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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4105936/2019

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Held at Glasgow on 12 August 2019

Employment Judge: P O'Donnell

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Mr Robert Oratynski

**Claimant
In Person
Interpreter -
Ms Karwacka**

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Sebastian Sosenko t/a Pine Tree Bakery

**First Respondent
Not Present and
Not Represented**

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The Pine Tree Bakery

**Second Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that:-

- 1) The Claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of **£391.50**.
- 2) The Respondent breached the Claimant's contract in a number of respects:-

E.T. Z4 (WR)

a. He dismissed the Claimant without notice and an award of **£391.50** is made in respect of this breach.

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b. He failed to pay the Claimant for contractual holidays taken in 2017 and 2018. An award of **£1,597.32** is made in respect of this breach.

c. He failed to provide the Claimant with work for a three week period in circumstances where there was no contractual power to lay off the Claimant. An award of **£587.25** is made in respect of this breach.

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REASONS

Introduction

1. The Claimant has brought complaints of redundancy pay, a failure to provide him with notice of dismissal, a complaint that he was not paid for holidays taken in 2017 and 2018 and a complaint that he was not paid for the last three weeks of his employment.

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2. The Respondent lodged an ET3 seeking to resist the claims although it was not clear from the content of the ET3 as to the basis of this. The Respondent did not dispute that the business had ceased trading and the Claimant dismissed as a result and the only dispute he raised appeared to be in relation to the sums owed to the Claimant.

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Preliminary issues

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3. The Respondent did not attend the Hearing. This was perhaps not surprising as his contact address was in Poland. The Tribunal administration tried to phone the Respondent on the telephone number provided but no contact could be made.

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4. In circumstances where no application for postponement had been made by the Respondent, the Tribunal decided it would in keeping with the overriding objective to proceed.

5 5. The Claimant is Polish and speaks little English. Unfortunately, he had not asked for an interpreter in advance. However, a Polish interpreter, Ms Karwacka, was available and the Tribunal is very grateful to her for attending at short notice allowing the hearing to proceed.

Evidence

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6. The Tribunal heard evidence from the Claimant via the interpreter.

Findings in fact

7. The Tribunal made the following relevant findings in fact.

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8. The Claimant was born on 29 June 1977 and was 41 years old when he was dismissed.

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9. He commenced employment with the Respondent in April 2016 after going through a trial period and training. The Claimant could not recall the precise date he started; he received his first pay on 1 May 2016 and was paid weekly. In the event, nothing turns on the precise date of employment.

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10. The Claimant was employed to work 25 hours a week and was paid £195.75 a week gross and £189.34 a week net. He was entitled to take 140 hours paid leave each year with the holiday year being January to December. He did not have a written contract and all of these terms were agreed verbally with the Respondent.

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11. On 24 January 2019, the Claimant and other employees were told by the Respondent not to attend work for a while but not to look for other jobs during this period as they would be back soon. Prior to this, the Claimant had not

reached any agreement with the Respondent that he could be laid off by the Respondent nor was there any agreement that the Respondent was entitled to not provide the Claimant with work.

5 12. The Claimant understands that the Respondent and his brother (who managed the business) were arrested and deported from the UK around this time. He understands that the Respondent now resides in Poland.

10 13. During this time, the Claimant and other employees tried to contact the Respondent but had difficulty doing so. Eventually, on 14 February 2019, another employee, Pawel Wujjak, got hold of the Respondent on the phone who told him that the business was closed and all employees were dismissed. Mr Wujjak informed the Claimant of this.

15 14. The Claimant is aware that the locks on the premises have been changed as he returned to try to collect personal belongings and could not get in. He understands that the owner of the property took action because the Respondent owed him rent arrears.

20 15. In 2017, the Claimant took his full 140 hours contractual holidays but was only paid for 75 hours. In 2018, he took his full 140 hours contractual holidays but was not paid for any of these.

Claimant's submissions

25 16. The Claimant made no submissions and relied on the contents of his ET1.

Relevant Law

30 17. Section 135 of the Employment Rights Act 1996 provides that an employee is entitled to redundancy payment where they are dismissed in circumstances where they are redundant.

18. The definition of redundancy can be found in section 139 of the Employment Rights Act 1996 and includes the situation where the employer ceases to carry on the business in which the employee is employed.
- 5 19. The amount of any redundancy pay is determined by section 162 of the 1996 Act and is a number of weeks' pay depending on age and length of service.
20. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by
10 way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996.
21. Where an employer does not give the correct notice of dismissal then an employee can recover damages for this breach of contract equivalent to the
15 salary they have lost for the relevant period.
22. It is a fundamental term of any contract of employment that the employer provides work for the employee to do. A failure to comply with this term would be a breach of contract and an employee can sue for any losses arising from
20 such a breach.
23. Similarly, any failure by an employer to pay sums due under the contract will amount to a breach of contract entitling the employee to sue for losses arising from the breach.
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24. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. The 1994 Order provides that any claim for breach of contract must be lodged within
30 3 months of the end of employment.

Decision
Redundancy Pay

5 25. The Tribunal finds that the Claimant was dismissed by reason of redundancy; the circumstances in which he was dismissed fall squarely into the definition of redundancy in section 139(1)(a)(i) of the 1996 Act.

26. The claimant was 41 at the time of his dismissal and had 2 years' service. He is therefore entitled to a redundancy payment of 2 weeks' pay.

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27. The claimant's gross pay per week was £195.75. He is, therefore, entitled to a redundancy payment of 2 weeks x £195.75 = £391.50.

Breach of contract

15 28. The Claimant was entitled to 2 weeks' notice of dismissal and was provided with no notice at all in breach of contract.

29. The Tribunal therefore awards the Claimant damages equal to two weeks' wages for the breach of contract relating to the failure to pay notice. This sum is taxable and the award is made gross so that the Claimant gets the net amount in his hand. The sum awarded is £391.50.

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30. The Tribunal also finds that the Respondent breached the Claimant's contract when they failed to pay him for the holidays he took in 2017 and 2018. The Tribunal finds that the Claimant had a contractual entitlement to 140 hours paid holiday each year and that a failure to pay the Claimant for this is in breach of contract.

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31. The losses flowing from this breach of contract is equal to 205 hours' pay and so the Tribunal awards the Claimant the sum of £1597.32 in damages for this breach. Again, this sum is taxable and the award is made gross so that the Claimant gets the net amount in his hand.

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32. Finally, the Tribunal finds that there was no term of the Claimant's contract of employment which entitled the Respondent to lay off the Claimant or fail to provide him with work. The Respondent was therefore acting in breach of contract for the three week period from 24 January (when the Claimant was told not to come to work) to 14 February 2019 (when the Claimant was dismissed) in that the Respondent failed to provide him with work.

33. The Claimant's loss flowing from this breach are the wages he would have earned in this period and so the Tribunal awards the Claimant the sum of £587.25 (that is, a sum equivalent to 3 weeks' wages) for this breach. Again, this sum is taxable and the award is made gross so that the Claimant gets the net amount in his hand.

Date of Judgment: 15 August 2019

Employment Judge: Peter O'Donnell

Entered Into the Register: 04 September 2019

And Copied to Parties

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