



# EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MISS A CLARK

V

MR D PRZYBYCIEN

HELD REMOTELY ON: 1 APRIL 2021

BEFORE: EMPLOYMENT JUDGE S POVEY  
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT: IN PERSON

FOR THE RESPONDENT: IN PERSON

## JUDGMENT

1. The Claimant was dismissed by the Respondent by reason of redundancy on 17 July 2020.
2. The Respondent wrongfully dismissed the Claimant, by failing to give her proper notice of dismissal.
3. The Respondent made unlawful deductions from the Claimant's wages, by failing to pay to her outstanding holiday pay and a redundancy payment.
4. The Respondent must pay the sum of £1488.18 to the Claimant, made of the following:

	£
4.1. Redundancy payment	558.08
4.2. Notice pay	524.00
4.3. Holiday pay	<u>406.10</u>
Total:	<u>1488.18</u>

## **REASONS**

1. The Claimant brings claims of unpaid redundancy payment, holiday pay and notice pay against her former employer. She submitted her form ET1 to the Tribunal on 25 November 2020. The Respondent resisted the claims in form ET3 on 28 January 2021. He claimed that all sums owed to the Claimant had been paid.
2. Further to directions issued by Judge Brace on 16 March 2021, the Claimant sent to the Tribunal and the Respondent the evidence upon which she relied. The Respondent provided no evidence but did attend the hearing on 1 April 2021 where he gave evidence and presented his case (as did the Claimant).
3. Although I gave judgment with reasons at the end of the hearing, I agreed to provide summary written reasons to the parties so they had a record of why I had found in favour of the Claimant and ordered payment of the sums set out above.
4. The Respondent took over the business which was employing the Claimant in February 2019. Prior to that, the Claimant had been employed by the previous owner since January 2016. She was a chef, worked 16 hours per week and was paid £131 per week.
5. The Claimant's employment transferred to the Respondent when he took over the business (and as evidenced by documents from the Respondent's accountant and from the agreement between the Respondent and the previous employer).
6. Under her contract of employment with the Respondent dated 4 March 2019, the Claimant was entitled to 5.6 weeks annual leave (on a pro rata basis) and two weeks notice of termination of her employment. Annual leave was calculated and accrued on a calendar year basis.
7. The Claimant commenced maternity leave shortly after the Respondent became her employer. She remained on maternity leave until May 2020. When she returned to work, she was immediately placed on furlough by the Respondent.
8. In early July 2020, the Respondent visited the Claimant at home and told her that the business was no longer viable as a result of the pandemic. He stated that the business would be closing but that he could not afford to pay any sums owed to the Claimant. Rather, these could be claimed from the government and directed the Claimant to his accountants, who had been dealing with the payroll.
9. I found that the Respondent did not give the Claimant effective notice at this meeting that her employment was being terminated. He did not state when her contract of employment would be ending nor did he provide her

with sufficient information for her to positively identify when that might be. At its highest, the Respondent warned the Claimant of future dismissal.

10. The Claimant was only made aware that her employment terminated with effect from 17 July 2020 when she received her P45 from the accountants.
11. On 20 August 2020, the Respondent's accountants wrote a letter to the Llanelli Job Centre, wherein they stated the following:
  - 11.1. The Respondent was insolvent and would be applying for bankruptcy.
  - 11.2. The Claimant was owed £109 in holiday pay and £558.08 as a redundancy payment.
12. The Respondent confirmed in evidence to the Tribunal that he did not, in the event, become insolvent or declare bankruptcy. He did however agree with the sums purportedly owed to the Claimant. It was not in dispute that no sums have been paid to the Claimant.
13. Based upon the evidence presented to me, I reached the following conclusions:
  - 13.1. The Claimant was employed continuously for over four years (her employment having transferred to the Respondent in February 2019).
  - 13.2. The Claimant's weekly pay was £131 and her daily pay was £65.60.
  - 13.3. The Claimant was dismissed on 17 July 2020 by reason of redundancy. She was 32 at the time.
  - 13.4. The Claimant was dismissed without notice.
  - 13.5. The Claimant had accrued 6.2 days of holiday entitlement by the time of her dismissal. As explained to the Respondent, her entitlement to holiday pay (as with all her other employment rights) continued during her maternity leave (by reason of Regulation 9 of the Maternity & Parental Leave Regulations 1999).
14. It followed from these findings that the Claimant was owed redundancy pay, notice pay and holiday pay by the Respondent. Her claims therefore succeeded.
15. As to the amounts payable to the Claimant, she had a statutory entitlement to a redundancy payment of £524 (based upon her four years complete service, her age at the date of her dismissal and her weekly wage). However, the statutory entitlement is the minimum amount due. The Respondent's acceptance of the accountants' letter of 20 August 2020 constituted an increase on that minimum by the Respondent. In effect, the

Respondent agreed to a redundancy payment of £558.08 and I ordered payment in that sum.

16. The Claimant had a contractual right to two weeks' notice of termination of her employment. However, by reason of section 86(1)(b) of the Employment Rights Act 1996, the Claimant had accrued a statutory right to four weeks notice (based upon the continuity and duration of her employment). By reason of section 86(3), that statutory entitlement takes precedence over the shorter notice period in the contract of employment. The Claimant was therefore entitled to four weeks notice, which she did not receive. As such, I ordered the Respondent to pay her a sum equivalent to four weeks' notice, namely £524 (£131 x 4).
17. Finally, the Claimant had accrued 6.2 days of holiday entitlement when she was dismissed. She was entitled to be paid that in lieu of taking holiday. I therefore ordered the Respondent to pay the Claimant the sum of £406.10 (£65.50 x 6.2).
18. As I explained to the parties, those sums are payable by the Respondent. If they are not paid within a reasonable period, any enforcement of the judgment by the Claimant has to be pursued by an application to the County Court, not the Employment Tribunal

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**EMPLOYMENT JUDGE S POVEY**

**Dated: 6 April 2021**

Order posted to the parties on  
7 April 2021

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For Secretary of the Tribunals