



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Cryan

Respondent: Elite Health & Fitness Sunderland Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The judgment of the Tribunal is that:

1. The complaint in respect of a statutory redundancy payment under section 163 Employment Rights Act 1996 is well founded and succeeds. The Respondent is ordered to pay to the Claimant a redundancy payment in the sum of **£1,606.50**.
2. The Complaint in respect of accrued but untaken holiday pay under Regulation 30 Working Time Regulations is well founded and succeeds. The Respondent is ordered to pay to the Claimant the sum of **£476.08**
3. The complaint of breach of contract in respect of the failure to give 9 weeks' notice is well founded and succeeds. The Respondent is ordered to pay to the Claimant damages in the sum of **£1,071**.
4. The total amount to be paid to the Claimant is **£3,153.58**.

REASONS

5. The Claimant was employed by the Respondent from 01 October 2010 until 21 December 2019 when she was dismissed without notice by reason of redundancy. On 05 March 2020, the Claimant presented a Claim Form to the Tribunal in which she claimed a redundancy payment, damages for wrongful dismissal (notice pay).
6. The proceedings were served on the Respondent at its Registered Office with a response date of 30 April 2020. Mr David Tate, the sole director and shareholder applied for an extension of time for service of a response and one was granted, extending time to 14 May 2020. However, no response was returned. Therefore, in accordance with rule 21 of the Tribunal Rules of Procedure an Employment Judge must decide whether on the available material a determination can properly be made

of the claim or part of it, and to the extent that a determination can be made, the Employment Judge must issue a judgment.

7. A preliminary hearing by telephone was arranged for 12 June 2020 at which the Claimant was represented by a representative of the Sunderland Welfare Rights Centre, Mr Subramaniam, and at which I was able to discuss the claims and understand the amounts claimed.
8. At the date of dismissal the Claimant had been continuously employed for 9 complete years and was 66 years old. Therefore, she had 9 complete years of service over the age of 41. Her gross weekly pay was £119. At the date of dismissal she had accrued 16 days untaken holiday. I was able to determine the holiday pay claim on the basis that the Claimant's average working day appeared to be 2.75 hours resulting in accrued but untaken holidays of 44 hours (her annual entitlement was 61.6). At a rate of £10.82 an hour, this resulted in a claim for \$476.08.
9. On the date of terminations he was told that the business was ceasing to trade with immediate effect. She was given no notice nor was she paid in respect of his outstanding holiday payments. The sole director and shareholder of the company, Mr David Tate, has been unresponsive to requests for payment by the Claimant.
10. I am entirely satisfied that the Claimant's employment was terminated by reason of redundancy without notice and without payment of outstanding holidays. Therefore, it was appropriate for a judgment to be issued to that effect.

Employment Judge Sweeney

12 June 2020