



EMPLOYMENT TRIBUNALS

Claimant: John Sartain

Respondent: Fiesta Flowers and Gifts Limited

Heard at: Bristol Employment Tribunal (via CVP in public) **On:** Friday, 28th August 2020

Before: Employment Judge Mr. M. Salter

Representation:

Claimant: In person

Respondent: No appearance and not represented.

JUDGMENT

- (1) The Claimant is entitled to a redundancy payment in the sum of £6,403.85.
- (2) It does not appear that the limitation period for his other claims has begun.

REASONS

Introduction

1. These are my reasons for the judgment set out above. I have arrived at these after hearing.
2. By a claim form presented to the tribunal on 23rd January 2020 the Claimant brought claims seeking a redundancy payment, notice pay and for unpaid holiday from his previous employers Fiesta Flowers.
3. The matter was listed for Preliminary hearing to determine whether those claims had been presented in time. The Claimant's employment having ended on 31st May 2019 and ACAS conciliation taking place between 16th and 20th January 2020.

4. The matter came before me for that Preliminary Hearing. Mr. Sartain represented himself, the Respondent was not in attendance.
5. The hearing was held via Cloud Video Platform. I did not feel that my ability to assess the quality of the evidence was effected by this medium.
6. I heard evidence from Mr. Sartain that was given under an affirmation in which he told me:
 - (a) he was 49 when he was dismissed having been employed by Fiesta Flowers limited for some 15 years. The details in his ET1 are correct: he earned £1,500 a month gross or £346.15 a week;
 - (b) after the company became insolvent both he and his business partner Mr. D Kinsley made applications to the Secretary of State for payments out of the National Insurance Fund ("the Fund") for a redundancy payment, statutory notice pay and for the accrued but untaken holiday pay;
 - (c) he presented his application to the Secretary of State two days after Mr. Kinsley
 - (d) Mr. Kinsley received his payments from the Secretary of State a couple of days before lockdown was introduced in March.
 - (e) the Claimant is still awaiting payment or any communication from the Secretary of state regarding his claim.
7. Unfortunately, the Claimant was unable to assist me with what sort of insolvency the Respondent had been placed into, however it appears on the evidence I have heard that the Secretary of State is satisfied that the Respondent is undergoing an appropriate form of insolvency to require it to make payments from the Fund to Mr. Kinsley.
8. On the basis of what I have heard I consider that, in accordance with section 164 of the Employment Rights Act 1996, it is just and equitable for me to extend time for the presentation of a claim for a redundancy payment: there is clearly a redundancy situation that existed with the Respondent; the delay in presenting a claim is down to the failure of the Secretary of State to advance the Claimant's claim. On the basis of the evidence I have, I calculate the redundancy payment to amount to £6,403.85.
9. As far as the other payments are concerned. Having made an application to the Secretary of state, time to present a claim does not start to run until the

Secretary has communicated its decision to the claimant (s188(2) of the Employment Rights Act 1996), and at present this has not occurred.

10. I directed that the Claimant is, within 14 days, to provide to the Tribunal a brief document setting out
 - (a) Type of insolvency the Respondent entered into;
 - (b) Date it went into insolvency;
 - (c) Date of application to Secretary of State and details of the application (e.g. any reference number received)
 - (d) Details of business partners claim to sec of state (including any reference number).

11. The claim will then be served on the Secretary of State along with this further information document.

Employment Judge M. Salter

Date: 2 September 2020

Judgment sent to parties: 15 September 2020

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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