



# EMPLOYMENT TRIBUNALS

Claimant: Miss J Hurrell  
Respondent: ACI Retail Finance Limited

## JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

### RULE 21 LIABILITY AND REMEDY JUDGMENT

The judgment of the Tribunal is as follows:

1. Pursuant to Rule 21 on the Respondent having failed to enter a response, the claim succeeds.
2. The claim before the tribunal to which the rule 21 liability judgment relates, is a claim for holiday pay, a claim for notice pay and for a redundancy payment.
3. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of **£960** (gross)
4. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of **£1,153.86**
5. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of **£1153. 86** (gross)

#### *Explanatory note: redundancy calculation*

*To qualify for a redundancy payment, the employee must have at least two years' continuous service 'ending with the relevant date' pursuant to section 155 Employment Rights Act 1996 (ERA). This is normally the date on which employment comes to an end. Where however the employer has dismissed with less than the minimum statutory notice as provided for by section 86 (1) ERA, the relevant date is the date on which the proper **statutory notice** would have expired had the employer given it on the date the employee was dismissed.*

*The claimant was told of her dismissal orally on 15 October 2020 which was confirmed in writing on 16 October 2020, with 1 years' service accrued as at that stage, she was entitled to a minimum of 1 week's **statutory** notice (the contractual notice however was 1 month subject to a payment in lieu of notice clause – however the respondent has not filed a*

*response asserting exercise of or reliance on that PILON provision and the claimant complains of a breach of the notice clause and failure to pay in accordance with it). The claimant confirms that she had returned from furlough and was working from 23 March 2020.*

*An oral communication of seven days' notice construed was seven clear days' notice exclusive of the working day on which notice was given: **West v Kneels Ltd 1987 ICR 146, EAT.***

*The claimant is therefore awarded a redundancy payment on the grounds that even if notice was served on 15 October rather than the 16 October, 7 clear days' notice would expire on the date 2 years' service is accrued. No defence has been filed by the respondent disputing her entitlement.*

*Redundancy payment is calculated as: 1.5 week's pay (gross/ £384.62) for each full year worked when you are aged 41 or older - therefore calculation is: £384.62 x 3 = £1,153.86*

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Employment Judge Broughton

Date: 5 July 2021

JUDGMENT SENT TO THE PARTIES ON

9 July 2021

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FOR THE TRIBUNAL OFFICE