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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Numbers: 4118200/2018 and 4118199/2018

Heard in Glasgow on 26 November 2019

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Employment Judge Lucy Wiseman

15 **Mr Anthony Currie**

**First Claimant
Represented by:
Mr P Currie
Lay Representative**

20 **Ms Linda McCulloch**

**Second Claimant
Represented by:
Mr P Currie
Lay Representative**

25 **GGL Catering Ltd**

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:-

- 35 (i) GGL Catering Ltd shall pay to Mr Currie a redundancy payment of **Nine Thousand, Six Hundred and Ninety Pounds (£9,690)** and notice pay of **Three Thousand, Five Hundred and Ninety Three Pounds (£3,593)** and

E.T. Z4 (WR)

- (ii) GGL Catering Ltd shall pay to Ms McCulloch a redundancy payment of **Four Thousand, Nine Hundred and Nine Pounds** (£4,909) and notice pay of **Two Thousand, Eight Hundred and Twenty Seven Pounds** (£2,827).

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REASONS

1. The claimants presented a claim to the Employment Tribunal on 2 September 2018 alleging they were entitled to receive a redundancy payment and payment of notice of termination of employment.
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2. The claimants initially noted three possible employers: Ralphael Pacitti, first respondent; G E P Enterprises Ltd, second respondent and GGL Catering Ltd, third respondent.
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3. A Preliminary Hearing took place on 28 February 2019 to determine the correct identity of the employer.
4. An Employment Judge issued a Judgment dated 8 March 2019, in which he noted the claims against the first and second respondent were dismissed following withdrawal by the claimants, and the claims against the third respondent were remitted to a one day hearing. The Employment Judge noted the issues to be determined at that hearing would be: (i) whether the claimants' employment with the third respondent was continuous from the date of commencement of their employment; (ii) if not, when did the claimants commence their employment with the third respondent and (iii) are the claimants entitled to a redundancy payment and notice pay from the third respondent and if so, at what amount.
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5. The response of the third respondent was struck out in a Judgment dated 27 August 2019 because the respondent had failed on four occasions to respond to correspondence from the tribunal.
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6. I heard evidence from the claimants, and I was referred to a number of documents. I, on the basis of the evidence before me, made the following material findings of fact.

5 **Findings of fact**

7. Mr Anthony Currie commenced employment on 6 July 2000. He was employed as a Chef.

10 8. Mr Currie had initially been employed by Cathal Maguire Ltd, a company owned by Mr Darren Fields.

9. Mr Fields informed Mr Currie that he was selling the business to Mr Ralph Pacitti in July 2007.

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10. Mr Currie continued to work 40 hours per week as a Chef. He was paid an hourly wage of £9.50.

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11. Mr Pacitti subsequently transferred the business to his son, Giancarlo Pacitti, who owned a company called GEP Enterprises Ltd.

12. Mr Currie was not informed about this transfer, nor the subsequent transfer to GGL Catering Ltd.

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13. GEP Enterprises Ltd subsequently transferred the business to GGL Catering Ltd (a company owned by Mr Ralph Pacitti's younger son, Luciano Pacitti). This transfer occurred on or about late March/early April 2017.

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14. Mr Currie was given a letter dated 1 June 2018 entitled Notice of Termination of Employment (page 17). The letter, which was handed to Mr Currie on 8 June, confirmed his employment would terminate on 15 June 2018 and that he would be paid one week's notice and holiday pay. The letter also enclosed a Principal Statement of Employment dated 10 April 2017 (page 14) which

noted the date of employment as being 23 March 2017, the hours of work as being 30 per week and the rate of pay as being the national minimum wage. These particulars were incorrect.

5 15. Mr Currie worked continuously throughout the period of his employment from 6 July 2000 until his employment terminated on 15 June 2018. He worked 40 hours per week throughout this period and earned an hourly rate of £9.50. A pay slip from GGL Catering Ltd for the week 7 April 2017 was produced at page 15 confirming the claimant worked 40 hours for an hourly rate of £9.50. 10 The gross pay was £380 and the net pay was £326.64. A further pay slip for 14 April 2017 (page 16) confirmed these details.

16. Ms McCulloch commenced employment in May 2006. She was employed by Cathal Maguire Ltd as a Shop Assistant, working 40 hours per week.

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17. Mr Fields informed Ms McCulloch that the business had been sold to Mr Ralph Pacitti. Ms McCulloch's employment transferred to Mr Ralph Pacitti in June 2007.

20 18. Ms McCulloch was not informed about subsequent transfers of the business to GEP Enterprises Ltd in April 2017 and then to GGL Catering Ltd in March/April 2017.

25 19. Ms McCulloch was informed by Mr Ralph Pacitti in early March 2018 that her employment would be terminating because the building had to close. This was subsequently confirmed by Luciano Pacitti on 8 June 2018. Ms McCulloch was given a letter (page 21) confirming notice of termination of employment, and giving one week's notice.

30 20. Ms McCulloch queried why she was not being paid a redundancy payment and 12 weeks' notice. She was advised by Mr Luciano Pacitti that this was because she had only worked for him for a year.

21. Ms McCulloch was handed the Principal Statement of Employment (page 18) as she was leaving the premises on the last day of her employment. The Statement, dated 10 April 2017, referred to Ms McCulloch working 30 hours per week. This was incorrect because Ms McCulloch had, since 2007, worked 38 hours per week.

22. Ms McCulloch produced two pay slips (pages 19 and 20) showing she worked 38 hours for a rate of £7.50 per hour, giving a gross weekly pay of £285, and a net weekly pay of £257.04.

Discussion and Decision

23. I firstly had regard to the ET3s presented by the three respondents. The first respondent's ET3 suggested the claimants had not been employed by Mr Ralph Pacitti personally, but by a partnership called Arcaffe TSC. The ET3 asserted the claimants' employment transferred (by virtue of the Transfer of Undertakings Protection of Employment Regulations – TUPE) to GEP Enterprises Ltd with effect from 1 April 2014. (It is not material to this case, but I noted the assertion the claimants had been employed by Arcaffe TSC rather than Mr Ralph Pacitti personally was not supported by a Minute of Agreement for the sale of the business which named Mr Ralph Pacitti personally as the seller).

24. The ET3 response for GEP Enterprises Ltd accepted there was a TUPE transfer of staff at the time of the transfer which occurred on or about 1 February 2014. The ET3 response also referred to GEP Enterprises Ltd being in liquidation and stated: "*when GEP Enterprises ceased trading the next business that opened TUPED everything into their company*".

25. The ET3 response from GGL Catering Ltd suggested Mr Currie had been offered a trial period and that his employment had started on 1 April 2017.

26. The third respondent was asked to produce information and documentation to clarify the basis upon which it had taken over the business from GGL

Enterprises Ltd. The third respondent failed to respond to this correspondence and this ultimately led to their ET3 response being struck out.

5 27. I accepted the claimants' evidence regarding the fact they were not informed of any subsequent transfer after Mr Ralph Pacitti acquired the business. They had understood they worked for Mr Ralph Pacitti in a family run business.

10 28. I found as a matter of fact that the claimants worked the same number of hours on a continuous basis: there was no break in service. I also preferred the claimants' evidence that they had not been asked to work a trial period.

15 29. The evidence suggested there had been a seamless transfer of the business from GGL Enterprises Ltd to GGL Catering Ltd. The claimants' employment TUPE transferred from GEL Enterprises Ltd to GGL Catering Ltd in late March or early April 2017.

20 30. The effect of the TUPE transfer to GGL Catering was that the claimants' employment transferred to GGL Catering Ltd with continuity of service preserved.

31. Mr Luciano Pacitti, for GGL Catering Ltd, gave notice of termination of employment effective on 15 June 2018. The reason for the termination of employment was redundancy.

25 32. I decided Mr Currie is entitled to be paid a redundancy payment and 11 weeks' notice from GGL Catering Ltd.

30 33. I calculate the redundancy payment to be £9,690 (being 25.5 weeks x £380 gross per week).

34. I calculate the payment of notice to be £3,593 (being 11 weeks x £326.64 net per week).

35. I decided Ms McCulloch is entitled to be paid a redundancy payment and 11 weeks' notice from GGL Catering Ltd.

5 36. I calculate the redundancy payment to be £4,909 (being 15.5 weeks x £297.54).

37. I calculate the payment of notice to be £2,827 (being 11 weeks x £257.04 net per week).

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Employment Judge: Lucy Wiseman
Date of Judgment: 26 November 2019
Date sent to parties: 29 November 2019

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