



EMPLOYMENT TRIBUNALS

Claimant
Ms EJ Russell

Respondent
Francis W Construction Ltd

EMPLOYMENT JUDGE GARNON
MADE AT NORTH SHIELDS

ON 12 August 2019

JUDGMENT (Liability Only)
Employment Tribunals Rules of Procedure 2013 –Rule 21

1. The claims of wrongful dismissal (breach of contract), failure to pay compensation for untaken annual leave and unfair dismissal are well founded.

2. A Remedy Hearing will be fixed for the first available date with a time estimate of two hours, at which the respondent may participate on remedy matters only.

REASONS

1. The claim was presented on 3 July and served on 10 July 2019 by being sent to an address which I have checked today corresponds precisely with the address of the respondent's registered office as revealed by a Companies House search. The claimant commenced Early Conciliation (EC) on 8 May and ACAS issued the EC certificate on 20 June which suggests ACAS contacted the respondent who engaged in conciliation for longer than the usual four week period . A claim may be validly served on a limited company either at its registered office. I am convinced the claim has been validly served on the respondent.

2. A response was due by 7 August 2018 but none was received. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) to decide on the available material whether a determination can be made and , if so, obliged to issue a judgment which may determine liability only or liability and remedy.

3. I have in the claim form sufficient information to enable me to find the above claims proved on a balance of probability but not a claim for which the claimant has "ticked the box" in part 8 of the form for a redundancy payment . I do not have enough to determine the sums to be awarded. The claimant has sent in a schedule of loss and I have noted it contains certain requests, such as a judgment against the directors personally and other companies they control, which cannot be awarded. I believe a remedy hearing is needed

4.As for the applicable law ,the common law provides a contract of employment may be brought to an end by reasonable notice unless the respondent can prove gross misconduct. Dismissal

without such notice is termed "wrongful" and damages are the pay the claimant would have received during the notice period less any sums received in mitigation of loss.

5. The Working Time Regulations 1998 say in Regulation 14 that where a worker's employment is terminated during the course of a leave year, and, on the date on which the termination takes effect, the proportion she has taken of the leave to which she is entitled in the leave year differs from the proportion of the leave year which has expired, her employer shall make a payment in lieu of untaken leave

6. The law of unfair dismissal is in Part X of the Employment Rights Act 1996 (the Act). Compensation for unfair dismissal comprises two elements. The first, called a basic award, is an arithmetic calculation based on the claimant's date of birth and length of service. The second element is the compensatory award calculated in accordance with s 126 of the Act .

TM Garnon Employment Judge
Date signed 12 August 2019 .