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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100511/2021

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Hearing Held by Cloud Based Video Platform (CVP) on 2 July 2021

Employment Judge Neilson

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Ms J Doyle

**Claimant
In Person**

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Coltart Earley Limited

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:-

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- (a) the respondent shall pay to the claimant the sum of Eight Thousand Six Hundred and Eight Pounds (£8,608) as a statutory redundancy payment; and
- (b) the respondent shall pay to the claimant the sum of Two Thousand, Three Hundred and Seventy Four Pounds and Sixty Two Pence (£2,374.62) as a payment in respect of accrued annual leave.

REASONS

- 5 1. This is a claim in respect of the non-payment of a statutory redundancy payment and in respect of the payment of accrued holiday pay. Reasons were given orally at the hearing and the Claimant has since requested full written reasons. These are now provided.
- 10 2. The claimant had initially set out additional claims in respect of an alleged pension loss of £23.28 and a claim for losses in respect of breach of contract arising out of the late payment of sums due to her. In the course of the hearing the claimant confirmed that she was not pursuing these claims further and acknowledged that she was not in a position to provide any evidence to support these claims.
- 15 3. Although the claimant had ticked the box for unfair dismissal on her ET1 form at the hearing the claimant confirmed that she was not pursuing an unfair dismissal claim. She did not dispute that her employment was terminated by reason of redundancy. The claimant confirmed that her claims related to her statutory redundancy pay and accrued holiday pay only.
- 20 4. The Claimant appeared at the hearing. The Respondent did not lodge an ET3 in time. Mr Coltart, a director of the respondent, was present at the hearing. He confirmed that the respondent was not defending the claim. In accordance with Rule 21 his participation was restricted.
- 25 5. The claimant gave evidence under oath and she referred to a bundle of documents that she had produced.

Findings in Fact

6. The claimant was employed by the respondent as an Administration and Quality Assurance Manager under a contract of employment dated 14 and 16 June 2007.
- 5 7. The claimant commenced employment on 16 July 2007.
8. Under her contract of employment, the claimant had an entitlement to 25 days holiday per year plus 8 bank holidays.
9. The claimant's monthly pay from the respondent for the relevant periods was £2,572.50 gross per month (£1,947 per month after the deduction of tax). This equated to a gross weekly pay of £593.65.
- 10 10. The claimants date of birth is 7 December 1973.
11. The respondents holiday year runs from 1 January to 31 December.
12. It was agreed as between the claimant and the respondent that the claimant could carry forward 4 days of holiday from the holiday year 2019 to 2020.
- 15 13. The claimant had 15 days holiday accrued and outstanding in respect of the 2020 holiday year to the date of termination of her employment.
14. The claimant was placed on furlough leave, with her agreement, as a consequence of the Covid-19 pandemic. The claimant was on furlough leave from 13 April 2020 through to 30 November 2020.
- 20 15. The claimant was paid at the rate of 80% of her normal pay in respect of her time on furlough leave.
16. There were 5 bank holidays during the period the claimant was on furlough leave. These were one in April; two in May; one in July and one in September. The claimant received her furlough pay of 80% of her normal pay on those dates.
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17. The claimant was issued with notice of the termination of her employment on the grounds of redundancy on 15 October 2020.
18. The claimant's employment terminated by reason of redundancy on 30 November 2020.
- 5 19. The claimant has received her full pay in respect of her notice period of 12 weeks.

The Law

20. Employees with more than two years continuous service are entitled to receive a statutory redundancy payment in circumstances where their employment is terminated on the grounds of redundancy – in accordance with Part XI of the Employment Rights Act 1996.
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21. A statutory redundancy payment is calculated in accordance with the provisions set out in section 162 of the Employment Rights Act 1992.
22. The statutory cap on a weeks' pay for the purposes of calculating a statutory redundancy payment due as at 30 November 2020 was £538.
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23. Under the Working Time Regulations 1998 ("WTR") a worker has an entitlement to be paid on termination in respect of accrued holidays – Regulation 14. A claim in respect of failure to pay may be made under Regulation 30 to an Employment Tribunal.
- 20 24. Under Regulation 16 of the WTR a worker has a right to be paid in respect of any period of annual leave. A claim in respect of failure to pay may be made under Regulation 30 to an Employment Tribunal.

Submissions

- 25 25. The claimant produced a detailed note wherein she set out the sums that she alleged were due to her. She was claiming a statutory redundancy payment of £8,608.47 – a slightly higher sum than the respondent originally offered, to

take account of a birthday that fell within the statutory notice period. She was claiming annual leave accrued and unpaid of 4 days (2019); 15 days (2020) and 2 days (2021). In addition, she claims for non-payment of her full pay in respect of Bank Holidays that fell in 2020 whilst she was on furlough leave and only in receipt of 80% of her pay. There were 5 such days. As previously mentioned the claimant was not insisting upon her pension loss claim of £23.28 nor was she pursuing any claim for loss arising out of alleged late payment by the respondent.

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26. The respondent was not defending the proceedings. When asked for comment by the Tribunal Mr Coltart confirmed that there had been errors made in the process by the respondent but that since about January 2021 there really had been no dispute between the parties as to the sums due and these would have been paid if the claimant had been willing to sign a COT3.

Discussion

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27. This was a claim where the claimant was alleging that she had not been paid her statutory redundancy pay and that there was an outstanding sum due to her in respect of accrued holidays and holidays that had been taken by her but in respect of which she had not been correctly paid.

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28. There had been quite lengthy correspondence between the parties leading up to this hearing. It was clear that the respondent had made a number of errors in calculating sums due to the claimant. These appear to have been largely unintentional rather than deliberate. A number of these errors had been rectified by the date of the hearing.

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29. The only issues for the Tribunal to determine were the correct calculation of statutory redundancy pay and the correct calculation of holiday pay under Regulation 14 and 16 of the WTR.

30. Turning firstly to the calculation of statutory redundancy pay. The claimant was correct to identify that her birthday on 7 December was relevant to the calculation of her statutory redundancy pay. The relevant date for calculating the statutory redundancy payment is the date upon which any statutory notice period (12 weeks in the case of the claimant) would expire. This date is after 7 December 2020. The correct calculation of the statutory redundancy payment is accordingly to take account of 13 years of continuous employment, an age of 47 and a maximum weekly wage capped at £538. That results in a statutory redundancy payment of £8,608.

31. With regard to the accrued holiday pay there was an agreement to carry over 4 days from 2019. In addition, there were 15 days due from 2020. The claimant is not entitled to claim for accrued holiday pay in respect of periods when she was not employed. There is accordingly no accrued holiday pay due for 2021. She is entitled to her normal pay under Regulation 16 of the WTR in respect of the Bank Holidays. In total this equates to 20 days (4 + 15 + 1 (being 5 x 20% shortfall)). The Tribunal finds that 20 days pay are due to the claimant in respect of Regulations 14 and 16 of the WTR. That is a total of £2,374.62.

Employment Judge: Stuart Neilson
Date of Judgment: 13 September 2021
Entered in register: 24 September 2021
and copied to parties

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