



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102019/2020 (A)

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Held via telephone conference call on 8 January 2021

Employment Judge S MacLean

10 **Mr P Ferry**

**Claimant
In Person**

15 **Mulroy Civil Engineering (Scotland) Ltd**

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The claimant was unfairly dismissed in terms of section 98 of the Employment Rights Act 1996 and the respondent shall pay to the claimant a monetary award of £1,575.
- 25 2. The claim in respect of unauthorised deductions from wages is well founded. The respondent failed to pay a day's wages for 23 March 2020 and the claimant's holiday entitlement and is ordered to pay the claimant the sum of £563.87.
- 30 3. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £907.74

REASONS**Introduction**

1. The claimant presented a complaint of unfair dismissal, seeking a redundancy payment, arrears of pay, holiday pay and notice pay. The respondent did not
5 present a response.
2. On 9 September 2020, an Employment Judge issued a case management order taking account of the contents of the Tribunal file; practice direction – fixing and conducting remote hearings issued by the President Judge Shona Simon on 11 June 2020; remote hearings practical guidance referred to in the
10 practice direction. The parties were advised that a public hearing would be conducted remotely on Cloud Video Platform by an Employment Judge sitting alone on 8 January 2021. A test was carried out by the clerk on 23 December 2020. The respondent did not participate. It was not possible to complete the test as there were a number of technical issues with the claimant's WIFI.
- 15 3. Having reviewed the papers I directed that the remote public hearing would be conducted by telephone. The parties were advised of the change in arrangements.
4. On 5 January 2021 at 16:50 "Mr McGrenaghan" for the respondent sent an email to the Tribunal (not copied to the claimant) advising that it had not traded
20 since "the COVID [outbreak]" and "back in February there was an action raised to strike out the company off however it was reversed and an attempt to save the company was met." The email also stated that the company was no longer trading; had no funds or assets to pay creditors and it was highly unlikely that the company would resume trading. I directed that the email be
25 copied to the claimant for information.
5. A second email was sent by the respondent at 16:52 saying that there had been several attempts to contact the Tribunal on the number given on the letter but it was ringing out. I was not clear when those attempts were made. The Tribunal's office was closed on 1 to 4 January 2021 inclusive. It was

however open on 5 January 2021 and as duty judge I was in the office along with other judicial and administrative colleagues.

6. The respondent did not participate at the remote hearing on 8 January 2021. I heard evidence from the claimant whom I found to be a credible and reliable witness in absence of any evidence to the contrary.

7. I found the following essential facts to have been established or agreed.

Findings in fact

8. The respondent is a limited company (company number SC464597) having its registered office on 117 Atlas Industrial Estate, Glasgow and carrying on business in construction.

9. The respondent employed the claimant as a ground worker from 1 October 2017 until the respondent terminated his employment on 23 March 2020.

10. The claimant attended work on 23 March 2020. He and his colleagues were sent home. On 1 April 2020 he received a P45.

11. On termination the claimant did not receive wages for 23 March 2020; notice pay; payment for a week of holidays accrued but not taken; or a redundancy payment.

12. At the date of his dismissal, the claimant was 64 years of age. The respondent had employed him for two complete years of service. The claimant's gross pay was £559 per week. His net weekly wage was £453.87.

13. Due to the national lockdown the claimant was unable to apply for alternative work during the two week period when he ought to have received notice of termination. There has been little opportunity for new employment.

14. The claimant believed that the respondent had changed its name to Mulroy Contracts Limited. Enquiry on Companies House website revealed that Mulroy Contracts Limited (company number SC652898) is a separate company incorporated on 28 January 2020.

Deliberations

15. The claimant accepts that while he believes that various companies with connections to the respondent company and its director continue to trade the claimant had no evidence that the respondent company had traded after 23
5 March 2020. He also accepted that while he sought compensation in section 9.2 of the claim form for a protective award no such claim had been made nor were there sufficient facts set out in section 8.1 of the claim form from which I could make such an award.
16. From my findings I was satisfied that the respondent terminated the claimant's
10 employment on 23 March 2020. The only explanation is the national lockdown on 23 March 2020. The respondent has not traded since then. Accordingly I was satisfied that the reason for the claimant's dismissal was redundancy. That is a potentially fair reason.
17. Given the claimant's length of service he would have been entitled to a
15 redundancy payment. None was made. The only communication from the respondent was the issue of a P45.
18. While I appreciate this is a challenging time for all involved and there was
20 much uncertainty in March 2020 the respondent's communication with the claimant in these uncertain times is disappointing. Notwithstanding the respondent's financial difficulties it has not been prepared to accept that money is due to the claimant albeit the respondent cannot pay it.
19. In these circumstances while I consider that the dismissal is procedurally
25 unfair I do not consider it appropriate to award a compensatory award but rather restrict the monetary award to the basis award which equates to the redundancy payment that the claimant was due: 3 weeks' gross pay (restricted to the statutory maximum of £525) (3 x £525), that is £1,575.
20. In relation to other statutory rights I was satisfied that the claimant's claims in respect of unauthorised deduction from wages was well founded. The respondent failed to pay a day's wages (£110) for 23 March 2020 and a

week's holiday pay of £453.87 which accrued but had not been taken. The respondent is ordered to pay the claimant the sum of £563.87.

21. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £907.74
5 being two weeks' net wages (2 x £453.87).

10 Employment Judge: Shona MacLean
Date of Judgment: 8th January 2021
Entered in register: 22nd January 2021
Copied to parties