EMPLOYMENT TRIBUNALS

Claimant: Miss Linda Rawlings

Respondent: Knightsbridge Property Management Limited

Heard at: (by video)

On: 1 October 2021

Before: Employment Judge Adkin

Appearances

For the claimant: Mr B Smith, FRU representative (*pro bono*)
For the respondent: Mr M Green, Counsel

JUDGMENT

(i) The Respondent was the Claimant's employer within the meaning of section 230(1) Employment Rights Act 1996 as at the date of termination on 7 April 2020.

(ii) The claim for redundancy payment succeeds.

(iii) The claims for holiday pay, notice pay and unpaid wages are all brought out of time, do not have the benefit of any extension of time under section 111 of the Employment Rights Act 1996 and are dismissed.

WRITTEN REASONS

1. This was a reserved decision. Although it was a one-day hearing, the question of the identity of the Claimant's employer was not entirely straightforward.

2. The Claimant, in a claim presented on 7 September 2020 says that she was employed as a receptionist/administrator by the Respondent business from 2012 until she was dismissed on 7 April 2020. This followed the death of Mr William Stern whom both parties agree was responsible for most of the Claimant's day-to-day instructions, albeit most came indirectly via Ms Karen Fife.

The Claims

3. The claims contained within the clam form are for redundancy pay and holiday pay.

4. I took the Claimant's application to amend dated 5 May 2021 as a preliminary matter and for reasons given orally, granted an application to add claims of wrongful dismissal and unpaid wages, subject to time limits, i.e. the Respondent may argue that these claims are out of time such that there is no jurisdiction. The claim for wrongful dismissal is relabelling and will be treated as if it was part of the original claim form presented 7 September 2020. The claim for unpaid wages is an entirely new claim and the application to amend is granted but treated as presented at 5 May 2021.

5. The Respondent's response is brief but in short it denies employing the Claimant. While the Respondent is not committing to a positive case, by implication the Claimant was employed by Mr William Stern personally to deal with a variety of business matters, or by a company, most likely Withleigh Limited ("Withleigh"), a company which was dissolved in December 2020.

Evidence

6. I have had the benefit of witness statements and live evidence from the Claimant herself.

7. For the Respondent Mr Mark Stern, Director and shareholder of the Respondent gave evidence. His brother Mr Andrew Stern, shareholder also gave evidence, as did Ms Karen Fife who contends that she was not an employee of the Respondent at all at the material time, but an employee of Withleigh Limited. She is now an *ad hoc* consultant for the Stern brothers.

Procedure

8. This was a video hearing. After the conclusion of the Claimant's evidence I adjourned over lunch and invited the parties to consider whether I ought to be making an order under rule 34 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") e.g. to join representatives of the estate of Mr William Stern. The particular concern I raised was whether I might hear evidence and make findings which representatives of the estate might wish to have participated in.

9. After the adjournment both representatives, having taken instructions, agreed that they wished me to proceed without considering an order under rule 34 or any adjournment.

The facts

10. On 28 October 2011 the Claimant attended an interview with Ms Karen Fife following which she commenced employment with South Kensington Management Ltd on 5 December 2011 as Receptionist & Administrative Assistant for the whole London Office at 6a Albert Court, Kensington Gore, London SW7 “the Office”.

11. On 19 January 2012 the Claimant signed contract of employment with South Kensington Management Ltd, of which Ms Fife was company secretary. According to the entry on companies house Messrs Mark and Andrew Stern had been directors of that business until their resignations on 24 May 2011, although they remained the sole shareholders of the business. The nature of the business was “Renting and operating of Housing Association real estate”.

12. The Claimant’s responsibilities included dealing with post, receptionist duties such as fielding telephone calls, making tea/coffee, liaising with porters and cleaners and filing. It seems that she would carry out these responsibilities for a number people within the Office, such that Mr William Stern and his two sons Mark and Andrew all had the benefit of her assistance. The Claimant accepted in her oral evidence that the younger Stern’s businesses were separate to their Father. Nevertheless she carried out tasks for Mark and Andrew’s businesses such as filing and answering the telephone.

13. She received her instructions in the main directly from Ms Fife, although she agrees that Mr William Stern was ultimately responsible for her instructions and also for important decisions like granting a £3,000 p.a. pay rise that she received in 2017. It was William Stern who admonished her for taking sick leave and threatened to deduct her wages.

14. It is not disputed that Mr William Stern was historically disqualified from being a company director. His name does not appear as company director on any of the various companies referred to in these written reasons.

15. On 4 July 2013 Vantage Estates Ltd (“Vantage”) was incorporated.

16. On 28 February 2015 South Kensington Management Co Limited dissolved.

17. At this time the Claimant began to receive her salary from Vantage Estates Ltd but in other respect her day-to-day work did not change.

18. On 5 April 2015 the Claimant’s P60 showed her employer as Vantage Estates Ltd, 6 Albert Ct, Kensington Gore.

19. On 5 April 2016 Vantage Estate Ltd was dissolved. Notwithstanding this event the Claimant received a P60 on this date from Vantage Estate Ltd.

<u>Payment from the Respondent</u>

20. In 2016 the Claimant’s salary payments in her account began to appear with the reference “Knightsbridge Prop”. It is common ground that this reference related to the name of the Respondent, although the Respondent argues that this is not determinative of the identity of the Claimant’s employer and that this was simply a payroll service that was being provided for the Claimant’s actual employer. What

the Respondent has not done is identify definitively who the actual employer was and how and when it was agreed that this payroll service would be provided.

21. The earliest payment with the "Knightsbridge Prop" reference in the documents supplied is 17 November 2016, however these payment may have commenced earlier in 2016, since there is a gap in the bank statements supplied between December 2015 and November 2016.

22. On 29 June 2016 an annual return for the Respondent showed that Mr Andrew Stern & Mr Mark Stern were the only shareholders, owning one share each. The nature of the business is described in an entry at companies house as "Other business support service activities not elsewhere classified".

23. On 22 July 2016 Mr Mark Stern became a director of the Respondent. This entity seems to have been in existence for some time, given that I can see a resignation of an earlier officer as early as 11 July 1993.

24. Notwithstanding the dissolution of Vantage Estate Ltd, on 5 April 2017 the Claimant received another P60 purportedly from this entity. Vantage cannot have been her employer at this stage.

25. On 4 July 2018 Ms Fife provided a document on the Respondent's headed note paper, with its address stated to be a registered office and a company registration number at the bottom of the page:

> "To Who it May Concern
> This is to certify that Linda Rawlings has been employed since December 2012 as Office Administrator/Receptionist.
> Her job is full-time and on a permanent contract.
> Yours faithfully
> Karen Fife
> Company Secretary" [41].

26. Ms Fife was Company Secretary of the Respondent, having been appointed on 19 July 2001. She remained so until her resignation on 29 December 2020. Ms Fife was also Company Secretary of Withleigh Ltd in the period 21 June 2018 to 1 October 2020

27. I accept the Claimant's evidence that she had asked Ms Fife for a letter on headed paper to prove that she was in employment. There is a dispute between the parties about the precise circumstances that this document was requested. The Claimant says it was to provide proof of employment to a bank in Barbados to support a family member. Ms Fife says it related to a court matter in the UK. I do not have evidence which would enable me to easily resolve this dispute either way. In any event, happily, it is not necessary for me to resolve this dispute. Both parties agree that it was a formal situation where the fact of the Claimant being in permanent employment was relevant.

28. What Ms Fife says about her choice of headed notepaper I have dealt with below.

Covid-19 pandemic

29. In late March 2020 Mr William Stern unfortunately died, having been ill with Covid-19. Ms Fife told the office team that the team could take 7 days off at home

because of the spread of Coronavirus. The Claimant agreed to isolate. Unfortunately she herself contracted Covid-19.

30. On 15 March 2020 the Claimant received her last salary instalment paid by the Respondent, in the sum of £1,881.33. I can see the reference in her bank statement dated 16 March 2020 says “Knightsbridge Prop Salary”.

Termination

31. On 7 April 2020 Mr Andrew Stern called the Claimant by telephone. I accept her evidence that she said he told her words very close to the following:

> “My Dad has passed away, after having been taken ill with coronavirus. Mark [Stern] is in hospital. He's in a coma from coronavirus. As well as having to cope as best I can with my father's death and my brother's , I have a lot on my shoulders. I now have to look after my mother and the rest of my family during this terrible time. I can't do it all on my own. I don't really know what to do. I'm sorry, but I am going to have to let you go. I have to tell you that you no longer have a job with the business, and I have to make you redundant. Please seek legal advice about redundancy pay and get back to me once you have. I won't turn my back on you, and I promise I'll support you Linda, but right now, I have so much to deal with. Can you give me some time?"

32. It seems that an administrative colleague of the Claimant also received a telephone call at around the same time from Mr Andrew Stern told her that he had to let her go.

33. On 18 May 2020 Mr Andrew Stern told the Claimant that he was awaiting a telephone call from his Uncle and that her name was on a list of people to be paid.

34. A week or so later ACAS suggested that the Claimant give Andrew Stern a deadline for payment. She put forward a deadline of 26 June 2020.

35. On 4 June 2020 Mr Andrew Stern wrote to the Claimant. On the one hand he encouraged her to take full advantage of whatever legal rights she had against her employer and suggested that it might have been his Father personally, although he was unclear who her employer was. On the other hand he denied that he himself had any liability and explained that he believed that his Father had no assets only creditors. He went on to say “please rest assured of my intention to do the right thing. This may well take time. I will try my best.”

36. The Claimant discovered after her employment had come to an end that although national insurance and tax had been purportedly deducted from her pay in fact this had not been paid to HMRC.

Legal proceedings

37. On 19 August 2020 ACAS was notified under the early conciliation process in respect of Mark Stern. An ACAS certificate was issued the same day.

38. On 7 September 2020 the Claimant presented a claim for a redundancy payment to the Tribunal, which mentioned Mark Stern and Knightsbridge Property Management Limited as the Respondent as well as Andrew Stern as Second

Respondent. This claim was initially accepted by the Tribunal as a claim against Mark Stern, which was subsequently corrected to the name of the Respondent. The claim against Andrew Stern was rejected.

39. At box 8.2 of the claim form the Claimant wrote that she was employed by William Stern and that his sons Mark and Andrew Stern were directors of the company.

40. On 16 October 2020, ACAS issued an ACAS certificate for Mr Andrew Stern.

41. On 19 January 2021 at a Preliminary Hearing by CVP I extended time for presentation of the response to 16 February 2021.

42. The Claimant obtained another ACAS EC Certificate for Knightsbridge Property Management Limited on 1st March 2021.

43. On 5 May 2021 the Claimant made a written application to amend to add claims for notice pay and unpaid wages.

Law

44. In the context of employment contracts the Supreme Court in *Autoclenz Ltd v Belcher and ors* 2011 ICR 1157, SC, endorsed a line of cases which stressed that the circumstances under which employment contracts are agreed are often very different from those under which commercial contracts are agreed, with employers largely able to dictate the terms and held that there was less restricted approach to the circumstances in which a court might look behind the wording of a written contract.

45. It is not necessary before a court will look behind the contractual documentation that there is a sham or an intention by the parties to deceive others (*Protectacoat Firthglow Ltd v Szilagyi* 2009 ICR 835, CA). In that decision Smith LJ said that a tribunal faced with a 'sham' allegation must consider whether or not the words of the written contract represent the true intentions or expectations of the parties (and therefore their implied agreement and contractual obligations) not only at the inception of the contract but at any later stage where the evidence shows that the parties have expressly or impliedly varied the agreement between them. Lord Justice Aikens warned that, when seeking out the 'true intentions' of the parties, tribunals should not concentrate too much on the 'private' intentions of the parties — ultimately, what matters is what was actually agreed at the time the contract was concluded

46. In *Uber BV and ors v Aslam and ors* 2021 ICR 657, SC, the Supreme Court held that not only is the written agreement not decisive of the parties' relationship, it may not be even the starting point for determining employment status.

<u>Reasonable practicability</u>

47. I have to consider whether to extend time to allow the claim (pursuant to section 111(2)(b) of the Employment Rights Act 1996), whether:

    (i) it was not reasonably practicable for the claim to be presented by 1 February 2020;

(ii) the claim was presented within such further period as is considered reasonable.

48. What is reasonably practicable is equivalent to "reasonably feasible". The onus of proving that presentation in time was not reasonably practicable rests on the claimant, but there should be a liberal interpretation of the provision in favour of the employee (*Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490).

49. Where mistake or ignorance on the part of the litigant was not the result of any faulty professional advice the question for the tribunal is whether the litigant's mistake or ignorance was reasonable. This was articulated in the leading case of *Wall's Meat Co Ltd v Khan* [1978] IRLR 499, [1979] ICR 52, CA in which Brandon LJ stated (at [60]–[61]):

> "the impediment [to a timeous claim] may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable."

50. IDS Brief contains the following commentary on ignorance of time limits:

> "Where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit. Indeed, in *Trevelyans (Birmingham) Ltd v Norton* 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim."

Conclusions

51. I have decided the matters below by reference to the agreed list of issues.

1. Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

52. The Respondent, through Mr Green argues as follows:

    52.1 It is wrong to simply look at the wording of contracts and the like in line with the authorities must look at the reality of the situation.

52.2 Mr William Stern had day-to-day control of the Claimant, as evidenced by a discussion with her about sick days, negotiated a pay rise, instructed Ms Fife to employ her and through Ms Fife told her what to do.

52.3 Making coffees etc for Mark and Andrew Stern was no more than as a favour.

52.4 At no point did the Claimant work outside of Mr William Stern's control.

52.5 The Claimant in her oral evidence did not know what the Respondent actually did and struggled to describe the responsibilities other than filing.

52.6 A characterisation of a "family business" is the wrong way to look at this. There are separate legal entities and separate actors and it must be viewed in that way dispassionately.

52.7 It is admitted that the bank account of Knightsbridge Property Management Ltd was used to pay her salary, says it provided this payroll service. The bank account statements simply correspond to this position.

52.8 Ms Karen Fife was not challenged in her evidence at paragraph 6 of her witness statement that she had made a mistake in providing the document on 4 July 2018 [41].

52.9 Andrew Stern was doing nothing more than the "decent thing" confirming to the Claimant that there was no work for her to do.

52.10 The evidence of Karen Fife that she no longer has a full-time job and now works on an *ad hoc* basis as a consultant for the Stern brothers is evidence that the business of William Stern in which she was engaged has come to an end with his death.

53. The following matters point toward the Claimant being an employee of the Respondent:

53.1 The Respondent paid the Claimant her monthly salary and had done since 2016. Her previous employer Vantage Estate Limited (as indicated by her P60 documentation) was dissolved in April 2016. Her initial employer (as indicated by her contractual documentation) was dissolved in February 2015.

53.2 In 2018 (page 41) Ms Fife, the Respondent's Company Secretary provided a letter on the Respondent's headed notepaper confirming that the Claimant was an employee, which can only be referable to the Respondent.

53.3 Mark Stern's dismissal of the Claimant by reason of redundancy was evidence that he had the authority to do so, which is consistent with him being a director and shareholder of the Respondent.

53.4 At the outset of employment she contracted with a company (South Kensington Management Limited) rather that Mr William Stern individually, which perhaps makes it unlikely that she was subsequently employed by him as an individual.

53.5 Mr Smith argues that the Tribunal should reject the suggestion given in the evidence of Karen Fife that the Claimant employment transitioned from South Kensington Management Ltd to Vantage Estates Ltd to

Withleigh Limited, not least because the second of these entities was dissolved in April 2016 and the third was not incorporated until December 2016. The Claimant must have been employed by someone in the intervening period and it can't have been Vantage which was dissolved nor Withleigh which had yet to be incorporated.

54. I accept the submissions from Mr Green that I have to look at the reality of the situation, which may not be fully reflected in contractual documentation and that looking at this as a "family business" would be the wrong way to approach the matter, particular insofar as this might lead to the conclusion that the younger Sterns bore some responsibility for the business activities of their Father.

55. The contract of employment entered into between the Claimant and South Kensington Management Limited cannot reflect the reality as at the time of determination given that the Claimant has continued to work for approximately 5 years after its dissolution.

56. I have considered the arguments from the Respondent. The contention that the Respondent was simply providing a "payroll service" for the real employer, unspecified, I do not find persuasive. This was not a business offering payroll services generally. If it could be shown through a contract or some other evidence that the Respondent had taken on this responsibility by way of some sort of agreement, or that payments were made from the actual employer to the Respondent that might have some more weight. The Respondent has not put forward any positive case as to which company or individual it was offering payroll services for. Ms Fife's conjecture is that the Claimant was employed by Withleigh Limited, but there is no evidential basis either for that suggestion or that the Respondent was providing payroll services to Withleigh.

57. That Mr William Stern was responsible for providing some direction to the Claimant, albeit through the Respondent's company secretary Ms Fife, in the circumstances of the case, is not inconsistent with the Claimant's case that she was employed by the Respondent. She had been employed by other companies, initially South Kensington Management Limited at a time when Mr W Stern was directing her via Ms Fife. I cannot see from the companies house documentation (81 – 90) that Mr William Stern was a director of that business either, and yet the documentation shows that she originally contracted with it. The reality of the situation, I find is that Mr William Stern was able to make decisions about employees for companies that were employing the Claimant at various stages even if he was not identified in companies house documentation as a director or shareholder. I draw this inference for two reasons. First I find that the Claimant was contractually employed by South Kensington Management Limited at a time when her instructions came ultimately from Mr William Stern. Second, when Mr Mark Stern was asked in cross examination whether he was a shareholder of South Kensington Management Limited he answered "I'm told so". This is a curiously passive position for an experienced man of business to adopt in relation to a business that he half owned and had been a director of. I infer that the reality of the situation was that notwithstanding the content of the companies house register this was a business that his Father was running in reality.

58. I find that it is significant in this case that the Claimant was being paid a monthly salary by the Respondent, working at its registered address and in 2018 its company secretary provided confirmation for an official purpose that she was an employee on its headed notepaper. She was notified of her dismissal for redundancy by Mark Stern who was a director and shareholder of the Respondent.

59. An argument put forward by the Respondent is that the Claimant was not able to describe in her oral evidence in detail what the Respondent did. It is true that she was not able to give any detail beyond saying that she filed documents and carried out receptionist duties. I find however that the nature of the Claimant's role did required her to have an in depth understanding.

60. The Respondent submits that Ms Fife was not challenged in her evidence that she was mistaken when she provided the note on headed paper in 2018. This is an allusion to the rule *Browne v Dunn* (1893) 6 R. 67, [1893] 1 WLUK 44, i.e. that before an advocate can challenge the accuracy of witnesses evidence in closing submissions, this must be done in cross examination.

61. The precise submission put by Mr Smith is "When Karen Fife states in her witness statement that she quickly reached for the wrongly headed paper (ie Knightsbridge not Withleigh), this is not convincing". I have no hesitation in rejecting Mr Smith's submission on this point, in part because this point was not put in cross examination and in part because it mischaracterises what Ms Fife's witness statement says on this point. Ms Fife does not say that it was hurried inadvertence that lead her to use the Respondent's notepaper. She says that she did not have any headed notepaper for Withleigh Limited at all and made a decision to use the Respondent's headed paper rather than Mr William Stern's personal headed paper, which she says was wrong. Ultimately Ms Fife's opinion on the correct employer in 2018 is not the determining factor in this case. The Tribunal must make an assessment on the balance of probabilities in the light of all of the evidence.

62. As to Ms Fife's suggestion that the Claimant seamlessly went from employment by South Kensington Management Limited to Vantage Estates Limited to Withleigh Limited, I am persuaded the by Claimant's submission that this cannot have been so since there was a significant gap between the dissolution of Vantage and the incorporation of Withleigh in 2016. It was in 2016 that the Respondent commenced paying the Claimant's salary. There is an absence of documentation suggesting that the Claimant was employed by Withleigh.

63. On balance, other than the point about Ms Fife's evidence, I accept the Claimant's submissions. I find that from the date that the Claimant started to received payments from the Respondent in 2016 she was an employee of the Respondent. In line with the content of the letter dated 4 July 2018 I find that this was continuous employment dating from the commencement of her employment with South Kensington Management Limited.

64. I find that by operation of Employment Rights Act 1996, section 218(2), i.e. transfer of a business, trade or undertaking, the Claimant's continuity of employment was preserved from her initial employment with South Kensington Management Limited. From her perspective there was no change in her terms, conditions or place of work (excepting one pay rise) for the entire period, notwithstanding the changes of employer name.

65. It follows that the Respondent was the Claimant's employer at the time of dismissal.

2. Time limits

2.1 Given the date the claim form was presented (7 September 2020), and that the Claimant says she was dismissed on 7 April 2020, the claim for holiday pay may be out of time, subject to considering the ACAS early conciliation period.

2.2 Given that the time limit for claims for redundancy pay is 6 months, it seems on the face of it that this is in time.

66. I find that the Claim for redundancy pay was presented in time.

2.3 Was the holiday pay claim made within the time limit in the Employment Rights Act 1996? The Tribunal will decide:

2.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of 7 April 2020?

67. In fact the ACAS EC such as it was occurred on a single day 19 August 2020. The claims for holiday pay, wrongful dismissal and unpaid wages were presented out of time.

2.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

68. The Claimant argues that it was not reasonably practicable to present her claim due to the fact that she contracted Covid-19 and after this it took some time before she began to feel better. She gave Mr Andrew Stern a period of grace given that he initially at least seem to suggest that he was going to arrange payment for her. She says that it was only in the middle of July that it began to dawn on her that the Sterns were not going to help. She could not get through to Citizens Advice because they were also under pressure because of the pandemic. She saw a conciliator on 19 August 2020 who then issued in early conciliation certificate. She says that prior to this she did not know about Tribunal time limits.

69. As to the elements of the amended claim, she says that the application to amend was made in May 2021, once she had had the benefit of a FRU representative advising her that she needed to clarify that there were separate claims being brought under different legal headings.

70. Mr Smith for the Claimant set out in his written submission:

> "The Claimant was ignorant of the time limit for bringing a holiday pay claim. This ignorance was reasonable because the Claimant was assured that the Respondent would pay her and therefore, she had no

reason to think that she needed to take reasonable steps to investigate time limits. When she spoke to Citizens Advice (CAB) by telephone, the conversation simply covered her entitlement to redundancy pay, notice pay, holiday pay and any unpaid wages.

She did take the reasonable step of contacting ACAS for advice about dealing with her employer but, again it was reasonable for the subject of time limits not to arise as she had reason to believe that her employer would pay her."

71. I accept that there was a period of time during which the Claimant was ill when it would not have been reasonably practicable to present a claim. Although I have not been given specific dates, from the chronology as I understand it this was no more than a fairly short period of time, although I accept that the Claimant may have felt fatigued during a period of convalescence. I have not received evidence however which leads me to the conclusion that Covid-19 not reasonably feasible for the Claimant to present her claim within 3 months.

72. While it seems that the Claimant was waiting in the expectation or hope that Mr Andrew Stern would come up with the money that she was owed, it was clear that he had dismissed the Claimant and yet by the email of 4 June 2021 suggesting that he did not know who employed her.

73. Ultimately I do not find that holding off in the hopes of receiving payment made it 'no reasonably practicable' to present a claim, however commendable it was on the part of the Claimant to have trust in her former employer and seek an amicable resolution.

74. Thereafter the Claimant was waiting to speak to CAB. While I recognise that the Claimant wanting to seek advice and the difficulties posed by the Covid-19 pandemic, I do not understand it is the law that time limits are extended as long as a claimant is awaiting legal advice. I have not received evidence suggesting that the Claimant in this case was unable to access information online or submit a claim form.

75. She does not therefore get the benefit of the exception under section 111 so as to bring her claim out of time.

2.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

76. It has not been necessary for me to consider this element given the finding above.

3. **Holiday Pay (Working Time Regulations 1998)**

77. It has not been necessary for me to consider the holiday pay claim given the finding above.

4. Redundancy pay

4.1 Was the Claimant made redundant?

78. Section 139 of the Employment Rights Act 1996 contains the following:

> 139 Redundancy.
> (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—
> …
> (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.

79. I find that this was a redundancy situation. The Claimant and another administrative colleague were "let go" due to the effects of the Covid-19 pandemic on the Respondent business, which corresponds clearly to the statutory definition at section 139(1)(b)(i).

4.2 If so, what was her entitlement to redundancy pay?

80. This will be the subject of the remedy hearing if this is required on **10am 17 December 2021 by CVP (video)**.

81. Given that calculation of redundancy pay is based on a statutory formula I would be surprised if there is any significant dispute on this point. **The parties are both requested to notify the Tribunal whether the remedy hearing is expected to be effective by 10 December 2021 at the latest and if so what points are in dispute**.

4.3 Has the Respondent failed to pay this sum?

82. I do not understand it to be in dispute that the Respondent has failed to pay this sum.

5. Application to amend (notice pay and unpaid wages)

83. These claims were brought out of time and there is no extension under section 111.

Employment Judge Adkin

3 November 2021

Sent to the parties on:

03/11/2021.
For the Tribunal Office: