



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**v**

1. Mr J Greenwood
2. Mrs J Greenwood

1. Rockstone Public House LTD
2. Mr Pringle

## Judgment

**Heard at: Southampton**

**On: 20 and 21 July 2020**

**Before: Employment Judge Rayner**

### Appearances

**For the Claimant:** Mr and Mrs Greenwood in person

**For the Respondent:** Mr R Pringle, Director.

1. This has been an in-person hearing.
2. The claimants' claims for breach of contract succeeds. Each claimant is entitled to payment of the sum of £24,000.00 as a severance and/or redundancy payment by the respondents.
3. No order is made for payment of separate sums in respect of statutory notice pay or statutory redundancy pay because the severance pay was a payment which included any entitlement to statutory or contractual redundancy pay and statutory or contractual notice pay and any outstanding holiday pay.
4. For the avoidance of doubt, the amounts Mr and Mrs Greenwood would be entitled to as statutory notice and statutory redundancy pay, had there been no breach of contract, are as follows:
  - a. Mr Greenwood was entitled to a statutory redundancy payment of £2769.24. (calculated 8 weeks x 1.5 x £230.77 gross weekly pay).
  - b. Mrs Greenwood was entitled to a statutory redundancy payment of £2769.24 (calculated as 8 weeks x 1.5 x £230.77 gross weekly pay.)
  - c. Mr Greenwood was entitled to 7 weeks statutory notice pay calculated on net pay of £807.73. (7 weeks x net pay of £115.39).
  - d. Mrs Greenwood is entitled to 7 weeks statutory notice pay of £1291.99. (calculated 7 weeks x £184.57 net weekly pay).

5. The respondent will now pay Mr Greenwood the sum of £24,000.00 as damages for breach of contract.
6. The respondent will now pay Mrs Greenwood the sum of £24,000.00 as damages for breach of contract.
7. The remaining claims for holiday pay and unpaid wages are dismissed.

## **REASONS**

Background to the claim and Findings of fact -

1. By a claim dated 8 January 2020 the claimant John Greenwood and the claimant Jenny Greenwood both submitted claims to the Employment Tribunal against Mr R Pringle and Mr J Wiseman of the Rockstone Pub.
2. Each claimant brought a claim for a redundancy payment; notice pay; holiday pay; arrears of pay; and other payments.
3. It was subsequently clarified that the correct respondents were (1) Rockstone Public House Limited and (2) Mr R Pringle.
4. In the claim form the claimants both alleged that they had been ejected from the Pub premises; that they had received no salary since September 2019 and nor have either of them been issued with a P45 or a P60 , and that they had not been paid for notice or redundancy.
5. The claimants are a husband and wife team who were owners and directors of the business called Rockstone Cherry Ltd which owned and ran a pub and restaurant.

6. The claimant Mr Greenwood states that they started their employment in 2011 as directors and Mr Greenwood states that he worked 80 hours a week.
7. It is not in dispute is that the claimants put the business up for sale at the end of 2018 and that at some point over the summer in 2019 they entered into negotiations with Mr Pringle and his business partner Mr Wiseman, with a view to selling the business to them and that Mr Ron Pringle offered to purchase the business.
8. The business was handed over to Mr Pringle at the end of August 2019 and a business, Rock Stone Public House was set up as the trading company. The terms on which the business was handed over are central to the dispute.
9. The claimants say that they were subject to a TUPE transfer, by which their employment transferred to that company. The respondent denies that they were and that in any event, if they were, that any such TUPE transfer was in error.
10. The claimants state that they received salaries from the new business, post transfer until the middle of September 2019 but not since then.
11. Rockstone Cherry Ltd was put into administration, although the Rock Stone public house continues to trade.
12. The claimants say that when they handed over the business to Mr Wiseman and Mr Pringle at the end of August 2019 and left the business in September 2019, it was in the expectation that they would receive certain payments. The payments were, they say, agreed under a contract which they say they had made with Mr Pringle acting on behalf of the respondents.

13. The respondents filed an ET3 denying that the claimant was entitled to any of the amounts claimed. Whilst the respondents accept that they took over the business, the dispute between the parties arises because they disagree about the existence of a contract, or the terms of any contract which that they entered into to do this.

14. The claimant's assert that there was a contract between the parties under the terms of which they were entitled to receive, jointly, certain payments including a payment of £48,000. The claimants both assert that this figure was payable to both of them, and that it was a two-year severance deal or redundancy payment.

15. Mr Pringle for the company asserts that no such contract was ever formally entered into, although he accepts that there were negotiations and draft terms of contract were drawn up, and that those terms made reference to the payment of the figure of £48,000 to the claimant's jointly.

16. The parties agree that the issues are

- a. Was either claimant an employee of the respondent?
- b. Was the claimant or either of them transferred to the respondent company
- c. If yes when did the employment end
- d. If it ended is the Claimant or either of them entitled to any payment of redundancy pay
- e. Is either claimant entitled to holiday pay/ notice pay?

17. Whilst Mr Pringle initially disputed that the claimants were employees of the respondent, because he said that they had not transferred following a TUPE

transfer, he accepted before me that there had been a relevant transfer and that both claimants had in fact transferred to the employment of the respondent.

18. The further questions I have to determine are

- f. Was there a contract between the parties?
- g. If yes, what were the relevant terms of that contract?
- h. Was there a term of an agreement which entitled the claimants to receive the sum of £48,000.00 for redundancy?

### **The relevant legal provisions**

19. Redundancy is defined in S.139(1) ERA and the definition applies to claims for redundancy payments. The statutory words are:

*'For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to*

*(a) the fact that his employer has ceased or intends to cease —*

*(i) to carry on the business for the purposes of which the employee was employed by him, or*

*(ii) to carry on that business in the place where the employee was so employed,*

*or*

*(b) the fact that the requirements of that business —*

*(i) for employees to carry out work of a particular kind, or*

*(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.'*

20. An employer must pay a redundancy payment to an employee who is dismissed by reason of redundancy, or who is eligible for a redundancy payment by reason

of being laid off or kept on short-time — S.135 Employment Rights Act 1996 (ERA).

21. The amount of *statutory* redundancy pay, as opposed to contractual redundancy pay, which an employee is entitled to depends on his or her age, length of service and pay. The employee is entitled to :
- i. one and a half weeks' pay for each complete year of service after reaching the age of 41;
  - j. one week's pay for each complete year of service between the ages of 22 and 40 inclusive, and
  - k. half a week's pay for each complete year of service below the age of 22 — S.162(2) ERA.

#### **Formation of Contracts of employment**

22. For a contract to exist, several conditions must be satisfied. There must be an agreement (usually consisting of an offer which is then accepted) made between two or more people, the agreement must be made with the intention of creating legal relations and the agreement must be supported by consideration — i.e. something of benefit must pass from each of the parties to the other.

23. The parties must intend both the agreement itself and its constituent terms to be legally binding in order for the whole contract to be effective, although the burden lies on the party asserting otherwise to prove that no such intent existed — see *Edwards v Skyways Ltd 1964 1 All ER 494, QBD*, where a pension clause in an agreement between an airline and the British Airline Pilots Association headed 'ex gratia payment' was nonetheless held to be enforceable. The High Court said in that case that the burden on the employer in showing that a commercial agreement was not intended to be legally binding was a heavy one

#### **Findings of FACT**

24. The claimants were both employed by Rockstone Cherry Ltd from 12 November 2011.
25. Mr Pringle had become a director of Rockstone Cherry Ltd and a second company, Rockstone Public House Limited on 20 September 2019.
26. In his evidence to me, Mr Pringle states that it was the claimants joint wish to leave the premises and business because they wanted to start retirement and enjoy their home overseas.
27. On 1 September 2019 there was a transfer of an undertaking and the staff who had previously been employed by Rockstone Cherry Ltd were transferred to the employment of Rockstone Public House Limited.
28. I have seen an email from Jason Weisman to Mr Pringle and copied to Mr Greenwood dated the 31 August 2019 which states *John and I discussed recently that Rockstone Cherry Ltd would cease to trade as of tomorrow. From this point forward Rockstone Public House Limited will operate the trading side of the business (all staff are being TUPE tomorrow) with originally the liabilities been paid off by a refinance .*
29. Both claimants were employed before the transfer and as a matter of fact transferred to the employment of Rockstone Public House Limited on the 1 September 2019.
30. Mr Pringle, giving evidence for the respondent conceded this fact before me. He stated that he had not previously realised that there had been a TUPE transfer which affected both claimants, and thought that it had been an error. He also

stated that he believed the claims should have been brought against Rockstone Cherry Ltd.

31. I find that Mr Pringle knew before this hearing, and certainly by the time the case came before me that Rockstone Cherry Ltd was insolvent. He also knew of the TUPE transfer , because of an email from Mr Greenwood to Jason Weisman and him, Ron Pringle on the 11 December 2019 stating that a TUPE transfer had taken place.

32. He knew that the claim had been properly brought following a transfer of undertaking but chose to continue to deny the fact, in the face of the evidence.

33. Mr Pringle now accepts that he ought to have accepted earlier in this process that there was indeed a transfer of undertaking and that the claimant's were transferred to the employment of Rockstone Public House Limited.

### **The process of contracting**

34. On 31 August 2019 Mr Greenwood sent an email to Mr Pringle stating that he had *appraised Jason of everything. He has put some things in train.* He asked Mr Pringle to meet with Jason ASAP and says *sorry that I am away but it makes sense to agree where we are going and hopefully avoid duplication of effort. No point in spending money we don't have to.*

35. On 31 August Mr Pringle replied to the claimant stating that he agreed with not duplicating effort and asking for further information about Jason's role. Mr Greenwood replied stating that *Jason knows the whole history from the beginning. he runs the books pays the bill staff wages et cetera and controls the money he runs the accounts for us on both sides and looks of the business*



*when we are away. He is completely trustworthy and understands where we're both coming from in this business. So yes please as frank and open as possible.*

36. At that point on 31 August 2019 it is evident that Mr Greenwood considered himself to be part of the business.

37. Mr Pringle then emailed Jason Weisman and agreed that they would meet the following week.

38. The email also states *John just concerned regarding which limited company- I was suggesting that I took over RCL not the newco as RCL is the one with the insolvency issues. I know there are assets you want to protect, and we can deal with that.*

39. This email is at page 6 of the claimants documents and it is evidence that on 31 August 2019 Mr Pringle had not taken over the company.

40. On 31 August 2019 an email from Jason to Mr Greenwood and Mr Pringle confirms that Rock Stone Cherry Ltd would cease to trade as of *tomorrow*, that date being 1 September 2019 and that Rock Stone Public House Ltd would operate the trading side of the business, with all staff being TUPE transferred over on 1 September 2019.

41. Following this exchange and following the transfer which the parties now agree took place on 1 September 2019, both claimants received pay slips from the

new company for payments of wages up to and including week ending September 15, 2019.

42. Both claimants also continued to receive pay slips until January 2020, although neither received any further pay. The payslips showed a zero amount of pay for each claimant.

43. At this point in time the claimants were not in fact at work, because they were in France at their second home.

44. The claimant's have provided a summary of their claim to the employment tribunal in an email which is at page 30 of the bundle in which they state that they had agreed with Mr Pringle that they would receive a payment of £48,000.00 jointly in respect of redundancy; that they had agreed that they would receive salary on an ongoing basis of £1000 per month each, from August 2019 and that they were also owed 10 weeks holiday pay for the last year and for this year to date. They also made a claim of statutory redundancy for 10 years service at the rate of one week pay for each year of employment.

45. What happened next, following the transfer of the undertaking, is that the parties entered into discussions in respect of the sale of the business. This also followed the transfer of the directorship from the claimant to the respondent.

46. By the 4 September 2019, the parties had a draft agreement which stated as follows:

*RP to become sole director and shareholder of RCL.*

*Balance settled with RBS in respect of mortgage and charge taken*

*John and Jenny to receive £150K approx 21 days later (this is coming from a pension. I think 14 day notice)*

*property sold (2 RPHL or a SPV) at circa £200K. John and Jenny to receive £48K to two year severance (**this may need to be executed before the above**). (EJ Rayner emphasis)*

*fully assignable lease created and registered for RPHL a@ £60 K pa*

*Rock Stone freehold refinanced at projected £550K at 70% LTV =£385. John Jenny received 20% =£77K*

*shortfall between target of £300K at projected 3275K to be paid from business @£1500 pm*

*second stage- timings to be agreed*

*lease on RockStone to be marketed at say £90K and sale proceeds split 50-50 possible return £45K*

*lease on Sadlers to be marketed at say £100K sale proceeds split 50-50 possible return £50K*

*These above lease sale figures would be less any extra costs incurred in achieving sales and interest additional capital invested*

*Notes,*

*although this represents a potential £370k for John and Jenny it is appreciated this is dependent on other factors. However we will contract to guarantee the initial £198K combined with the 20% of the 70% refinancing this should mean £277K as a minimum and £1500 per month for 15/16 months*

*John and Jenny can be shareholders and directors of RPHL if they so wish, and/or take a charge in relation security from the lease.*

*Please note it may be incumbent on Jason to pay John and Jenny initial monies as he effectively controls RCL and it seems it takes weeks to open a new business account now. Especially when directors change*

*the only caveat in all of this is an undervalued sale accusation which we have discussed.*

*Finally, the cost of liquidating (solvent or otherwise) is necessary RCL to paid equally between the parties*

47. The document, I have been shown by the parties is headed *Draft Draft Draft* -

*First 2 to 3 months and at the bottom states draft 4<sup>th</sup> September 2019 .*

48. On 17 September 2019 Mr Pringle wrote to Roger Rixon of Branston and Childs with the subject header *Rockstone Cherry RDS settlement*. In the email he says *please could you send an email to my colleague and friend Andy Rogers, just to confirm that you will hold the £120,000 funds to his order and they will not be released until security by way of the charge is completed to his/ our satisfaction in other words the monies held to order. Just peace of mind.*

49. I find that this is a reference to the statement within the 4 September 2019 draft which states *the balance settled with RBS on respect of mortgage* .

50. Prior to this date Mr Greenwood had provided Mr Pringle with a mortgage redemption figure, which is dated 10 September 2019 and which is at appendix 3 xiii of the bundle and which is attached to the Mr Greenwood's witness statement as an exhibit, and which states that the redemption figure is £117,114.46. In his email Mr Greenwood makes reference to a redemption figure +6000 outstanding monthly payments and asks Jason to provide the details to him.

51. On 17 September Mr Rixon of Branston and Childs replied to Mr Pringle and Mr Greenwood stating *I confirm we will hold the sum of £120,000 to your order pending completion of the charge.*

52. I find that at that point that Mr Greenwood reasonably believed that the mortgage was to be redeemed and the money paid over. It appears from further correspondence that by 26 September 2019 the money had not in fact been

paid to redeem the charge on the RockStone. This is evident from the documents at appendix 3 to the claimant's witness statements comprising emails between Miss Jaffar at RBS and Roger Rixon of Branston and Childs

53. On the 19 September 2019 Mr Pringle contacted Ian Coupland of Lewis Nedas Law subject Rockstone Cherry Ltd share sale.

54. In this email he states: *I tried to call you before sending this communication but time is of the essence. I know you have warned me of the solvency issue with this, however, I have reached an agreement with the sellers. We are going to transfer shares and directorship today at a nominal value. This is based on heads of terms you have ( 4<sup>th</sup> and 5<sup>th</sup> September ).*

*I am happy to proceed in the normal way with a share sale agreement, save for the fact it will be after the event. There are some liabilities that have come to light such as rent arrears of 17 K which will be deducted and /or indemnities required if necessary. Although I am doing this in my name personally I think we will transfer to the company within a few months- Dan is still away but is aware of where we are.*

55. This email is at page 3 of the claimants bundle.

56. The claimants evidence to this ET was that the document dated 4 September the terms of which are set out above, are the heads of terms which were being discussed and which are referred to by Mr Pringle in the email of 19 September 2019.

57. It states *property sold to RPHL or a SPV that circa 200 K John and Jenny to receive 48K as years (severance this may need to be executed before the above)*. It does not state where the payment of the £48,000 will come from, and nor does it state that it is dependent upon anything other than the sale of the property to RPHL.

58. This document is described on its face as a draft and I find that it is indeed one of the documents referred to as the heads of terms agreement in the email from Mr Ron Pringle to Ian Coupland on the 19 September 2019.

59. I find that by 19 September 2019 the terms of the agreement had been agreed and both parties considered that they had in fact and law, made an agreement. On the evidence before me, I find that both intended to create legal relations.

60. The agreement they had made was an agreement based on the transfer of shares and directorship at a nominal value on the 19 September 2019 and is based on the heads of terms 4<sup>th</sup> and 5<sup>th</sup> of September. Part of the heads of terms was a payment of £48,000 to Mr and Mrs Greenwood by Mr Ron Pringle.

61. On the 20 September 2019 Mr Pringle wrote to Ron Rixon, copying in John Greenwood, stating, *I've spoken to Ian Coupland and he said its not for him to agree the deal merely to acknowledge the terms of the deal as sent. Its up to me to agree it subject to contract and I do*. Roger Rixon replied that he would pass this on to John.

62. The same day, Mr Greenwood and Mr Pringle met at the Blue Keys Pub to discuss what would happen next.

63. I find that by this point, Mr Greenwood and Mrs Greenwood both believed that there was an agreement in place, the terms of which were as set out in the terms of agreement of the 4<sup>th</sup> September 2019, which they considered was binding on both parties, and which would be honoured by Mr Pringle. In so far as there was anything further to discuss, they entered the discussion with the intention of creating a legally binding agreement.

64. I find that Mr Pringle also attended at this meeting with the intention of making a binding agreement with the Greenwoods in respect of the termination of their employment.

65. At this meeting, the agreement to pay an amount in respect of redundancy, and the question of statutory redundancy was discussed.

66. The parties agreed that both Mr and Mrs Greenwood would be made redundant. I find that at this point there was no job for either Mr or Mrs Greenwood going forward and that they were both therefore redundant within the meaning of the relevant statutory provision.

67. I find that Mr Greenwood acted in good faith on that basis in proceeding with the next steps he then discussed with Mr Pringle. Both parties intended to create legal relations at that meeting. Mr Greenwood believed that he had made a binding agreement that, notwithstanding other parts of the agreement, that he

and Mrs Greenwood would be paid the sum of £48,000.00 by way of an enhanced redundancy payment, as a severance payment.

68. I find that all the agreements he made with Mr Pringle from that date on, and all his and Mrs Greenwoods actions, were made on that basis.

69. I find that Mr Pringle also intended to create legal relations in respect of the agreement. He knew that Mr Greenwood considered that a binding agreement had been made, and he encouraged that belief because he also believed that there was a binding contract in place at that point, by which he, as director of Rockstone Public House Limited, agreed to pay, and was bound to pay, the sum on £48,000.00 by way of an enhanced redundancy payment to Mr And Mrs Greenwood jointly.

70. This sum was one which was intended to settle all the employment based payments which might be outstanding, including redundancy payments, holiday pay and notice pay. I draw this conclusion from the lack of any further discussion between the parties about statutory notice or statutory redundancy pay.

71. In their oral evidence of both Mr Greenwood and Mr Pringle accepted that the figure of £48,000.00 was discussed at the meeting and that it was a figure to be paid to the Greenwoods. There was no evidence before me that Mr Pringle made any caveat about the payment of this figure. I find that Mr Pringle offered and Mr Greenwood accepted a payment of £48,000.00 on behalf of himself and his wife Mrs Greenwood as joint severance pay or as an enhanced redundancy payment.



72. Since both claimants had been subject to a TUPE transfer, they were at this point both employees of Rock Stone Public House limited and it is therefore Rock Stone Public House limited which is liable for the statutory redundancy payment.

73. Both claimants assert that by 21 September 2019 they believed that a formal contract had been agreed between themselves and Mr Pringle, who was now the director Of Rockstone Public House Limited, and that it was only because they believed the contract had been concluded that they cleared the flat above the pub and took their holiday in France.

74. This is supported by the email dated 21 September 2019 sent by Mr Greenwood to Mr Pringle headed, *Deal Done At Last*. He refers to the payment of the £48,000.00 and says *the £48k should just be paid over to us as a severance pay. We will deal with this tax wise but if it is redundancy then it should be tax free*. I find this is evidence of an binding agreement having been made between the parties.

75. Mr and Mrs Greenwood both acted on this agreement, to their detriment, by clearing the flat above the pub and leaving the country .

76. The claimants both asserted that a telephone conversation had subsequently taken place between them and Mr Weisman in which Mr Weisman told Mrs Greenwood that the £48,000 would be paid into her bank account shortly and in which he asked for further details of her bank account so that he could make the

payment. Mr Pringle accepted in cross examination that such a conversation had taken place, but maintains that no contract had in fact been concluded.

77. Mr Pringle maintains that no contract in respect of payments to either claimant has ever been concluded, and states that any documentary evidence making reference to terms of such an agreement are references to draft terms only.

## **Conclusions**

78. I conclude that an agreement was finalised on the 19 September 2019, at the blue keys pub, to pay the claimants the sum of £48,000.00 by way of a redundancy and/ or severance payment, in consideration of the transfer of the business to the respondents, and in respect of the termination of the claimants employment. The claimants accepted the offer of £48,000.00 as a termination payment to them jointly and left the property they had lived in over the pub, in consideration of the agreement. I conclude that the phone call that took place seeking details of the bank account of Mrs Greenwood is evidence that Mr Pringle had contracted to pay the amount of £48,000.00 to the claimants jointly.

79. I conclude that there was an oral agreement between Mr Pringle acting as a director of the company and the claimants. I have found that the agreement was for the payment of £48,000.00 in total or £24,000.00 each to Mr Greenwood and to Mrs Greenwood in respect of a severance of termination payment regarding their employment with Rockstar Public House Ltd.

80. I reject Mr Pringle's evidence that this phone call was merely an enquiry dependent on the contract being concluded. It was evidence of an unconditional agreement to pay an agreed amount of money which the parties all knew and

agreed was payable under an oral agreement concluded between them. I conclude that Mr Pringle has subsequently determined that he does not wish to pay the money as agreed.

81. I have not drawn any conclusions regarding whether or not an enforceable contract was finalised in respect of the remainder of the commercial contract which the claimants assert was made.

82. I do not have jurisdiction to deal with commercial contracts, except where there are separate terms dealing with employment or employment related matters. I have therefore confined my findings and conclusions to the matters which arise from the contract of employment and its termination only.

**Other claims:**

**The notice period**

83. I find that the continuous period of employment for each claimant started on 12 November 2011 and continued until at least the 20 September 2019. Both claimants would have been entitled to notice.

84. I have not been shown any contract of employment for either claimant and Mr Greenwood states that whilst both had a standard contract, he has not been able to access it because it was on the company computer in the possession or control of the respondents. He asserted that they would have been a notice period within it and I accept that that is the case.

85. However in the absence of any documentation or any evidence as to what that notice period would have been I find that the notice period to which each

claimant was entitled was the statutory notice period under section 86 Employment Rights Act 1996. This states that an employee is entitled to one weeks notice for each year of continuous employment if his period of continuous employment is 2 years or more but less than 12 years ( section 86(1)b.

86. By the 20 September 2019 when notice of termination by way of redundancy was discussed and agreed by the parties, each claimant was entitled to 7 weeks notice.

87. In fact, both claimants subsequently took annual leave and did not return to England but remained in France. Neither claimant could recall the exact date when they started their holiday but both thought it was towards the end of September 2019.

88. Both claimants asserted that they had agreed to give vacant possession of the flat above the part prior to going on holiday, and that they had cleared their possessions so that a new manager could move in.

89. I find that the 8 week notice period runs from 20 September 2019 until 22 November 2019.

90. I conclude from the evidence before me and find as fact that both the claimant's employment ended on the 22 November 2019.

91. Neither claimant was paid in respect of the notice period and both are entitled to be paid their usual wages for that period.

**The rate of pay for purposes of notice pay**

92. I have seen one payslip for Mr Greenwood which records actual payment after tax and National Insurance deductions and to pay slips for Mrs Greenwood which records actual payment after tax and national insurance deductions.

93. Mr Greenwood asserts that his payslip is incorrect but he has produced no further evidence of any and nor has he produced any schedule of loss setting out the amount which he says he should have been paid in respect of notice. Mrs Greenwood has produced no schedule of loss and indeed no statement for the tribunal.

94. I conclude that Mr Greenwood was paid £230.77 gross and £115.39 net per week.

95. I conclude that Mrs Greenwood was paid the same weekly gross that is £230.77 gross and £184.57 net per week.

96. I conclude that both Mr Greenwood and Mrs Green were dismissed by reason of redundancy on 22 November 2019.

97. At the point of termination of contract each claimant had 8 years continuous service.

98. At the point of termination Mr Greenwood, who was born on or 1948, was 71 years old.

99. At the point of termination of Mrs Greenwood who was born on 8 February 1949 was 70 years old.

100. On the basis of the statutory provisions both claimants are entitled to statutory redundancy payments calculated at  $1.5 \times \text{gross weekly pay} \times 8 = \text{£}2769.24$ . This figure is contained within the larger figure payable by way of enhanced redundancy pay.

#### **Contractual redundancy pay**

101. The claimants argue that they are entitled to a payment of £48,000.00 between them. This could only be the case if there was provision within the contract of employment for enhanced redundancy payment.

102. No contract has been produced, and I have found that the payment of £48,000.00 for termination was the result of an oral or verbal contract made between the parties. This was a variation of any existing written contract.

#### **Holiday Pay**

103. In respect of holiday pay I have heard no evidence from the claimant's setting out what pay they were entitled to, but in so far as they were entitled to be paid for the holiday they took in October 2019 this is covered by the payment of notice pay.

104. Insofar as the claimants allege that they have not been paid their wages were a period of time on 15 September 2019 until termination of the

employment, this falls within the same period of time at the period of notice, and they have therefore been paid for up until the date that I find their employment must terminate.

105. Both claimants continued to receive pay slips for nil pay until January 2020. This is not explained. I find that from the end of September 2019 the claimants were both in France with the knowledge and agreement of the respondent.

106. This sort of agreement might be classed as a period of gardening leave whilst notice is served. Once the notice period expires there is no basis for me finding that the employment relationship continues. Whilst there are payslips issued with a record no pay actually being paid and further the claimants do not suggest that they were either available for work or that they sought to work for the respondent. On the contrary they remained out the country.

107. I therefore find that there is no further entitlement to wages after the expiry of the notice period.

**Summary of conclusions on pay**

108. I find that each claimant is entitled to a statutory redundancy payment as set out above, payable by the respondent Rock Stone Public House Ltd.

109. I find that each claimant is entitled to 7 weeks notice pay payable by the respondent Rock Stone Public House Ltd.

110. I find that holiday pay is covered by the period of notice and that any unpaid wages are also covered by the period of notice.

111. Save as in these respects the claimant's claims are dismissed.

**Employment Judge Rayner**

Southampton

Dated 2 November 2020

Sent to the parties on

\_\_\_19 November 2020\_\_\_\_\_

Note: online publication of judgments and reasons

The ET is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at:  
<https://www.gov.uk/employment-tribunal-decisions>.

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness