



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Russell Blakelock

**Respondent:** Fairstern Ltd

**Heard at:** London Central (remotely, by video) **On:** 18 February 2021

**Before:** Employment Judge Smailes (sitting alone)

## Appearances

For the claimant: In person

For the respondent: No attendance

**Note:** This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face to face hearing because of the COVID-19 pandemic.

## JUDGMENT

The judgment of the Tribunal is that

1. The claimant was dismissed by reason of redundancy and the respondent is ordered to pay the claimant a redundancy payment in the sum of £4,200 without deduction.
2. The respondent was in breach of contract by dismissing the claimant without the period of notice to which he was entitled and the respondent is ordered to pay to the claimant damages of £4,726.16.

## REASONS

1. Reasons were given at the hearing and are repeated here so that the respondent has the reasons for the change of the name of the respondent.
2. The claimant submitted a claim form on 05 May 2020, claiming his statutory redundancy pay and statutory notice pay following his dismissal without notice on 24 February 2020.
3. The respondent did not reply to the claim or attend the hearing.
4. The claimant named Mr Biffa, a director of the Fairstern Ltd, as the respondent. The claimant was employed by Fairstern Ltd. I have exercised my discretion to amend the respondent to the claim to Fairstern Ltd.

5. I am satisfied that Mr Biffa is aware of the proceedings as the address given for him in the claim form is the address on record for him at Companies House as a director of Fairstern Ltd. Mr Biffa had an opportunity to defend the claim but has not done so. Having changed the name of the respondent, I am satisfied that it is fair to the respondent and in the interests of justice to proceed with the hearing.
6. I heard evidence on oath from the claimant, who adopted the ET1 as his witness statement, and considered the following documents: the ET1, bank statements showing payments of wages, and an email from Mr Biffa to the claimant dated 24 April 2020.
7. The background to this claim is that the claimant was employed by the respondent from 1 September 2011 to 24 February 2020, when he was dismissed without notice. The reason given by the respondent was redundancy.

### **Findings**

8. The claimant was employed by the respondent from 01 September 2011 to 24 February 2020 as a project manager/installer. I have heard evidence of a name change from Fairstern Ltd to Smartspace Automation. That is not a company name registered at Companies House. I am satisfied that it is a trading name used by Fairstern Ltd and that the claimant remained an employee of Fairstern Ltd, a company still registered as active, throughout his employment.
9. At the date of termination of his contract the claimant's salary was £2,560 per calendar month gross.
10. The claimant received a text message on 23 February 2020 asking him to meet Mr Biffa the next day. At the meeting on 24 February 2020 Mr Biffa told the claimant that the respondent was insolvent, the business was closing that day, and that any redundancy payment would be met by the government.
11. The claimant was unable to obtain a redundancy payment as suggested at the meeting as he was unable to provide the required information. He contacted Mr Biffa, who sent an email on 24 April 2020 stating, 'as you know, if I could have paid you your redundancy I would have, but there were simply no funds left'.
12. The claimant was 39 years old when he was dismissed by way of redundancy after 8 complete years of service.
13. The claimant was dismissed without notice.

### **The law**

14. Section 139(1) Employment Rights Act 1996 (ERA) an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him.
15. Section 162 ERA provides for the calculation of a redundancy payment at 1 week's pay for each year of employment in which the employee is not below the age of twenty-two.
16. Section 86(1)(b) ERA provides that the notice required to be given by an employer to terminate the contract of employment of a person who has been continuously

employed for two years or more but less than 12 years is not less than one week's notice for each year of continuous employment.

### **Conclusions**

17. The claimant was dismissed by way of redundancy. He was paid £590.76 gross per week. He was employed for 8 complete years at dismissal. He was aged 39 at dismissal, so is entitled to one week's pay for each year of service. The redundancy payment calculated in accordance with s162 ERA is 8 weeks at the capped level of £520 per week, £4,200.00.
18. The claimant was dismissed without notice and is entitled to damages for the breach of contract. The intention of damages is to put the claimant in the position he would have been if the contract had been performed correctly, i.e. if he had been given notice.
19. The claimant is entitled to 1 week's notice for each completed year of service. Although damages are calculated on a net basis, since the claimant will be liable for tax on the notice pay, I use the gross figure in the calculation. The claimant's gross weekly pay was £590.76. The damages for breach of contract are £590.76 x 8 = £4,726.08.

Julia Smailes

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Employment Judge Smailes

\_\_\_\_19 March 2021\_\_\_\_\_

Date

JUDGMENT SENT TO THE PARTIES ON

22/03/2021.....

FOR THE TRIBUNAL OFFICE

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