



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr B Richardson

AND The Cornubia Inn (Hayle) Limited (now dissolved) (1)  
The Secretary of State for Business Energy and Industry (2)

**Respondents**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Bodmin

**ON**

26 July 2019

**EMPLOYMENT JUDGE** N J Roper

**Representation**

**For the Claimant:**

**In Person**

**For the First Respondent:**

**No Appearance Entered – Did Not Attend**

**For the Second Respondent:**

**Written Representations**

**JUDGMENT**

The judgment of the tribunal is that:

- 1. The claimant's claims for unfair dismissal, unlawful deduction from wages, for accrued holiday pay and for breach of contract are all dismissed because they were presented out of time; and**
- 2. The claimant is entitled to a statutory redundancy payment in the sum of £1.384.60 (4 x 1 x £346.15); and**
- 3. The hearing listed for 21 and 22 August 2019 is cancelled.**

**REASONS**

1. This is the judgment following a Preliminary Hearing to determine whether or not the claimant's claims were presented in time.
2. I have heard from the claimant. The first respondent did not enter a Notice of Appearance in defence to this claim, and is now dissolved. I have considered the written representations submitted on behalf of the Second Respondent. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and

- documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
3. The claimant worked as a General Manager in the pub and leisure industry. He commenced employment with The Fox & Hounds (Comford) Ltd in February 2014. At that stage that company owned the tenancy of the Cornubia Inn in Hayle in Cornwall. On 1 December 2015 the tenancy transferred to the first respondent namely The Cornubia Inn (Hayle) Ltd, and the claimant's accrued employment rights transferred to the first respondent under TUPE on that date. The claimant was dismissed by the first respondent by reason of redundancy with immediate effect on 2 July 2018.
  4. The claimant earned £1,500.00 gross per month which was £1,227.00 net per month. His gross weekly pay was £346.15. He raised three separate complaints against his former employer, for breach of contract seeking his four weeks' notice pay at £1,227.00, for unlawful deductions from his wages following unpaid statutory sick pay in the sum of £202.51, and entitlement to his his statutory redundancy pay. He was aged 34 at the date of his dismissal and his statutory redundancy entitlement amounts to £1,384.60 (4 x 1 x £346.15).
  5. The first respondent ignored his requests for payment and ceased trading. The claimant wrote to his employer repeatedly during the late summer and early autumn of 2018 asserting his right to the above payments. The claimant also wrote to the second respondent seeking payment of his unpaid statutory entitlements outlined above.
  6. The claimant subsequently decided to issue these proceedings. He initiated the Early Conciliation process with ACAS (Day A) on 12 December 2018, and the Early Conciliation Certificate was issued on 9 January 2019 (Day B). The claimant then issued these proceedings on 7 April 2019.
  7. The claimant does not seek to argue that it was not reasonably practicable for him to have issued these proceedings before that date.
  8. The first respondent was dissolved on 23 April 2018. The second respondent has resisted the claimant's claims because the first respondent is not insolvent.
  9. Having established the above facts, I now apply the law.
  10. The relevant statute is the Employment Rights Act 1996 ("the Act"). Section 111(2) of the Act provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
  11. Under subsections 23(2) and 23(4) of the Act these provisions are effectively replicated for unlawful deduction claims, and similarly these provisions are effectively replicated for breach of contract claims under Article 7(a) and (c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. There are similar provisions for accrued holiday pay claims under Regulation 30(2) of the Working Time Regulations 1998.
  12. Under section 164 of the Act an employee will lose the right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date, he makes a claim for payment by notice in writing to his employer or otherwise refers the matter to an employment tribunal.
  13. In this case the claimant's effective date of termination of employment was 2 July 2018. The three month time limit therefore expired at midnight on 1 October 2018. The six month time limit therefore expired at midnight on 1 January 2019. The claimant does not rely upon any grounds to suggest that it was not reasonably practicable to have issued proceedings within the relevant time limit. The claimant does not enjoy the benefit of any extension of time under the Early Conciliation provisions because the three month time limit expired before Day A under that process.
  14. I therefore find that the claimant's claims for unfair dismissal, unlawful deduction from wages, for breach of contract, and for accrued but unpaid holiday pay were all submitted out of time, and I hereby dismiss them for that reason. However, the claimant did make a claim in respect of his statutory redundancy entitlement both to his former employer the

- first respondent, and the Secretary of State the second respondent, within the period of six months from the date of termination of his employment.
15. I therefore find that the claimant's claim for a statutory redundancy payment was presented within time. The claimant is entitled to a statutory redundancy payment in the sum of £1,384.60 (4 x 1 x £346.15).
  16. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 8; a concise identification of the relevant law is at paragraphs 10 to 12; how that law has been applied to those findings in order to decide the issues is at paragraphs 13 to 15.

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Employment Judge N J Roper

Dated                      26 July 2019