EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr M O'Hara **v** **K & M McLoughlin Decorating Ltd**

Heard at: Watford **On**: 9 July 2019

Before: Employment Judge Milner-Moore
Employment Judge L Anstiss (Observing)

Representation

For the Claimant: In person
For the Respondent: T Anderson, Counsel

RESERVED JUDGMENT

1. The claimant's claim for breach of contract in relation to the contractual redundancy payment of £5,000 fails and is dismissed.
2. The claimant's claim for breach of contract in relation to notice pay of £1,836 succeeds.
3. The claimant's claim for a statutory redundancy payment of £3,912 succeeds.
4. The claimant's claim for holiday pay of £403.80 succeeds.
5. The respondent's counter claim for breach of contract in the sum of £10,165.72 succeeds.
6. The claimant is ordered to pay to the respondent the sum of £4,013.92

REASONS

1. This case was listed for a final hearing to consider claims of breach of contract (failure to pay a contractual redundancy payment and notice pay), failure to pay a statutory redundancy payment and failure to pay accrued annual leave on termination. The sums claimed are not in dispute and are as follows:

    1.1 A contractual redundancy payment of £5,000, or in the alternative a statutory redundancy payment of £3,912,

1.2 Notice pay of £1,836 (representing three weeks' of the claimant's notice period between 16 March and 6 April 2018 during which he did not attend for work), and

1.3 Holiday pay of £403.80.

2. The respondent advances an employer's contract claim in respect of a loan made to the claimant in the amount of £10,165.72. Neither, the fact of, nor the amount of, the loan is in dispute.

3. The following issues arose for determination:

3.1 What agreement was originally reached between the parties as to the repayment of the loan of £10,165.72?

3.2 What were the terms of the agreement reached in relation to the claimant's voluntary redundancy? In particular, as to:

(a) the conditions upon which the claimant would receive a contractual redundancy payment of £5,000,
(b) the date on which the claimant's employment would terminate and whether the claimant was required to attend at the respondent's offices throughout the notice period, and
(c) whether the claimant would be required to repay the loan amount of £10,165.72.

3.3 Did the claimant perform his side of the bargain, such that the respondent was obliged to pay him the contractual redundancy payment of £5,000, pay of £1,836 in respect of the remainder of the notice period and to waive repayment of the loan?

3.4 If the claimant was not entitled to a contractual redundancy payment, was the claimant nonetheless entitled to a statutory redundancy payment pursuant to section 135 Employment Rights Act 1996? Or did the claimant disentitle himself to a statutory redundancy payment by resigning from his employment at some point during the period 15 March to 6 April 2018?

3.5 Employer's counter claim – it is admitted that the claimant owed the sum of £10,165.72 to the respondent?

(a) Did the respondent agree to waive that loan as part of the terms agreed for the claimant's departure on voluntary redundancy?
(b) If so, what, if any, conditions were attached to the waiver of the loan and were those conditions discharged by the claimant?

4. I received a bundle of documentary evidence and a witness statement from Mr. McLoughlin, the director of the respondent company, who has responsibility for its day-to-day running. I also received a very short-

statement from the claimant, which incorporated, by reference, both his ET1 and his response, dated 7 January 2019 to the employer's contract claim.

Facts

5. In light of the evidence, I made the following factual findings.

5.1. The claimant began employment with the respondent on 8 February 2010. He was employed as a Quantity Surveyor and had eight years' service when his employment terminated. He was one of two Quantity Surveyors employed by the respondent in 2018, the other being Sean Cassidy. The respondent is a small, family decorating company. It held some contracts with the Carillion Group. That group went into liquidation in January 2018 and this affected the respondent's profitability.

5.2. It was not disputed that during 2017/2018 the respondent had made a loan amounting to £10,165.72 to the claimant. The respondent had made such loans to him in the past. The respondent had been in the practice of paying annual bonus payments to staff and the loans made to the claimant had been offset against the bonus payments made to him. There was no contractual entitlement to any bonus. The bonus payments themselves were entirely discretionary and were normally paid according to a formula devised by Mr. McLoughlin. At the end for financial year 2017/2018, only a small bonus of around £500 was paid to each employee because of the impact that the failure of Carillion had on the respondent's business.

5.3. In early February 2018, Mr. McLoughlin spoke to both the claimant and Sean Cassidy and asked whether either would be interested in volunteering for redundancy. On or around 7 February 2018, the claimant said that he would be prepared to accept voluntary redundancy. At some point subsequently, the claimant and the respondent discussed the terms on which the voluntary redundancy would go ahead. The claimant sent an e-mail to Mr. McLoughlin dated 3 March 2018 to Mr. Mcloughlin's personal e-mail account, headed "*leaving terms*" which states as follows:

> "Kevin, as discussed last week, please see below for a summary of what we discussed was to be agreed:
>
> Last day at work: 15 March 2018
> Wages paid up until 6 April 2018 (end of 8 weeks)
> £5,000 redundancy to be paid with last wage payment
> Once final figures agreed for 2017 bonus, any balance over £10,000 to be paid at some point later in 2018
> I can keep my phone and phone number.
> I will transfer over as soon as possible after leaving date.
>
> Hopefully this covers everything and you are in agreement…
>
> As discussed, if you need help with anything just let me know and I can jump in and out as required…"

6. Mr. McLoughlin accepts that the e-mail of 3 March 2018 was sent to his personal account and that he may have read it at the time but he says that he did not respond to it because "*I had not really given it my attention*". Mr. McLoughlin said that he conducted most business by telephone or in meetings and that he did not really "do e-mail". I consider that the claimant's email to the respondent of 3 March evidences the principle terms that were agreed between the parties. Although there is no reply from Mr. McLoughlin formally assenting to it, he accepts that he saw and read the email at the time. If the terms set out in the email had not reflected the agreement one would expect him to have replied to make this clear.

7. The claimant's evidence was that "*part of the redundancy agreement discussed at the end of February 2018 was to clear any monies I had spent through the K & M business. I agree that this was just over £10,000 at this time. This is why I referenced on my e-mail to the respondent on 3 March that I noted that I only expected to get paid any bonus over £10,000 later in 2018.*" Mr. McLoughlin's evidence was that it was always understood that the loan would be repayable on termination of employment. Mr. McLoughlin did not recall specifically discussing the loan during the meeting that he had with the claimant in relation to voluntary redundancy terms. His statement records that "*it is possible that the claimant asked me about a potential bonus payment…Whilst I cannot remember specifically agreeing anything in this regard, any such agreement would have been conditional on the claimant conducting a hand over of his duties*".

8. It is the respondent's case that one of the agreed terms relating to the claimant's voluntary redundancy was that if he had been able to complete his tasks and hand matters over properly by 15 March 2018, he need not come into work for the remainder of his notice period. The claimant accepts that this was the understanding reached and it is reflected in the claimant's email. The dispute between the parties turns on whether the claimant did satisfactorily complete his work and provide an adequate handover such that he did not need to attend for work after 15 March.

9. The only matter that the claimant was required to handover to Ms Cole related to a computer system used by the respondent and provided by a company called Deltec. Although no formal handover meeting took place, I find that the claimant did provide a sufficient handover of matters relating to the system. The only outstanding issue related to some invoices from Deltec that were due for payment. The claimant had told Deltec that it needed to provide an explanation of what the invoices related to before they could be authorised for payment. He had forwarded to Ms. Cole a number of e-mails which explained this and which evidenced his dealings with Deltec. In particular, on 28 and 29 March 2018, the claimant replied to email from Toni Cole with a query about Union Square (the Deltec system) explaining how to use this system and explaining the context that had resulted in the disputed invoice. The claimant continued to engage with trying to resolve the issue on the respondent's behalf, sending further emails to Deltec on 28 March 2018 and on 9 May 2018. Ms. Coles and the claimant exchanged e-mails

during March 2018 and there was no suggestion in those emails that she considered that the claimant had failed adequately to hand matters over to her.

10. The claimant's evidence in relation to the handover of his work to Mr. Cassidy was that many of the projects that he had worked on were effectively finished by 15 March 2018. The claimant maintained that, although there was no single formal handover meeting with Mr Cassidy, he and Mr Cassidy worked closely together and lived together at the time. The claimant asserted that they had regular discussions and he ensured that Mr Cassidy had the information that he needed in relation to all outstanding matters before 15 March. That was with the exception of the two matters ((Premier Inn and Bemerton) on which he continued to work after 15 March, albeit doing so remotely and without coming in to the office. The claimant maintained that this was done with the respondent's agreement.

11. There is no evidence that the claimant conducted a formal handover or that he produced any detailed briefing note to explain the state of play on his work. However, I find that he did have some discussions with Sean Cassidy regarding his work and that he forwarded to Mr. Cassidy and others a number of emails in relation to outstanding matters in the period between 16 March 2018 and 6 April 2018.

12. I also find that the claimant did continue to work on the Premier Inn and Bemerton matters after 15th March 2018. However, I consider it unlikely that he had specifically agreed this arrangement with Mr. McLoughlin. The agreement reached with Mr. McLoughlin had been that he need not attend the office after 15 March *if his outstanding work had been completed*. I consider it unlikely that Mr. McLoughlin would have consented to the claimant ceasing to attend work after 15 March if anything significant remained unresolved. I consider it likely that the claimant was keen to return to Northern Ireland, that he did not want to delay his return whilst these two matters were completed and hoped that he could conclude the work from there without its causing difficulty to the respondent or coming to adverse attention.

13. The Premier Inn matter related to outstanding charges in respect of work done by the respondent, which charges needed to be approved by an organization called HJ Martin. The documentary evidence shows that the claimant had continued to email AS, the responsible individual at HJ Martin regularly throughout the period February to April 2018 and that he was trying to arrange to speak to her on 9 April 2018 (which was the first availability she offered) in order to resolve matters.

14. The Bemerton matter related to the preparation of a further statement of charges in relation to the services provided by the respondent. The claimant prepared this and sent it to the respondent on 13 April 2018 with some commentary about why he considered that the statement was unexpectedly low and suggestions as to how this could be remedied. His email stated

"*Got the application done yesterday and sent in. Values do not make good reading. There was an error on the spreadsheet that reduced the total by £14K. The movement in value this month is approx. £20K. The costs have also went up since the last application. I do not understand how though. Will need more looking at*".

15. The respondent has made reference to an e-mail sent to the claimant on 16 March by Toni Cole saying "*your first day as a free man! Can you remember to give your credit card and oyster card to Sean so we can get them cancelled please? Thanks and enjoy your freedom*!" to which the claimant replied on 22 March "*all returned to Sean and thanks I intend to enjoy it!"* It is suggested that this e-mail exchange, combined with the claimant's failure to attend for work after 15 March 2018, is consistent with the claimant having resigned on 15 March 2018. That is not, however, borne out by the documentary evidence which shows that the claimant continued to perform work for the respondent from 15 March 2018 up until his last day of service on 6 April 2018 and indeed beyond that date. The respondent had previously suggested that the claimant was absent from work without authorization and that this amounted to gross misconduct but that argument was not advanced by the respondent during the hearing.

16. Mr. McLoughlin's evidence was that, on 16 March, he was informed by Mr. Cassidy and Ms. Cole that no handover meeting had taken place. As a result, he instructed Mr. Cassidy to contact the claimant to ask him to return to work and perform a proper handover but the claimant had refused to do so. The claimant disputes this. Although phone records have been produced to evidence Mr. McLoughlin's calls to the claimant, no phone records have been produced to evidence Mr. Cassidy's contact with him. The claimant was in email contact with both Mr. Cassidy and Miss Cole during this period. Neither of them sent the claimant an email to say that he needed to return to work to perform a handover, which would have been the natural thing to do. Mr. Cassidy is still employed by the respondent so would have been available to be called by the respondent as to whether or not he did as, asserted by Mr. McLoughlin, repeatedly call the claimant in the period 15 March to 6 April 2018, and, tell him that he was required to return to work and complete the handover process.

17. The claimant contacted the respondent's accounts department on 3 April asking for information and for confirmation that he would receive his redundancy pay. Mr. McLoughlin instructed the accounts department not to pay and not to reply because he was dissatisfied with the claimant's failure to perform a handover. However, he did not, as one might expect him to have done, contact the claimant himself to explain why no payment was being made and that the claimant was required to return to work.

18. I find that that the claimant was not instructed by the respondent to return to work at any point before his employment terminated. I find that it was not until 7 April 2018 at the earliest (the day after the claimant's employment

had terminated) that Mr. McLoughlin first called the claimant and asked him to return to work to finalise outstanding matters.

19. The claimant did not return to the UK but continued to conduct some work for the respondent remotely during April 2018, after his employment had terminated. The respondent still did not make the redundancy payment to him. The claimant and Mr. McLoughlin spoke on 17 April 2018. Mr. McLoughlin's told the claimant he considered that the redundancy money was not payable because the claimant had not completed his jobs or conducted an effective handover. The claimant offered to assist in relation to outstanding points but was not prepared to return to London unless paid his redundancy money. Mr. McLoughlin was not prepared to pay him unless he returned so an impasse was reached.

20. On or around 16 April 2018, Mr. McLoughlin asked his accountant, Mark Downing, to review matters because he was concerned that the situation in relation to the claimant's projects was not sufficiently clear. Subsequently, on 20 April 2018, Sean Cassidy wrote to the claimant with an e-mail headed "*outstanding jobs*" and setting out a list of nine matters where further information was required. The email stated "*Kevin wants a summary of where we are at with each job, the date the final accounts for each were submitted and how the negotiating of each final account went and what the actual percentages could be. Give me a call once you have reviewed. He is looking for you to run through as well once you have reviewed*". On 4 May 2018, the claimant provided a response on each and copied it to Mr. McLoughlin. The claimant did not have full access to the respondent's information at this point but replied setting out his understanding on the basis of such information as he could access.

21. Of the nine matters:
    21.1. One matter related to the Premier Inn Archway. I find that the claimant had continued to work on this matter during his notice period sending various emails chasing the quantity surveyor to finalise documentation. The matter had not been resolved by the time the claimant left but this does not appear to have been due to any fault on the claimant's part.
    21.2. Two matters related to SCH projects, where there was work to be written off but the position had not been properly set out to enable the Accountant to do this. It does not appear that the claimant provided any detailed handover of the position relating to these matters during his notice period.
    21.3. One matter related to Providence Court where money was owed to the respondent but this had not been flagged up as an issue by the claimant during his notice period.
    21.4. Four matters concerned projects that had been completed and all money due paid to the respondent but the claimant had failed to submit a final account. Mr. McLoughlin's evidence was that the failure to submit final accounts had led to problems for the respondent negatively affecting cash flow and reputation. Although the claimant explained the lack of a

final account in his reply of 4 May 2018 by saying that "*as a rule I generally don't label any applications as a final account as this could have the effect of any further application for work after this date on a contract not being eligible for monthly payments*" there is no evidence that the claimant had explained that this was his practice or that he had made it clear to anyone else that final accounts had not been submitted. Had the claimant done so the respondent would have had an opportunity to ask him to put this right before he left.

21.5. The final matter raised related to the Bemerton project – the claimant had submitted a further statement in relation to charges to be billed to the client relating to this matter on 13 April 2018. However, as the claimant's accompanying email acknowledged there were outstanding questions regarding the statement. Given that this was one of the matters that the claimant had reserved to work on during his notice period it is not clear why these matters had not been resolved and the work completed before the claimant's employment terminated at the very latest. The respondent's evidence, which I accept, is that that the work done by the claimant to produce this statement was belated (the account should have been produced by the end of March) and inadequate in terms of the information it contained and that these deficiencies led to criticism and a delay in the respondent being paid.

22. There are aspects of the respondent's criticism of the claimant that are unfair (e.g. in relation to the handover to Ms. Cole of matters relating to Deltec). However, I do find that there was work that could, and should, have been finished by the claimant during his notice period but which was not properly completed by him. I also find that, in some respects, the claimant failed to provide a sufficient explanation of the state of play in relation to the matters for which he was responsible so to enable the projects to be wound up without difficulty. These failures caused additional work and costs for the respondent (e.g. in instructing the accountant to review matters) and, in at least once instance, meant that payment to the respondent was delayed. Given that the respondent was, at this time, already under pressure from the collapse of Carillion delays in payment and additional work and costs were particularly unwelcome.

Submissions

23. The respondent contended that there was no dispute that the £10,065.72 was owed and was originally intended to be repayable if employment was terminated. It is suggested by the claimant that the loan was waived as part of the redundancy discussions but Mr. McLoughlin was clear that there was no such waiver. Indeed, his evidence was that the loan never came into the discussion because everyone was aware that it had to be paid back. The claimant's email of 3 March 2018 does not say in terms that there had been any waiver of the loan which is surprising because that would have been the most valuable part of the deal. It could be implied from the email's reference to the bonus, that the debt remained live and to be extinguished by future bonus. Given the respondent's financial situation it was unlikely that it would

write off a significant loan to an employee. If in the alternative, there was an agreement to waive the loan, such agreement was contingent on the claimant performing his side of the bargain and doing a proper handover which he had not done.

24. As regards the redundancy payment, the respondent contended that it had been agreed that the claimant would receive £5,000 if he completed the closeout tasks. The question is whether the claimant complied with that obligation. The claimant's evidence was that, there was no formal hand over with Mr. Cassidy during which he went through each account one by one, but that they had a close working relationship and their regular interactions meant that Mr Cassidy would be aware of what was happening. However, paragraphs 40 onwards of Mr McLoughlin's statement give details about the impact of the claimant's actions and his failure to do a proper handover. Ultimately, one had to ask why, if the claimant had handed over his work, the respondent was bringing this claim. If the respondent had not been placed at a disadvantage no claim would have been brought and he would not have had to engage others to look over the various matters to check the position. Once the claimant was in Northern Ireland he couldn't access all the information that he needed to give a proper account of matters and so by leaving early without having fully closed off or handed over matters he had not fulfilled his side of the bargain. The simple fact was that work was left undone which should have done before the claimant left.

25. The respondent contended that the claimant had lost any entitlement to a statutory redundancy payment by downing tools and leaving the respondent on 15 March 2018 as this amounted to a resignation. Alternatively he should be treated as resigning when he was contacted by Mr Cassidy and told to return but refused to do so. Whilst the claimant did some work during the remainder of his notice period it was very limited in degree.

26. The claimant argued that it was agreed, as part of the redundancy terms, that the loan would be waived and he set that out in the e-mail. He considered that he had provided an effective hand over. He maintained that he and Mr Cassidy had spoken and that he had provided him with the information that he needed. He considered that it had been agreed that he would receive £5,000 as a redundancy payment and that it had been expected that he would work at home following 15 March 2018 because there was a very limited amount of work for him which did not require him to be full time in the office in London. There was no contact from the respondent between 15 March and 7 April to suggest an adequate handover had not been provided. His discussion with Mr. Mcloughlin on 7 April 2018 did not relate to the handover of work generally but only to the Deltec invoice. He had worked with both Sean Cassidy and Toni Cole, sending e-mails in to explain the position. It was not until some two weeks after his notice had ended that he was asked to provide further information in response to queries from the accountant and he had provided such information as he had. He did not accept that he had resigned on 15 March. It had been agreed that he could work from home during the remainder of his notice period and he had done so. No-one had requested him to return

to London and work between 15 March and 6 April. Had the respondent really believed that he was still obliged to repay the loan then he would have expected the respondent to make mention of this in the first ET3. It was only several months after the event that any mention of this was made.

Law

27. In considering whether there is a contract, what the terms of any contract are, and what those terms mean, it is necessary for a court to make findings about what was communicated between the contracting parties (whether that communication is oral or in writing or by their actions) and to consider what, viewed objectively, those communications would have been understood at the relevant time to mean. The subjective intentions or beliefs of the parties are not relevant to that exercise. Terms of contract may be express or they may in some circumstances be implied.

28. It may be appropriate to imply a term where, for example, the parties would necessarily have agreed the term in question because it was required in order to make the contract effective in achieving its purpose (the "business efficacy" test) or where the term is so obviously what the parties would have intended that it was regarded as unnecessary to record it explicitly (the "officious bystander" test). Where contractual terms are to be implied there must be an objective foundation for their implication, they must be reasonable, they must be terms that the parties would necessarily have agreed, they must be clear and they must not contradict any express terms.

29. The termination of a contract of employment by resignation requires words or actions on the part of the employee which are sufficiently clear and unambiguous that, viewed objectively, a reasonable employer is entitled to regard the employee as having resigned his employment. Staying away from the workplace without explanation may be reasonably viewed as a resignation in some circumstances but it will not inevitably be so.

30. The Tribunal's jurisdiction in respect of a counter claim by an employer derives from the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 article 4

"Proceedings may be brought before an Employment Tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due in respect of personal injuries) if –

the claim is one to which section [3(2) of the Employment Tribunals Act 1996] applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
the claim is not one to which article 5 applies;
the claim arises or is outstanding on the termination of the employment of the employee against whom it is made;
proceedings in respect of a claim of that employee have been brought before an Employment Tribunal by virtue of this order".

What agreement was originally reached between the parties as to the repayment of the loan of £10,165.72?

31. There was little evidence as to the terms on which the loan to the claimant was originally made. However, I consider that a term can be implied to the effect that the loan would be repayable on termination of employment, if it had not already been repaid. I consider that the parties would necessarily have expected such a term to apply. Such a term would have been reasonable. It is unlikely that the respondent would have agreed to continue to advance a loan to someone who was not employed by him or that the claimant would have expected him to do so.

What were the terms of the agreement reached in relation to the claimant's voluntary redundancy and the repayment of the loan?

32. I have concluded that the claimant's email to the respondent of 3 March largely evidences the principle terms agreed between the parties. An objective reader would conclude that the parties had agreed that:
    32.1. the claimant's employment would terminate on 6th April 2018 and he would be paid until that date;
    32.2. if he had satisfactorily completed his outstanding work (by concluding it or handing it over) he need not physically attend work after 15 March 2018;
    32.3. after 15 March 2018, he would be available to assist remotely but his obligation to provide such further assistance would necessarily come to an end when the period of notice expired on 6 April 2018; and
    32.4. in return, he would receive a contractual redundancy payment of £5,000, his loan would be waived, if that year's bonus exceeded the loan amount he would receive the difference and he would be permitted to keep his work phone.

33. My conclusions regarding the claimant's obligations up to 15 March and in relation to the loan require additional explanation.
    33.1. Although the email recording the terms of the claimant's departure states no more than "Last day at work: 15 March 2018, wages paid up until 6 April 2018 (end of 8 weeks)" I have found that it was, in fact, orally agreed between the parties that the claimant being released from his obligation to attend work after the 15 March was contingent on the claimant having completed, or handed over, any significant outstanding work by that date.
    33.2. As to the loan, the email records that "*once final figures agreed for 2017 bonus any balance over £10,00 to be paid at some point later in 2018*". Construing matters objectively, I consider that this wording is consistent with the parties having reached an understanding that the claimant would only receive a bonus in respect of 2018 if the bonus paid exceeded the value of the loan, but that the respondent was not requiring the repayment of the loan on termination. Had it been agreed that the loan remained repayable on termination I consider that the claimant's email would have made reference to this or, that Mr McLoughlin would have been motivated to reply to the email to make sure that the

expectation of repayment was clearly recorded. Were the loan not being waived this would have meant that the claimant still owed the respondent money on the termination of his employment, even after the contractual redundancy payment and remaining wages had been taken in to account. One would therefore expect to have seen something from the respondent to the claimant in writing to make clear that the balance of £X was going to be due from him on termination, unless extinguished by any future bonus.

Did the claimant perform his side of the bargain, such that the respondent was obliged to pay him the contractual redundancy payment of £5,000, notice pay of £1,836 and to waive repayment of the loan?

34. The claimant's "side of the bargain" was that he would work as normal until 15 March 2018. After that date, if he had satisfactorily dealt with his outstanding work (whether personally or by handing matters over properly), such that it was no longer necessary for him to be physically in the office, then he need not attend for the remainder of the notice period, as long as he then provided such further assistance as was required until his employment terminated.

35. During his evidence, Mr. McLaughlin laid a great deal of stress on the fact that the claimant had not conducted a formal handover meeting with Ms. Cole and Mr. Cassidy. There are various ways in which work may be handed over to a successor and there is no evidence to suggest that the claimant was informed of any expectation that handover must occur by means of a formal meeting. However, I have nonetheless concluded that the claimant did not perform his side of the bargain. He stopped attending work after 15 March 2018 although there were still a number of matters outstanding which had not been properly concluded or handed over to his colleagues. The claimant had not submitted final accounts on a number of outstanding matters. If he considered it unnecessary to do so, it was still incumbent on him to explain the position before he left on 15 March and to make clear that final accounts had not been submitted. The respondent did not have a clear picture of the state of play on some of the other matters for which the claimant was responsible (the SCH and Providence Court matters). The claimant had not satisfactorily completed his outstanding work on the Bemerton matter by 15 March. Although the claimant may have considered that he could continue to work on that matter remotely, in fact the work was still outstanding even at the point when his employment terminated on 7 April and, when it was belatedly completed, was inadequate. The failure to complete the work promptly and properly caused delay in the respondent being paid. As a consequence of these failings, I do not consider that the claimant had met the conditions necessary for the payment of the contractual redundancy payment or the waiver of the loan.

36. I consider that the question of notice pay for the period 16 March to 6 April is a different matter. I have found that the respondent did not request the claimant's physical return to work until 7 April, by which point the notice period had already expired. I have also found that the claimant was

performing some work during this period, albeit that he was performing this work remotely. The respondent may not have been satisfied with the quality or quantity of the work done during this part of the notice period but that does not disentitle the claimant from continuing to receive payment during that period.

If the claimant was not entitled to a contractual redundancy payment, was the claimant nonetheless entitled to a statutory redundancy payment pursuant to section 135 Employment Rights Act 1996? Or did the claimant disentitle himself to a statutory redundancy payment by resigning from his employment at some point during the period 15 March to 6 April 2018?

37. I do not consider that the claimant's actions in failing to attend for work in the period 16 March to 6 April 2018, can reasonably be construed to be a resignation in the circumstances of this case. First, it had been agreed between the parties that the claimant need not continue to attend at the respondent's workplace if his work had been sufficiently completed. The claimant genuinely believed himself to have handed matters over sufficiently and believed that his physical attendance at work was not therefore required. I have found that it was not until after his employment terminated that he was instructed to physically present for work at the respondent's offices. Second, he continued to perform work for the respondent in that period. The respondent may not have been satisfied with the work he performed but it cannot be inferred from the claimant's failure to physically present for work after 15 March that he had resigned. Accordingly, I consider that the claimant remains entitled to a statutory redundancy payment.

Is the loan amount still due to the respondent?

38. In light of the conclusions that I have reached, I find that the loan amount remains due to the respondent because the claimant did not satisfy the conditions under which the repayment of the loan of £10,165.72 would be waived. The sums owed by the respondent by way of statutory redundancy payment (£3,912), notice pay (£1,836) and holiday (£403.80) amount to £6,151.80. I have therefore deducted these sums from £10,165.72 and ordered the claimant to make payment of the balance of £4,013.92.

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Employment Judge Milner-Moore

Date: …1 October 2019.

Sent to the parties on: .....

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For the Tribunal Office