



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107675/2020

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Held via Cloud Video Platform (CVP) on 15 February 2021

Employment Judge R Bradley

10 **Miss Samantha Wilson**

**Claimant
In Person**

15 **Jackies Hair Salon**

**Respondent
Represented by:
Mr Y Anderson**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the employment tribunal is that:-

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1. The claim for accrued and unpaid holiday succeeds; the respondent shall pay to the claimant the sum of five hundred and twelve pounds (£512.00) in respect of holiday pay for paid annual leave to which the claimant was entitled but was not paid
2. The claim for a statutory redundancy payment succeeds; the respondent shall pay to the claimant a statutory redundancy payment amounting one hundred and eighty-four pounds and eighty pence (£184.80) and
3. The claim for damages for breach of contract succeeds; the respondent shall pay to the claimant damages for wrongful dismissal amounting to two hundred and sixty two pounds and forty pence (£262.40).

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REASONS

Introduction

1. By a notice dated 10 December 2020 the final hearing of this case was fixed for 15 February 2021 at 11.00am. The respondent also received notice of the claim that day. The ET3 form (lodged on 7 January 2021) indicated that the respondent did not defend the claim.
2. By Order dated 14 January the claimant had been required to set out the basis on which she calculated the various claims set out in section 9 of the ET1 form. The claimant said that she had not seen the Order. She was able to provide some information in her evidence. In large measure she had relied on advice from ACAS.
3. The claimant presented her own case. Ms Anderson (daughter of the proprietor of the respondent's business) appeared for the respondent. She confirmed that she had completed the ET3 form. She also confirmed that none of the claims were contested. I advised her that while she had been entitled to notice of the hearing and was entitled to receive the judgment and reasons, the extent of her participation in the hearing was as permitted by me. As the various claims were considered and evidence taken, Ms Anderson was able to assist me, for which I am grateful.
4. There was no dispute between the claimant and Ms Anderson on any material aspect of the claims.

The claims and the issues

5. The claimant made three claims. First, for £512.00 representing accrued and untaken holidays at the end of her employment. Second, for a statutory redundancy payment in the sum of £196.80. Third, £262.40 representing a claim for payment in lieu of her notice period. She confirmed that (contrary to Box 8.1 of her ET1 form) she did not make a claim for arrears of pay. In respect of the claims, I identified the following issues:-

- a. What was the holiday year operated by the respondent?

- b. To what holidays was the claimant entitled in the holiday year in question, 2020?
- c. Of that entitlement, how many holidays had the claimant taken?
- d. What sum (if any) was the claimant due in respect of her accrued and
5 untaken holiday entitlement in that year?
- e. Was the claimant dismissed by the respondent?
- f. If so, what was the reason for her dismissal?
- g. If the reason was redundancy, to what statutory redundancy payment is she entitled?
- 10 h. If the claimant was dismissed, to what period of notice was she entitled?
- i. Did she work or was she paid for that period of notice?
- j. If not, what sum is due to her as damages for the failure to provide notice?

15 **Evidence**

6. I heard evidence from the claimant. Her evidence was consistent with the claims that she made. She was able to elaborate on the information provided in the tribunal forms as necessary and in answer to questions that I asked.

Findings in Fact

- 20 7. I found the following facts admitted or proved.
8. The claimant is Samantha Wilson. She resides at 248 Auchinairn Road, Glasgow G64 1JJ. Her date of birth is 10 January 1997. The respondent is Jackie's Hair Salon. Its trading premises were at 1991 Dumbarton Road, Glasgow.
- 25 9. On 20 August 2018 the claimant began employment with the respondent as a hairdresser. She worked at the premises at 1991 Dumbarton Road. She

worked 16 hours per week. She was paid £7.70 per hour. Her agreed gross and net pay per week was £123.30. She was paid fortnightly.

10. The respondent's holiday year was the calendar year. The claimant was entitled to 5.6 weeks' paid leave per holiday year.
- 5 11. From 1 January 2020, the claimant was entitled to 5.6 weeks' leave.
12. On 23 March 2020 the salon was required to close which it did. The claimant was furloughed.
13. On 23 April 2020 the proprietor of the respondent's business died. She was Yvonne Anderson's mother.
- 10 14. On 15 July 2020, the respondent's business re-opened. The claimant returned to work. She returned to work for which she was paid £246.60 per fortnight.
- 15 15. On 11 September 2020, the shop was closed. It was unable to continue to trade by reason of business debts. The claimant's contract of employment ended that day. She had received no notice in advance of 11 September that she would be dismissed that day.
16. By 11 September 2020 the claimant had taken no paid leave.
17. Ms Anderson had carried on her mother's business between 15 July and 11 September. She also worked in the salon.
- 20 18. By 3 December the date of presenting her ET1, the claimant had not found alternative employment.

The law

- 25 19. Regulation 13A(3) of the Working Time Regulations 1998 provides that the aggregate annual leave entitlement provided for by Regulations 13A(2) and Art13(1) is subject to a maximum of 28 days. Regulation 16 provides that a worker is entitled to be paid in respect of any period of annual leave to which s/he is entitled under Regulations 13 and 13A at the rate of a week's pay in respect of each week of leave. Regulation 14(2) provides that where the

proportion of leave taken by a worker is less than the proportion of the leave year which has expired the employer shall make a payment in lieu of leave in accordance with paragraph (3).

20. Section 135(1)(a) of the Employment Rights Act 1996 provides that an employer shall pay a redundancy payment to any employee of his if s/he is dismissed by reason of redundancy. Section 139(1)(a)(i) of the Act provides that for the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed.
21. Section 86(1)(b) of the 1996 Act provides that the notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years.
22. Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order provides that proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine; (b) the claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee's employment.

25 Discussion and decision

23. Looking at the issues, the respondent's holiday year was the calendar year. The claimant was entitled to 28 days paid leave in 2020. By the effective date of termination of 11 September, she had taken no paid leave. Ms Anderson was able to confirm that ordinarily the salon took public holidays at Easter and in May. It was agreed that at those times in 2020 the claimant was on furlough. The claimant advised that she had relied on ACAS and an online

UK Government website to calculate the amount due to her representing her accrued and untaken leave as at 11 September. Ms Anderson did not dispute the sum, £512.00. My decision is that this sum is due to the claimant for accrued and untaken holiday as at her effective date of termination. That amount is due to her by the respondent.

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24. The agreed effective date of termination was 11 September. The claimant was dismissed that day on account of the closure of the salon. The reason for her dismissal was the closure of the respondent's business. She was therefore dismissed because the respondent ceased to carry on the business for the purposes of which the claimant was employed. The claimant was thus dismissed by reason of redundancy. She was not paid a redundancy payment by the respondent. On 11 September, the claimant had 2 complete years of service. By that date, she was 23 years of age. Her gross week's pay was £123.30. The statutory redundancy payment due to the claimant is £184.80. I do not agree the claimant's claim for £196.80. That sum is not divisible by her gross weekly wage so as to result in a recognised multiplicand. The respondent has not paid any amount as a redundancy payment to the claimant. The statutory amount of £184.80 is due by the respondent to her.

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25. By virtue of her 2 years of service, the claimant was entitled to receive 2 weeks' notice of termination of which she received none. She is entitled to be paid a sum as damages representing the pay to which she would have been entitled in that period. The sum of £262.40 is due by the respondent to the claimant for it.

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26. In discussions with Ms Anderson it is not likely that the respondent will be able to pay any of the sums awarded in this judgment.

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Employment Judge: R Bradley

Date of Judgement: 19 February 2021

Entered in register: 27 April 2021

and copied to parties

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