



## EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4100421/2021 (V) Hearing by Cloud Video Platform on 23 April 2021

Employment Judge: M A Macleod

10

Miss Alexandra Vig

Claimant  
In Person

15

Canon Court Apart Hotel Ltd

Respondent  
Not Present and  
Not Represented

20

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

The Judgment of the Employment Tribunal is that:

25

1. The claimant's claim for a redundancy payment fails and is dismissed; and
2. The respondent is ordered to pay to the claimant the sum of **One Thousand Six Hundred and Sixty Two Pounds and Fifty Pence (£1,662.50)** in respect of annual leave accrued but untaken as at 31 October 2020, the date of termination of the claimant's employment. The sum awarded is expressed gross of tax and national insurance. It is for the Respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

30

### **REASONS**

35

3. The claimant presented a claim to the Employment Tribunal on 5 February 2021 in which she complained that the respondent had unlawfully deprived her of a redundancy payment and a payment in respect of annual leave accrued but untaken as at the date of termination of her employment.

4. The respondent did not submit an ET3 response to the claim.
5. A hearing was listed to take place on 23 April 2021 by Cloud Video Platform (CVP) in order to determine the claim.
6. Three issues arise in this case:

5

**1. Was the claim presented in time?**

**2. Is the claimant entitled to a redundancy payment, and if so, what payment should be awarded to her?**

10

**3. Is the claimant entitled to payment in respect of annual leave accrued but untaken as at the date of termination of her employment, and if so, what payment should be awarded to her?**

15

7. The claimant appeared on her own behalf, accompanied and appropriately assisted by Mr Tibor Ovari, her partner. She gave evidence, briefly. I advised the claimant that Mr Ovari could be in attendance with her and assist her in locating documents to which she referred or was referred, but that he should not speak to her. Mr Ovari very courteously complied with this direction.

20

8. The hearing proceeded by CVP, and the claimant benefited from the assistance of an interpreter in the Hungarian language. All were able to participate in the hearing, though with occasional difficulties as the interpreter struggled from time to time to hear the claimant clearly, and unfortunately the claimant's neighbours appeared to be playing loud music throughout the hearing which was audible on the CVP. However, I was satisfied that the hearing was able to proceed satisfactorily, and was particularly grateful for the excellent interpretation skills provided by Ms Forman, the interpreter.

25

9. I deal, then, with each of the issues in turn.

**Was the claim presented in time?**

10. The claimant's employment ended with effect from 31 October 2020, by reason of redundancy due to the ongoing impact of the coronavirus pandemic.

11. She presented her claim to the Tribunal on 5 February 2021.

5 12. She notified ACAS of her intention to make her claim on 15 December 2020, within the statutory timescale for presenting both a claim for a redundancy payment and a claim for unlawful deductions from wages (holiday pay). The Early Conciliation Certificate was issued by ACAS on 26 January 2021.

10 13. Accordingly, it is plain that the claimant's claim has been presented within the statutory time limit. The Tribunal has jurisdiction to hear this claim.

**Is the claimant entitled to a redundancy payment, and if so, what payment should be awarded to her?**

15 14. The claimant's employment commenced on 6 January 2019 (as she confirmed in evidence, and as is noted on the Statement of Terms and Conditions provided by her to the Tribunal in respect of her employment with the respondent), and ended on 31 October 2020. She had less than two years' continuous service with the respondent.

20 15. Section 155 of the Employment Rights Act 1996 provides that "*An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.*"

25 16. In these circumstances, the claimant has no right to a redundancy payment, lacking the necessary minimum qualifying service with the respondent. This claim must therefore fail, and is dismissed.

**Is the claimant entitled to payment in respect of annual leave accrued but untaken as at the date of termination of her employment, and if so, what payment should be awarded to her?**

17. The claimant claims that she was, as at the date of termination of her employment, entitled to 27 days' accrued annual leave. The respondent wrote to her on 28 September 2020, in the person of Matthew Hansen, Director, to confirm that this was agreed by the respondent, and that they would pay this sum to her at the end of October 2020.

18. The respondent failed to pay the claimant in respect of her outstanding annual leave on termination of her employment at the end of October 2020. They offered to pay her £200 as a payment in respect of this amount, but the claimant did not reply, and no payment has since been made by the respondent to the claimant.

19. Accordingly, I find that the claimant is entitled to receive payment in respect of 27 days' annual leave accrued but untaken by her as at the date of termination of employment. The respondent does not dispute this in correspondence, and has not presented a defence to this claim.

20. The claimant's hourly rate of pay was £8.21. She worked 7.5 hours per day. Accordingly, the claimant is entitled to receive  $7.5 \times £8.21 \times 27$ , which amounts to £1,662.50.

21. The sum awarded above is expressed gross of tax and national insurance. It is for the Respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

Employment Judge: Murdo Macleod  
Date of Judgment: 26 April 2021  
Entered in register: 11 May 2021  
and copied to parties