



EMPLOYMENT TRIBUNALS

Claimant: Ms A Buckley

Respondents: (1) Beauty Consultants Bureau (UK) LLP (In liquidation)
(2) Secretary of State for Business, Energy and Industrial Strategy

Heard at: London Central (by CVP)

On: 7 September 2021

Before: Employment Judge Professor A C Neal

Appearances

Claimant: Ms A Fadipe

First Respondent: Did not appear and was not represented

Second Respondent: Did not appear and was not represented

JUDGMENT

- (1) **The Claimant is entitled to a redundancy payment. The Tribunal finds that the amount of redundancy pay to which the Claimant is entitled is £3,228.00p. and orders payment of that sum.**
- (2) **The First Respondent failed to pay the Claimant holiday pay to which she was entitled. The Tribunal makes a declaration that the Claimant's complaint under paragraph (1)(a) of Regulation 30 of the Working Time Regulations 1998 is well founded and makes an award of compensation to be paid by the employer to the Claimant in the sum of £3,710.79p.**
- (3) **The First Respondent breached the contract of the Claimant in failing to pay for a period of notice due. The Tribunal orders payment to the Claimant of the sum of £3,323.10p in respect of that breach of contract.**

REASONS

Background

1. The Claimant brings three claims alleging (1) entitlement to a redundancy payment; (2) failure to pay holiday pay due; and (3) breach of contract.
2. Those claims arise out of the circumstances surrounding termination of the Claimant's employment with the First Respondent in the context of a Creditors' Voluntary Liquidation.
3. The Second Respondent has been joined to the proceedings and has served a response to the Claimant's claims. It is common ground that the Claimant has made an application to the Secretary of State as provided for by **Section 166 of the Employment Rights Act 1996**. It is also common ground that the Secretary of State in a letter dated 14 May 2021 has expressed the view that the Claimant is not entitled to the sums claimed by reason that:

“We have been unable to verify your employment details with the Insolvency Practitioner. We cannot calculate any payment due to you without this information.”

4. The Claimant was represented by Ms Fadipe. A bundle of documents running to 114 pages was presented to the Tribunal for the hearing. That bundle included copies of correspondence and records relating to the period of the Claimant's employment with the First Respondent; correspondence between the Claimant and liquidators for the First Respondent; and correspondence between the Insolvency Service and the Claimant. In addition the Claimant produced a further document dated 19 May 2014 from the First Respondent to the Claimant containing confirmation of an offer of employment and setting out basic terms to apply with effect from 27 May 2014 (that being the “first day of service”).
5. The Claimant gave evidence under oath on the basis of a prepared witness statement running to 16 paragraphs and by reference to a provisional Schedule of Loss drawn up for the purposes of the hearing. The Employment Judge questioned the Claimant in relation to various aspects of her evidence and engaged with the Claimant's representative in order to clarify particular elements in the preliminary Schedule of Loss.

Findings of Fact

6. Having regard to the evidence given by the Claimant (including responses to questions put by the Employment Judge), documents included in a bundle prepared for this hearing, and additional documents produced during the course of the hearing, the Tribunal makes the following findings of fact:
 - (1) On 19 May 2014 the First Respondent wrote to the Claimant confirming an offer made to her for the position of “Trainee Business Manager”. That letter set out the responsibilities of the Claimant in that post and provided for her first day of service to be 27 May 2014.

- (2) The First Respondent's letter also set out provisions in relation to pay in terms that the Claimant's starting salary was to be £22,000.00 per annum with an increase to £24,000.00 per annum on completion of a 3-month period of service in which "satisfactory development and performance" was evidenced. Payment of salary was to be paid monthly on or before the 28th of each month.
- (3) Holiday entitlement was also provided for in the First Respondent's letter. The "holiday year" was stated to run from April to March, and the Claimant's entitlement was initially to 20 days of holiday per annum. Specific provision was made in respect of "entitlement for 2014", this being stated as 16 days of holiday.
- (4) The Claimant duly commenced her employment with the First Respondent on 27 May 2014. She continued thereafter to be employed in the role of Manager.
- (5) In December 2019 the Claimant notified the First Respondent that she was pregnant.
- (6) From January 2020 until 9 June 2020 the Claimant was then signed off on sick leave.
- (7) On 19 March 2020 the Claimant sent an e-mail to the First Respondent attaching a copy of her "Maternity Certificate to claim Statutory Maternity Pay or Maternity Allowance" [Bundle pages 70-71]. That e-mail was sent at 10.20 am and gave notice that the Claimant intended to commence a period of maternity leave on 1 May 2020 and to take a full year.
- (8) On the afternoon of the same day, at 4.02 pm, the Claimant received an e-mail from a Mr Grant Pegg [Bundle page 59], who described himself as an "impartial Face2Face Consultant" dealing with redundancies. Attached to that e-mail was "correspondence for your reference" which consisted of what purported to be a copy of a letter from the First Respondent to the Claimant notifying her that she was at risk of redundancy [Bundle pages 55-56]. That letter was dated 17 March 2020 and made reference to a "consultation meeting" said to have been held on 16 March 2020. The Claimant had not attended any "consultation meeting" on 16 March 2020, having notified the First Respondent by e-mail dated 13 March 2020 that she had a pre-natal appointment on that day [Bundle page 53]. The letter went on to state that:

"...the company has now commenced a period of consultation with you, which is envisaged to last for approximately 2 weeks."

Notwithstanding that statement, however, the Tribunal accepts the Claimant's evidence and finds that no "consultation" in line with the representation in the letter dated 17 March 2020 took place thereafter with the Claimant.

- (9) Shortly after this the Claimant sent to the First Respondent a copy of a GP's letter dated 26 March 2020 which set out the Claimant's medical situation as (1) suffering from "Psoriatic arthritis, guttate psoriasis, Fibromyalgia"; (2) being 26 weeks pregnant; and (3) "suffering from depression during pregnancy ... and ... taking anti-depressants".

- (10) From 30 March 2020 onwards the Claimant made a number of enquiries about payments of wages due, since she had not received any such payment, along with non-payment of SSP [Bundle pages 63-65]. She also took those matters up with her trade union [Bundle pages 65-68].
- (11) On 9 June 2020 the Claimant commenced her period of maternity leave. The due date for her return to work was set as 9 March 2021. On 26 June 2020 the Claimant had her baby.
- (12) During the period following commencement of her maternity leave the Claimant attempted unsuccessfully to communicate with the First Respondent [Bundle pages 69-70], culminating in the sending of an e-mail on 8 March 2021 confirming that she was “ready to resume work as of tomorrow” [Bundle pages]. No responses were forthcoming in relation to those communications.
- (13) The only meaningful correspondence between the First Respondent and the Claimant during this period took place in October and November 2020 when the First Respondent was attempting to obtain the agreement of the Claimant to a “Settlement agreement” bringing her employment to an end. An “offer” was made on 16 October 2020, followed by a further offer dated 20 November 2020. This correspondence was handled through the Claimant’s trade union solicitor. In the event no agreement was reached on the basis of these “settlement offers” and the Claimant continued in employment.
- (14) Eventually, following the Claimant’s notification of her intended return on 9 March 2021, the Claimant received on 22 March 2021 a communication from a Mr W A Batty of Antony Batty & Company LLP, stating that he had been appointed as Liquidator of the First Respondent on 26 February 2021 and enclosing a package of standard documentation relating to insolvency arrangements [Bundle pages 76-102]. That communication, which was dated 10 March 2021, included the statement that:
- “I am advised by the Director of the Company that you were made redundant on 31 March 2020.”**
- (15) In the light of the evidence before the Tribunal it is clear that the statement contained in the communication from the Liquidator is not correct. The Tribunal finds that the Claimant was at no time “made redundant” or otherwise had her employment with the First Respondent terminated prior to receipt of that communication on 22 March 2021.
- (16) The Tribunal finds that the Claimant’s employment with the First Respondent was terminated on receipt of the letter dated 10 March 2021 from the Liquidator. That letter was received on 22 March 2021.
- (17) The Tribunal further finds that the Claimant’s entitlement to annual holiday leave has risen from the 20 days per annum on her commencement of employment with the First Respondent in 2014 to 28 days per annum under current employment legislation in force at the date of her termination. [See **Article 13A of the Working Time Regulations 1998** providing for “additional leave”.]

- (18) The Tribunal finds that the Claimant's salary at the date of her employment being terminated was £28,800.00 per annum. It is undisputed that her gross weekly pay was £553.85 and that her nett weekly pay was £447.05.
- (19) Following notification from ACAS that no conciliation could take place in the circumstances of insolvency [Bundle page 103], and rejection of her application for payments from the Second Respondent, the Secretary of State, in a letter dated 14 May 2021 [Bundle pages 107-108], by reason that:

“We have been unable to verify your employment details with the Insolvency Practitioner. We cannot calculate any payment due to you without this information.”

the Claimant commenced proceedings in the Employment Tribunal claiming (1) entitlement to a redundancy payment; (2) payment of accrued holiday pay due; and (3) breach of contract in relation to the non-payment of notice money due.

The Applicable Law

(1) Redundancy Pay

6. The relevant part of **Section 135 of the Employment Rights Act 1996** provides that:

- (1) An employer shall pay a redundancy payment to any employee of his if the employee —
- (a) is dismissed by the employer by reason of redundancy, ...
- (2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

7. The relevant part of **Section 136 of the Employment Rights Act 1996** provides that:

- (1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if) —
- (a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),
- ...
- (5) Where in accordance with any enactment or rule of law —
- (a) an act on the part of an employer, or
- (b) an event affecting an employer (including, in the case of an individual, his death),
- operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

8. The relevant part of **Section 139 of the Employment Rights Act 1996** provides that:

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to —

- (a) the fact that his employer has ceased or intends to cease —
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business —
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,have ceased or diminished or are expected to cease or diminish.

...

- (4) Where —
 - (a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and
 - (b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).
- (5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.
- (6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

9. **Section 155 of the Employment Rights Act 1996** provides that:

An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

10. **Section 162 of the Employment Rights Act 1996** provides that:

- (1) The amount of a redundancy payment shall be calculated by —
 - (a) determining the period, ending with the relevant date, during which the employee has been continuously employed,
 - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
 - (c) allowing the appropriate amount for each of those years of employment.
- (2) In subsection (1)(c) "the appropriate amount" means —
 - (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).
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

...

- (6) Subsections (1) to (3) apply for the purposes of any provision of this Part by virtue of which an employment tribunal may determine that an employer is liable to pay to an employee —
 - (a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or
 - (b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit, as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.

11. **Section 163 of the Employment Rights Act 1996** provides that:

- (1) Any question arising under this Part as to —
 - (a) the right of an employee to a redundancy payment, or
 - (b) the amount of a redundancy payment,shall be referred to and determined by an employment tribunal.
- (2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.
- ...
- (5) Where a tribunal determines under subsection (1) that an employee has a right to a redundancy payment it may order the employer to pay to the worker such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.

12. **Section 164 of the Employment Rights Act 1996** provides that:

- (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date —
 - (a) the payment has been agreed and paid,
 - (b) the employee has made a claim for the payment by notice in writing given to the employer,
 - (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
 - (d) a complaint relating to his dismissal has been presented by the employee under section 111.
- (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee —
 - (a) makes a claim for the payment by notice in writing given to the employer,
 - (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
 - (c) presents a complaint relating to his dismissal under section 111, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.
- (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to —
 - (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
 - (b) all the other relevant circumstances.

13. **Section 166 of the Employment Rights Act 1996** provides that:
- (1) Where an employee claims that his employer is liable to pay to him an employer's payment and either —
 - (a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
 - (b) that the employer is insolvent and the whole or part of the payment remains unpaid,the employee may apply to the Secretary of State for a payment under this section.
 - (2) In this Part "employer's payment", in relation to an employee, means —
 - (a) a redundancy payment which his employer is liable to pay to him under this Part,
 - (aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of section 135 which has effect by virtue of section 203(2)(e) or (f), or
 - (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 157, liable to make to him on the termination of his contract of employment.
 - (3) In relation to any case where (in accordance with any provision of this Part) an employment tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in subsection (2)(a) to a redundancy payment is to the part of the redundancy payment.
 - (4) In subsection (1)(a) "legal proceedings" —
 - (a) does not include any proceedings before an employment tribunal, but
 - (b) includes any proceedings to enforce a decision or award of an employment tribunal.
 - (5) An employer is insolvent for the purposes of subsection (1)(b) —
 - (a) where the employer is an individual, if (but only if) subsection (6), (8ZA) or (8A) is satisfied,
 - (b) where the employer is a company, if (but only if) subsection (7), (8ZA) or (8A) is satisfied
 - (c) where the employer is a limited liability partnership, if (but only if) subsection (8), (8ZA) or (8A) is satisfied.; and
 - (d) where the employer is not any of the above, if (but only if) subsection (8ZA) or (8A) is satisfied.
 - (6) This subsection is satisfied in the case of an employer who is an individual —
 - (a) in England and Wales if —
 - (i) he has been made bankrupt or has made a composition or arrangement with his creditors, or
 - (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986, and
 - (b) in Scotland if —
 - (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or
 - (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.
 - (7) This subsection is satisfied in the case of an employer which is a company —

- (a) if a winding up order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
 - (aa) if the company is in administration for the purposes of the Insolvency Act 1986,
 - (b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
 - (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.
- (8) This subsection is satisfied in the case of an employer which is a limited liability partnership —
- (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,
 - (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or
 - (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.
- (8ZA) This subsection is satisfied in the case of an employer if —
- (a) the employer is a legal person,
 - (b) a request has been made for the first opening of collective proceedings —
 - (i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and
 - (ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and
 - (c) any of the following has decided to open the proceedings —
 - (i) a court,
 - (ii) a meeting of creditors, or
 - (iii) the creditors by a decision procedure.
- (8A) This subsection is satisfied in the case of an employer if —
- (a) a request has been made for the first opening of collective proceedings —
 - (i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and
 - (ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and
 - (b) the competent authority has —
 - (i) decided to open the proceedings, or
 - (ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.
- (8B) For the purposes of this section —
- (a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor,

supervisor of a voluntary arrangement, or person performing a similar task,

- (b) “competent authority” includes —
 - (i) a court,
 - (ii) a meeting of creditors,
 - (iii) a creditors’ committee,
 - (iv) the creditors by a decision procedure, and
 - (v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(8C) An employee may apply under this section only if he or she worked or habitually worked in Great Britain in that employment to which the application relates.

- (9) In this section —
 - (a) references to a company are to be read as including references to a charitable incorporated organisation, and
 - (b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.

(2) Holiday Pay

14. The relevant part of **Regulation 13 of the Working Time Regulations 1998** provides that:

- (1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.
...
- (3) A worker’s leave year, for the purposes of this regulation, begins —
 - (a) on such date during the calendar year as may be provided for in a relevant agreement; or
 - (b) where there are no provisions of a relevant agreement which apply —
 - (i) if the worker’s employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or
 - (ii) if the worker’s employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.
...
- (5) Where the date on which a worker’s employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins. ...

15. The relevant part of **Regulation 13A of the Working Time Regulations 1998** provides that:

- (1) Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).
- (2) The period of additional leave to which a worker is entitled under paragraph (1) is —
...
 - (e) in any leave year beginning on or after 1st April 2009, 1.6 weeks.

- (3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.
- (4) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 13.
- (5) Where the date on which a worker's employment begins is later than the date on which his first leave year begins, the additional leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.
- (6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where —
 - (a) the worker's employment is terminated; ...
- (7) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due. ...

16. The relevant part of **Regulation 14 of the Working Time Regulations 1998** provides that:

- (1) Paragraphs (1) to (4) of this regulation apply where —
 - (a) a worker's employment is terminated during the course of his leave year, and
 - (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.
- (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).
- (3) The payment due under paragraph (2) shall be —
 - (a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or
 - (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula —

$$(A \times B) - C$$

Where —

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

...

- (5) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.

17. **Regulation 16 of the Working Time Regulations 1998** provides that:
- (1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.
 - (2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) and the exception in paragraph (3A).
 - (3) The provisions referred to in paragraph (2) shall apply —
 - (a) as if references to the employee were references to the worker;
 - (b) as if references to the employee's contract of employment were references to the worker's contract;
 - (c) as if the calculation date were the first day of the period of leave in question;
 - (d) as if the references to sections 227 and 228 did not apply;
 - (e) subject to the exception in sub-paragraph (f)(ii), as if in sections 221(3), 222(3) and (4), 223(2) and 224(2) and (3) references to twelve were references to —
 - (i) in the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the number of complete weeks for which the worker has been employed, or
 - (ii) in any other case, 52; and
 - (f) in any case where section 223(2) or 224(3) applies as if —
 - (i) account were not to be taken of remuneration in weeks preceding the period of 104 weeks ending —
 - (aa) where the calculation date is the last day of a week, with that week, and
 - (bb) otherwise, with the last complete week before the calculation date; and
 - (ii) the period of weeks required for the purposes of sections 221(3), 222(3) and (4) and 224(2) was the number of weeks of which account is taken.
 - (3A) In any case where applying sections 221 to 224 of the 1996 Act subject to the modifications set out in paragraph (3) gives no weeks of which account is taken, the amount of a week's pay is not to be determined by applying those sections, but is the amount which fairly represents a week's pay having regard to the considerations specified in section 228(3) as if references in that section to the employee were references to the worker.
 - (3B) For the purposes of paragraphs (3) and (3A) "week" means, in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other worker, a week ending with Saturday.
 - (4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration") [F6(and paragraph (1) does not confer a right under that contract)].
 - (5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

18. **Regulation 30 of the Working Time Regulations 1998** provides that:

- (1) A worker may present a complaint to an employment tribunal that his employer —
 - (a) ...
 - (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

- (2) Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented —
 - (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

- (2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2).

- (3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal —
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the worker.

- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the employer's default in refusing to permit the worker to exercise his right, and
 - (b) any loss sustained by the worker which is attributable to the matters complained of.

- (5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

(3) Notice Payment

19. **Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994** provides that:

- Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if —
- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
 - (b) the claim is not one to which article 5 applies; and
 - (c) the claim arises or is outstanding on the termination of the employee's employment.

20. **Article 9 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994** provides that:

...

- (2) Where proceedings in respect of a contract claim have been brought before an employment tribunal and the employee or employer who is the applicant party to them becomes bankrupt before their conclusion, the proceedings shall not abate by reason of the bankruptcy and the tribunal may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely adjudicated upon, order the person in whom the interest of the bankrupt party has vested to be made a party and the proceedings to be carried on as if he had been substituted for the bankrupt party.

Discussion

(1) Redundancy Payment

21. In relation to her claim to be entitled to a redundancy payment the Tribunal finds that the Claimant was dismissed and that the reason for her dismissal was redundancy within the meaning of **Section 139 of the Employment Rights Act 1996**.

22. The Claimant's date of birth was 2 February 1990, and the Tribunal finds that she was employed by the First Respondent between 27 May 2014 and 22 March 2021. She therefore had six completed years of service (working backwards from the date of termination). During all of those years of service the Claimant was aged below forty-one years but not below twenty-two.

22. The "appropriate amount" for the purposes of **Section 162 of the Employment Rights Act 1996** is therefore one-week's pay. The Claimant's weekly pay at the time of the termination of her employment was £553.85p gross. That is subject to the statutory cap in force on the date of termination: namely £538.00p.

23. Multiplying £538.00p (the "capped" appropriate amount) by six (the number of completed years of service) **the Tribunal finds that the amount of redundancy pay to which the Claimant is entitled is £3,228.00p. and orders payment of that sum.**

(2) Holiday Pay

24. In relation to the claim for unpaid holiday pay the Tribunal finds that the Claimant's holiday year was provided for in her contract of employment as running from April to March.

25. Her annual entitlement was governed by the relevant statutory provisions in **Article 13 and Article 13A of the Working Time Regulations 1998** which displaced the original provision in the contract of employment entered into with effect from her commencement of employment on 27 May 2014. That entitlement had risen from 20 days per annum to 28 days per annum at the time of the termination of the Claimant's employment.

26. The Tribunal finds that the Claimant was employed for the entirety of the holiday year 2019/2019 and that she was employed for 51 out of the 52 weeks in the holiday year 2020/2021.

27. The Tribunal finds that no holiday was taken by the Claimant during the holiday year 2020/2021. Her outstanding entitlement for that holiday year was therefore 27.5 days (reflecting employment for 51 out of 52 weeks).

28. The Tribunal also finds that six days of entitlement had not been taken in the holiday year 2019/2020. Those six days were rolled over to the holiday year 2020/2021.

29. The total outstanding holiday entitlement due to the Claimant was therefore 33.5 days (27.5 + 6 days).

30. The Tribunal finds that no holiday payment has been made to the Claimant in respect of that outstanding holiday entitlement.

31. The Tribunal has found that the Claimant's salary at the date of her employment being terminated was £28,800.00 per annum. It is undisputed that her gross weekly pay was £553.85 and that her nett weekly pay was £447.05. This equates to daily gross pay of £110.77p.

32. The Tribunal makes a declaration that the Claimant's complaint under **paragraph (1)(a) of Regulation 30 of the Working Time Regulations 1998** is well founded and makes an award of compensation to be paid by the employer to the Claimant in the sum of £3,710.79p (reflecting the daily gross pay multiplied by 33.5).

(3) Notice Payment

33. In relation to the claim that the First Respondent has failed to make payment due in respect of a period of notice to terminate the Claimant's contract of employment the Tribunal finds that the Claimant commenced employment on 27 May 2014 and that the employment was terminated without notice on 22 March 2021.

34. Having regard to the content of the Claimant's terms of employment and the provisions of **Section 86 of the Employment Rights Act 1996** the Tribunal finds that the notice entitlement of the Claimant at the time of the termination of her employment was six weeks (as calculated by reference to Section 86(1)(b) of the 1996 Act).

35. The Tribunal finds that no payment has been made by the First Respondent in respect of the Claimant's entitlement to notice.

36. The Tribunal finds that the First Respondent is in breach of contract and the Claimant's claim to be paid in relation to that breach arose or was outstanding on the termination of the Claimant's employment. It follows that the Claimant is entitled to bring her claim by reference to **Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994**.

37. The Tribunal has found that the Claimant's gross weekly pay at the time of the termination of her employment was £553.85p. Multiplying that gross weekly pay by six the Tribunal finds that the amount due in respect of the Claimant's entitlement to a period of notice is £3,323.10p.

38. The Tribunal orders payment to the Claimant of the sum of £3,323.10p in respect of breach of contract by the First Respondent.

Disposal

39. The judgment of the Tribunal is that:

- (1) The Claimant is entitled to a redundancy payment. The Tribunal finds that the amount of redundancy pay to which the Claimant is entitled is £3,228.00p. and orders payment of that sum.**
- (2) The First Respondent failed to pay the Claimant holiday pay to which she was entitled. The Tribunal makes a declaration that the Claimant's complaint under paragraph (1)(a) of Regulation 30 of the Working Time Regulations 1998 is well founded and makes an award of compensation to be paid by the employer to the Claimant in the sum of £3,710.79p.**
- (3) The First Respondent breached the contract of the Claimant in failing to pay for a period of notice due. The Tribunal orders payment to the Claimant of the sum of £3,323.10p in respect of that breach of contract.**

Employment Judge Professor A C Neal

11/11/2021

Sent to the parties on:

12 11 2021

For the Tribunal: