



EMPLOYMENT TRIBUNALS

Claimant: Ms L Middleton (1)
Ms A Haywood (2)
Ms B A Bamigbade (3)
Ms J Steele (4)
Ms J Cooke (5)
Ms W Goff (6)

Respondent: Quality Care Midlands Limited
(In Creditors Voluntary Liquidation)

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
Decided on the papers – no parties attended

On: 01 July 2021

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: No appearance

For the respondent: Barred from taking part

JUDGMENT

After considering the Tribunal's file and the evidence of each claimant

After noting that the respondent is now in creditors' voluntary liquidation and that it is separately disbarred from taking part

And for the reasons set out below the Tribunal orders that

1. The respondent's title is amended to "**Quality Care Midlands Limited (In creditors voluntary liquidation)**".

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2. The respondent has made unauthorised deductions from the wages of the first claimant, Ms L Middleton. It must therefore pay to her the sum of **£1,518.24 gross**.
3. The respondent made the second claimant, Ms Hayward, redundant but has not paid the whole of her redundancy pay to which she is entitled. Therefore the respondent must pay to the second claimant the sum of **£2,957.22**.
4. The respondent made the third claimant, Ms Bamigbade, redundant but has not paid the whole of her redundancy pay to which she is entitled. Therefore the respondent must pay to the third claimant the sum of **£6,606.60**.
5. The respondent made the fourth claimant, Ms Steele, redundant but has not paid the whole of her redundancy pay to which she is entitled. Therefore the respondent must pay to the fourth claimant the sum of **£274.42**.
6. The respondent made the fifth claimant, Ms Cooke, redundant but has not paid the whole of her redundancy pay to which she is entitled. Therefore the respondent must pay to the fourth claimant the sum of **£100.76**.
7. The respondent made the sixth claimant, Ms Goff, redundant but has not paid the whole of her redundancy pay to which she is entitled. Therefore the respondent must pay to the fourth claimant the sum of **£3,556.32**.

REASONS

Introduction

8. The claimants each bring claims for unpaid wages and redundancy payments. The claims have been consolidated. The exact claims of each claimant differ and I have set out their claims in more detail below.
9. On 28 September 2020 the Tribunal issued an unless order against the respondent seeking their reply to the Tribunal's earlier correspondence. The respondent was told that if they failed to comply by 5 October 2020 then their response would be struck out and they would be disbarred from taking part in proceedings except to the extent the Tribunal permits. The respondent did not reply. Therefore, the response was struck out. They have not sought permission to take part since.
10. On 19 October 2020 I listed the cases to be determined on the papers and gave directions.
11. On 2 November 2020 the respondent entered into creditors voluntary liquidation. This does not restrict the continuation of proceedings. However, I have ordered of my own motion the respondent's title be amended to reflect this change.

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12. Each party has submitted a schedule of loss and statement in support of their claim with exhibits. I have taken them into account.
13. I have also taken into account the contents of the Tribunal's file, including the claim (but not the responses because they have been struck out).
14. This is the determination of each claimant's claim.
15. Though I deal with each claim individually, the following observations are true of each of them:
 - 15.1. I have found no reason to doubt each of the claimant's honesty in the evidence they have presented to me;
 - 15.2. Unless I have expressly indicated otherwise, I accept the evidence each of them has given.

Lesley Middleton (2602501.2020)

16. From 5 November 2009 until 9 March 2020 the respondent employed Ms Middleton as a care assistant in its care home at Charnwood Hall Nursing Home.
17. In January 2020 she was told that she would be made redundant and given 12 weeks' notice.
18. She received her redundancy pay but did not receive her pay for wages between 21 February 2020 and 9 March 2020. These totalled £730.64 gross
19. She treats this as unpaid wages, though she concedes there is some doubt because the respondent failed to issue itemised pay statements or P60. I find as a fact it was wages because it appears that she worked in this time, but payment stopped. There is no reason to conclude she agreed to work for free. If it were redundancy pay, then no work would have been expected. Ultimately it makes no difference in this case to the amount (though it does to the consequent tax treatment) because her weeks' pay of £306.22 is below the statutory cap for redundancy pay.
20. In addition, the respondent deducted from her wages pension contributions to her workplace pension but did not pay them into the pension itself. It kept them for itself instead. That amount was £787.60 gross.
21. She presented her claim on 25 June 2020 after early conciliation between 1 May 2020 and 19 May 2020. The claim is therefore in time.
22. The **Employment Rights Act 1996 Part II** prohibits an employer from making unauthorised deductions from wages absent certain exceptions. The respondent has not advanced any grounds for believing (yet alone concluding) that there are no potential exemptions here that would otherwise authorise the deductions.

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23. Therefore I am satisfied that the respondent has made the following unauthorised deductions from Mrs Middleton's wages. I award her the sum of £787.60 + £730.64 = **£1,518.24 gross**.

Ms A Haywood (2601850.2020)

24. From 27 September 2012 until 2 March 2020 the respondent employed Ms Hayward in its care home at Charnwood Hall Nursing Home. She was 77 at the time of dismissal.
25. In January 2020 she was told that she would be made redundant and given 7 weeks' notice.
26. She presented her claim on 10 June 2020 after early conciliation between 4 May 2020 and 13 May 2020. The claim is therefore in time.
27. Her weekly pay was £322. She was entitled therefore under the **Employment Rights Act 1996 section 162** to £3,381 by way of redundancy payment. Under the **Employment Rights Act 1996 section 163** the question of entitlement and amount can be determined by the Employment Tribunal.
28. The respondent clearly dismissed Ms Hayward for redundancy. A notice signed by S Boodhoo, the respondent's director, confirms the same. In any case there is a presumption under **section 163(2)** that the dismissal was for redundancy. The respondent has not shown otherwise.
29. Though the respondent has paid some lump sums (£2,936 made up from divers sums paid in May, June and July 2020) they have failed to provide any itemised pay statements to explain what they are. The respondent was tardy in its payment of notice pay and holiday pay.
30. Mrs Hayward has become aware from her own contact with HM Revenue and Customs that the sums paid in May, June and July covered outstanding wages, notice pay and holiday pay because they were net sums after payment of tax. After calculating what has been paid and allocating it to the various heads of notice pay, holiday pay and redundancy pay she has identified that £2,957.22 appears to be outstanding from her redundancy payment and seeks an award accordingly. She has exhibited to her statement
31. I accept her estimate and calculation as correct. For me the most compelling element in support of her estimate is the respondent's letter of 8 April 2020 which says
- "you have all been paid your, notice payments and holidays due to the point of the home became empty with the exception of the redundancy element."

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This shows in my opinion that the respondent's payments are made to discharge redundancy owed only after they have discharged notice pay, holiday pay etc. i.e. everything else.

32. Redundancy pay should not have tax deducted because it is taxable not as earnings but as compensation under **ITEPA 2003 section 401** instead. She is therefore entitled to treatment only the net payment of what remains as discharging that obligation.
33. The respondent has therefore paid all but £2,957.22 of the redundancy payment. Therefore the respondent must pay to Ms Hayward the sum of **£2,957.22**.

Ms B A Bamigbade (2602791.2020)

34. From 2005 until 14 April 2020 the respondent employed Ms Bamigbade in its care home at Charnwood Hall Nursing Home. She was 64 at the time of dismissal.
35. She presented her claim on 21 July 2020 after early conciliation between 27 May 2020 and 27 June 2020. The claim is therefore in time.
36. In January 2020 she was told that she would be made redundant and given 12 weeks' notice.
37. Her weekly pay was £468. She was entitled therefore under the **Employment Rights Act 1996 section 162** to £9,828 by way of redundancy payment. Under the **Employment Rights Act 1996 section 163** the question of entitlement and amount can be determined by the Employment Tribunal.
38. The respondent clearly dismissed Ms Bamigbade for redundancy. A notice signed by S Boodhoo, the respondent's director, confirms the same. In any case there is a presumption under **section 163(2)** that the dismissal was for redundancy. The respondent has not shown otherwise.
39. Though the respondent has paid some lump sums (£6325.40 made up of divers sums May, June and July 2020) they have failed to provide any itemised pay statements to explain what they are. However Ms Bamigbade has discovered from HM Revenue and Customs that the respondent continued to deduct tax and national insurance which it must do on notice pay but not redundancy pay. She concludes, and I accept, that £3,104 of these payments is net payment of the shortfall in notice pay (so that she has received all notice pay to which she is entitled) and the remainder of £3,221,40 is therefore part payment of the redundancy payment.
40. The respondent has therefore paid all but £6,606.60 of the redundancy payment. Therefore the respondent must pay to Ms Bamigbade **£6,606.60**.

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Ms J Steele (2603256.2020)

41. From 12 January 2016 until 3 February 2020 the respondent employed Ms Steele in its care home at Charnwood Hall Nursing Home. She was 58 at the time of dismissal.
42. She presented her claim on 4 September 2020 after early conciliation between 7 August 2020 and 7 August 2020. Because it is for redundancy payment the claim is therefore in time (**Employment Rights Act 1996 section 164**).
43. In January 2020 she was told that she would be made redundant and given 3 weeks' notice.
44. Her weekly pay was £390. She was entitled therefore under the **Employment Rights Act 1996 section 162** to £1,755 by way of redundancy payment. Under the **Employment Rights Act 1996 section 163** the question of entitlement and amount can be determined by the Employment Tribunal.
45. The respondent clearly dismissed Ms Steele for redundancy. A notice signed by S Boodhoo, the respondent's director, confirms the same. In any case there is a presumption under **section 163(2)** that the dismissal was for redundancy. The respondent has not shown otherwise. It is in my judgment plainly just and equitable she should receive a redundancy payment.
46. Though the respondent has paid some lump sums (£1,480.58 in May 2020) they have failed to provide any itemised pay statements to explain what they are. I accept the claimant's assumption these are payments of redundancy pay.
47. The respondent has therefore paid all but £274.42 of the redundancy payment. Therefore the respondent must pay to Ms Steele **£274.42**.

Ms J Cooke (2603257.2020)

48. From 9 June 2014 until 9 February 2020 the respondent employed Ms Cooke in its care home at Charnwood Hall Nursing Home. She was 59 at the time of dismissal.
49. She presented her claim on 4 September 2020 after early conciliation between 7 August 2020 and 7 August 2020. Because it is for redundancy payment the claim is therefore in time (**Employment Rights Act 1996 section 164**).
50. In January 2020 she was told that she would be made redundant and given 5 weeks' notice.
51. Her weekly pay was £256.56. She was entitled therefore under the **Employment Rights Act 1996 section 162** to £1,924 by way of

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redundancy payment. Under the **Employment Rights Act 1996 section 163** the question of entitlement and amount can be determined by the Employment Tribunal.

52. The respondent clearly dismissed Ms Cooke for redundancy. A notice signed by S Boodhoo, the respondent's director, confirms the same. In any case there is a presumption under **section 163(2)** that the dismissal was for redundancy. The respondent has not shown otherwise. It is clearly just and equitable she should receive an redundancy payment.
53. Though the respondent has paid some lump sums (totalling £1,823.46) they have failed to provide any itemised pay statements to explain what they are. I accept the claimant's assumption these are payments of redundancy pay.
54. The respondent has thus paid all but £100.76 of the redundancy payment. Therefore the respondent must pay to Ms Cooke **£100.76**.

Ms W Goff (2603258.2020)

55. From 30 August 2000 until 6 April 2020 the respondent employed Ms Goff in its care home at Charnwood Hall Nursing Home. She was 50 at the time of dismissal.
56. She presented her claim on 4 September 2020 after early conciliation between 7 August 2020 and 7 August 2020. Because it is for redundancy payment the claim is therefore in time (**Employment Rights Act 1996 section 164**).
57. In January 2020 she was told that she would be made redundant and given 12 weeks' notice.
58. Her weekly pay was £256.56. She was entitled therefore under the **Employment Rights Act 1996 section 162** to £6,029.16 by way of redundancy payment. Under the **Employment Rights Act 1996 section 163** the question of entitlement and amount can be determined by the Employment Tribunal.
59. The respondent clearly dismissed Ms Goff for redundancy. A notice signed by S Boodhoo, the respondent's director, confirms the same. In any case there is a presumption under **section 163(2)** that the dismissal was for redundancy. The respondent has not shown otherwise.
60. Though the respondent has paid some lump sums (£1,823.46 in May 2020) they have failed to provide any itemised pay statements to explain what they are. I accept the claimant's assumption these are payments of redundancy pay. It is clearly just and equitable she should receive a payment for redundancy.

61. The respondent has therefore paid all but £3,556.32 of the redundancy payment. Therefore, the respondent must pay to Ms Goff **£3,556.32**.

Employment Judge Adkinson

Date: 1 July 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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