



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C Bailey

**Respondent:** Reuse & Employment Limited

**Heard at:** East London Hearing Centre

**On:** 29 June 2020

**Before:** Employment Judge Russell

**Representation**  
**Claimant:** In person  
**Respondent:** No Response presented. Did not attend.

## JUDGMENT

1. The Claimant is granted leave to amend her claim to include a complaint of failure to pay notice.
2. The Respondent having failed to present a Response, all claims succeed.
3. The Respondent must pay to the Claimant the total sum of £1,421.20

## REASONS

1. This has been a remote hearing by CVP video conference, which has not been objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I was referred to the claim form, the contents of the file and an email from the Claimant dated 16 June 2020.

2. By a claim form presented on 31 January 2020, the Claimant brought a complaint for arrears of pay and holiday pay. In summary, that on 15 December 2019 she was not paid the full amount of salary due to her, that she was not paid for work subsequently done in December 2019 and, following submission of a sick certificate on 10 January 2020, for work in January 2020 either. The Claimant made attempts to obtain payment and was initially told by the Respondent's Mr Penn that she would be paid, although no payment has been

made. The Claimant submitted a grievance on 20 January 2020 to which she has received no reply.

3. The Claimant contacted ACAS on 27 January 2020. The Claimant subsequently became aware that the office had closed due to alleged non-payment of rent. As of today's date, the Respondent is recorded by Companies House as active and no insolvency proceedings appear to have been instituted.

4. The Respondent has not presented a Response. Having reviewed the file, I am satisfied that the claim was properly served on the address given by the Claimant, as were the Notice of Hearing and email advising the parties that the claim would be heard by video conference facility. Today, my clerk attempted to telephone the Respondent but could get no reply. I am satisfied that it is in the interests of justice to proceed with the hearing.

5. The Claimant did not tick the box on the claim form to indicate any claim for notice pay. She tells me that she did not know that she could bring such a claim but would have done so if she knew that it was possible. Given that there was no express dismissal and she was acting without the benefit of legal advice, I accept that this was a reasonable misunderstanding on the part of the Claimant. The Claimant's employment has clearly terminated even though there has been no express letter of dismissal: she has not been paid since 15 December 2019 (and then not in full), has raised a grievance to obtain payment and received no response at all. Even without an express termination, these were repudiatory breaches of contract and they amount to a dismissal for which no notice was given. I accept that the Claimant would have been entitled to four weeks' notice based upon a termination on 31 January 2020, the end of the working week in which she contacted ACAS. I treated this as an application to amend to include a claim for notice pay.

6. I considered whether to grant the Claimant leave to amend her claim, applying the guidelines set down in **Selkent Bus Company Ltd v Moore** [1996] IRLR 661 and **Cocking v Sandhurst Stationers Limited** [1974] ICR 650 NIRC. Whilst the overarching consideration is the balance of justice and hardship to the parties in refusing or granting the amendments, I should also consider:

- (1) Whether or not the application proposed is minor or substantial;
- (2) The application of time limits and whether there should be any extensions; Where the claimant proposes to include a new claim by way of amendment, the Tribunal must have regard to the relevant time limits and, if the claim is out of time, to consider whether the time should be extended under the appropriate statutory provision (i.e. reasonable practicability or on the just and equitable ground, as the case may be).
- (3) The timing and manner of the application, including why an application was not made earlier and why it is being made at this stage. However, delay in itself should not be the sole reason for refusing an application.
- (4) The factors set out in s.33(5) Limitation Act 1980: (a) length of and reasons for delay; (b) the effect of delay on the cogency of the evidence; (c)

the conduct of the parties, including provision of information and whether they acted promptly once aware of relevant information; and (d) steps taken to obtain advice.

7. I concluded that although this amendment was substantial, adding a new claim for notice pay, the balance of justice required leave to be granted. Mr Penn admitted that the Claimant was owed money when they spoke on 4 January 2020. Despite this admission, the breach was not rectified and there was a further failure to pay in January 2020. The contract was terminated due to the admitted repudiatory breach by the Respondent. The effect of a repudiatory breach is not readily known by litigants in person, the Claimant was honestly mistaken in her belief that she could not claim for notice pay without an express dismissal. Whilst the claim is out of time, the Claimant has shown why it was not reasonably practicable to have included it in the claim when originally presented. The claim arises from the conduct of the Respondent and it would be unjust to deprive the Claimant of her contractual entitlement to notice by reason of the Respondent's own failure to pay her and respond to her grievance.

8. By contrast, the prejudice to the Respondent is not so great. It has not presented a Response and has not participated in the proceedings. There is no defence to the claim for arrears of wages which give rise to the repudiatory breach which terminated the contract. Further, the Respondent's conduct in not engaging with the Claimant has entirely caused the misunderstanding which prevented the claim for notice pay being included from the outset. The balance of hardship is in favour of allowing the amendment.

9. In the absence of a defence, the claims succeed. The Claimant confirmed the figures which are due and owing. I accepted her evidence as reliable and make the following award:

- (i) Pay up to 15 December 2019 (the Claimant was paid £400 cash but was entitled to receive £678 net): **£278**
- (ii) Pay for hours worked on 16, 17 and 19 December 2019: **£142.90**
- (iii) 8 days holiday accrued but untaken: **£428.70**
- (iv) Four weeks' notice pay: **£571.60**

**TOTAL SUM DUE:     £1,421.20**

Employment Judge **Russell**  
Date: **30 June 2020**