



EMPLOYMENT TRIBUNALS

Claimant: Mr L Illingworth

Respondent: DP Morris

Heard at: Manchester (via CVP)

On: 15 June 2021

Before: Employment Judge Ainscough
(sitting alone)

Representation

Claimant: Ms R Dawson (Solicitor)

Respondent: Mr J Tidy (Consultant)

JUDGMENT having been sent to the parties on 24 June 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant brought a claim for a redundancy payment in accordance with section 163 of the Employment Rights Act 1996. The claimant started early conciliation on 21 January 2021 and received the certificate on the same date. The claimant lodged his Employment Tribunal claim on 22 January 2021.

2. The claimant was a farm and dairy worker at the respondent's farm from 28 June 1982 to 31 January 2020.

Evidence

3. There was a bundle of documents of 54 pages, which included a witness statement from the claimant and a witness statement from the respondent. I heard live evidence from both the claimant and the respondent, and I heard submissions from both representatives.

The Issues

4. The issues were agreed with the representatives prior to hearing the evidence, and were as follows:

- (1) Whether there had been a dismissal of the claimant and/or whether he had resigned as a result of the respondent's conduct on 31 January 2021;
- (2) If so, what was the reason for that dismissal or resignation? Was it a redundancy situation?

Time Limit Point

- (3) Whether the claimant had in fact made a written request for a redundancy payment within six months of the relevant date;
- (4) If not, whether the claimant had made a Tribunal claim within 12 months of the relevant date and whether it would be just and equitable to award a redundancy payment.

Relevant Legal Principles

5. Section 135 of the Employment Rights Act 1996, provides a right to a redundancy payment if an employer dismisses an employee by reason of redundancy.

6. Section 139 of the Employment Rights Act 1996 confirms that somebody is taken to be dismissed by reason of redundancy if:

- (a) The employer has ceased to carry on a business for the purposes for which the employee was employed by him; or
- (b) That the requirements of the business for employees to carry out work of a particular kind have ceased or diminished.

7. Section 163 presumes in such cases that the claimant has been dismissed by reason of redundancy unless the respondent proves otherwise.

8. Section 162 sets out the formula for the calculation of the statutory redundancy pay scheme:

“(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for each year of employment not within paragraph (a) or (b).”

9. In the event of the non-payment of redundancy pay, the relevant date for the purposes of enforcement is, in accordance with section 145, the date when notice expires.

10. Section 164 of the Employment Rights Act 1996 sets the time limit at six months from the relevant date, to seek payment in writing from the employer. If the claimant did not do this, there is still a right to a redundancy payment if within a further six months the claimant has either claimed in writing, brought an Employment Tribunal claim or brought a claim for unfair dismissal. In such circumstances the claimant will receive a redundancy payment if the Tribunal considers it would be just and equitable to grant one.

Relevant Findings of Fact

11. The claimant was employed by the respondent from 28 June 1982 until 31 January 2020. The claimant's role as a dairy and farm worker consisted equally of milk processing and caring for the herd of dairy cows.

12. In October 2018 the claimant unfortunately suffered a stroke and was absent from work for ten weeks. The claimant returned to work in January 2019. In March/April 2019 the respondent told the claimant that he was selling the business.

13. On 31 August 2019 the respondent sold the milk round. From that date onwards the respondent received calls from local farmers seeking permission to speak to the claimant about a job. The respondent gave the claimant permission to have those discussions.

14. In November 2019 the respondent told the claimant that the dairy cows were to be sold in January 2020. On 23 January 2020 the dairy cows were sold. On 24 January 2020 the claimant took a week's leave. The claimant left the respondent's employment on 31 January 2020.

15. On 3 February 2020 the claimant began his new job.

16. At the end of February 2020, the claimant visited the respondent and asked for a redundancy payment.

17. On 1 April 2020 the respondent rented the farmland out to a local farmer.

18. On 29 April 2020 the claimant sent the respondent a text which said, "have you looked into redundancy pay yet?".

19. On 4 May 2020 the respondent sold his herd of young cattle.

20. On 26 June 2020 the claimant sent another text to the respondent saying, "how are you getting on with looking into the redundancy payment?".

21. In early January 2021 the claimant visited a solicitor and sought advice.

Submissions

Respondent's submissions

22. The respondent submitted that the claimant's claim for a redundancy payment was out of time. It was the respondent's position that the claimant's texts seeking payment were not sufficient to meet the requirement to put the request in writing.

23. The respondent submitted that it would not be just and equitable to extend time for submission of the claim because the claimant waited seven months after his dismissal before he sought legal advice.

24. It is the respondent's primary case that the claimant was not made redundant, but rather resigned after receiving a job offer. The respondent maintained that the claimant still had a job caring for the herd of young cows.

Claimant's submissions

25. The claimant submitted that the text he sent to the respondent within six months of his dismissal did amount to a request in writing. The claimant contended that the respondent understood the request.

26. In the alternative the claimant submitted that a claim was made to the Tribunal within the twelve months of his dismissal and it would therefore be just and equitable to extend time.

27. The claimant maintained that he relied upon his friendship with the respondent and believed the payment would be made without the need to make a claim. The claimant submitted that he made his claim to the Tribunal immediately after taking advice from a Solicitor.

28. The claimant's position was that his role had disappeared by the end of January when the dairy cows were sold.

Discussion and Conclusions

Was the claimant dismissed?

29. The respondent admitted that after the milk round had been sold, he was contacted by local farmers who wanted to approach the claimant about a job. The respondent said there was a need for dairy farmers in the area. The respondent gave permission for those local farmers to speak to the claimant. Had the claimant not been in need of a job, the respondent would not have given this permission.

30. By August 2019 half of the claimant's job had ceased. At the same time, the respondent asked the claimant to stay on until he had sold the dairy cows. If the claimant's job was not disappearing, there would be no need for the respondent to ask the claimant to stay on.

31. In November 2019 the respondent told the claimant that the dairy cows were to be sold. Between November 2019 and January 2020 the respondent and the claimant had a conversation in which the respondent asked the claimant what he

was going to do after the sale. It is clear from this conversation that the respondent knew the claimant needed to find another job.

32. The respondent accepted that even if the claimant had stayed until 4 May 2020, when the herd of young cattle was sold, the claimant's role would have eventually cease and he would have been made redundant.

33. From November 2019 the claimant knew his job would be ending in January 2020. The respondent terminated the claimant's employment in November 2019, and the claimant was under notice of termination until the sale of the cows on 23 January 2020. It was agreed with Mrs Morris on 23 or 24 January 2020 that the claimant would take leave and finish on 31 January 2020.

34. The claimant's role ceased on 23 January 2020, and he took holiday from 24 January 2020.

35. The claimant was dismissed by reason of redundancy – the claimant's role at the respondent's farm had ceased. The claimant did not resign, and the respondent has not proven any other reason for dismissal.

Time Limit Point

36. The relevant date is 31 January 2020 when the claimant's notice expired. Therefore, it was necessary for the claimant to seek to enforce his right to a redundancy payment by no later than 30 July 2020.

37. The claimant sent a text message on 29 April 2020 that said, "have you looked into redundancy pay yet?", and again on 26 June 2020 that said, "how are you getting on with looking into the redundancy payment?". Those text messages were not in isolation. They followed a conversation between the claimant and the respondent in February 2020, when the claimant visited the respondent and asked him about redundancy pay. The respondent admitted that he was shocked by this request. He said he understood that the claimant was requesting a redundancy payment, and he admitted he knew he was asking for a redundancy payment when he received the text messages.

38. In **Hetherington v Dependable Products Ltd 1971 ITR 1, CA**, the Court of Appeal determined that it was necessary to construe any request in writing liberally in favour of the employee. In **Price v Smithfield and Zwanenberg Group Ltd 1978 ICR 93, EAT**, the Employment Appeal Tribunal went further to say that it is whether the recipient of the texts would reasonably understand that it was the intention of the sender to seek a redundancy payment.

39. I find that, Mr Morris knew from the conversation with Mr Illingworth that the subsequent text messages were requesting a redundancy payment.

40. I find that the claimant did make a written request for a redundancy payment within the six month period from 31 January 2020. The fact that the claimant then did not lodge his claim until January 2021 is not precluded by the legislation. There is nothing in the legislation that requires him to do so any sooner than that, and therefore the date he lodged his claim does not cause his claim to be out of time.

41. My finding is that the claimant is entitled to a redundancy payment, having been dismissed on grounds of redundancy.

42. The claimant was 54 years old when he was made redundant. By the date of his redundancy the claimant had completed 37 years service with the respondent. The claimant's gross weekly salary was £443.90.

43. In accordance with the formula set out at section 162 of the Employment Rights Act 1996, the value of the redundancy payment £11,763.35

Employment Judge Ainscough

Date: 27 September 2021

REASONS SENT TO THE PARTIES ON

4 October 2021

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