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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104267/2020

Held in Glasgow by Cloud Video Platform (CVP) on 15 January 2021

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Employment Judge Murphy

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Martin Clark

**Claimant
In Person**

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Motherwell Bridge Ltd

**Respondent
Represented by:
Mr A Tembe
Legal Representative**

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JUDGMENT

The claimant's claims for breach of contract in respect of unpaid wages, unpaid
30 pension contributions and accrued holidays during the notice period were dismissed
at the conclusion of the hearing on 15 January 2021. Oral reasons were given.

On 29 January 2021, the claimant made an application pursuant to Rule 62(3) of the
Employment Tribunals Rules of Procedure 2013 to be provided with written reasons
for the decision announced at the hearing. These are provided below.

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REASONS

Issues to be determined

- 5 1. At the outset of the hearing, the Tribunal sought to identify facts which were agreed or capable of being agreed and the issues which it fell for the Tribunal to determine. It was a matter of agreement between the parties that the claimant had a contractual entitlement to one month's notice of the termination of his employment. The issues were agreed as follows: -
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- a. Did the respondent serve notice on 30 June 2020 to terminate the claimant's contract on 31 July 2020?
 - b. If the Respondent did not serve notice on that date, when did the Respondent serve notice, if at all?
 - 15 c. If the Respondent did not serve the required period of one month's notice, is the Claimant entitled to damages for the Respondent's breach of contract in respect of:
 - (1) pay during the unworked notice period;
 - (2) holidays which would have accrued during the unworked notice period; and
 - 20 (3) employer's and employee's pension contributions due on pay during the unworked notice period.
- 25 2. The paper apart to the ET1 form asserted that the Respondent had wrongly claimed furlough grant from the Government in respect of the notice period. The Claimant was advised at the hearing that it was not considered that the Tribunal had jurisdiction to consider this claim. Comments were invited from the parties. Mr. Tembe agreed that jurisdiction was lacking. The Claimant, a litigant in person, was unable

to identify any legislation conferring jurisdiction on the Tribunal to consider this matter but indicated he continued to assert the claim.

Findings in Fact

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3. The Tribunal made the following findings in fact.

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4. The Claimant's employment began on 2 May 2019. He was dismissed on 27 March 2020 and reinstated on or about 1 April 2020, whereupon he was immediately placed on furlough. At that time, the terms of his original employment contract which had been signed in April 2019 were adopted but varied to the extent documented in a letter sent by the respondent to the claimant by email on 3 April 2020. Under the express terms which applied, from 1 April 2020, the Claimant remained entitled to one month's notice of termination of his employment (as had been the position under his original contract).

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5. The Claimant immediately was placed on furlough leave and remained on furlough until his employment terminated on 31 July 2020. On 30 June 2020 the Respondent wrote to the Claimant. The letter included the statement:

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"We can now confirm that Altrad will no longer claim for you under the scheme past the 31 July 2020. Consultation and notice have been applied and your employment will cease on that day, as we are not able to retain your services."

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6. In fact, no consultation had taken place between the parties, but the claimant understood from the letter of 30 June 2020 that he was being put on notice of the termination of his employment by the respondent, and that the notice would expire one month from that date. The claimant received and read the letter on 30 June 2020.

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7. The claimant's employment terminated on 31 July 2020. He was paid in full for the month of July at 100% of his wages. The Respondent paid the employers' pension contributions due on those wages. Additionally, the claimant salary sacrificed a proportion of his wages by way of employee pension contributions to the Group Personal pension plan operated by the respondent.

Relevant Law

8. An employee who is dismissed in breach of his contract is entitled to claim such sum by way of damages which will put him in the position in which he would have been had the contract been performed. In the absence of express provision, the common law requires that reasonable notice be given, and the Employment Rights Act 1996 incorporates certain statutory minimum notice periods (section 86(4)). The express terms are paramount, subject to the statutory minimum rights.
9. Notice of termination of the employment contract must be clear. Notice will not be sufficient if the date of dismissal is not ascertainable from the terms of the notice (**Haseltine Lake & Co v Dowler** [1981] ICR 222). Notice is given when it is received by an employee (**Newcastle Upon Tyne NJS Foundation Trust v Haywood** [2018] IRLR 644). If given in the course of a day on which work was done, it starts to run the following day (**West v Kneels Ltd** [1987] ICR 146).

Discussion / decision

10. There was no dispute as to the period of contractual notice to which the claimant was entitled. His one-month express entitlement exceeded the statutory minimum notice period.
11. The terms of the letter received on 20 June 2020 by the claimant with regard to the termination of his employment were clear and unequivocal. The date on which the notice would terminate was expressly stated to be

31 July 2020. The notice period given was, therefore, in accordance with the undisputed contractual entitlement. The claimant repeatedly accepted in his evidence that the letter of 30 June 2020 was understood by him to be notice his employment would terminate on 31 July 2020. He advanced
5 no claim that the terms of the letter were vague, ambiguous or indeed misunderstood.

12. The claimant's position was that under the rules of the Government's furlough scheme at the material time, employers were not permitted to apply furlough grant monies towards wages during contractual notice of
10 termination. He asserted that under the Government scheme then in place, employers could claim furlough grant monies for the notice periods of employees being made redundant (but not redundancy monies). The claimant submitted that he was not redundant, and therefore there was no right on the respondent's part to claim furlough monies in respect of his
15 notice period. The claimant's position was that the respondent had applied furlough grant monies in this manner and the effect of this, he said, was that he was entitled to an additional month's notice or payment in lieu thereof, commencing on 1 August and ending on 31 August 2020.

13. The Tribunal rejected this submission. The parties produced a copy of the
20 Government guidance on the furlough scheme published on 26 March 2020 and updated on 1 May 2020. The Tribunal could not find support in that document for the claimant's interpretation of the Government guidance with respect to notice periods. The Tribunal concluded, however, that it was unnecessary to make a finding on that question.

25 14. The correct period of notice was duly served and remunerated in this case. Even if the furlough grant ought not to have been applied by the respondent towards payment of the claimant's wages while he was under notice during July 2020, the Tribunal did not accept that the legal
30 consequence was to revoke the notice served or otherwise confer upon the claimant an entitlement to an additional month's notice.

15. It is understood the claimant has contacted HMRC regarding his concerns over the application of furlough funds to his pay during the notice period. The Tribunal has no jurisdiction to determine whether the Coronavirus Job Retention Scheme was used appropriately or otherwise in relation to the claimant's wages during this period at the material time.

16. The Claimant's claim was, therefore, dismissed.

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Employment Judge: Lesley Murphy
Date of Judgment: 17 May 2021
Entered in register: 02 June 2021
and copied to parties

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