



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103008/2019

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Held in Glasgow on 12 June 2019

Employment Judge O'Donnell

10 Mrs A McGloin

Claimant  
In Person

Bute House Ltd

Respondent  
Not present and  
Not represented

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:-

- 20 1. The claimant was dismissed by reason of redundancy and is entitled to a statutory redundancy payment of **£6646.14**.
2. The claims of unlawful deduction of wages and breach of contract were presented outwith the time limit set down in s23(2) of the Employment Rights Act 1996 and the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 respectively. Further, that it was reasonably practicable for the claimant to have presented the claim within the relevant time limit. In these
- 25 circumstances, the Tribunal does not have jurisdiction to hear those claims.

### REASONS

#### Introduction

- 30 1. The claimant has brought complaints in relation to the following matters:-

a. That she is due a statutory redundancy payment;

b. Unlawful deduction of wages in respect of a shortfall in her final wages;

**E.T. Z4 (WR)**

- c. Unlawful deduction of wages in respect of pay in lieu of untaken holidays;
  - d. Breach of contract in respect of a failure by the respondent to give proper notice of dismissal.
- 5 2. The respondent did not submit an ET3 in response to the claim and did not attend the hearing.

### **Evidence**

3. The Tribunal heard evidence from the claimant.

### **Findings in Fact**

- 10 4. The Tribunal makes the following relevant findings in fact:-
- a. The claimant commenced employment with the respondent on 6 February 2006. When her employment terminated she was employed as a carer but had previously worked as a senior carer. She worked 32 hours a week made up of 4 shifts of 8 hours each. She was paid 15 £1600 a month gross and £1200 a month net.
  - b. The claimant's employment terminated on 2 October 2018; the respondent had ceased trading and closed the care home in which the claimant had worked on 14 September 2018 when the last resident had been transferred to another home. The claimant and her 20 colleagues had been informed the week before that the home was to close but that they would be employed until 2 October 2018
  - c. The claimant spoke to Vijay Valman who was one of the owners of the respondent about getting a letter confirming she was redundant and about payments she would receive. She was told not to worry.
  - d. After her employment terminated, the claimant, along with other former 25 employees of the respondent, tried to contact the respondent about monies owed to them. They could not get an answer on the telephone

number for the respondent, the respondent's offices were closed and the app they had used to contact the respondent was shut down.

- e. The claimant did not take any advice until she had spoken to a colleague, Ann Major, who referred her to Strathclyde University Law Clinic. The claimant could not recall exactly when she spoke to her colleague but thought it was after New Year.
- f. The claimant attended the Law Clinic and was advised that her claims may be out of time but that she could apply to the Employment Tribunal to see if the claims would be heard out of time.
- g. As a result of this advice, the claimant contacted ACAS on 15 March 2019 to engage Early Conciliation.
- h. The ACAS Early Conciliation Certificate was issued on the same day.
- i. The claimant submitted an ET1 on 19 March 2019 but this was rejected due to a difference in the name of the respondent on the ET1 and the Early Conciliation Certificate. A revised ET1 which corrected the error was submitted on 22 March 2019.

**Relevant law**

- 5. 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.
- 6. 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.
- 7. 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.
- 8. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is

authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.

9. Section 23(2) states that the Tribunal shall not consider a complaint of deduction of wages unless it is presented within 3 months of the date of payment of the wages. Where there are a series of deductions then s23(3) states that the time limit runs from the last deduction in that series.
10. The Tribunal has discretion under s23(4) to hear a claim outwith the time limit set in ss23(2) and (3) where they consider that it was not reasonably practicable for the claim to be presented within the 3 month time limit and it was presented within a further period that the Tribunal considers to be reasonable.
11. 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 way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996.
12. 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 salary they have lost for the relevant period.
13. 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 3 months of the end of the claimant's employment. It contains a discretion for the Tribunal to hear a complaint out of time in similar terms to the discretion under s23(4) of the 1996 Act set out above.

25 **Claimant's submissions**

14. The claimant accepted that her claims for unlawful deduction of wages and breach of contract were not lodged in time. She had taken her employer's word that she would be paid. She had not taken advice at the time as she had no money and could not afford a lawyer.

## Decision

### Redundancy Pay

- 5 15. The Tribunal finds that the claimant was dismissed by reason of redundancy; the circumstances in which she was dismissed fall squarely into the definition of redundancy in section 139(1)(a)(i) of the 1996 Act.
16. The claimant was 57 at the time of her dismissal and had 12 years' service. She is therefore entitled to a redundancy payment of 18 weeks' pay.
- 10 17. The claimant's gross pay per week was £369.23 (£1600 per month x 12 months gives an annual salary of £19200 and this divided by 52 weeks gives £369.23 a week). She is, therefore, entitled to a redundancy payment of 18 weeks x £369.23 = £6646.14.

### Unlawful deduction of wages/Breach of Contract

- 15 18. The Tribunal finds that the claims for unlawful deduction of wages and breach of contract were not presented within the relevant time limit under s23 of the Employment Rights Act 1996 or the 1994 Order, respectively. The claimant was dismissed on 2 October 2018. The time limit for lodging either claim would have expired on 1 January 2019. The time limit had, therefore, expired when the claimant contacted ACAS to commence Early Conciliation on 15 March 2019 and so she could not benefit from any extension of time as a result of Early Conciliation.
- 20 19. The Tribunal considered whether or not it would exercise its discretion under s23(4) ERA or the 1994 Order to hear the claim out of time. For the reasons set out below, the Tribunal considered that it would not do so.
- 25 20. The Tribunal considered that it was reasonably practicable for the claim to have been presented in time. There was no evidence before the Tribunal that the claimant was, in any way, unable to have taken advice and lodge a claim in time. Although she had put faith in her employer to do the right thing, this does not allow the Tribunal to conclude that it was not reasonably practicable for her to have taken action. The same would apply in respect of

the fact that the claimant was not aware of the time limits for lodging a claim; she was not prevented from taking advice, as she subsequently did, which would have identified the time limits.

5 21. In these circumstances, the claims for unlawful deduction of wages and breach of contract being lodged out of time and the Tribunal not being willing to exercise its discretion to hear those claims out of time, the Tribunal does not have the jurisdiction to hear the claim.

10 22. In light of the decision on the time limit issue, the Tribunal has not considered the substantive issues regarding whether or not the claimant was subject to an unlawful deduction of wages or breach of contract.

Employment Judge: Peter O'Donnell

Date of Judgement: 26 June 2019

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Entered in Register,

Copied to Parties: 01 July 2019

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