



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103515/2020 (A)

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Held via telephone conference call on 26 January 2021

Employment Judge L Wiseman

10 Mr P Nykiel

Claimant
In Person

15 Mulroy Civil Engineering Scotland Ltd

Respondent
No appearance and
No representation

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided:

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- (i) the dismissal of the claimant was fair;
 - (ii) the respondent shall pay to the claimant a redundancy payment of £4212; and
 - (iii) the respondent shall pay to the claimant the sum of £480 in respect of holiday pay.

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REASONS

- 1. The claimant presented a claim to the Employment Tribunal asserting he had been unfairly dismissed and was entitled to be paid a redundancy payment and holiday pay.
- 2. The respondent did not enter a response and did not appear for the hearing.
- 30 3. The hearing today took place by telephone with the claimant and a Polish interpreter, Ms McGinn. I made the following material findings of fact.

Findings of fact

4. The claimant commenced employment with the respondent on the 1 March 2014 as a Groundworker. He earned £468 gross per week, giving a net weekly take home pay of £367.
- 5 5. The claimant attended work as normal on the 23 March 2020, but the following day he was instructed to stay at home because there was no work available for him.
6. The claimant received a letter approximately a week later, informing him the company had had to close down because there was no work available. A P45
10 was enclosed with the letter.
7. The claimant was in receipt of Jobseekers Allowance from May until he started alternative employment in October 2020. The claimant is working 24 hours per week and receives £11 per hour.
8. The claimant sought 6 days holiday pay for holiday accrued but not taken prior
15 to the termination of his employment.

Discussion and Decision

9. I was satisfied the reason for the claimant's dismissal was redundancy, which is a potentially fair reason for dismissal falling within section 98(2)(c) Employment Rights Act. There were no issues regarding the fairness of the
20 selection of the claimant for redundancy in circumstances where all employees were made redundant at the same time, due to the closure of the company.
10. There is an onus on an employer to follow a fair procedure when dismissing an employee, and, in a redundancy situation, a fair procedure will involve
25 warning and consulting affected employees. The respondent did not warn or consult the claimant regarding redundancy. However, I was satisfied the employer could reasonably have concluded that warning and consultation would be "utterly useless" or "futile" in circumstances where the company had no work and was therefore having to close.

11. I decided, that in circumstances where the company was closing and all employees were made redundant, that the dismissal of the claimant was fair.
12. I next considered whether the claimant was entitled to a redundancy payment. I had regard to the terms of section 135 Employment Rights Act which provides that an employer must pay a redundancy payment to an employee who is dismissed by reason of redundancy. I have set out above that the reason for the claimant's dismissal was redundancy, and in those circumstances, the claimant was entitled to a redundancy payment.
13. I calculated the redundancy payment to be £4212 (being 9 x £468 gross per week).
14. I also made an award of 6 days holiday pay, which the claimant had calculated to be £480.
15. I, in conclusion, decided the claimant had been fairly dismissed. I made an award in respect of a redundancy payment (£4212) and holiday pay (£480).

Employment Judge: Lucy Wiseman
Date of Judgment: 16 February 2021
Entered in register: 16 February 2021
and copied to parties