



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100479/2020 (A)**

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**Final Hearing held via telephone conference call on 10 August 2020**

**Employment Judge M Robison**

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**Ms G Gibson**

**Claimant  
Not present and  
Not represented**

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**Mr I Robertson**

**First Respondent  
In Person**

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**Second Respondent  
No response**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1. The claim against the second respondent is dismissed.
2. The respondent having paid to the claimant statutory redundancy pay, no sums are due to the claimant. Her claim for redundancy pay is therefore dismissed.

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### **REASONS**

1. The claimant raised a claim in the Employment Tribunal on 26 January 2020 claiming redundancy pay. The first respondent resists the claim. No response was received from the second respondent.
2. A final hearing in this case was listed to take place in person. That hearing was however converted to a preliminary hearing on case management issues only, to take place by telephone conference call. This was in light of the Presidential

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Guidance on the Covid-19 Pandemic issued on 18 March 2020, and subsequent directions, which state that no in person hearings can currently be listed. The Presidential Guidance however requires consideration to be given to other alternatives to an in-person hearing such as determination by way of written submissions or by video or telephone hearing.

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3. Due to the fact that e-mails were being sent to Mr Robertson's old work e-mail address, the case management preliminary hearing listed in this case was postponed due to short notice. At that time, I noted that the claimant had advised that she did not have access to the internet, and therefore it was clear that this case could not heard by way of video conferencing.

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4. On considering how to make progress in this case, I decided that it was appropriate and in the interests of justice to hold the final hearing by telephone conference call.

5. This was because it was apparent from the papers that there were no key issues of fact which were in dispute; and the only issue to be determined was the correct application of the law to those undisputed facts. Indeed, the only issue of dispute between the two parties was whether the respondent had made a shortfall in the payment of redundancy pay to the claimant, and thus whether the correct numbers had been used to identify the sum due.

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6. At this final hearing held by telephone conference call, various unsuccessful attempts were made to contact the claimant by telephone. Mr Robertson did however attend the hearing. I decided, in accordance with the overriding objective, that it was appropriate and in the interests of efficiency to allow the hearing to proceed in the absence of the claimant. This was largely because there were no key issues of fact in dispute.

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7. Both the claimant and Mr Robertson had lodged a number of documents in support of their position. These are referred to in this judgment as appropriate. I took account of what the claimant had set out in her ET1 and documents lodged. I heard evidence on oath from Mr Robertson.

8. At the outset of the hearing I asked Mr Robertson to confirm his relationship with the second respondent. He confirmed that this was a franchise firm, that he had traded on his own account, and that he was the claimant's former employer.
- 5 9. In these circumstances, the claim is properly directed against the first respondent, and therefore the claim against the second respondent is dismissed.

### Findings in Fact

- 10 10. On the basis of the evidence heard and the documents lodged the Tribunal finds the following facts are agreed:
11. The claimant was employed by the respondent as an office manager from 8 June 2000 until she was made redundant on 27 September 2019.
12. The claimant worked 22.5 hours each week, that is 7.5 hours per day and three days per week. She was paid £8.75 per hour.
- 15 13. The claimant was paid monthly gross the sum of £858, as confirmed by payslips lodged dated 26 July, 30 August and 27 September 2019.
14. The claimant also received a variable bonus based on telephone enquiries which were converted to customers. On the payslip dated 26 July, that is stated to be £17. On the payslip dated 30 August, that is stated to be £26.50. On the  
20 payslip dated 27 September 2019 that was £23.50.
15. The respondent intimated to the claimant in a letter dated 24 June 2019 that she was being made redundant because the business was closing. He thus gave her 13 weeks' notice.
16. The respondent initially calculated redundancy pay to be £5445 using the  
25 government's calculator (see print out from gov.uk website) and advised the claimant of that (see letter lodged dated 9 August 2019). He subsequently realised that he had made an error in the calculation.

17. Although he was informed that bonus was not to be included in the calculation by an ACAS officer, he thought that it was only reasonable that he should include bonus in the calculation and that he had read that on the government website.
- 5 18. He recalculated redundancy pay due, and set out his calculations in a letter to the claimant dated 3 September 2019 which he lodged.
19. He paid to the claimant, as confirmed by the payslip dated 27 September which he lodged, the sum of £5,591.85 in respect of a statutory redundancy payment.
20. The claimant's date of birth is 1 October 1960.

#### 10 **Relevant law**

21. Section 135 of the Employment Rights Act 1996 states that an employer shall pay a redundancy payment to an employee if the employee is dismissed by reason of redundancy.
22. Section 162(1) states that the amount of a redundancy payment shall be  
15 calculated by (a) determining the period, ending with the relevant date, during which the employee has been continuously employed, (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and (c) allowing the appropriate amount of each of those years of employment.
- 20 23. Section 162(2) states that the appropriate amount means (a) one and a half week's pay for a year of employment in which the employee was not below the age of forty-one, (b) one week's pay for a year of employment in which he was not below the age of twenty-two, and (c) half a week's pay for each year of employment not within paragraph (a) and (b).
- 25 24. The maximum length of service which may be taken into account in a redundancy pay claim is 20 years (section 162(3)), a year being a period of 12 complete calendar months (section 210(2)(b)).
25. The relevant date for the purposes of calculating the redundancy payment is the effective date of termination, that is, in terms of section 145(a) where the

contract is terminated by notice, the date on which that notice expires; where the dismissal is without notice, the date of which the termination takes effect (section 145(b)).

### **Tribunal deliberations and decision**

- 5 26. The claimant was due and was paid a statutory redundancy payment. The only dispute in this case was the exact amount of redundancy pay due.
27. Redundancy pay is based on a statutory formula, as set out in the relevant law section above. That formula is based on two figures, the number of weeks' pay the claimant was entitled to given her age and length of service, and the gross  
10 weekly wage.
28. In this case, it is not in dispute that the claimant was 58 as at the date of redundancy and that she had worked for the first respondent for 19 years.
29. The only dispute between the parties was the exact amount of gross weekly pay to be used for the calculation. Because the claimant was paid monthly and she received a bonus, a calculation had to be made using those figures. This  
15 is where the parties differed.
30. The claimant asserted that the gross weekly pay for the calculation was £214.50. That figure is not however correct. The claimant has not included bonus in the calculation. Bonus should be included.
- 20 31. It would appear however that she has taken the monthly basic gross figure (£858) and divided that by four to obtain the weekly gross figure. That however is not the correct way to obtain an accurate weekly gross figure.
32. The weekly gross figure is calculated as follows.
33. The bonus figure is based on the average over the final 12 weeks of work.  
25 During those 12 weeks the claimant received a total of £67 (£17 + £26.50 + £23.50). That equates to £22.33 per month (£67 divided by 3) or £5.15 per week (£67 divided by 13 or £22.33 x 12 divided by 52).

34. Thus, the average monthly gross figure over the final three months of employment was £880.33. In order to calculate an accurate weekly average, that should be multiplied by 12 months and divided by 52, giving a weekly gross figure of £203.15.
- 5 35. With regard to the number of weeks pay which Ms Gibson is due, she worked for two years while she was under the age of 41, for which she is entitled to two weeks pay per year. She worked for 17 years between the ages of 41 and 59, for which she is entitled to one and a half weeks pay per year. That equates to 27.5. There is no dispute about that figure.
- 10 36. The redundancy calculation is therefore reached using the following sum: 27.5 x £203.15 which is £5,586.63.
37. In fact, Mr Robertson paid the claimant the sum of £5,591.85. The difference may be accounted for by a rounding error or adding one extra week of average bonus.
- 15 38. However, the fact is that Mr Robertson has paid to Ms Gibson a slightly higher sum than the provisions would require.
39. Consequently, there is no sum due from Mr Robertson to the claimant and this claim is dismissed.
- 20 40. In conclusion, I would record here that it is unfortunate that what was apparently an amicable employment relationship over 19 years should have ended with an unsuccessful claim to the employment tribunal resulting simply from a miscalculation.

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Employment Judge: M Robison  
Date of Judgment: 10 August 2020  
Entered in register: 12 August 2020  
and copied to parties

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