



# EMPLOYMENT TRIBUNALS

**Claimant**

Mrs J Bonfield

v

**Respondent**

Nash Inns Ltd  
( No Appearance Entered)

**Heard at:** Cambridge (by CVP)

**On:** 17 December 2020

**Before:** Employment Judge Cassel

**Appearances**

**For the Claimant:** In Person

**For the Respondent:** No Appearance.

**COVID-19 Statement on behalf of Sir Ernest Ryder, Former Senior President of Tribunals**

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

## JUDGMENT

1. The claimant was unfairly dismissed by the respondent.
2. The respondent is to pay the claimant a basic award of £4855.20 and a compensatory award of £18,676.32 comprising a sum of £18,376.32 for loss of earnings and £300 for loss of statutory industrial rights.
3. The recoupment provisions apply.

## REASONS

### Background

- 1 in her claim to the Employment Tribunal the claimant, Mrs J Bonfield, claims unfair dismissal from her employment as a manager with the respondent company, a redundancy payment, notice pay, holiday pay and “other payments.”
2. The claim form was sent to the respondent at their trading address, the address at which the claimant had worked since 2009, but no response was received.
3. The claims were considered by a judge in chambers and the hearing today was to determine whether the claim form had been submitted in time and if so what the appropriate remedy is. The claimant gave evidence on oath and confirmed that following a period of Early Conciliation through ACAS she first tried to submit her claim form electronically. She had been dismissed on 25 June 2019 and submitted the first claim form on 27 August 2019. An acknowledgement was received by her on 30 September 2019 but her claim was rejected as she had wrongly named the respondent by giving the manager’s name rather than the respondent as named above. She resubmitted her paper claim on 6 October 2019. Bearing in mind the date of dismissal and the provisions for, early conciliation, I find that the claim form had been submitted in time and the tribunal has jurisdiction to hear her complaints.

### Evidence

4. The claimant gave further evidence and gave details of the suspension and disciplinary procedures that took place that led to her dismissal. She stated accepted that although a procedure had been followed, statements had either been manufactured or altered which gave a false impression of wrong doing during her employment. She was dismissed for conduct. She added that she had never been provided with a written contract of employment during her employment, which had transferred to the present respondent at the end of 2018 and it was only after her employment had ended that written terms were served on her. Part of her claim relates to outstanding holiday pay and she gave evidence that she was owed three days holiday pay from 2019 by the respondent and from the year ending December 2018, had been unable to take 15 days holiday by reason of her employment with the previous owners, the pressure of work and lack of support. Contractually she was entitled to carry over those 15 days holiday to the holiday year ending December 2019 and that that was payable by the respondent. The “other claims” appear to relate to matters for which the tribunal has no jurisdiction.

## Conclusions

5. The right not to be unfairly dismissed is provided for under section 94 of the Employment Rights Act 1996.
6. The question of fairness is provided for under section 98 of the Employment Rights Act 1996 in which we are told:
  - “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
    - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
    - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
  - (2) A reason falls within this subsection if it—
    - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
    - (b) relates to the conduct of the employee,
    - (c) is that the employee was redundant, or
    - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
  - (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
    - (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
    - (b) shall be determined in accordance with equity and the substantial merits of the case.”
8. As is seen in the statutory provision above, it is for the respondent to show the reason or principal reason for dismissal and in the absence of a response and evidence from the respondent I find that the dismissal was unfair. I also find that based on the evidence provided by the claimant she was entitled to holiday pay for three days in the holiday year ending 2019 and for the 15 days claimed and carried over from 2018.

7. The claimant had been continuously employed from 11 November 2009 until her dismissal on 25 June 2018, a period of nine years. By reason of the claimant's age and length of service the multiplier I apply is 10.5. Her basic pay was £462.40 per week and the basic award is thus £4855.20.
8. As far as holiday pay is concerned she had prepared a schedule of loss showing that her gross pay was £85.83 per day and that for three days less tax and national insurance she should have been paid £204.91. Similarly using the same calculation for the 15 days that sum is £1024.56. Both the sums are net payments and the respondent is to account to the claimant and HMRC for any tax and national insurance payable.
9. The claimant gave further evidence that she had applied for work and had followed up several job applications. She explained though having lost the accommodation with the respondent, she and her partner were living in a caravan and can only stay at a particular site for 21 days. She stated that following the health emergency in March she was classed as "homeless" and required to move their caravan to Birmingham where she had been unable to find work in hospitality or indeed any work and had lived on savings until May 2020 when she started to claim universal credit. I find that she had mitigated her loss so far as she was able to do and award 12 months loss of earnings which sum amounts to £18,376.32. That is a net amount and the respondent is to account to the claimant and HMRC for any tax and national insurance payable.
10. The recoupment provisions apply. The monetary award is £23,731.52. The amount of the prescribed element is £18,376.32. The dates to which the prescribed element is attributable is 30 June 2019 until 31 May 2020. The amount the monetary award exceeds the prescribed element is £5385.20.

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Employment Judge Cassel

Date: 17.12.2020

Sent to the parties on: ..8.01.2021.  
T Henry-Yeo

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For the Tribunal Office