



EMPLOYMENT TRIBUNALS

Claimant: Mr A Evans

Respondent: Southgate (Park Garage) limited

Heard at: Cardiff **On:** 15 July 2019

Before: Employment Judge Harfield

Representation:

Claimant: Mrs C Evans (the claimant's sister in law)

Respondent: Did not attend

JUDGMENT

1. The claimant worked for the respondent from 2 February 1986 to 14 September 2018. On 12 September 2018 the claimant was told that the respondent was ceasing business on the 14 September and that there were no funds to pay redundancy pay, notice pay or pay in respect of accrued but untaken holiday. The respondent did not file an ET3 in this case or seek an extension of time for filing one. However, Mr Wheeler, the former director of the business, wrote to the tribunal on 13 February 2019 confirming that he had closed the business as he could not afford to keep trading, laid off the staff and had no funds or assets available. That said, at the present time according to Companies House records, the respondent is still an active company and has not, as yet, entered a form of insolvency. There is an active proposal to strike the company off the register but that is being opposed.
2. The claimant's claim succeeds and he is entitled to a statutory redundancy payment, notice pay and outstanding holiday pay. Having heard from the claimant and Mrs Evans on his behalf and considered the documents given to me, I am satisfied that the claimant was paid weekly the sums of £162 and a £135 cash dividend. In addition, he received commission payments on a monthly basis. His commission payments in the 12 weeks prior to the termination of his employment were £547.50 in June 2018, £246.70 in July 2018 and £169.80 in August 2018. This gives an average weekly commission figure of £74.15. Added together the claimant's weekly gross pay was therefore **£371.15**. The holiday year ran from 1

April 2018 and the claimant had 2 weeks accrued but untaken holiday entitlement at the time his employment was terminated. The claimant was entitled to a 12 week statutory notice period however the claimant mitigated his losses by obtaining new employment from 1 October 2018 onwards at a gross weekly pay of £400. As such his notice pay loss is for the first two weeks of the notice pay period.

3. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of **£10,577.78**
4. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of **£742.30**.
5. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of **£742.30**
6. The above sums are calculated gross and the claimant will be responsible to account for any tax or employee national insurance contribution due in respect of the notice pay and holiday pay.

Employment Judge Harfield
Dated: 15 July 2019

JUDGMENT SENT TO THE PARTIES ON

.....20 July 2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

NOTE:

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.