



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 4102275/20 (V)**

10

**Held on 12 January 2021**

**Employment Judge N M Hosie**

15

**Miss J M Watt**

**Claimant**

**Mrs E L Hutcheson t/a Hair & Co**

**Respondent**

20

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the respondent shall pay the claimant:-

25

1. the sum of Six Thousand, Two Hundred and Eighty-Eight Pounds (£6,288) as a redundancy payment; and
2. the sum of Two Thousand and Sixty Pounds and Five Pence (£2,060.05) as damages for breach of contract (failure to give full notice of termination of employment).

30

35

**REASONS**

**Introduction**

**E.T. Z4 (WR)**

1. The claimant, Janice Watt, claimed the respondent was due to make a redundancy payment to her and that the respondent had failed to pay her full notice entitlement when she was dismissed. The respondent, Lynda Hutcherson, denied that she had dismissed the claimant. She claimed that the claimant had resigned and left her employment, of her own volition.

### The evidence

2. I heard evidence first from the claimant. I then heard evidence from the respondent and from her witness, Deborah Verity.
3. Each party submitted documentary productions (“C” and “R”).

### The facts

4. Having heard the evidence and considered the documentary productions, I was able to make the following findings of fact. The claimant commenced her employment with the respondent as a Hairdresser on 4 April 2004. The effective date of termination of her employment was 3 April 2020. The claimant worked in the respondent’s shop in Banff.
5. The respondent’s business had been ailing for some time. The respondent had informed the claimant in 2019 that she was thinking about closing down and by March 2020 she had the added concern that there would be loss of business due to the anticipated “lockdown”, as a consequence of the Covid-19 Pandemic.

- 6.

**Saturday 21 March 2020**

7. The claimant and another stylist, Jackie, were working in the shop, along with the respondent. The respondent claimed that the claimant resigned that day. She said she went into the kitchen to make a coffee at the same time as the claimant. When they were in the kitchen her witness, Deborah Verity, came  
5 into the shop. Mrs Verity is a neighbour and friend of the respondent. She called into the shop most Saturdays . When she came in, she also went through to the kitchen where she joined the claimant and the respondent.

8. According to the respondent, at one point in their conversation, in the kitchen,  
10 the claimant took out her mobile phone and showed her a message from her insurance company to the effect that her wages would be covered if she was dismissed. The respondent claimed that the claimant then said to her, "*just finish me. I'll get paid.*" and she responded by saying, "*Jan just leave it until we see what's happening.*"

15

9. I also heard evidence from Deborah Verity about the exchanges between the claimant and the respondent that day in the kitchen. She spoke to a letter/statement which she had submitted prior to the hearing (C46). It was in  
20 the following terms:-

*"I have been asked by Lynda to provide a witness statement as to what I overheard Jan in the kitchen of the shop saying to Lynda. On the Saturday that Lynda closed the shop I called in to see Lynda what was happening with the shop. Lynda and Jan were in the kitchen and Jan opened her phone and showed it to Lynda. I did not see what was on the phone. Then Jan said you'd be better paying me off as my insurance will cover my wages and Lynda said just leave it Jan. Wait and see what happens. There was something said about good money after bad. I can't remember the exact words. When Lynda had told me what Jan had done I was in total shock knowing what I heard.  
25 Lynda was very good to her staff and can't believe she had done this on Lynda."*

30  
35

10. Mrs Verity confirmed the terms of her letter/statement at the tribunal hearing. She confirmed that the claimant had made reference to an insurance policy

which she had. She suggested to the respondent that she “*pay her off*”, as otherwise, “*she was throwing good money to bad*”. She confirmed that the respondent replied by saying: “*Just leave it and let’s see what’s going to happen.*” In cross-examination, Mrs Verity also reminded the claimant that  
5 previously she had, “*told her about this amazing policy you had when cutting my hair and that it would pay your wages.*”

11. However, the claimant’s account of her discussion with the respondent that day in the kitchen was quite different. She denied that she had resigned as  
10 the respondent claimed. She maintained that she was dismissed by the respondent with effect from 3 April 2020 when she received her P45 (C51).

12. The claimant accepted that she told the respondent about the insurance policy she had. She said that she first advised the respondent of this some  
15 weeks before. She thought that the policy would make up her wages if she was off work for any valid reason. However, when she enquired about this she discovered that there was only cover in the event of her being signed off due to “sickness”. She claimed that on 21 March when in the kitchen she showed the respondent a message from the insurers on her mobile phone to  
20 that effect. She said that when the respondent saw the message she told her to stop paying for the insurance as it was a “*waste of money*”.

13. According to the claimant, the respondent also advised her in the course of their conversation that day that she was thinking about closing the shop and  
25 “*paying her off.*” The claimant only had two clients that day. She left the shop around 1.30pm. She said that before she left the respondent also told her that she did not know what was going to happen with the business and that, “*we might try three days at the end of next week.*” She asked the claimant to phone her clients and move their appointments to the end of the week. The  
30 claimant said that when she left the shop “*she didn’t know what was happening*”.

14. While I heard evidence, not only from the respondent but also from her witness, Mrs Verity, and I only heard evidence from the claimant about the

conversation in the kitchen on 21 March, the claimant gave her evidence in a measured, consistent and convincing manner. It was significant that her evidence was consistent with the documentary productions. She presented as both credible and reliable. I preferred her account.

5

**Sunday 22 March**

15. The respondent said that having watched the news on Saturday night she “*thought it was too dangerous*” to open the salon. Accordingly, she telephoned the claimant the following day to advise her of her decision and to ask her to let her clients know.

16. The respondent discovered later that on Sunday 22 March the claimant had gone into the shop and removed her personal belongings. The respondent also claimed she also took some of her “colours”. One of her documentary productions was an order for replacement colours (R3). However, the claimant had told the respondent that she didn’t want to leave “*her stuff*” in the shop as it had been broken into previously and that was why she collected her personal belongings the following day. She also maintained that the respondent was aware that she would be removing her “*stuff*” from the shop and referred to a text message which she sent to the respondent on 24 March to that effect (Annex C4). She denied taking any of her “colours”. I accepted the claimant’s evidence in this regard.

25

17. The “lockdown” then came into force and, as it transpired, the shop never re-opened. The respondent closed the shop on 21 March and that proved to be the last day the claimant worked there. A new tenant took over the lease of the premises in July.

30

**Tuesday 24 March**

18. The respondent put a notice on the salon door that day to inform customers that the salon had closed. It was written on behalf of both the respondent and the claimant. It was in the following terms (R1):-

5        *"We are sorry that we have had to close the salon. We wish all our clients many thanks for all their continued support over the years. As soon as we are informed that it is safe to re-open we shall be in touch by phone.*

10        *We look forward to welcoming you all back soon.*

15        *Lynda & Jan*

*Any enquiries please telephone Lynda on .....*"

15

### **Wednesday 25 March**

19. The claimant said that, having taken advice from her accountant, she decided to give the claimant *"two weeks' sick pay"* and pay her £100 per week *"holiday pay"*. She also said that she, *"asked her every day if she was coming back to work. There was no reply."*

20

### **Friday 27 March**

25 20. The respondent said that she was, *"under huge pressure and stress as she was still incurring expenses in connection with the shop."* She said that she had *"had enough"*. She decided to cease trading on Friday 27 March.

21. She delivered a P45, therefore, to the claimant that day (C51). She explained that the reason for the *"leaving date of 3 April"* on the P45 was that she had *"taken account of two weeks' sick pay for the claimant."*

30

22. Subsequently, on 31 March the respondent offered to "furlough" the claimant but the claimant refused the offer (C 67).

35 **Messages**

23. The claimant produced a number of copy e-mails and text messages. These included an e-mail which she sent to her MSP on 24 March. It was in the following terms (C28):-

5           *"As a work (sic) who has been asked to stay at home can you please get information on how employers are to access the 80% pay package for their workers, my employers says she can't find information so is giving me sick pay of £94.00. Will this be back dated when she can get on to the pay package. Also said if goes on too long that after 16 years loyal service she will just have to pay me off with no redundancy as there is no money. Please can you advise me on this matter.*

10

*I cannot be the only worker with such worries so maybe you can raise these question (sic) with the Government on behalf of workers in Scotland."*

15

#### **P45**

24. The claimant received her P45 from the respondent (C51). It was put through the letter box of her neighbour on 27 March. The claimant had requested her P60 as she thought that this would be required to enable her to claim benefits (Annex C2). But, as she put it, *"I got my P45 instead."*

20

25. When the claimant asked for her P60 by text message on 24 March 2020 she told the respondent: *"Want to keep job if can."* (Annex C2). The respondent replied as follows (Annex C3): *"Ok have done end of year but won't let me print until 6 April. We will get back whenever I am going up today to clear up and close you may try e-mail then if I can. I will claim your 80% of wages as soon as I can. Hopefully they will pay it backdated."*

25

30

35

26. She also produced a number of text messages and e-mails (C58-69). These included the following:-

On 26 March, the following text message from the respondent (C58): -

5 *“Looks like I might have to close up the shop....they are saying I’m not entitled to anything because of Derek. I will let you know by end of week. If that happens you will need to make your own claim for benefits xx”*

On 27 March, the following text message from the claimant (C59):-

10

*“Is this a temporary or permanent closure. Need a letter making it clear with exact dates, before I can benefits xx”*

15

The respondent’s response:-

*“I don’t know love. My head is done in if they had got this 80% done i wouldn’t be doing this i would be better for you as well to P45 you cease trading and maybe sometime in the future start up again i am sorry about abt this Jan believe me xx”*

20

On 27 March, the following text message from the respondent (C60):-

25

*“No you wernt paid off. I ceased trading xx”*

30

### **Discussion and decision**

35



27. The principal issue in this case was whether the claimant resigned on 21 March 2020, as the respondent maintained, or whether she was dismissed with effect from 3 April 2020 as the claimant maintained. What actually transpired and what was said on Saturday 21 March 2020, in the respondent's shop, therefore, was pivotal to my decision.
28. I was not persuaded that the claimant resigned. I arrived at that decision mindful that not only did I have the respondent's evidence but also evidence from Mrs Verity.
29. However, even if their evidence was to be accepted in its entirety, in response to a suggestion by the claimant that she be "laid off", the respondent replied: *"Just leave it Jan. Wait and see what happens."*
30. That exchange could not be construed as meaning that the claimant had resigned, let alone unequivocally. Indeed, there was no evidence that the claimant actually said she wished to resign.
31. Further, and in any event, as I recorded above the claimant presented as credible and reliable. It was significant that her evidence was consistent with the text messages and e-mails at the relevant time which were included in the documentary productions. I preferred her evidence.
32. It was clear that the respondent was confused about how the "lockdown" would affect hairdressers and that she was also confused about how the furlough scheme would operate.
33. Further, in all the exchanges between the parties both orally and in writing, there is no reference to the claimant "resigning". Indeed, the written communications are consistent with the claimant remaining in the respondent's employment until she received her P45 on 27 March 2020 (C51).

34. Also, had the claimant resigned on 21 March, as the respondent maintained, there would have been no need to record "3/4/20" as her "leaving date" on the P45 (C51).

5

35. The respondent's text message of 27 March at 19:05 was also significant. She said:- "*No you wernt paid off, I ceased to trade.*" (C.60). That was consistent with the claimant's contention that she was dismissed when she received her P45. Had the respondent believed the claimant had resigned, she probably would have said so in that message.

10

36. Also, when the respondent closed the shop she put a notice on the shop door to say that both she and the claimant were "looking forward" to welcoming clients back "soon". That notice makes no sense if the claimant had already resigned.

15

37. The respondent also offered the claimant her job back and that she would be furloughed. That also seems extraordinary if the claimant had resigned.

## 20 **Insurance policy**

38. It was clear that the claimant advised the respondent that she had an insurance policy which would pay her wages if she was unable to work. But the circumstances in which these payments would be made wasn't clear. The claimant thought that it might apply if she was "laid off" due to the effect of the Pandemic. She sought clarification from the insurers and was advised that there was only cover in the event of sickness absences.

25

39. I accepted the claimant's evidence that what she showed the respondent on her mobile phone on 21 March was a message from her insurers to confirm she only had cover for sickness absences. That was why the respondent told her told her it was "a waste of time".

30

40. I arrived at the view, therefore, that the claimant did not resign on 21 March 2020. I did so without a great deal of difficulty as not only did I have the claimant's own evidence, there was also a substantial body of documentary evidence consistent with the claimant's version of events and inconsistent with the respondent's version of events. It was clear that the claimant was dismissed, with effect from 3 April 2020, when she received the P45 from the respondent on 27 March 2020.

41. It appeared to me that the reason the respondent had defended the claim was because she believed that if she closed the shop the claimant would not claim anything from her, but would claim against her insurance company instead.

## 15 Remedy

42. As the claimant was dismissed due to the respondent's business closing down for good, there was clearly a redundancy, in terms of s.139(1)(a) of the Employment Rights Act 1996, which deals with the situation where an employer has ceased or intends to cease to carry on business.

## Redundancy payment

43. I was satisfied, therefore, that the claimant was entitled to a redundancy payment. She included with her documentary productions a Schedule of Loss, which I understand was prepared with the assistance of a solicitor (C47-50). The Schedule is comprehensive, includes supporting documentation and was not challenged.

44. I am satisfied, therefore, that the claimant is entitled to a redundancy payment of **£6,288**, calculated on the basis of 16 years' service, that she was 58 years

of age when her employment ended and that her average weekly earnings were £262.

**Breach of contract**

5

45. The respondent was in breach of contract as she only gave the claimant one week's notice of her dismissal, rather than her statutory entitlement of 12 weeks.

10

46. The claimant is entitled to an award of damages to reflect her loss in respect of that breach. There was included in the Schedule of Loss a detailed calculation (C49/50) along with supporting documentation. I am satisfied that that calculation is accurate. Accordingly, the claimant is also entitled to an award of damages in this regard of **£2,060.05**.

15

**Employment Judge**

**Nick Hosie**

**Date of Judgment**

**24th February 2021**

20

**Date sent to parties**

**25th February 2021**

25

30

5