



EMPLOYMENT TRIBUNALS

Claimant: Ms Natasha Bowen

Respondent: Cuddly Bears Nursery Limited

Heard at: Llanelli Magistrates Court **On:** 14th May 2018

Before: Employment Judge Howden-Evans (sitting alone)

Representation

Claimant: In person, supported by Ms Alison Phillips

Respondent: No attendance

JUDGMENT

Upon there being no attendance by or on behalf of the respondent and having heard evidence on oath from the claimant, the employment judge's decision is:

1. The correct name of the respondent is Cuddly Bears Nursery Limited.
2. The respondent has dismissed Ms Bowen on grounds of redundancy. Ms Bowen is entitled to a statutory redundancy payment from the respondent of **£1,415.08** as calculated at the end of this judgment.
3. The respondent has dismissed Ms Bowen with insufficient notice. Ms Bowen is entitled to **£607.38** compensation for breach of contract for lack of notice (notice pay) as calculated at the end of this judgment.
4. In the event of this debt not being paid within 14 days of this judgment, interest will accrue on this debt, as calculated at the end of this judgment.
5. As the respondent is due to be dissolved by voluntary strike off on 15th May 2018, it is likely Ms Bowen will face difficulty recovering this debt from the respondent. If Ms Bowen is unable to recover this debt from the respondent, she is referred to section 166(1)a Employment Rights Act 1996, which explains her right to claim payment from the National Insurance Fund.

6. The Employment Protection (Recoupment of Jobseekers Allowance & Income Support) Regulations 1996 do not apply to this award.

REASONS

1. Whilst reasons for this judgment were provided orally at the hearing, the employment judge is mindful that the respondent was not present at the hearing, so has provided written reasons, for their benefit.
2. This hearing was listed to be heard at 2:00 pm on 14th May 2018, in Carmarthen County Court. At 10:00 am on 14th May 2018, it became apparent that a hearing room would not be available in Carmarthen, so the tribunal clerks looked for an alternative venue. Both parties are based in Llanelli. A hearing room was available in Llanelli County Court for the afternoon, so the hearing was relocated to Llanelli to commence at 2:00 pm.
3. At 10.13 am a clerk to the tribunal sent an email to both parties advising them of the change of venue. At 12:42 pm the respondent's sole director, Jacqui John replied by email stating "*unfortunately due to the change to Llanelli I won't be able to attend today*". She provided no further explanation.
4. At Llanelli, I waited until 2:45pm before commencing the hearing. In the meantime, the clerk had tried to phone the respondent to no avail. I undertook a Companies House search which revealed that Ms John had made an application to the Registrar for the respondent company to be struck off and dissolved (a voluntary strike off). The Gazette notice indicated the company would be dissolved on 15th May 2018 (tomorrow).
5. The respondent company is not affected by a voluntary arrangement, administration order, administrative receivership, compulsory or voluntary liquidation. At the time of this hearing and judgment, the respondent company has not been dissolved and so the claimant is able to proceed with her claim.
6. I considered whether it was appropriate to continue with the hearing in the absence of the respondent. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides I may continue with the hearing in the absence of a party, having considered the information available to me, after any enquiries that may be practicable. Despite attempts to telephone the respondent, I have no further information as to the reason why the respondent cannot attend. I note that Ms John's home address which is stated to be the respondent's contact address is actually in Llanelli where this hearing is taking place.
7. Having considered the respondent's email, the response, the fact the company is due to be dissolved tomorrow, and the overriding objective, I have determined it is in the interests of justice to proceed in the absence of the respondent, as the claimant (a litigant in person) will not be able to proceed with this claim after tomorrow, without first applying to the registrar of Companies House for the respondent company to be restored. Further, if the respondent had a good reason for their absence and/or an arguable defence

to this claim, they are able to apply for the judgment to be reconsidered under rule 70 & 71 Employment Tribunal Rules of Procedure 2013.

8. I considered the claim and response form. In her response, on behalf of the respondent, Ms John has accepted the claimant's dates of employment and her earnings details have been correctly stated in the claim form. She also accepts the claimant has not received redundancy pay and has not been paid the full notice pay. She explains the drop in the number of children attending the nursery and the increase in rent led to her closing the business. The respondent did not have sufficient funds to pay the claimant the full amount owed to her.
9. Ms Bowen, a nursery assistant, was continuously employed by the respondent, during the period 19th September 2011 and 27th October 2017. She commenced employment shortly before her 18th birthday and was 24 years old at the time of her dismissal, by which time she had 6 complete years' service with the respondent. Her salary before tax was £1,533 per month; her normal take home pay was £1,316 per month.
10. It is clear the circumstances of Ms Bowen's dismissal amount to a dismissal by reason of redundancy (see Section 139 (1)a(i) Employment Rights Act 1996). Ms Bowen has not received any redundancy payment from the respondent.
11. Ms Bowen was paid 4 weeks' pay in lieu of notice, but Section 86 Employment Rights Act 1996 explains she was entitled to 6 weeks' notice, having worked for the respondent for more than 6 years.

Employment Judge Howden-Evans

Date 14th May 2018

JUDGMENT SENT TO THE PARTIES ON

20 May 2018

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FOR THE TRIBUNAL OFFICE

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Calculations

Redundancy Payment

(calculated in accordance with s162 Employment Rights Act 1996)

Ms Bowen's weekly gross pay = £353.77 (£1,533 x 12 /52)

1 week's gross pay for each of the 2 years in which
Ms Bowen was aged 22 and over:

$$1 \times 2 \times \text{£}353.77 = \text{£}707.54$$

1/2 week's gross pay for each of the 4 years in which
Ms Bowen was aged under 22:

$$0.5 \times 4 \times \text{£}353.77 = \underline{\text{£}707.54}$$

$$\text{Redundancy Payment} = \text{£}1,415.08$$

Notice Pay

Ms Bowen's net weekly pay = £303.69 (£1,316 x 12 / 52)

$$2 \text{ weeks} \times \text{£}303.69 = \underline{\text{£}607.38}$$

$$\text{Total amount owed to Ms Bowen} = \text{£}2,022.46$$

Interest will accrue at a rate of 8% per annum on any amount of this award that remains unpaid 14 days after the date of this judgment. (See Article 3 (1) Employment Tribunals (Interest) Order 1990)