



EMPLOYMENT TRIBUNALS

Claimants: Respondent:
(1) Mr A Barry v Oxford Precision Components
(2) Mr F Fowler UK Ltd
(3) Mr M Kennett
(4) Mr P Sauberlich

Heard at: Reading On: 6 February 2019

Before: Employment Judge KJ Palmer (sitting alone)

Appearances

For the Claimants: Mr C Harrington (Solicitor)
For the Respondent: No response entered, not entitled to attend and no attendance

JUDGMENT

Amended under Rule 69 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1

The Claimants are awarded the following sums:

1. Mr A Barry - £5,175.44. This includes a statutory redundancy payment of £978.00 to be deducted from the unfair dismissal award set out in detail in this Judgment.
2. Mr F Fowler - £27,401.69. This includes a statutory redundancy payment of £13,936.50 to be deducted from the unfair dismissal award set out in detail in this Judgment.
3. Mr M Kennett - £24,755.09. This includes a statutory redundancy payment of £7,335.00 to be deducted from the unfair dismissal award set out in detail in this Judgment.

4. Mr P Sauberlich - £22,048.03. This includes a statutory redundancy payment of £3,178.50 to be deducted from the unfair dismissal award set out in detail in this Judgment.

REASONS

1. This matter came before me today pursuant to claims presented to this tribunal by the four Claimants in a single ET1 claim form presented on 14 March 2018.
2. All four Claimants were employed by the Respondent, a precision component company manufacturing ferrous and non-ferrous items for use in various technology industries and the automotive industry.
3. They attended the premises of the Respondent at 5 The Chambers, Vineyard, Abingdon, Oxfordshire on 16 December 2017 to find that the exterior locks to the site had been changed by the landlord who happens to be the University of Oxford.
4. From that date, none of the four Claimants were able to attend the premises and work for the Respondent.
5. Despite this, they were promised throughout December and early January by Ranjan Kashyap, a director of the Respondent; and Dhiraj Mehta, the majority shareholder of the Respondent, that the company was continuing to trade and that there was a difficulty with the lease at the premises and that this would very soon be resolved and that they would all be back working. They were promised that they would continue to be paid their wages on a weekly basis as previously.
6. Sadly, none of the Claimants received any further payment. They were informed by Mr Mehta in early January that he would be paying them wages for December and January but no such payment was ever forthcoming.
7. As a result, all four Claimants took the initiative and wrote to the Respondent indicating that unless they heard from the Respondent by a specific date, they would treat themselves as dismissed and would then seek to find work elsewhere. All four sent identical letters to Mr Mehta and Mr Kashyap on 11 January 2018 explaining that despite the promises they had received, there appeared to be no active management and no active trading in the company

and that unless they heard promptly, they would treat themselves as dismissed – in the case of Mr Barry, on that date, 11 January, and in the case of the others, they allowed a little more time for a response on 19 January.

8. It should be borne in mind that all four were very concerned having not been paid for December and January, the Christmas period, and were very keen to seek work elsewhere.
9. Not surprisingly, they heard nothing and treated themselves as dismissed on the dates they had set out in their letters. In the case of Mr Barry, the reason why he had elected to treat himself as dismissed on 11 January was that he had secured work elsewhere and commenced on 15 January.
10. All four Claimants are to be congratulated for immediately seeking to mitigate their loss and to find work elsewhere.
11. I am delighted to say that all four were able to secure work elsewhere relatively quickly and are all gainfully employed in other companies.
12. I had four witness statements before me which I took as read and I variously questioned the Claimants during the course of this hearing.
13. I understand that they have heard nothing further from the Respondent or the two individuals who ran it. They tell me that in fact it looks very much as if the landlord has taken possession of the premises and is now using it for their own purposes as a carpentry unit for the University of Oxford.
14. It is clear that the Respondent no longer trades and there is absolutely no prospect of them doing so.
15. All four Claimants have applied to the Insolvency Service but have been told that as the company is not insolvent, their claims have been rejected.
16. They now pursue their claims in the Employment Tribunal.
17. Pursuant to the presentation of their claims in March 2018, no response was filed by the Respondent and accordingly, pursuant to Rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, under Rule 21(2), it was decided that it was necessary to fix a hearing before a Judge alone to determine judgment in these proceedings.
18. I am very grateful to Mr Harrington for his assiduous preparation in representing the four Claimants. I had before me four well drafted and clear witness statements and a bundle running to some 182 pages setting out all

relevant documentation and four well put together schedules of loss in each case.

The effective date of termination

19. I had to determine based on the evidence before me what the effective date of termination for each Claimant was. Having heard the evidence of the Claimants and taken as read their witness statements, I concur with Mr Harrington's assessment that the effective date of termination in respect of Mr Barry was 11 January 2018; in respect of Mr Fowler, it was 19 January 2018; in respect of Mr Kennett, it was 19 January 2018; and in respect of Mr Sauberlich, it was 19 January 2018.
20. I am therefore happy to endorse the schedules of loss for each Claimant as produced by Mr Harrington save in one material respect.
21. The calculation relating to loss of statutory rights is in my judgment flawed and is based upon two weeks' gross pay. That is not correct and I make an award of £500.00 for loss of statutory rights in each of the four Claimants' cases.
22. Accordingly, and pursuant to the above I make the following awards:

Mr Alan Barry

23. I make a finding that Mr Barry's claims for a statutory redundancy payment, unfair dismissal, wrongful dismissal, holiday pay and unlawful deduction of wages all succeed.

Unfair dismissalBasic Award/or Statutory Redundancy Payment:

2 weeks' gross pay	£978.00
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<u>Total Basic Award</u>	<u>£978.00</u>
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Compensatory Award:

Actual loss of earnings from 11/1/2018 until the date of this hearing 6/2/2019. 56 weeks x £470.32 net pay per week	£26,337.92
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Less earnings received from EDT to 6/2/2019	(£25,005.30)
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<u>Plus further earnings</u>	<u>£943.58</u>
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	<u>£389.04</u>
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Loss of pension contributions	0
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Loss of statutory rights	£500.00
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<u>Total Compensatory Award</u>	<u>£889.04</u>
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Wrongful dismissal

2 weeks' net pay	£940.64
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Holiday Pay under the Working Time Directive	£92.13
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Unlawful deduction of wages For the period 17/12/2017 to 11/2/2018	£2,275.63
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Grand Total payable by the Respondent to the Claimant	£5,175.44
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Mr Frank Fowler

24. I make a finding that Mr Fowler's claims for a statutory redundancy payment, unfair dismissal, wrongful dismissal, holiday pay and unlawful deduction of wages all succeed.

Unfair dismissalBasic Award/or Statutory Redundancy Payment:

1 x 3 x £489 + 1.5 x 17 x £489	£13,936.50	
		<u>£13,936.50</u>

Total Basic AwardCompensatory Award:

Actual loss of earnings from EDT 19/1/2018 until the date of this hearing 6/2/2019. 52 weeks x £607.99 net pay per week	£31,615.48	
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Less earnings received from EDT to 6/2/2019	(£30,996.15)	
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<u>Plus further earnings</u>	<u>£476.86</u>	
		<u>£142.47</u>

Loss of pension contributions		£80.39
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Loss of statutory rights		£500.00
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<u>Total Compensatory Award</u>		<u>£722.86</u>
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Wrongful dismissal

12 weeks' notice pay		£7,295.88
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Holiday Pay under the Working Time Directive		£1,601.20
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Unlawful deduction of wages For the period 17/12/2017 to 19/1/2018		£3,845.25
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Grand Total payable by the Respondent to the Claimant		<u>£27,401.69</u>
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Mr Michael Kennett

25. I make a finding that Mr Kennett's claims for a statutory redundancy payment, unfair dismissal, wrongful dismissal, holiday pay and unlawful deduction of wages all succeed.

Unfair dismissal

Basic Award/or Statutory Redundancy Payment:

1.5 x 10 x £489	£7,335.00	
		<u>£7,335.00</u>

Total Basic Award

Compensatory Award:

Actual loss of earnings from EDT 19/1/2018 until the date of this hearing 6/2/2019. 52 weeks x £500.13 net pay per week	£26,006.76	
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Less earnings received from EDT to 6/2/2019	(£17,960.44)	
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<u>Plus further earnings</u>	<u>£589.87</u>	
		<u>£7,456.45</u>

Loss of pension contributions		£279.65
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Loss of statutory rights		£500.00
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<u>Total Compensatory Award</u>		<u>£8,236.10</u>
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Wrongful dismissal

10 weeks' notice pay @ £500.13	£5,001.30	
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Holiday Pay under the Working Time Directive	£920.19	
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Unlawful deduction of wages For the period 17/12/2017 to 19/1/2018	£3,262.50	
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Grand Total payable by the Respondent to the Claimant		£24,755.09
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Mr Paul Sauberlich

26. I make a finding that Mr Sauberlich's claims for a statutory redundancy payment, unfair dismissal, wrongful dismissal, holiday pay and unlawful deduction of wages all succeed.

Unfair dismissal

Basic Award/or Statutory Redundancy Payment:

1 x 5 x £489 and 1.5 x 1 x £489	£3,178.50	
		<u>£3,178.50</u>

Total Basic Award

Compensatory Award:

Actual loss of earnings from EDT 19/1/2018 until the date of this hearing 6/2/2019. 52 weeks x £561.36 net pay per week	£29,190.72
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Less earnings received from EDT to 6/2/2019 (£18,842.96)

<u>Plus further earnings</u>	<u>£306.39</u>
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Loss of pension contributions	<u>10,041.37</u>
	£29.03

Loss of statutory rights	£500.00
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<u>Total Compensatory Award</u>	<u>£10,570.40</u>
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Wrongful dismissal

6 weeks' notice pay @ £561.36	£3,368.16
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Holiday Pay under the Working Time Directive	£1,302.52
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Unlawful deduction of wages For the period 17/12/2017 to 19/1/2018	£3,628.45
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Grand Total payable by the Respondent to the Claimant	£22,048.03
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Case Numbers: 3304730/2018

to

3304733/2018

Employment Judge KJ Palmer

Date: 5 March 2019

Judgment and Reasons

Sent to the parties on: ..11 November 2019

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For the Tribunal Office

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