



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113048/2019

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Held in Glasgow on 3 March 2020

Employment Judge R Gall

10 **Mr I Mossman**

**Claimant
In Person**

15 **Habeel Tariq**

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claims in respect of holiday pay and notice pay (payment in respect of leave accrued but untaken at date of termination of employment and breach of contract for absence of notice or notice pay) were presented out of time. It was not however reasonably practicable for the claimant to present those claims within time. Time is therefore extended to permit those claims to proceed.
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- 25 2. The respondent is ordered to pay the following amounts to the claimant: –
- a. the sum of £969.23 by way of payment in lieu of notice, being 8 weeks' pay
 - b. the sum of £1453.85 by way of redundancy pay.
 - c. The sum of £242.30 being 2 weeks' pay awarded to the claimant in terms of Section 38 of the Employment Act 2002 as there was no statement of main terms and conditions of employment issued to the claimant.
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This Judgement was given orally. As stated at the hearing, in terms of rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013,

written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The following sets out what was said, at the conclusion of the hearing, after time was taken to consider the case. It is provided for convenience of parties.

REASONS

1. This claim was brought in circumstances where the claimant's job had come to an end due to closure of the business in which he worked. It had closed without any notification to the claimant, whether by way of discussion prior to closure or at time when the business ceased.
2. There was no defence lodged by way of form ET3.
3. I heard evidence from the claimant. I found the following facts to be established by that evidence.
4. The claimant worked in the business from 1 March 2011 until 3 July 2019. He was 54 years of age on 3 July 2019, having been born on 25 August 1964. He earned £525 gross and the same amount net per month. His weekly wage was therefore £121.15.
5. The claimant was initially employed by a partnership, H & S Assets. That partnership dissolved due to disagreement between the partners. A company named ASA Assets & investments Ltd became the claimant's employer. Payslips for the period 2013 to 2016 confirmed that as being the identity of employer.
6. A search at the Register of Companies established that ASA was dissolved on 3 April 2018. It could therefore not have been the employer of the claimant after that date.
7. One person had been present in the business throughout the period of time in which the claimant was employed. That was the respondent, Habeel Tariq. Mr Tariq was in the business more or less every day during the course of the

claimant's employment. The business was a print shop. Mr Tariq was the designer in the business. The claimant did the print work. Mr Tariq ordered materials and made decisions in relation to the running of the business.

8. The claimant received no payslips after 2016. He did not ever receive at any point a statement of main terms and conditions or a contract of employment.
9. The claimant left for holiday on 18 June 2019. Everything seemed fine. The business was trading as usual. The claimant's wife and daughter went to Tenerife. Unfortunately, the claimant became seriously ill whilst in Tenerife. He been due to return to work on 3 July 2019. He remained in hospital in Tenerife however for a further 2 week period.
10. When the claimant returned to Scotland, he was unable to make contact with Mr Tariq. His wife had been trying to make contact with Mr Tariq, without success, whilst the claimant had been in hospital in Tenerife. The claimant establish that the shop was closed. He was very stressed by this and also by the illness which was still affecting him. His medication was being adjusted. Side effects occurred. Ultimately his condition stabilised.
11. In August the claimant went to see Citizens' Advice Bureau. They informed him that a claim to an Employment Tribunal might be possible, with there also being a potential claim intimated to the insolvency service. As the claimant recalls it, they referred to there being a period of 6 months to bring the claim. That may have been in connection with the redundancy element. The claimant has no recollection of a time period of a different duration been mentioned as being applicable for the holiday pay or notice pay element of any claim.
12. The claimant was therefore unaware of there being a 3 month time limit for presentation of an Employment Tribunal claim. He assumed it to have been a 6 month time limit which applied. That is the time limit for presentation of a claim for redundancy pay. The period of 3 months is given for presentation of a claim for notice pay and holiday pay. The claimant has not been involved on any previous occasions with Employment Tribunals. He did not carry out any check on the web to establish the position with regard to any time limits.

13. At the beginning of November 2019, a friend said to him that he should make a claim to the Employment Tribunal. He therefore spoke with ACAS, obtained the Early Conciliation Certificate and submitted his claim. This claim was submitted on 17 November 2019.
- 5 14. Having heard the evidence, I was satisfied that it was not reasonably practicable for the claimant to lodge the claim prior to the time when he did. He had no awareness of there being a time limit other than the one of 6 months which ACAS had mentioned to him. That of course is the correct time limit for bringing a claim in respect of a redundancy payment. The claimant was unaware of any shorter time limit applying to claims for holiday pay and notice pay.
- 10 15. Ignorance is not of itself sufficient to constitute circumstances where it is not reasonably practicable to bring a claim. The Tribunal has to be satisfied that it was reasonable for the claimant to be ignorant of the time limit mentioned. Given the information he had from ACAS, his own health issues which were extremely worrying and his lack of earlier involvement with an Employment Tribunal, I was persuaded that it was not reasonably practicable for the claim to be presented in time. I therefore extended time for presentation of the claims in respect of holiday pay and notice pay.
- 15 16. There was an issue as to identity of employer. Clearly, at time of termination of the claimant's employment, his employer could not have been ASA, as it had been dissolved over a year earlier. The only person who was acting as employer was Mr Tariq. I regarded it as appropriate that he was found to have been the employer of the claimant at time of termination of the claimant's employment.
- 20 17. The claimant had been employed for 8 years. He was entitled to receive notice or a payment in lieu of notice of 8 weeks. He received no notice or pay in lieu of notice. His claim therefore in respect of breach of contract is for 8 weeks pay. That totals £969.23.
- 25 18. Having regard to the claimant's age, 54, time of termination of his employment and his length of service, 8 complete years, he is entitled to redundancy
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payment of 12 weeks pay. That totals £1453.85. I was satisfied that the circumstances of termination of the claimant's employment, the business ceasing to operate, validly founded a claim for redundancy pay.

- 5 19. The holiday year for the claimant was January to December. At time of termination of his employment he had worked for half a year. His annual holiday entitlement was 25 days. He had received holidays on 1 and 2 January, one day of holiday at Easter and 10 days holiday in June. On that basis he had no holiday leave accrued but untaken at time of termination of his employment.
- 10 20. The claimant did not receive any statement of employment particulars. In terms of Section 38 of the Employment Act 2002 he is entitled to receive the minimum amount of 2 weeks pay unless there are exceptional circumstances making such an award unjust or inequitable. There were no exceptional circumstances. The Tribunal can award the higher amount of 4 weeks pay if
15 it considers that to be just and equitable in all the circumstances. I had no information that the claimant had requested statement of employment particulars. It would undoubtedly have been helpful to him.

21. I did not have information which led me to the view that it was just and equitable to award the higher amount in this case. An award of 2 weeks pay is therefore made. That totals £242.30.

Employment Judge:

R Gall

5 Date of Judgement:

04 March 2020

Entered in Register,

Copied to Parties:

05 March 2020