Case Number: 3332060/2018
3332062/2018

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

1. Mr Barry Foster **v Mrs Cara Marie Tarsey t/a SC Engineering**
2. Mr Neil Bowers
3. Miss Katherine Montague

Heard at: Watford **On**: 18 June 2019
Before: Employment Judge Andrew Clarke QC

Appearances
For the Claimants: In person
For the Respondent: No attendance

JUDGMENT

Mr Bowers

1. The respondent is ordered to pay to the claimant, Mr Bowers, the following sums:

    1.1. A redundancy payment of £3,570.

    1.2. Unpaid wages in respect of the period 23 to 27 April 2018 in the sum of £277.87.

    1.3. The sum of £625.21 in respect of accrued holiday entitlement as at the date of dismissal.

    1.4. £1,389.40 as wages for the period 27 April to 25 May 2018 being a period when the claimant was available for work.

    1.5. £2,084.10 in respect of the claimant's statutory entitlement to notice.

    1.6. £829.92 being a sum due to the claimant at the date of termination of his employment.

Mr Foster

2. The respondent is ordered to pay to the claimant, Mr Foster, the following sums:

   2.1. A redundancy payment in the sum of £12,600.

   2.2. In respect of four days' work from 23 to 27 April 2018, the sum of £230.40.

   2.3. £460.80 in respect of accrued holiday entitlement.

   2.4. £1,152.00 in respect of the period from 27 April to 25 May 2018 when the claimant was available for work.

   2.5. £3,456 in respect of the claimant's entitlement to a statutory minimum period of notice on the termination of his employment.

Mrs Montague

3. The respondent is ordered to pay to the claimant, Mrs Montague, the sum of £1,317.12 as a redundancy payment.

REASONS

1. The tribunal gave judgment in the above sums having heard from the claimants. The respondent had not put in a response. She did not attend the hearing. On 3 March 2019, within the period allowed to her to submit a response, she wrote to the tribunal (not copying the same to the claimants) asserting that SC Engineering was a partnership between herself and her former husband and requesting that the hearing date be postponed "until the correct paperwork is sent". The tribunal responded by noting that the communication had not been copied to the claimants and, hence, the tribunal could make no order. The respondent did not thereafter raise that point with the claimants. On the morning of the hearing the tribunal received an email from the respondent apologising for her non-attendance, again asserting that the business was a partnership between herself and her former husband, asserting that the claimants had received their P45s, which ought to be sufficient to enable them to make claims against the redundancy fund and saying that neither she nor the partnership was able to pay anything to the claimants. Hence, the letter contained no indication that the respondent disputed any part of the various claims made by these claimants.

2. Having considered the matter, the claimants wished to proceed against the respondent and did not wish to apply to join her former husband as a second respondent. They informed me that Mr Tarsey had worked with

them in the business until shortly prior to its collapse, but had informed them before he left that the partnership between himself and his former wife had been dissolved and that she was now sole responsible for the running of the business.

3. Having heard from the claimants I am satisfied that the business ceased to trade as from 25 May 2018 when they received their P45s. The landlord at the premises from which the business previously traded had locked the business (and, hence, them) out from the premises some weeks before. However, the respondent had consistently maintained to them that she was seeking to arrange matters so that the business could recommence. Hence, until the receipt of the P45s, they remained employed.

4. Mrs Montague claims only in respect of a redundancy payment. Mr Foster and Mr Bowers make additional claims. They had worked from 23 to 27 April but had not been paid. Furthermore, each was available for work from 27 April until receipt of the P45s on 25 May. They had not simply sat back and waited to see what might develop. Instead, I am satisfied that they had been proactive in seeking out the respondent and questioning her as to how matters were progressing and had received promises to the effect that work would resume in due course.

5. Each of Mr Foster and Mr Bowers had holidays which had accrued to them and which were untaken at the time of their dismissal. In Mr Foster's case there were 8 days of untaken holiday and in Mr Bowers' case, 9 days of untaken holiday. Each of those gentlemen was entitled to receive the statutory minimum period of notice. Mr Foster had worked for the business for some 27 years and was entitled to the maximum 12 weeks' notice. Mr Bowers had worked for the business for 6 years and was entitled to 6 weeks' notice.

6. Mr Bowers' case also has one additional feature. An Attachment to Earnings Order had been made in respect of council tax. Deductions from wages were duly made, but very few of the weekly deductions were actually paid over to the relevant local authority. I am satisfied that the deductions from his wages were lawful in accordance with s.13(1)(a) of the Employment Rights Act 1996. However, whilst his claim for unlawful deductions from wages cannot succeed, his claim under the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 does succeed. The claimant himself remained liable for the sums and has made payment to the local authority. I am satisfied that in circumstances where such sums were deducted from wages but had not been paid to the local authority, the total sum of unpaid deductions would be due and owing to the claimant as at the date of termination of employment as damages for breach of contract or as being "any other sum" owing as, in the above circumstance, I consider that the deductions would be a sum held in trust by the respondent for the claimant.

7. So far as redundancy payments are concerned, I am satisfied that Mrs Montague had 8 complete years of service as at the date of termination of

her employment each of which was when she was below the age of 41. So far as Mr Foster is concerned, he had 20 years' service over the age of 41. So far as Mr Bowers is concerned, he had 1 complete year of service before age 41 and 5 complete years of service after age 41. Both Mr Foster and Mr Bowers received gross weekly wages of £420 and Mrs Montague's gross weekly wage was £164.64. The redundancy payments set out in the judgment have been calculated using those sums and having regard to those years of service.

8. So far as Mr Foster is concerned his daily take home pay was £57.60. So far as Mr Bowers is concerned his daily take home pay was £69.47. The calculations in respect of unpaid wages, notice monies and holidays have been made using those net figures.

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Employment Judge Andrew Clarke QC
27 June 2019
Date: ……..
24 July 2019
Sent to the parties on: .....

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For the Tribunal Office