of May 2018. He also received advice from the Citizens Advice Bureau about the time limits for making claims. He thought he was guilty of a “misunderstanding” in relation to time limits. He indicated that he thought the time limit for each of the claims for notice pay and redundancy was 6 months. He accepts that he “just did not pick up on the advice”.
8. At termination of employment his hourly rate of pay was £13.50 and he worked a 33 hour week making his gross weekly wage £445.50.
9. Applications made by the claimant to the respondent for payments outstanding being notice pay and redundancy pay have met with no response. He is therefore required to make this claim.

### Conclusions

10. The claimant’s claim for notice pay is effectively a claim for breach of contract by the employer. Such claims must be taken within 3 months from the effective date of termination or if there is no effective date of termination the last day in which the employee worked. In this case given that the last day of working was 29 March 2018 then his claim should have been presented to the Tribunal on or before 28 June 2018 but was not presented until 16 August 2018.
11. The claimant’s position is that he had had advice on time limits but misunderstood the position thinking that he had 6 months to make a complaint in respect of both claim for redundancy (being the effective time limit in that respect) and notice pay. It is possible to provide an extension of the 3 month time limit if it was not “reasonably practicable” for the claimant to have presented his claim in time.
12. To meet the test of reasonable practicability it has been explained that the “relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done”.

13. A claimant's complete ignorance of his or her right to make a claim may make it not reasonably practicable to present the claim in time but the claimant's ignorance must itself be reasonable. In those circumstances a tribunal must ask what opportunities there were for the claimant to find out of his rights; whether he took those opportunities; if not why not and was he misled or deceived. Essentially the test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.
14. In this case it is difficult to find that the claimant was unaware of his rights or had been in some way misled or deceived. He had made enquiry of ACAS and the Citizens Advice Bureau and had received advice about time limits. As he fairly indicated he may have "just not picked up on the advice" as regards the differentiation between a claim for redundancy and claim for notice pay.
15. In those circumstances I could not consider that it was not reasonably practicable for the claimant to have presented his claim in time. These time limits are strictly enforced and the circumstances here would not mean that the time limit could be extended.
16. The claim for redundancy pay however has been made in time being within 6 months of the date of termination of his employment. Given his age at termination (53 years) and length of employment (3 complete years) he is entitled to a redundancy payment of 4.5 weeks x a week's wage. His weekly wage at the relevant time amounted to £445.50 and accordingly the amount due to him by way of redundancy payment is £2,004.75.
17. An award of that sum is made in favour of the claimant. It is appreciated that while there would appear to be no formal insolvency proceedings in place in respect of the respondent any application to them for payment will not meet with success. In those circumstances it is likely that the claimant would require to make application to the Insolvency Service under Section 167 of the Employment Rights Act 1996 for payment.

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**Employment Judge: JD Young**  
**Date of Judgment: 26 November 2018**  
10 **Entered in register: 28 November 2018**  
**and copied to parties**

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