



EMPLOYMENT TRIBUNALS

Claimants: Mrs A Lister
Mrs F Hammonds

Respondent: TBA Electro Conductive Products Limited

HELD AT: Manchester (by CVP) **ON:** 1 October 2021

BEFORE: Employment Judge Leach
(sitting alone)

REPRESENTATION:

Claimants: In person
Respondent: Mr Linekar, Manager

JUDGMENT was sent to the parties on 7 October 2021.

The judgment included a statement informing the parties that as reasons for the judgment were given orally at the hearing, written reasons would not be provided unless a written request was presented by either party within 14 days that the written record of the decision was sent. This time limit is set by Rule 62(3) of the Employment Tribunal Rules of Procedure 2013 (Rules).

The request for written reasons therefore should have been made by no later than 21 October 2021. It was made by email dated 28 October 2021.

Rule 5 of the Rules provides that a Tribunal may, on its own initiative, extend any time limit specified in these Rules. On my own initiative, I extend the time limit to allow the respondent's request for written reasons.

REASONS

Introduction

1. This case is about whether the two claimants have been paid the correct notice pay after having been dismissed from their employments with the respondent, for reason of redundancy.
2. At the date these claims were issued, other payments (notably a statutory redundancy payments) were outstanding. Those other matters have since been resolved. The only remaining claim was for breach of contract (payment in lieu of notice).

The Hearing

3. The hearing was by CVP. The connections were good and I am satisfied that a fair hearing took place.
4. The respondent had applied for a postponement of this hearing on the basis that its external accountant was on annual leave. That application was refused. The hearing of these cases had by that stage been postponed on 3 previous occasions, all at the request of the respondent.
5. Nether party was legally represented. I heard evidence from the claimants and from Mr Linekar. I was provided with an electronic bundle of relevant documents prepared by the claimants.
6. There is no significant dispute on the facts as I note below.
7. The claimants' claim that the respondent was in breach of contract by failing to pay in full a payment in lieu of their notice entitlement.

Findings of Fact

8. On 24 September 2020 the claimants received a letter from the respondent. The following are relevant extracts from this letter (the extracts are from Mrs Lister's letter):

“Notice to end employment

You are entitled to 12 weeks' notice to end your employment with TBA Electro Conductive Products Limited, based on your length of service.

Your employment will terminate on 31 October 20. You will not be required to work your notice period and the organisation will make a payment in lieu of notice to you.

Entitlement to redundancy pay

Due to your length of service you are entitled to a statutory redundancy payment of £16,140 plus 12 weeks' notice and outstanding holiday pay which will be paid to you with your final pay instalment, making a total of £25,420.57. You will receive this sum direct from the Government.”

9. An extract in identical terms (but with different financial calculations) was sent to the claimant, Mrs Hammonds. I refer to both letters as “the Letter”.

10. As the extract from the Letter makes clear, the respondent’s expectation when the letter was written was that the Government would fund all of the amounts stated.

11. When the Letter was written, the respondent intended that the claimants would continue in employment (and be paid) up to and including 31 October 2020, and at that stage receive their full 12-week notice entitlement as a payment in lieu of that notice period.

12. This finding of fact is supported by the terms of the Letter itself as well as the evidence provided by Mr Linekar.

13. The respondent later learned that the Government’s Redundancy Payments Office would not fund all of these payments but would only provide the respondent with a loan for the amount of the statutory redundancy pay. The respondent learned this in November 2020 (it is not clear precisely when) and wrote to the claimants on 26 November 2020. At this stage knowing that it had to fund the amounts for notice, the respondent declared that five weeks of notice had already been paid (being the period 24 September to 31 October 2020), and therefore only seven weeks’ in lieu of notice was left to be paid.

14. This is not what the Letter said and not what the respondent intended when the letter was sent or at any stage up to and including 31 October 2021.

15. The claimants were willing to accept the terms of the Letter of 24 September 2020 and did so. They did not complain about their dismissals and did not dispute that their positions were redundant.

16. Neither party provided a written contract of employment. There was no dispute that the statutory minimum notice period only applied to the claimants. I find that each of the claimants had a contractual entitlement to a minimum of 12 weeks’ notice of dismissal from the respondent, mirroring the statutory entitlement to minimum notice.

Discussion and Conclusion

17. Minimum notice periods are set out in section 86 of the Employment Rights Act 1996. Both claimants have long service with the respondent, and each is entitled to a minimum of 12 weeks’ notice.

18. The statutory right to minimum notice does not mean that longer notice cannot be provided. Sometimes employers provide longer notice than minimum notice requirements, particularly in redundancy dismissals.

19. It is clear (and Mr Linekar accepted) that the respondent, in the Letter, informed the claimants that their employment would end on 31 October 2020 and then they would receive a full 12 weeks’ notice at that stage, which would be compensated by a way of payment in lieu of notice. Under the contractual notice term in the claimants’ contracts (and under section 86 ERA) the respondent was entitled to provide such notice. The respondent could have given the claimants shorter notice (12 weeks) but it did not.

20. The respondent's position only changed in November 2020 (after the dismissals) as noted above. That change in position does not in any way change the terms of the Letter which had made clear what notice was being provided and the respondent had, by that stage, provided that notice.

21. The respondent was not entitled to somehow shorten the period of notice given after the notice period had expired.

22. Had the respondent changed its position on, say 1 October 2020 (at which stage, 16 weeks of the 17 weeks' notice given, would have remained) then it may have been able to rely at that stage, on a contractual entitlement to give 12 weeks' notice thus reducing overall liability for notice (employed and in lieu) from 16 weeks to 12 weeks. (although that would depend on any argument being advanced that the terms of the Letter amounted a consensual change to the contractual notice term – a matter that I did not consider)

23. However, in attempting on 26 November 2020, to reduce the length of notice given on 24 September 2020 means that the respondent was trying to rewrite history.

24. The period of notice was given and served in accordance with the terms of the employment contracts and the respondent is liable, under the terms of those contracts, for payment of salary for that notice period (employed and in lieu).

25. The claimants' claims of breach of contract succeed and each claimant is entitled to payment in lieu of the five weeks' notice which remains unpaid.

Remedy

26. We discussed and agreed what a week's pay was for each of the claimants. I am grateful to Mr Linekar and to the two claimants for their cooperation in the discussion and calculation such that the figures are agreed.

27. It is agreed that a week's pay as far as Mrs Lister is concerned is £585.60 and for Mrs Hammonds is £431.36.

28. We then multiplied these amounts by five to reach the judgment amounts of (for Mrs Lister) £2,928 and (for Mrs Hammonds) £2,156.82.

29. These are gross amounts. The payments are part of the "Post Employment Notice Pay" payable to the claimants and are subject to deductions for tax.

30. The respondent is ordered to pay these amounts.

Employment Judge Leach
Date: 22 November 2021.

REASONS SENT TO THE PARTIES ON
25 November 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.