



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111730/2019**

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**Held in Glasgow on 15 January 2020**

**Employment Judge R Gall**

10 **Mr Jose Antonio Le**

**Claimant  
No appearance and  
No representation**

15 **The Bakehouse Scotland Ltd**

**First Respondent  
No appearance and  
No representation**

20 **Secretary Of State For Business, Energy  
& Industrial Strategy**

**Second Respondent  
Represented by:  
No appearance and  
No representation**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claim is dismissed. This is in terms of Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

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### **REASONS**

1. This was a claim presented on 17 October 2019. The claimant sought payment of redundancy pay, holiday pay and wages which he said were due to him.

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

2. There was no form ET3 lodged by the first respondent, the company which had been his employer. The second respondents requested intimation of the claim and the ability to respond. This was on the basis that the claim for payment made by the claimant to the national insurance fund on 24 October 5 2019 had been rejected as the employer, the first respondents, were not insolvent. The claim was therefore served upon the second respondents who submitted form ET3.
3. The date of the hearing had been intimated to all parties. The second respondents had confirmed that they would not appear at the hearing however 10 wished the position as set out by them in their response to be considered as part of that hearing. The first respondents had not lodged form ET3. Appearance by or on their behalf at the hearing was not anticipated.
4. On the day of the hearing, attendance being anticipated on the part of the claimant so that he could give evidence in support of his claim, there was no 15 appearance by him. There had been correspondence with the claimant in the lead up to the hearing. He had been asked whether he maintained that the first respondents were insolvent and also what evidence he had, if any, to support that. This was in circumstances where the records at Companies House showed the first respondents as "active". There was no record of 20 insolvency. The second respondents also maintained that the first respondents were not insolvent. The reply from the claimant stated that he confirmed that the first respondents were insolvent. It went on to state however that there was still "someone in office to answer phone calls." It did not provide any basis on which it was said that the first respondents were 25 insolvent.
5. There was no explanation from the claimant as to why he was not present at time of the hearing. Having waited until approximately 10:10 on the morning of the hearing without any appearance or contact from the claimant, the Clerk to the Tribunals telephoned both mobile numbers which the claimant had 30 provided when presenting form ET1. She attempted to make contact with the claimant through this means on two occasions. The first mobile number was switched off and no contact could be made. On dialling the second number

provided by the claimant, on each occasion this was done, no reply was obtained and the call went to voicemail. During the remainder of that morning of the hearing, there was no contact from the claimant.

- 5 6. In circumstances where there is no appearance, it is possible under Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 to dismiss a claim or to proceed with the hearing in the absence of a party. Before doing so, the Tribunal has to consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
- 10 7. I considered the fact that there was no appearance. I considered that there was no explanation from the claimant and no contact with him was possible through telephoning the two numbers provided by him.
- 15 8. Prior to coming to a decision as to what to do, I also had regard to the claim form and to the terms of form ET3 as submitted by the second respondents. I had regard to the law on the matter.
- 20 9. The claim arises in circumstances where the claimant was laid off by the first respondents. He has supplied to the Tribunal a copy of a letter of 4 March 2019 from the first respondents to him confirming that he has been laid off with effect from 4th of March 2019. Reference is made in that letter to the guarantee payment which he was to receive.
- 25 10. The statutory provisions around layoffs and redundancy are somewhat complex. It is possible for an employee to give notice of intention to claim redundancy payment in respect of lay off or short time working. The relevant statutory provisions are contained within Section 148 (2) of the Employment Rights Act 1996 ("the 1996 Act").
11. In order to make a valid redundancy payment claim an employee must issue notice of intention to claim in terms of Section 148(2) of the 1996 Act, following that by resignation giving notice. That is in terms of Section 150 of the 1996 Act.

12. In this case, the order in which actions were carried out by the claimant does not meet the requirements of the 1996 Act. The claimant wrote terminating his employment by resigning. He did that on 10 July 2019. He has produced to the Tribunal a copy of his letter of resignation. In that letter he seeks  
5 redundancy pay on the basis of having been laid off for over 13 weeks. The difficulty which he faces however is that this is not notice of an intention to claim redundancy payment, as the 1996 Act requires. It is intimation of resignation with a redundancy payment being sought.
13. Under the 1996 Act the procedure involves notice of intention to claim being  
10 given and an opportunity then for the employer to issue a counter notice. That enables an employer to contest any potential liability for a redundancy payment. There is a very limited basis on which a counter notice would successfully defeat a valid notice of intention to claim. There must however be notice of intention to claim before resignation pursuant to it can result in a  
15 redundancy payment being due to an employee.
14. As mentioned, the claimant in this case resigned before any notice of intention to claim was given. He did write on 5 August 2019 to the first respondents saying that he would like to claim redundancy pay. That, however, was after his letter of resignation. It could not constitute a valid notice of intention to  
20 claim.
15. It seemed to me therefore that there would be difficulty from the claimant's point of view, subject always to evidence and any arguments advanced, for a claim for redundancy payment to be made successfully in terms of the 1996 Act. I did not however have the benefit of attendance with any consequent  
25 evidence and submissions. Whilst the fact of non-attendance in the absence of explanation for that would potentially have been sufficient to dismiss the claimant terms of Rule 47, I was conscious of the overriding objective and it seemed appropriate to me to have regard to the claim as set out and indeed to the defence as tendered by the second respondents. Had I been convinced  
30 that a potentially valid claim had been made, it might have been the case that I did not dismiss the claim notwithstanding absence of attendance by the claimant.

16. I appreciate that the claim also extended to one in respect of holiday pay in respect of wages said to be due to the claimant. I did not have details of the relevant basis of claim of the calculations which were said to be applicable. It seemed from the claim form that the claimant sought payment for 12 weeks when he was laid off. According to the letter sent by the first respondents to the claimant confirming that he was laid off, there was a contractual entitlement to lay him off.

17. In the absence of any further details supporting these elements of claim and the calculation of them, and given in particular the absence of the claimant at the hearing and the fact that there was no explanation for that absence, I concluded that it was appropriate to dismiss those claims in addition to dismissal of the main claim for redundancy payment.

Employment Judge: R Gall  
Date of Judgement: 15 January 2020

Entered in Register,  
Copied to Parties: 20 January 2020