



EMPLOYMENT TRIBUNALS

Claimants

Respondent

Mr N Cohen and Mrs S Cohen

v

Westex Ltd (in administration)

Heard at: Watford (using CVP)

On: 3 September 2020

Before: Employment Judge Tynan

Appearances

For the Claimants: Mr Cohen

For the Respondent: Did not attend and was not represented

JUDGMENT

- 1) The Tribunal declares that the Claimants' complaints pursuant to s189 of the Trade Union & Labour Relations (Consolidation) Act 1992 are well founded.
- 2) The Tribunal makes protective awards in favour of the Claimants that the Respondent shall pay remuneration to them for the protected period of 90 days.
 - a) The protective award for Mr Cohen is the sum of £13,749.30 (90 days @ £152.77 per day)
 - b) The protective award for Mrs Cohen is the sum of £415,80 (90 days @ £4.62 per day)
- 3) The Claimant's complaint that he was dismissed in breach of contract, namely without being given the statutory notice to which he was entitled, is well founded. The Tribunal orders the Respondent to pay to the Claimant the gross sum of £2,940.15 as damages for breach of contract.

REASONS

- 1) By a claim form presented to the Employment Tribunals on 22 October 2019, the Claimants sought protective awards in respect of the

Case Numbers: 3324526/2019 and 3324527/2019 (V)

Respondent's failure to inform and collectively consult regarding proposed redundancies in accordance with its statutory obligations in that regard under s189 of the Trade Union & Labour Relations (Consolidation) Act 1992. The Respondent's Administrators, FRP Advisory LLP gave consent to the Claimants pursuing claims against the Respondent, on the understanding that this might enable them to pursue claims to the Insolvency Service but that they would not pursue any awards against the company's assets.

- 2) I determined the Claimants' complaints under s189 of the 1992 Act on 3 September 2020 giving the reasons for my decision. The Insolvency Service may cap the amount of the protective award that can be claimed by Mr Cohen.
- 3) In the course of the hearing Mr Cohen indicated that he had not been given any notice to terminate his employment, and that he wished to amend his Claim to include a claim for damages for breach of contract. I gave him leave to do so, albeit on the basis that he would need to file further evidence with the Tribunal regarding his notice rights and as to any sums earned by him during his notice period by way of mitigation of his losses. He submitted further evidence in this regard following the hearing.
- 4) Mr Cohen was continuously employed by the Respondent for over 14 years. Accordingly, he had a statutory right to 12 weeks' notice from the Respondent to terminate his employment. He has submitted a copy of a letter dated 23 September 2014 from the Respondent's former Group Managing Director, Mr Robert Keable, which confirms that his contractual notice period increased to 6 months on that date. Mr Cohen was dismissed with immediate effect on 18 September 2019, without notice or payment in lieu of notice. Accordingly, he is potentially entitled to claim 6 months' remuneration as damages for breach of contract, subject to giving credit for any income earned during his notice period. However, the Insolvency Service will only accept a claim in respect of his statutory notice period. On the basis that FRP Advisory LLP gave consent to the Claim proceeding in order to facilitate a claim to be made to the Insolvency Service, I shall limit any award of compensation to Mr Cohen's statutory notice period. His gross pay for his 12 weeks statutory notice period was £9,166.15 (based upon his stated monthly gross salary of £3,310). He secured another job and received £6,226 during the same period, for which he must give credit. His gross loss of earnings was £2,940.15 and that is the amount I shall award him as damages for breach of contract, expressed as a gross amount. Assuming that his claim to the Insolvency Service is accepted, tax and national insurance will likely be deducted from this sum before it is paid to him.

Employment Judge Tynan
13/10/2020

Case Numbers: 3324526/2019 and 3324527/2019 (V)

Date:
13/11/2020

Sent to the parties on:

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For the Tribunal Office

Note

Reasons for the judgment in respect of the protective awards having been given orally at the hearing on 3 September 2020, 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.