



# EMPLOYMENT TRIBUNALS

## Public Hearing by Telephone

**Claimant:** Mr T McHale

**Respondent:** Amac Engineering Services Ltd (in liquidation)

**HELD AT:** Sheffield **ON:** 30 June 2020

**BEFORE:** Employment Judge Little

### REPRESENTATION:

**Claimant:** In person

**Respondent:** No attendance or appearance

## JUDGMENT

My Judgment is that:-

1. The response is struck out.
2. Pursuant to the Employment Tribunals Rules of Procedure 2013, Rule 21, Judgment is entered in the claimant's favour.
3. The complaint of wrongful dismissal succeeds and the claimant is awarded damages in the amount of £1382.28.
4. The complaint of breach of contract (non-payment of wages) succeeds and the claimant is awarded damages in the amount of £23,617.72.
5. The complaint of failure to provide an initial statement of employment particulars succeeds and the claimant is awarded compensation in the amount of £460.76.
6. The claimant was dismissed by reason of redundancy and is entitled to a statutory redundancy payment in the amount of £3445.20.
7. The damages and compensation referred to above are now payable by the respondent to the claimant forthwith.

# REASONS

## 1. Response struck out

The respondent had been permitted to present a response out of time. Employment Judge Brain made an Order (in fact gave a Judgment) to that effect on 27 January 2020. On the same occasion he made case management orders. The respondent failed to comply with those Orders. That, in part at least, contributed to the postponement of a merits hearing which would otherwise have taken place on 11 and 12 May 2020.

When effecting that postponement Employment Judge Davies caused a letter to be written to the parties and that letter is the Tribunal's letter of 5 May 2020. Among other things the respondent was ordered to write to the Tribunal and the claimant no later than 12 May 2020 explaining why it had not complied with the case management orders and in any event why its response should not be struck out by the Tribunal. The respondent failed to reply to that Order.

On 4 June 2020 the respondent went into a voluntary creditors liquidation. The Tribunal has subsequently corresponded with the liquidator via Abbey Taylor Business Rescue and Recovery. Today there has been no attendance or appearance by the respondent. In these circumstances I consider that it is appropriate to strike out the response on the basis that there has been a continued and persistent breach of the case management orders issued by the Tribunal and today's non-attendance indicates that the respondent is not actively pursuing its response.

## 2. Jurisdiction

I find that the claimant's employment (as to which see below) ended on 30 July 2019. Although the claimant's brother Mr Anthony Michael McHale, who was the sole director of the respondent, sadly died on 11 June 2019, I am satisfied that the claimant continued to undertake work in respect of a project in Birmingham which was ongoing at the date of his brother's death. That work included such matters as collating the invoices and other administrative work.

It follows that the primary limitation period would have concluded on 29 October 2019 whereas the claim was not presented until 26 November 2019. However, the claimant had applied for ACAS early conciliation on 26 September 2019 and the ACAS certificate was not issued until 26 October 2019. That means that under the provisions of the Employment Rights Act 1996 section 207B and the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 Article 8B, there are 29 'non-counting' days. That extends the limitation period to 27 November 2019. It follows that presenting the claim on 26 November 2019 was in time.

## 3. Employment status

I find that the claimant undertook administrative and other work for the respondent for a period of some 23 years commencing in June 1996. I do not consider that the fact that for much of that period the claimant had employment with another organisation means that he could not have also worked for the respondent in his spare time, particularly as his other job was not full-time.

I am satisfied that control and mutuality of obligation were present, although at first sight there is difficulty with regard to the non-payment of wages. Usually the payment of wages at regular intervals is of cardinal importance in the employment relationship. I find that in the particular and somewhat unique circumstances which apply to the claimant's case there was an agreement that the claimant's wages would in effect be deferred. That arose in this way. It was originally anticipated that the claimant would be paid something in the order of £60 per week. On formation of the respondent's business it could not afford to make such payment. The claimant would remind his brother, the director, of this arrangement from time to time. Eventually it was agreed that the claimant would continue to work without pay in the sense of there being no weekly or monthly payment but when the director brother retired and the company was sold or its assets and value realised the claimant would receive a lump sum representing 25% of that value by way of deferred wages. Unfortunately, this did not come to pass because the director brother died prior to retirement. In these unusual circumstances I am satisfied that whilst there was no payment of a wage during the course of the employment relationship there was nevertheless consideration – the promise that the claimant's work would be recognised by the lump sum payment.

**4. Quantum**

I am satisfied that the wages can be recovered under the Tribunal's contractual jurisdiction and so there is no two-year limit as there would be if the only cause of action had been for unauthorised deduction from wages. There is however the limit on the contractual damages which the Tribunal can award and it is for that reason that, having awarded compensation for wrongful dismissal, that award has to be taken into account when awarding compensation or damages for non-payment of wages.

5. There is in the circumstances obviously no indication that any statement of employment particulars was ever issued.
6. I am satisfied that the reason for the claimant's dismissal was redundancy in circumstances where shortly after the death of the sole director (at that time) of the respondent the respondent's business ceased.

Employment Judge Little

Date 10<sup>th</sup> July 2020

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.