



# EMPLOYMENT TRIBUNALS

**Claimant:**  
**Mr Samuel Armstrong**

**Respondent:**  
**Crosfill & Archer  
Claims Ltd**

**Heard at:** Leeds (By Video & Telephone Link) **On:** 7 April 2021

**Before:** Employment Judge R S Drake

**Representation:**

**Claimant:** In Person  
**Respondent:** No Attendance/Appearance

## JUDGMENT

1. The Claimant was unfairly dismissed but no award of compensation is made because his claims were subsumed and discharged by a Redundancy payment.
2. The Claimant's claim for unpaid holiday pay is dismissed as the value of his Redundancy Payment exceeded his holiday pay entitlement.
3. The Claimant has established breach of contract in not being paid 11 days' notice as at the effective date of termination of his employment on 16 October 2020 and thus the Respondent shall pay to him the total sum of £880.00 to which extent his claim succeeds.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

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. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

**REASONS**

4. The Claimant attended in person but despite my ascertaining that the Respondents were notified of today's hearing and its mode (by video link) and were provided with the means of access, they did not attend. However, they applied by email to postpone the hearing because they alleged, they had not received the Claimant evidence documents. I noted that all of his evidence was generated by the Respondents, so they were seised with possession of all the material he sought to rely upon, and that in any event it would only be relevant to them if they were entitled to respond to the claims. As they had not filed an ET3 Response in time nor applied for leave to do so in time, they could take no part in the proceedings other than observe. Therefore, I refused their application for postponement which I noted they could not be concerned enough to attend via video link in order to make in more formal fashion. Thus, I had to rely solely on the Claimant's statement and his evidence which was given very candidly. I had no reason to conclude that the Claimant's testimony was anything other than credible and probative to the required civil law standard.

5. I made the following findings of fact: -

5.1 the Claimant was dismissed on grounds of redundancy on 16 October 2020 without prior consultation;

5.2 at that stage he had three years' service but was paid a redundancy payment based upon four years; the sum paid was £2,098.36 and exceeded the statutory minimum by 1 week's pay in the sum of £494.00;

5.3 he had been paid for 128 hours holiday but had accrued 168 hours and as his holiday pay was 32 hours short; the sum in question is £312.00 net;

5.4 the shortfall of his holiday pay had been set off against his redundancy payment insofar as it exceeded his statutory entitlement to the extent that his holiday pay entitlement was extinguished, and he had agreed to this;

5.5 he was given notice on the 24 September 2020, but he was only required to work up to 16 October 2020 and was not paid for the balance of 11 days' notice which was at a rate of £80 per day;

6 I made the following findings on applying the law: -

6.1 section 98 ERA provides that it is for the Respondent to show what their reason was for the Claimant's dismissal and that it was it was a

potentially fair reason. As the Respondents were not entitled to take part in the proceedings, they have failed to establish these points and therefore I find that the Claimant's dismissal was unfair but that his entitlement to a Basic Award of compensation is subsumed within the redundancy payment he received and that he would have been dismissed in any event on grounds of redundancy and therefore he has no provable loss in respect of ongoing earnings; therefore there is no Compensatory Award entitlement to declare; nonetheless I make a declaration that the Claimant was unfairly dismissed

6.2 the shortfall of the Claimant's holiday pay is extinguished by the value of the excess of the redundancy payment over and above the statutory minimum;

6.3 pursuant to his contract, the Claimant was entitled to three weeks' notice but in fact only had 10 days. He was therefore entitled to a further 11 days and he is therefore entitled to be paid damages of 11 days' pay at the rate of £80 per day, and thus the total sum of £880 which the Respondents shall pay to him.

Employment Judge R S Drake

Signed 19 APRIL 2021