



EMPLOYMENT TRIBUNALS

Claimant: Mr G Bridgwater

Respondent: K & B Thomas Removals Ltd

Heard at: Birmingham

On: 15 November 2019

Before: Employment Judge Meichen

Appearances:

For the claimant: in person

For the respondent: no appearance or representation

RULE 21 JUDGMENT

Background

1. The following background is provided insofar as relevant to the promulgation of this judgment.
2. The correct name of the respondent is "K & B Thomas Removals Ltd".
3. The claimant presented his ET1 claim form to the tribunal on 9 July 2019, following a period of ACAS early conciliation between 25 June 2019 and 9 July 2019. He alleged that he was owed notice pay, arrears of wages and holiday pay.
4. No ET3 response to the claim has been received, and there has been no appearance by or on behalf of the respondent today.
5. A search on Companies House indicates that the respondent is still an active company and has one active director.
6. The Tribunal decided that today's hearing should go ahead and the claimant should bring along documents to show the figures he was claiming.

7. The claimant attended today and has explained what has happened in what I consider to be a very straightforward way. In short, the claimant told me that the owner of the respondent company has sadly died so the company is no longer active and the claimant's employment was terminated as a result of that. The claimant has been in contact with those dealing with the respondent's outstanding business matters – including a firm of solicitors and an insolvency company.
8. Through these discussions it has been agreed and recorded in documentation shown to me that the claimant is entitled to the following sums:
 - (i) Outstanding holiday pay - £860.88.
 - (ii) Arrears of wages - £1020
 - (iii) Redundancy payment - £2380
9. The claimant has shown me that two payments have been made to him. One was for £1660.88 and the other was for £1560. That means there is a balance of £1040 outstanding.
10. The first payment to the claimant was expressed to be a part payment of £800 towards the arrears of wages and a full payment of the holiday pay of £860.88. The claimant has told me that he understands that the second payment was intended to cover 60% of the outstanding balance of the arrears of wages (i.e. £132) and 60% of the redundancy payment owed (£1428).
11. That means there is £88 pounds still outstanding for the arrears of wages and £952 for the redundancy payment.
12. A further issue was raised today in that the claimant told me that he believed he was also owed notice pay. I pointed out to the claimant that he had not ticked the box on his claim form to say he was claiming notice pay and that he would need permission to amend to include this claim.
13. The claimant told me that he had been informed that he was not entitled to notice pay by the respondent's advisers but had recently learned this was not correct. In the circumstances I granted the claimant permission to amend his claim. This was a pay claim which the claimant would have raised at the same time as his other pay claims (i.e. within time limits) had he not been given incorrect information. The respondent had chosen not to take any part in the proceedings and it would not be just to refuse the amendment.
14. The claimant was employed for 5 years and is entitled to one weeks pay for each year of service. The claimant's net weekly pay was £289 so that equates to £1445. I note that in correspondence from the respondent's advisers dated 15 May 2019 it was anticipated that the claimant may be owed a payment in

lieu of notice and there does not appear to be any reason why this should not be paid.

Rule 21

15. Insofar as relevant, Rule 21 of the Employment Tribunal's Rules of Procedure 2013 provides as follows:

Effect of non-presentation ... of response ...

(1) Where on the expiry of the time limit in rule 16 no response has been presented ... paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

16. It remains the case that the respondent company has failed to enter an ET3 response or made any attempt to participate in this hearing. I consider that there is sufficient material before me to enable a proper determination to be made.

Judgment

17. In accordance with my powers under Rule 21, I uphold the claimant's claims for a redundancy payment, failure to pay notice pay and an unlawful deduction from wages. The respondent is ordered to pay the claimant the following sums:

- (i) £952 for the balance of the redundancy payment outstanding.
- (ii) £1445 for the unpaid notice pay.
- (iii) £88 in respect of the unlawful deduction from wages.

Employment Judge Meichen
15 November 2019