



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss R Mumford

**Respondent:** Ms J Gooding T/A  
Lemon Tree Nails and  
Beauty

**Heard at:** Cardiff **On: 21 October 2019**

**Before:** Employment Judge  
Ward (sitting alone)

**Representation:**

Claimant: Mr Mumford (claimants'  
father)

Respondent: In person

**JUDGMENT** having been sent to the parties on 22 October 2019 and reasons having been requested by the respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

## REASONS

**The claim**

1. This claim relates to a termination of employment and a payment of notice monies

**The law**

2. The applicable law is s13 of the Employment Rights Act 1996 and common law contract law. With consideration of the time limits that apply

to such a claim under Regulation 7 of the Employment Tribunal Extension of Jurisdiction Order 1994.

**The evidence**

3. I heard evidence from the claimant and the respondent and was provided with paperwork from the parties.

**List of issues**

4. As this was a claim for notice pay s13 of the Employment Rights Act 1996 does not apply as it is not a description of wages properly payable under the Act. As this payment arose on the termination of the claimant's employment, I have had to consider the common law of contract together with the time limits that apply and whether it was reasonably practicable for the complaint to be presented and if not whether it was presented in such a further period as the tribunal considers reasonable.

**Findings of fact**

5. The Respondent owns her own business trading as Lemon Tree Nails and Beauty. The Claimant was employed under a contract of employment which both parties signed on 6 December 2018.
6. The Claimant was employed as a Lash Technician, Trainee Beauty Therapist and Nail Technician on 1 November 2018. She worked until 4 February 2019 and had New Year's Day as paid leave.
7. Within the contract it confirms the following; contracted hours of 16 hours per week, a rate of pay of £8 per hour and termination by employer to an employee is 4 weeks notice with provision for pay in lieu of notice, holidays are 28 days per year including bank holidays and the holiday year is from 1 January to 31 December with no entitlement to carry forward from one year to the next.
8. The Respondent had a quiet Christmas in 2018 and decided she could not afford to retain the Claimant. On 4 February the Claimant received an email from the Respondent terminating her employment with a final pay slip to follow. The Claimant treated this letter as a dismissal and queried her entitlement to pay in lieu of notice.
9. The Respondent upon realising the mistake offered to rectify the situation and honor the 4 weeks' notice requiring the Claimant to attend work to enable payment to be made for the work done. The claimant did not accept this offer of reinstatement. The Respondent agreed in writing that it had dismissed the claimant and continued to send pay slips during the notice period. However, the claimant was not paid during the subsequent four weeks because she didn't attend work. The claimant was paid in lieu of holidays at the end of the fourth week.

10. The holiday year is from 1 January of each year. There has been a change in the law, and the claimant would have been entitled to 4 weeks' plus bank holidays. A pro rata calculation for 16 hours per week at 5.6 weeks from January 2019 accrues 1.4 days. The claimant took paid leave on 1 January 2019 and was paid in lieu 4.5 hours.
11. The date when the pay in lieu of notice and outstanding holiday pay should have been paid had to be determined. The claimant explained in evidence that she was paid weekly in arrears as set out in her contract and therefore all outstanding monies should have been paid on 8 February. She was not however paid on this date, she received pay slips for the next four weeks and was paid in lieu of holidays on 1 March.
12. The Claimant explained in evidence that she believed the due date to be in March when her notice period would have expired and also due to advice from ACAS and the Citizens' Advice Bureau. The claimant contacted ACAS on 13 May and the certificate was issued by ACAS on 21 May.
13. The claimant is unrepresented and relied upon advice which was incorrect given the findings of fact in this case. The Tribunal totally understands why the payslips were sent during the four week period but it did cause confusion as to when the Claimant was employed or not employed. The Claimant did submit the claim within 7 days of her ACAS Certificate.

### **Conclusions**

14. The claim was presented on 28 May 2019. On the basis of the above facts that payment was due on the 8 February the claim on the face of it has been presented outside the statutory three month time limit. The ACAS period of early conciliation does not extend time as this was entered into after the expiry of the deadline.
15. The Tribunal therefore had to consider if it was reasonably practicable for the claimant to present her claim in time. The claimant received pay slips during the four weeks following her termination and was paid in lieu of holidays on 1 March. If the 1 March had been the effective date of termination her claim would have been submitted in time. The Tribunal is of the view that it wasn't reasonably practicable for a litigant in person to submit the claim based on a date she was not aware of until the finding of fact in this Tribunal. She was taking advice and the situation was confused by the receipt of the pay slips.
16. On the basis that it was not reasonably practicable to present the claim in time the Tribunal has had to consider if the claimant made the claim in such a reasonable time thereafter. The claimant contacted ACAS within 6 weeks of her pay in lieu of annual leave and following receipt of the

certificate submitted the ET1 within 7 days. The Tribunal finds no undue delay and finds that this is a reasonable period. As a result, the time period is extended and the claim can proceed.

17. The Claimant was dismissed with immediate effect by the letter of 4 February, the Claimant did not agree to be re-employed and the dismissal was not withdrawn. As a result, in accordance with the signed contract of employment the Claimant was entitled to 4 weeks' notice upon that termination as payment in lieu of notice. There were no grounds to summarily dismiss without notice.
18. The claimant upon termination of employment had 4.5 hours accrued annual leave and this was paid in lieu on the 1 March with no additional payment owed..

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Employment Judge Ward  
Dated:10 December 2019

JUDGMENT SENT TO THE PARTIES ON

.....21 December 2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

**NOTE:**

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.