



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4110215/21 (V)

Held on 8 September 2021

Employment Judge N M Hosie

10

Mr Colin Donaldson

**Claimant
In Person**

15

Keith Hogg Corporation Ltd

**Respondent
No Appearance**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The Judgment of the Tribunal is that:-

30

1. the respondent shall pay to the claimant a redundancy payment of Twelve Thousand, One Hundred and Five Pounds (£12,105);

2. the respondent shall pay to the claimant the sum of Five Thousand, Two Hundred and Sixty-One Pounds and Fifty-Two Pence (£5,261.52) as damages for breach of contract (failure to give notice of termination of employment); and

35

3. the claim under Regulation 30(1)(b) of the Working Time Regulations is well-founded and the respondent shall pay to the claimant the sum of One Thousand, Two Hundred and Seventy-Eight Pounds and Ninety Pence (£1,278.90) as a payment in lieu of annual leave.

E.T. Z4 (WR)

REASONS

1. The claimant, Colin Donaldson, brought various claims following his summary
5 dismissal from his employment with the respondent Company on 20 January
2021. The respondent had not submitted an ET3 response form and the
claim proceeded on an undefended basis.

2. I heard evidence from the claimant at the hearing and he submitted a bundle
10 of documentary productions ("P"). He gave his evidence in a measured,
consistent and convincing manner and presented as credible and reliable. I
was satisfied that his various claims were well-founded. I deal with each in
turn.

15 **Redundancy payment**

3. The claimant was employed by the respondent Company as a Bar Manager
for 17 complete years from 5 January 2004 to 20 January 2021 when he was
dismissed summarily. Apart from his wages (P6) he received no payments
20 from the respondent when he was dismissed. He was on furlough at the time.

4. The respondent Company ceased trading on that date and has not resumed.
It is understood that the landlord repossessed the premises where the
claimant worked as the respondent had failed to pay rent. I am satisfied that
25 this was a genuine redundancy situation in terms of s.139 (1)(a) of the
Employment Rights Act 1996.

5. At the time of the claimant's dismissal he was 52 years of age. His weekly
wage was in excess of the statutory maximum at the time of £538 (P.6). He
30 was entitled to a redundancy payment when he was dismissed. No such

payment was made. The respondent shall pay to the claimant a redundancy payment of **£12,105** (22.5 x £538).

Notice

5

6. The claimant was summarily dismissed. He did not have a written contract of employment but he was entitled to the maximum 12 weeks' statutory notice, based on his length of service. The respondent was in breach of contract in this regard and the claimant is entitled to an award of damages for that breach. The award is based on net earnings. The claimant earned 10 £438.46 net per week. Accordingly, the respondent is required to pay to the claimant the sum of **£5,261.52** (12 x £438.46) in respect of its failure to give him notice of termination of employment.

15 **Accrued holiday pay**

7. The claimant was entitled to 28 days' paid annual leave each year. At the time of his dismissal he had accrued 14 days' leave, having worked for 6 months in the holiday year and not taken any leave, before he was 20 furloughed. His salary was £28,500 per annum which equates to £91.35 per day based, on a 6-day working week. Accordingly, the respondent shall pay to him the sum of **£1,278.90** (14 x £91.35) as a payment in lieu of annual leave.

25 **Time limits**

8. The claims for notice and accrued holiday pay should have been submitted no later than 3 months from the effective date of termination. The claim form was not submitted until 27 June 2021. These claims, therefore, were out of 30 time. However, I have a discretion to extend the time limit if I am satisfied that it was not reasonably practicable to submit the claims in time. The claimant was advised by the respondent that the respondent Company was

insolvent and that it would be following an insolvency process which “might take a few months” (P.4); he was also advised that he would have a claim to the Insolvency Service (P.2). He submitted a claim to the Insolvency Service but he was advised by e-mail on 24 March that his claims for holiday pay and notice would only be considered if the respondent Company was insolvent (P.3). The claimant sent a reminder e-mail to the respondent on 26 May (P.4) and a further letter by registered post on 10 June (P5) seeking clarification and requesting the monies due to him. He did not receive a response. It was only then that he decided his only option was to raise employment tribunal proceedings. In all these circumstances, I was satisfied that it had not been reasonably practicable for the claimant to submit his notice and holiday pay claims in time. Accordingly, I decided to exercise my discretion and allow these claims to proceed.

15 **Respondent Company’s insolvency**

9. I am satisfied that the respondent Company is insolvent. There is ample evidence that that is so.
- 20 10. A search at Companies House reveals that the Company status is: “*Active – Active proposal to strike off*”.
11. A further internet search revealed a “credit report” which disclosed that the respondent Company has liabilities of £143.8k and a net worth of -£80.2k (P9).
- 25 12. I am also satisfied that the premises where the claimant worked has been repossessed by the landlord and the respondent ceased trading on 20 January 2021.
- 30 13. While there may not have been formal proceedings such as a liquidation, it is clear that the respondent Company is insolvent.

Employment Judge

Judge N M Hosie

5 **Dated**

10 September 2021

Date sent to parties

10 September 2021