



# EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107057/2019

Held in Glasgow on 19 August 2019 (in chambers)

Employment Judge I McPherson

Mr David Benton

Claimant

Bryan Byrne Consultants Ltd

Respondent

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

- (1) Upon reconsideration of the **Rule 21** Default Judgment granted by me and dated 16 July 2019, as sent to parties on 17 July 2019, being the “**original decision**”, and following upon the application from the claimant’s representative, dated 18 July 2019, for reconsideration of that original decision, and
- (2) Having sought written representations from both parties on 29 July 2019, and thereafter having received written representations from the claimant’s representative on 29 July 2019, but the respondent having made no representations, by 5 August 2019, as ordered, or at all, and having failed to present any ET3 response defending the claim, and having failed to apply for an extension of time to do so, and / or failed to apply for reconsideration of that Default Judgment, the Employment Judge has, on the basis of the available material, and without the need for an oral Hearing, dealt with the unopposed reconsideration application on the papers, in chambers.
- (3) Having done so, the Judge has granted the claimant’s application for reconsideration, in terms of the Tribunal’s powers under **Rules 71 to 73 of the Employment Tribunals Rules of Procedure 2013**, it being in the interests of

justice to reconsider the original decision on the basis that, due to error by the claimant and his representative, the claimant's ET1 claim form presented on 24 May 2019, and his subsequent additional information provided to the Tribunal on 10 July 2019, following the Tribunal's request for additional information on the sums sued for, both contained a material error by the claimant wrongly specifying the start date of his employment with the respondents, which was wrongly stated as 31 August 2009 when it should have stated August 1999.

- (4) Accordingly, having reconsidered the original decision, and taken into account the material now available to the Tribunal, including copy P60 year-end employer certification of earnings from tax years from 5 April 2000 to 5 April 2010, as the vouching produced on 29 July 2019 by the claimant's representative to establish that earlier date of commencement of employment with the respondent, the Judge **confirms** the original decision, as regards paragraphs 1, 4, 5 and 6, it not being necessary to reconsider those parts of the original decision, but **revokes** paragraphs 2 and 3 of the original decision, and, having taken the decision again, as regards the amounts properly due and payable to the claimant by way of notice pay, and redundancy pay, the Employment Judge has decided to issue the following reconsideration judgment:

- (a) The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant of 12 weeks' notice pay in the sum of **£6,230.76 (Six Thousand, Two Hundred and Thirty Pounds, Seventy-Six Pence)**, being 12 weeks at £519.23 per week. The claim for £6,750 (being 3 months at £2,250 per month) is refused, as not vouched as being contractually payable to the claimant, and the Tribunal has made an award based on his statutory minimum period of notice, capped at 12 weeks as per **Section 86 of the Employment Rights Act 1996**.
- (b) The claimant was dismissed by reason of redundancy and is entitled to a statutory redundancy payment of **£13,462 (Thirteen Thousand, Four Hundred and Sixty-Two Pounds)** based on his age 56 years, 19 years'

continuous employment, and weekly pay of £519.23 per week, but restricted (by **Section 227 of the Employment Rights Act 1996**) to the statutory maximum of £508 per week, giving a statutory redundancy payment entitlement of 26.5 weeks at £508. The claim for a redundancy payment of £13,780 is overstated by the claimant, and it is accordingly refused by the Tribunal, as it fails to take into account the statutory cap on a week's pay, and it is not vouched as being contractually payable to the claimant, and the Tribunal has made an award based on his statutory redundancy payment entitlement, calculated as per **Section 162 of the Employment Rights Act 1996**.

- (5) The original decision, except insofar as varied and replaced by the above paragraphs (4) (a) and (b), made in substitution for paragraphs 2 and 3 in the original decision, remains in full force and effect, and it should now be read alongside this reconsideration judgment.
- (6) 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 respondent's pending application for strike-off from the Register of Companies, company number SC**248415**, as per the first Gazette notice dated 2 July 2019,
- and for the Registrar to consider suspending that strike-off application pending the respondent paying the claimant the sums ordered in this Judgment.

Employment Judge: Ian McPherson  
Date of Judgement: 20 August 2019  
Entered in register: 21 August 2019  
And copied to parties