



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104721/2018**

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**Held in Glasgow on 9 May 2019**

**Employment Judge: W A Meiklejohn**

10 **Miss Fiona Morrison**

**Claimant**  
**Represented by:**  
**Mr M Dempsey -**  
**Advocate**

15 **Ms Laura Dewar**

**Respondent**  
**No appearance and**  
**No representation**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Judgment of the Employment Tribunal is as follows –

- (i) The Claimant's claim for breach of contract (in respect of notice pay) succeeds and the Respondent is ordered to pay to the Claimant the sum of SEVEN HUNDRED AND NINETY POUNDS AND EIGHTY PENCE (£790.80);
- 25 (ii) The Claimant's claim for a redundancy payment succeeds and the Respondent is ordered to pay to the Claimant the sum of TWO THOUSAND TWO HUNDRED AND SIXTY EIGHT POUNDS AND SEVENTY FIVE PENCE (£2268.75);
- 30 (iii) The Claimant's claim for unfair dismissal succeeds and the Respondent is ordered to pay to the Claimant the sum of THREE THOUSAND SEVEN HUNDRED AND TWENTY SIX POUNDS AND EIGHTY PENCE (£3726.80);

- (iv) In respect that the Respondent was in breach of the duty to give to the Claimant a written statement of particulars of employment, the Respondent is ordered to pay to the Claimant the sum of THREE HUNDRED AND THIRTY POUNDS (£330.00); and
- 5 (v) The Claimant's claim that the Respondent failed to provide a written statement giving particulars of the reasons for the Claimant's dismissal does not succeed and is dismissed.

## REASONS

### Introduction

- 10 1. This case came before me for a Final Hearing on both liability and remedy. Mr Dempsey appeared for the Claimant. The Respondent had not submitted a response to the claim and did not appear at the Hearing. I had a bundle of documents extending to 681 pages which had been prepared for a Preliminary Hearing (the "PH") before Employment Judge Atack on 15
- 15 February 2019.
2. At the PH the Claimant had given evidence and it had been decided by Employment Judge Atack that the Respondent had been the Claimant's employer at the time of termination of her employment. Findings in fact had been made (paragraphs 8-35 of the PH Judgment) which, for the reasons
- 20 explained below, were sufficient to deal with all of the claims apart from the alleged failure by the Respondent to provide a written statement giving particulars of the reasons for the Claimant's dismissal. In relation to this claim, I heard evidence from the Claimant.

### Breach of contract (notice pay)

- 25 3. Paragraphs 29-31 of the PH Judgment record that:
- (a) the Respondent ceased to trade from the premises where the Claimant was employed (Pennies Bar) on 25 February 2018 and the premises have not operated since that date,
- (b) the Claimant's last shift was on 24 February 2018 and

(c) the Claimant received a P45 from the Respondent (showing 7 March 2018 as the date of termination of her employment).

4. Notwithstanding the date shown on the P45, it was apparent from these findings that the Claimant's employment had been terminated by the Respondent without notice on 25 February 2018. Having been continuously employed by the Respondent and her predecessors at Pennies Bar for approximately 22 years, the Claimant was entitled to notice of termination of her employment.
5. In terms of section 86 (1)(c) of the Employment Rights Act 1996 ("ERA") the notice required to be given by the Respondent to terminate the Claimant's employment was 12 weeks. As that notice had not been given, the Claimant's contract of employment (under which, irrespective of whether a written statement of particulars of employment had been given to her, she was entitled to that notice) had been breached. The Claimant was entitled to payment in lieu of the notice for which section 86(1)(c) ERA provided.
6. The Claimant worked 11 hours per week and was paid at the rate of £7.50 per hour. The payslips included within the bundle of documents showed that she was paid £82.50 gross and £65.90 net per week. Some of the payslips showed a slightly higher net figure but Mr Dempsey was content that my calculations should be based of £65.90.
7. Accordingly the pay in lieu of notice to which the Claimant was entitled was 12 x £65.90 which totals £790.80.

### **Redundancy payment**

8. Section 139(1) ERA 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/her employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him/her, or to carry on that business in the place where the employee was so employed.

9. Paragraphs 29-31 of the PH Judgment are again relevant here. The Respondent did cease to carry on the business for the purposes of which the Claimant was employed by her. The business which operated at Pennies Bar ceased to trade.

5 10. Accordingly the Claimant is taken to be dismissed by redundancy and is entitled to a redundancy payment. At the time of her dismissal the Claimant was 56 years of age and had more than 20 years' service. Applying section 162 ERA (Amount of a redundancy payment) the appropriate calculation was £82.50 (a weeks' pay) multiplied by 27.5 (representing 15 years' service above the age of 41 with a multiplier of 1.5 and 5 years' service below the age of 41 with a multiplier of 1) which produces a total of £2268.75.

### **Unfair dismissal**

11. Where an employee is dismissed, in terms of section 98(1) ERA it is for the employer to show the reason or principal reason for the dismissal. In this case the Claimant's employment had been terminated by the Respondent (see paragraph 4 above) which means she was dismissed by the Respondent.

12. Because the Respondent had not presented a response to the claim, she had failed to show the reason or principal reason for the Claimant's and the claim of unfair dismissal had to succeed.

13. As the Claimant was entitled to a redundancy payment, she was not entitled to a basic award (section 122(4)(a) ERA).

14. Turning to the compensatory award, section 123(1) ERA provides that this shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. Here, the action taken by the Respondent was to cease trading from the premises where the Claimant was employed. The Claimant had not, at the date of the Hearing before me, secured alternative employment to replace her job with the Respondent. She had suffered loss

of earnings for a period of 50 weeks between the end of the period of notice to which she had been entitled (20 May 2018) and the date of the Hearing. 50 weeks at £65.90 per week totals £3295.00.

- 15 15. In terms of section 124 (1ZA)(b) the amount of the compensatory award could not exceed 52 weeks' pay. Accordingly the award in respect of future loss could not exceed a further two weeks' pay. This was £65.90 multiplied by 2 which totals £131.80.
- 10 16. The Claimant suffered the loss of her statutory employment protection rights as a result of her dismissal. She sought an award of £500.00 in this regard but I decided that a figure of £300.00 would be more appropriate, in line with normal practice.
17. The total of the unfair dismissal compensation is therefore £3295.00 plus £131.80 plus £300.00 which totals £3726.80.

**Written statement of particulars of employment**

- 15 18. In terms of section 38 of the Employment Act 2002, where (in proceedings to which the section applies, as it does here) the Tribunal finds in favour of the employee or makes an award to the employee and, when the proceedings were begun, the employer was in breach of the duty to give the employee a written statement complaint with section 1(1) or 4(1) ERA, the Tribunal must  
20 unless there are exceptional circumstances which would make it unjust or inequitable to do so, make an award of either the minimum amount (2 weeks' pay) or the higher amount (4 weeks' pay).
- 25 19. In this case there was no compliance with sections 1(1) or 4(1) ERA, i.e. no written statement of particulars of employment had been provided to the Claimant, and I decided that the award should be the higher amount. This was 4 x £82.50 which totals £330.00.

**Written reasons for dismissal**

20. In terms of section 92 (1) ERA an employee is entitled to be provided by his/her employer with a written statement giving particulars of the reasons for

the employee's dismissal. Section 92(2) provides that this entitlement applies (with some exceptions which are not relevant in this case) only if the employee makes a request for such a written statement.

5 21. The Claimant gave evidence about this. She referred to asking the Respondent by text message for a P45. She also referred to speaking with the Respondent because of rumours that the premises were to be closing. However, the Claimant very fairly acknowledged that she had not asked the Respondent for written reasons for her dismissal.

22. Accordingly her claim under section 92 had to fail.

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15 **Employment Judge: WA Meiklejohn**  
**Date of Judgment: 15 May 2019**  
**Entered in register : 17 May 2019**  
**and copied to parties**