



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121900/2018

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Held in Glasgow on 28 February 2019 (Final Hearing)

Employment Judge: Ian McPherson

10

Mr Scott Bremner

**Claimant
In Person**

L-Tec Controls Ltd

**Respondents
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) Having heard the claimant in person at this Final Hearing, and the respondents not having lodged any ET3 response defending the claim, and further not having appeared nor been represented, despite being issued with copy Notice of Final Hearing issued on 19 January 2019, the Tribunal finds that, on the basis of the information and material available to the Tribunal, all three heads of complaint **succeed**, and makes this determination as to the liability of the respondents for the complaints brought by the claimant of (a) failure to pay a redundancy payment, (b) breach of contract (failure to pay notice pay), and (c) failure to pay holiday accrued but untaken at the effective date of termination of the claimant's employment on 20 April 2018.

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(2) Further, having considered the claimant's evidence and additional vouching information provided post-Hearing, the Tribunal **orders** that the specific remedies to which the claimant is entitled for each of those successful heads of complaint are as follows:

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E.T. Z4 (WR)

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- (a) the claimant was dismissed by reason of redundancy and he is entitled to a redundancy payment of **TEN THOUSAND, FOUR HUNDRED AND FOURTEEN POUNDS (£10,414.00)**, which the respondents are ordered to pay to him;
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- (b) the claimant was dismissed in breach of contract in respect of notice and the respondents are ordered to pay to him damages in the sum of **NINE THOUSAND, NINE HUNDRED AND FORTY-FIVE POUNDS, AND SIXTY PENCE (£9,945.60)** and
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- (c) the respondents failed to pay the claimant's holiday entitlement in respect of annual leave accrued but untaken, and they are ordered to pay the claimant the sum of **ONE THOUSAND AND THIRTY-ONE POUNDS, AND TWENTY-TWO PENCE (£1,031.22)**
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- (3) **In total, the respondents shall pay to the claimant the total amount of TWENTY-ONE THOUSAND, THREE HUNDRED AND NINETY POUNDS, AND EIGHTY-TWO PENCE (£21,390.82).**
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- (4) Further, the Tribunal **instructs** the clerk to the Tribunal to send a copy of this Judgment to the Registrar of Companies, at Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh EH3 9FF, for information, and consideration by the Registrar in respect of the respondents' pending application for strike-off from the Register of Companies, company number **SC133303**, and for the Registrar to consider suspending that strike-off application pending the respondents paying the claimant the sums ordered in this Judgment.

REASONS

Introduction

- 5 1. This case called before me at 10.00am on the morning of Thursday, 28 February 2019, as per Notice of Final Hearing issued to both parties by the Tribunal by letter dated 19 January 2019 assigning a 3-hour Final Hearing for full disposal of the case, including remedy, if appropriate.

10 Notice of Claim

2. On 22 October 2018, following ACAS early conciliation between 9 and 22 October 2018, the claimant, acting on his own behalf, submitted an ET1 claim form against the respondents, in respect of various complaints, arising from
15 termination of his employment with them as an Electrical Engineer / Design Engineer on 20 April 2018.

3. The claimant described his claim as “**for 25 years working service with L-Tec**”, and he stated that he had an entitlement of 20.5 weeks, and 225 hours
20 holiday pay entitlement before being made redundant. While section 9.2 of the ET1 claim form invited him to state the sums he was seeking and give as much detail as possible on how he had calculated the sums being sought, no such specification was provided by the claimant at that stage. He simply provided his start and end dates of employment, and his weekly gross and
25 net pay.

4. Thereafter, by Notice of Claim and Notice of Final Hearing dated 29 October
30 2018, copy of the ET1 claim was served on the respondents at the address for service provided in the ET1 claim form, being their place of business, as also their company registered office. The respondents were advised that their ET3 response should be submitted to the Glasgow Tribunal Office by 26 November 2018 at latest.

5. Along with that Notice of Claim, the respondents were given Notice of the Final Hearing arranged for 11.30am on Wednesday, 9 January 2019, and advised that if they wished to apply for an extension of time to submit their response, then they must do so before 26 November 2018 and, if their response was not received by that date, and no extension of time had been agreed by an Employment Judge, they would not be entitled to defend the claim.

No Accepted Response, and Further Information required from the Claimant

6. Following a **Rule 21** referral to Employment Judge Muriel Robison, on 3 December 2018, no ET3 having been received from the respondents, she instructed that while it was possible to issue a Judgment without the need for a Hearing, she considered there was insufficient information to issue a Judgment at that stage, and so she required the claimant to provide additional information, and details of the sums claimed from the respondents, by 14 December 2018 to allow a Judgment to be issued.

7. On 17 December 2018, when the file was referred to Employment Judge Jane Garvie, she noted that there had been no response received from the claimant, and so she requested further information within 7 days. The claimant replied by email on 22 December 2018, and when his correspondence was referred to Employment Judge Lucy Wiseman, on 28 December 2018, she sought clarification about his claim for holiday pay to be provided no later than 4 January 2019.

8. The claimant replied, by email, on 2 January 2019, stating that his employment with the respondents was terminated in April 2018 and he had not taken any holidays up to that point. He did not respond to Judge Wiseman's request for clarification of the holiday year with the respondents.

9. However, the claimant did state that when he got his new employment, with a new employer (as from 7 May 2018, according to his ET1 claim form), he

was not entitled to holidays at the point when he was going on holiday, therefore he submitted that : ***“I should be entitled to my full holiday entitlement to cover my loss of wages”***, his additional information provided to the Tribunal on 22 December 2018 having stated that he was entitled to 20 days holidays from the respondents, and 9 statutory / bank holidays.

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10. When his reply of 2 January 2019 was then referred to Employment Judge Claire McManus, on 7 January 2019, she directed that the case proceed to the listed Final Hearing on 9 January 2019 at 11:30am, as she stated that evidence was required on the claimant’s entitlement to holidays.

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Final Hearing relisted by the Tribunal

11. When the case called before Judge McManus, on 9 January 2019, no party was present or represented, and when the Tribunal clerk telephoned the claimant, it emerged that he did not attend as he did not receive the Tribunal’s email of 7 January 2019 as, due to administrative error by Tribunal staff, it was sent to the wrong email address and, anyway, the claimant advised that he could not attend as he was working that day.

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12. Fresh Notice of Final Hearing was issued on 19 January 2019, on instructions from Judge McManus, setting aside 3 hours for its full disposal, including remedy if appropriate. The respondents were sent a copy, for information only, as they had not submitted an ET3 response, and they were advised that while entitled to attend this Final Hearing, they would only be able to participate to the extent permitted by the Judge hearing the case.

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13. As per standard practice, the letter advised both parties that they should bring 3 copies of any relevant documents which they considered relevant to their case and which they wished the Judge to take into account. Further, as per the original Notice of Final Hearing, issued to both parties on 29 October 2018, the claimant was advised that unless the figures by way of his calculation of claim were set out in the claim (which they were not), then he

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should send to the respondents, within 14 days of that date, details of the amount claimed and how it was calculated, and a copy of his calculation should be brought to the Final Hearing.

- 5 14. Having received the Tribunal's letter of 19 January 2019, the claimant
emailed the Tribunal, on 22 January 2019, asking if he had to be present at
this Final Hearing, or was it just for the respondents to be there? On 24
January 2019, a clerk to the Tribunal emailed the claimant advising him that
both parties were required to attend, and that the letter sent to him on 19
10 January 2019 explained further what was required, and if he needed any
further guidance or assistance, then he should contact ACAS or his local
CAB.

Final Hearing before this Tribunal

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15. When the case called before me, on Thursday, 28 February 2019, the
claimant was in attendance, unrepresented, and unaccompanied. There was
no appearance by, or representation, for the respondents, and as they had
not lodged any ET3 response defending the claim, I decided to proceed in
20 their absence. The claimant only brought one document to this Hearing, that
being a copy of the additional information provided to the Tribunal on 22
December 2018.

16. That additional information, which he told me he had submitted by using
25 information on the Gov.Uk website, and from ACAS, stated that he was due
a redundancy payment for 25 years' loyal service, holiday pay for 20 days',
plus 9 days' statutory / bank holidays, and 12 weeks' pay in lieu of notice, but
no financial quantification was provided by the claimant of the actual mounts
sought by him.

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17. When I enquired if the claimant had any "**relevant documents**" to produce
to the Tribunal, as per the Notice of Final Hearing, he stated that the
Tribunal's correspondence was not clear, and he thought he had already

given what had been requested. That said, he stated he might have some documents at home, and he could provide them as evidence of his former employment with the respondents, and his wages, and holiday entitlement as at 20 April 2018.

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18. The claimant, in giving short, formal evidence to the Tribunal, confirmed the terms of his ET1 claim form, and spoke of how, when he had been made redundant by the respondents "**out of the blue**", he and other employees had been called in to attend a 12 noon meeting, convened by the company MD, Bill Lavender, and Mr Lavender advising staff that they were being made redundant, and the business ceasing to trade, with the doors shut, and the company looking into insolvency.

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19. Further, the claimant advised that he was aware from correspondence to him from Companies House that the company, while not trading, had made an application to be struck off the Companies Register, but he did not understand it had gone into insolvency. The Tribunal clerk's check of Companies House showed the company as "**Active - Active proposal to strike off**".

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20 **Reserved Judgment, and Documents received from the Claimant**

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20. The Final Hearing having concluded by 10.40am, I found the 3 heads of complaint successful, but I otherwise reserved Judgment as I required to assess in chambers any sums to be awarded against the respondents as payable to the claimant, and I stated that I would give the case private deliberation in chambers, as soon as possible, after the claimant provided me with any relevant documents he wished me to take into account.

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21. On the afternoon following the Hearing, by email dated 28 February 2019, sent to the Glasgow Tribunal office at 13:40, the claimant submitted further documents supporting his claim, being 3 copy pay slips from the respondents, his P45 and P60 from them, and his P45 from his subsequent employer. His copy payslips issued 4 weekly, were for weeks 48, 51 and 3, showing his

basic pay varied with the number of hours worked, and whether or not he had any overtime or travel time added. They all showed a car allowance of £200 per 4 weeks. His final payslip, dated 20 April 2018, shows only basic pay at £3,115.20, plus car allowance of £200, giving gross wages of **£3,315.20**, and net wages of **£2,426.37**. Dividing those figures by 4, to get a weekly equivalent, I compute that to be **£828.80 gross**, and **£606.59 net per week**.

Findings in Fact

10 22. Although not subject to any cross-examination, the claim being undefended, and the respondents not present nor represented, the claimant's evidence was clarified by me as presiding Employment Judge asking him some questions. I found the claimant to be a credible and reliable witness as to the essential facts.

15 23. He spoke in evidence to the narrative of his claim, as set forth in the ET1 claim form, providing some further detail to what was stated there, and he has now produced some additional documents supporting his claim against the respondents. I have taken these vouching documents into account in
20 drafting my findings in fact.

24. On the basis of the evidence from the claimant heard by the Tribunal, and the information provided in his ET1 claim form, and the copy documents produced by the claimant and lodged with the Tribunal after the Hearing, I
25 have found the following essential facts established: -

(1) The claimant, aged 43 at the date of the Tribunal Hearing, was previously employed by the respondents as an Electrical Engineer / Design Engineer.

30 (2) He worked out of the respondents' business premises in Cumbernauld, where Mr Bill Lavender, MD of the respondents, was the owner and operator of that business, employing the claimant, and other staff.

- 5 (3) As at the effective date of termination of the claimant's employment with the respondents, being 20 April 2018, the claimant was working a 40-hour week, Monday to Friday, for what he stated was **£778 per week gross pay** before tax, and **£606 per week net**, normal take home pay, according to his ET1 claim form, along with a **£200 per month** car allowance from the respondents. From the copy payslips produced to the Tribunal, after the Hearing, I have computed a weekly **£828.80 gross**, and **£606.59 net per week**.
- 10 (4) The claimant's employment with the respondent started on 20 March 1993, and ended on 24 April 2018, when his employment with the respondents ended on account of redundancy. Post the Hearing, the claimant produced copy of his P45 from the respondents, dated 23 April 2018, showing his leaving date as 20 April 2018, with total earnings to date of £2,965.41
- 15 (5) The claimant advised the Tribunal that there had been no notification of pending redundancies and no consultation process. Redundancy had come "**out of the blue**" to him, and other employees.
- 20 (6) Further, the claimant advised that he had never been issued with written particulars of employment by the respondents, and for that reason, he could not produce a copy to the Tribunal. The claimant advised the Tribunal that he was continuously employed by the respondents without any break in continuity of service. Based on his start and end dates, he stated he had 25
- 25 years' service with the respondents.
- (7) He further advised that the company's holiday year was January 1 to December 31 each year, and that he had used his holidays in calendar year 2017, and been paid holiday pay, but he had not used any holidays in 2018, and he had not been paid for any accrued annual leave untaken at 20 April
- 30 2018.

- (8) The claimant also produced copy P60 from the respondents for the tax year to 5 April 2018 showing total pay that tax year of £45,524.69.
- (9) The claimant further advised the Tribunal that when he received his final pay, he did not receive any pay in lieu of notice, nor holiday pay, and these sums were still outstanding to him as at the date of this Final Hearing, as was a redundancy payment from the respondents.
- (10) No notice pay, or holiday pay, were included in his final payslip produced to the Tribunal, dated 20 April 2018. He had not made any claim to the Insolvency Service as the respondents were not insolvent, as far as he was aware.
- (11) While he knew the business premises in Cumbernauld were no longer operating, and signs for "**L-Tec Controls**" had been removed, the claimant understood that Mr Lavender's company still owned those premises, and while the company was seeking to be struck off the Companies Register, he did not understand it had taken any steps to go into insolvency.
- (12) Since his employment with the respondents ended, on 20 April 2018, the claimant secured new employment with Clyde Control Engineers, as from 7 May 2018, paying him around £552 per week net.
- (13) He stated that he worked there for 2 months or so, and, post the Hearing, he produced copy of his P45 from that subsequent employer, dated 19 June 2018, showing his leaving date as 15 June 2018, and total pay to date of 33,926.66. He advised the Tribunal that he has since then been employed and he is currently employed at Enterprise Control Engineers.
- (14) In completing his ET1 claim form for the Tribunal, on advice from ACAS, the claimant stated that he did not complete the box to state that he was complaining of unfair dismissal, explaining that he did not believe the respondents would answer that complaint, and he simply sought a

redundancy payment, with notice and holiday pay, following the guidance he received from ACAS, advising that an unfair dismissal claim (although mentioned on the ET1) “*simply didn’t cross my mind.*”

- 5 (15) As the claimant stated in evidence that he had only suffered one or two months’ wage loss, by comparison of his earnings at Clyde Control Engineers, compared with what he would have earned if still employed by the respondents, he confirmed at this Final Hearing that he did not seek leave of the Tribunal to amend his claim to seek a finding and compensation for unfair
10 dismissal, given he had not brought that complaint when lodging his ET1 claim form against the respondents.

Discussion and Deliberation

- 15 25. Having reflected on the case, I have now come to my final Judgment. I deal with each of the 3 heads of complaint, separately, as in the following parts of these my Written Reasons.

Redundancy Payment

- 20 26. In terms of **Section 135 of the Employment Rights Act 1996**, an employer shall pay a redundancy payment to an employee of his, if the employee is dismissed by the employer by reason of redundancy.
- 25 27. Redundancy is defined in **Section 139**, which provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy, if the dismissal is wholly or mainly attributable to the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him, or to carry on that business in the place
30 where the employee was so employed, or the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the

employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

- 5 28. The claimant's claim to the Tribunal for a redundancy payment constitutes a reference to the Tribunal under **Section 163**. For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed, in terms of **Section 163 (2)**, to have been so dismissed by reason of redundancy.
- 10 29. The respondents, although sent Notice of Claim, Notice of Final Hearing to their place of business, which is also their registered office, did not contest the claim, and while the statutory presumption of redundancy therefore applies, I am satisfied on the evidence available to the Tribunal that there was indeed a redundancy situation in the respondents' business as at 20 April 15 2018. On the evidence before the Tribunal, it is clear that the claimant's post was made redundant with immediate effect as of that date.
- 20 30. **Section 155** further provides that an employee does not have any right to a redundancy payment unless the employee has been continuously employed for a period of not less than 2 years ending with the date of redundancy. Again, on the evidence before the Tribunal, it is clear that the claimant had more than sufficient qualifying service to be entitled to a redundancy payment.
- 25 31. The amount of a redundancy payment is calculated in accordance with **Section 162**, and it is based on the individual claimant's wages, age and length of continuous employment with the employer. As at the effective date of termination of employment on 20 April 2018, the claimant (date of birth: 11 January 1976) was **aged 42**, and he had **25 years' continuous employment** 30 with the respondents, giving him a right to a redundancy payment of **20.5 weeks' pay**.

32 In his ET1 claim form, the claimant stated his entitlement as 20.5 weeks, but
he did not specify the amount he believed he was due from the respondents.
His gross weekly wages from the respondent were **£828.80** per week, based
5 on his gross 4 weekly wages payslip produced to the Tribunal. However, in
terms of **Section 227 of the Employment Rights Act 1996**, there is a
statutory limit on the amount of a weeks' pay, and, as at 20 April 2018, that
statutory limit was **£508** per week. Accordingly, the Tribunal has ordered that
the respondents shall pay to the claimant a redundancy payment in the sum
of **£10,414**, being **£508 x 20.5**, which is the appropriate sum.

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Breach of Contract: Notice Pay

33. Next, I have considered the claim for breach of contract for failure to pay
notice pay to the claimant. Under the **Employment Tribunals Extension of**
15 **Jurisdiction (Scotland) Order 1994**, a breach of contract claim may be
brought before the Tribunal in respect of an employee's claim for the recovery
of damages or any other sum if the claim arises or is outstanding on the
termination of employment. In this case, the claimant complains that he was
not paid any pay in lieu of notice.

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34. **Section 86 (1) of the Employment Rights Act 1996** provides rights for
employees to statutory minimum notice. The claimant having been employed
continuously by the respondents for 25 complete years, he is entitled to the
statutory maximum of **12 weeks'** pay in lieu of notice. The respondents are
25 in breach of contract by not paying the claimant his statutory minimum period
of notice.

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35. Damages for breach of contract should be assessed on the basis of gross
weekly pay. Based on the claimant's gross weekly pay of **£828.80**, I compute
30 that the sum payable is **£9,945.60**, being **£828.80 x 12**. Accordingly, the
Tribunal orders the respondents to pay that sum to the claimant as damages
for breach of contract.

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Accrued Holiday Pay

36. I turn finally to accrued holiday pay. This aspect of the claim proceeds as a complaint under **Regulation 30 of the Working Time Regulations 1998**.
5 On the basis of the evidence before the Tribunal, I am satisfied that the claimant took no holidays, and was paid no holiday pay, for his employment between 1 January and 20 April 2018. While the claimant sought payment for a whole year's holiday entitlement of 29 days, that is not his right, and I cannot award more than is his legal entitlement.

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37. Based on the claimant's actual net weekly wages, assessed at **£606.59** per week, calculated from his vouched net weekly wages, shown on his payslips produced to the Tribunal, that gives a **daily rate @ £121.32**. Applying that rate to his entitlement of **8.5 days**, as calculated by the GOV.UK online holiday pay calculator, it produces a sum of **£1,031.22**, which is the sum that
15 the Tribunal has ordered the respondents to pay to him, as the appropriate and proportionate annual leave entitlement accrued but not taken by him from 1 January 2018, the start of the calendar holiday year, to 20 April 2018, the latter date being the effective date of termination of his employment with the
20 respondents.

Intimation to Registrar of Companies, Edinburgh

38. In writing up this Judgment, given the pending application for Strike-Off, I
25 have instructed the clerk to the Tribunal to send a copy of this Judgment to Companies House for information, and consideration by the Registrar in respect of the respondents' pending application for strike-off from the Register of Companies.

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Employment Judge

Ian McPherson

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Date of Judgment

04 March 2019

Entered in register
and copied to parties

04 March 2019