



# EMPLOYMENT TRIBUNALS

**Claimants** Mr C Longbottom and  
Mrs L Longbottom

**Respondent:** Thornhill Lees Community Association Limited

**HELD AT:** Leeds **ON:** 26 February 2020

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimants:** Mrs L Longbottom  
**Respondent:** Mr T Wood, Counsel

# JUDGMENT

- 1.The correct title of the Respondent is Thornhill Lees Community Association Limited.
2. The claims of no notice pay and no holiday pay are dismissed on the ground that they are out of time and time is not extended on the ground that it would have been reasonably practicable for the claims to be issued in time.
3. The claim of redundancy payments are dismissed.

# REASONS

## 1. Introduction

In this case Mr and Mrs C and L Longbottom were employed respectively as caretaker with reception duties and youth and community centre manager, in the case of Mr Longbottom from 13 July 2009 and in the case of Mrs Longbottom from 9 April 2007 until their employment terminated on 18 October 2018. The Claimants come to this Tribunal for redundancy payments, for notice pay and for holiday pay.

## 2. Issues

- 2.1. Whether or not the Claimants are entitled to notice pay.
- 2.2. Whether or not the Claimants are entitled to holiday pay.
- 2.3. Their claims for the foregoing being out of time, whether or not was reasonably practicable for them to have issued those claims in time.
- 2.4. Whether or not the Claimants were dismissed from their employment.
- 2.5. If the Claimants were dismissed, what was the reason for dismissal. The Claimants say that it was redundancy. The Respondent offers no other reason.

## 3. Evidence

- 3.1. The Tribunal heard oral evidence from the Claimants and from Kamran Asif (Kamran) and Gulfam Asif (Gulfam). The Respondent had available Mr Bruce Bellwood but elected not to call him.
- 3.2. Mrs Longbottom gave the majority of the evidence on behalf of both Claimants but Mr Longbottom did give evidence and said that he agreed with her evidence.
- 3.3. At times Mrs Longbottom was unclear in her evidence. For example, when talking about on which day she had the key conversation with Kamran, she described her evidence as muddled, saying that she didn't really know what she was doing. By the key conversation the Tribunal means the alleged conversation between at least Mrs Longbottom, maybe Mr Longbottom, and Kamran on or about 15 October 2018. She did not think it unusual to be writing out her and Mr Longbottom's letters of dismissal. Further she and Mr Longbottom seemed to be confused as to where the key conversation took place. Mrs Longbottom said she didn't know if Mr Longbottom was present during the key conversation. As far as the letters were concerned, which it is alleged were produced as a result of the alleged key conversation, for some reason Mrs Longbottom produced four to six copies, all allegedly signed by Kamran and apart from a copy for ACAS she did not know why she had done this. She also said that one of the greatest problems she has is not telling the truth. She did try to correct this statement with two separate versions. She also had no satisfactory explanation as to why she post-dated the letters. She thought the letters, apparently taken from a template with no right of appeal in them, were "nice". These letters were not mentioned from the moment that they emanated from the key conversation, on or about 15 October 2018, until she wrote a letter by email to the Respondent on 30 November 2018 and she was unable to explain why she did not mention the letters in that letter dated 30 November 2018.
- 3.4. Mr Longbottom, whose evidence as I have indicated was much shorter than Mrs Longbottom's, told the Tribunal that he was present at the key conversation, although it was not in his statement, when Kamran in fact signed the letters. Mr Longbottom agreed it was not normal for a caretaker to be involved in conversations like the key conversation. He told Mr Wood that he was working on his witness statement the night before the Tribunal hearing, despite Mr Wood pointing out that he, Mr Wood, had received it earlier that day (on or about 11am). Mr Longbottom blamed paperwork and said that a few mistakes were made on the way.

- 3.5. Kamran was a much clearer witness and did not look for explanations.
- 3.6. Gulfam was of little assistance in dealing with the issues.
- 3.7. That there was a degree of conflict on the evidence. Having heard Mr and Mrs Longbottom on the one hand and Kamran on the other, the Tribunal preferred, wherever there was conflict on the evidence, the evidence of Kamran, and, therefore, the evidence of the Respondent, to that of the Claimants.

#### 4. The law

- 4.1. The Tribunal has to have regard to the following:
- 4.2. As regards time, in so far as it relates to notice pay, section 93(3) of the Employment Rights Act 1996 (ERA) which in turn refers to section 111(2)(b) ERA apply. That is the legislation which allows the Tribunal in a case where it is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the period of three months to extend time.
- 4.3. As regards holiday pay, as this is probably a contractual issue, rather than one under the Working Time Regulations, the relevant provision is Article 7(c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. The provisions are similar to section 111(2)(b) ERA.
- 4.4. On the question of time it is well decided that section 111(2)(b) ERA should be given a liberal construction in favour of an employee – see **Dedman v British Building and Engineering Appliances Limited** [1974] ICR 53 Court of Appeal. Indeed the question of whether there should be an extension is a question of fact. Guidance has been given on the expression “reasonably practicable” which is said to mean “reasonably feasible” in the case of **Palmer and anor v Southend on Sea Borough Council** [1984] ICR 372 in the Court of Appeal.

A Tribunal is entitled to take into account knowledge of rights, illness of a claimant and length of the delay.

- 4.5. Dealing with the question of dismissal and whether there was one or not, the law is contained in section 95(1) ERA and dismissal can be either where the contract is terminated by the employer with or without notice, or under a limited term contract or where the employee terminates the contract with or without notice in circumstances in which he or she is entitled to terminate it without notice by reason of the employer’s conduct.

#### 5. Facts

The Tribunal having carefully reviewed all the evidence both oral and documentary before it finds the following facts (proved on the balance of probabilities):

- 5.1. Kamran was a trustee of the Respondent and had been since June 2018. At the time of the key conversation he was the sole trustee. He had previous business experience and was aware of redundancy, having been made redundant himself.
- 5.2. Mrs Longbottom seemed to be in day to day charge of the Respondent and we find that Mr Longbottom followed her lead.
- 5.3. We find that Kamran never had conversations with Mr or Mrs Longbottom about redundancy, not even in the key conversation, which was on or about 15 October 2018.

- 5.4. What happened on or about that date was that Mrs Longbottom told Kamran that the Respondent had run out of money and that the Claimants were leaving on 18 October 2018.
- 5.5. Kamran discovered subsequent to the letter dated 30 November 2018, which Mrs Longbottom wrote about redundancy, that it was alleged by the Claimants that Kamran had agreed to the Claimants' redundancies and that on Kamran's instructions Mrs Longbottom should write letters of dismissal on behalf of the Respondent. We find that Kamran had no knowledge of either any redundancies or the alleged letters or dismissal at or about 15 October 2018 or at any time until after 30 November 2018. No steps were taken by the Respondent, through Kamran or otherwise, to make the Claimants redundant or dismiss them.
- 5.6. Mrs Longbottom painted the picture before us of being in meetings leading up to the redundancies, but redundancies were never mentioned in those meetings. Those meetings comprised Mrs Longbottom saying that the Respondent could not afford to keep her, but there was never any pressure from the Respondent on her or Mr Longbottom to leave.
- 5.7. It is true that after their departure Mr and Mrs Longbottom's roles were absorbed by trustees (Kamran and three appointed later). No other redundancies were made within the Respondent organisation, although employees did leave by natural wastage.
- 5.8. With regard to the question of time the Claimants were out of time for issuing the notice pay and holiday pay claims. Early Conciliation should have been commenced by 17 January 2019 and the Claimants did not do so until 19 February 2109.
- 5.9. Mrs Longbottom had spoken to ACAS in November 2018 and, on advice, written the letter dated 30 November 2018. Mrs Longbottom spoke to ACAS again, this time in January 2019 and the question of a claim form was raised but unusually not time limits. Mrs Longbottom said she did not know anything about these.
- 5.10. During the relevant period Mrs Longbottom was suffering from stress and anxiety, but this did not prevent her from communicating with ACAS (twice) or the Respondent on 30 November 2018.

## **6. Determination of the issues**

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 6.1. The Tribunal finds that it was reasonably practicable for the Claimants to issue proceedings in time. Despite Mrs Longbottom's illness she continued to deal with the case on behalf of herself and Mr Longbottom. In the circumstances time is not extended, either in relation to the claim for notice pay or the claim for holiday pay and both those claims are dismissed.
- 6.2. With regard to the claim for redundancy payments, this is an extraordinary case. The suggestion that Kamran initiated, bearing in mind his knowledge of redundancy and business experience, a redundancy procedure, without warnings or consultation, and left it to the "victims" to "execute" themselves, is a difficult concept. But we are not here concerned with concepts. We are concerned with the evidence. For all the reasons that have been set out in

the evidence of section (paragraph 3. above), we find that the evidence of Kamran is preferred to that of the Claimants and for that reason we find that he neither agreed to the redundancies of the Claimants nor did he authorise Mrs Longbottom to prepare the redundancy letters to the Claimants, nor did he sign the letters and, therefore, the Claimants were not dismissed for redundancy or otherwise and the Claimants' claims for redundancy payments are dismissed.

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**Employment Judge Shulman**

Date 27 February 2020