



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T Taylor

**Respondent:** Mere Park Garden Centre

**Heard at:** Birmingham Employment Tribunal (by CVP)

**On:** 08 February 2021

**Before:** Employment Judge Mark Butler

## Representation

Claimant: In person  
Respondent: Mr D Brierley (Director of Respondent)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V. A face to face hearing was not held because of the ongoing pandemic and all issues could be determined in a remote hearing. The documents that I were referred to are across two very short bundles.

# JUDGMENT

The claimant succeeds in her claim for unpaid notice pay. The claimant was entitled to be paid the total sum of £415.35 during her notice period. The claimant only received £95.85. The respondent is liable to pay the claimant the outstanding sum of £319.50 in unpaid notice pay/breach of contract.

# REASONS

1. The claim in this case arises following the presentation of a claim form on 27 October 2020. The claimant brought a claim in respect of unpaid notice pay only. This claim was brought following the claimant having resigned from her position with the respondent by email on 26 August 2020.
2. To assist me with this case today I had had sight of a number of documents. From the claimant I received a bundle that ran to 27 pages (this was inclusive of the claimant's witness statement), and from the respondent I received three documents: the staff handbook, the claimant's resignation letter and the decision of a grievance that the claimant had raised.
3. I heard evidence from the claimant on her own behalf. And I heard evidence from

Ms Pam Shaw on behalf of the respondent.

Issues

4. The only issue in this case was whether the claimant had received all notice pay that she was owed.

Law

5. Section 87 Employment Rights Act 1996: Rights of employee in period of notice.

(1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for one month or more, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(1).

(2) If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(2).

(3) In sections 88 to 91 "period of notice" means—

(a) where notice is given by an employer, the period of notice required by section 86(1), and

(b) where notice is given by an employee, the period of notice required by section 86(2).

(4) This section does not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by section 86(1).

6. Section 88 Employment Rights Act 1996: Employments with normal working hours.

(1) If an employee has normal working hours under the contract of employment in force during the period of notice and during any part of those normal working hours—

...

(b) the employee is incapable of work because of sickness or injury,

...

the employer is liable to pay the employee for the part of normal working hours covered by any of paragraphs (a), (b), (c) and (d) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week's pay by the number of normal working hours.

Findings of fact

I make the following findings of fact based on the balance of probability from the evidence I have read, seen, and heard. I do not make findings in relation to all matters in dispute but only on matters that I consider relevant to deciding on the issues currently before me.

7. The claimant started working for the respondent on 05 May 2019, as a Stock Control Assistant.
8. The claimant's contract contained a contractual term that related to notice periods. This provided that either party, should they wish to end the employment relationship on notice, where employment is beyond the first 12 weeks of service but under 2 years, would have to give one months' notice.
9. During March 2020, the respondent, due to the pandemic and not having been deemed to be an essential business, was required to close.
10. The claimant was placed on furlough during March and April 2020.
11. The claimant was asked to return to work in May 2020.
12. The claimant was absent from work on sickness leave, with a doctor's sick note, from 15 May 2020 up until she left the employ of the respondent.
13. The claimant emailed Mrs Shaw of the respondent resigning from her position on 26 August 2020. Although the claimant mistakenly thought she only had to give one weeks' notice, the claimant did not intend to end the contract by giving shorter notice than she was required to under her contract. Her intention was to resign in accordance with her contractual obligations. On balance this must be correct given that the claimant in her resignation letter writes that 'My sick note should cover me for my notice period as it expires on 1<sup>st</sup> September but please let me know if you need another to cover me'. The claimant was ready to send a further sick note if her calculation on her notice period was incorrect.
14. The respondent accepted the claimant's resignation by email of 27 August 2020. The respondent does not seek to reach an agreement that notice be shortened, nor does the respondent inform the claimant that the correct contractual notice period was a month, nor does the respondent specify when notice will come to an end. And this is for good reason, as the respondent does not consider it necessary to ask questions when an employee decides to leave.
15. Wages were paid monthly. With the period for calculating pay running from the 18th of the month until the 17th of the following month. The pay slip dated 30 September 2020 therefore included pay that was due from 18 August 2020 to 17 September 2020. This therefore included one week of the claimant's notice pay. The claimant as part of her pay slip had received £95.85 as sick pay during her notice period.
16. The claimant received no further payments during her notice period.

### Conclusion

17. The claimant's contractual position provided for her to give a notice period to terminate her contract that exceeded the statutory position by more than one week. This rendered ss.88-91 of the Employment Rights Act inapplicable to the claimant, which includes section 88 which seeks to protect the pay of employees with normal working hours who are absent from work on sick leave.
18. The claimant resigned from her position on notice. She sought to conclude her

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employment relationship in line with her contractual obligations, and was not acting in breach of her contract. A simple error on her behalf led to a misunderstanding as to the length of notice that was required from her. For the avoidance of doubt, this error is not a fundamental or repudiatory breach of contract by the claimant.

19. In these circumstances the claimant was entitled to one month's pay from 26 August 2020. As she was on sick leave, and she was going to remain on sick leave during her notice period, such payment must reflect that which she would have received during the one month notice period, and that is equivalent to one month's pay at the same rate as Statutory Sick Pay.
20. The claimant should have received a total of £413.35 during her one month notice period. The claimant received a payment that included the period of 26 August 2020 until 01 September 2020, and had therefore already received £95.85 pay from the respondent during her notice period. The claimant is therefore still owed £319.50, which covers the remainder of the pay that she should have received having resigned on notice. And that is the award that this tribunal makes to the claimant.

Employment Judge **Mark Butler**

12 February 2021

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.

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