



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102847/2019

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Held In Glasgow on 24 May 2019

Employment Judge: Robert Gall

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Mr R Wallace

**Claimant
In Person**

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Wallace Water Limited

**Respondent
Not present and
Not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that

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(1) The claim of breach of contract (notice pay), the claim for holiday pay in respect of holidays accrued but untaken at date of termination and the claim for wages outstanding but unpaid although presented late are permitted to proceed by time being extended. This is on the basis that it was not reasonably practicable for the claimant to lodge those elements of claim in time.

(2) The claimant was at date of termination of his employment unpaid for the 21 days worked in September 2018. He is due the sum of £2,275 in respect of

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those days worked. That sum is awarded to him and the respondents are ordered to pay that amount to him.

- 5 (3) In respect of holidays accrued but untaken at date of termination of his employment, he had accrued 11 such days. The sum due to him in that regard is £1,192, the respondents are ordered to pay that amount to him.
- 10 (4) The claimant was entitled to receive 8 weeks' notice of termination of his employment. He did not receive that, nor did he receive monies in lieu of notice. He is therefore entitled to payment of 8 weeks' pay by way of breach of contract. That amounts to £6,000. The respondents are ordered to pay that amount to him.
- 15 (5) The claimant was dismissed by reason of redundancy. He is entitled to a redundancy payment. Applying the following at date of termination, namely his age (43), his length of service (8 years) and his weekly wage, capped at the statutory maximum at that time (£508), results in a payment being due to him of £4572. The respondents are ordered to pay that amount to him.

20 As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the Hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the Hearing. The following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

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REASONS

1. This case called for a hearing at Glasgow on 24 May 2019. Mr Wallace appeared and gave evidence. There was no appearance and no representation for the respondents.

2. Mr Wallace was employed as a project manager with the respondents. He commenced employment with them in January 2010. Mr Wallace was paid a monthly amount of £3250 gross, £2425 net.
3. On 21 September 2018, he attended work and was told that the company was ceasing trading that day. Mr Wallace had no prior warning of this. He was given a letter from the director of the company addressed to the company accountants confirming that trading was ceasing that day. His employment ended that day.
4. The claim was presented on 7 March 2019. It was preceded by the issue of the ACAS Early Conciliation certificate. That certificate was issued on 7 March 2019. The notification was given by Mr Wallace to ACAS on 3 March 2019.
5. The claim for redundancy payment is presented in time. The claim however for unpaid wages, holiday pay and notice pay required to be presented within 3 months of the right to those payments arising. It would therefore have been required to have been presented by 20 December. At that date, the ACAS certificate had not been sought and therefore no provisions apply extending that time.
6. I heard evidence from Mr Wallace. I was satisfied that he was credible and reliable. His evidence was that he did not know of any time limit applicable to the making of Employment Tribunal claims. He has not previously made any such claim to the Employment Tribunal.
7. When he became aware that his job had ended, Mr Wallace submitted a claim on 26 September to the Insolvency Service. He heard nothing in response to that claim by the end of October and on 29 October 2018 raised that point with the Insolvency Service. They informed him that they had no record of a claim being received from him. He then submitted emails as originally submitted and was informed on 2 November 2018 that his claim was rejected as the respondents were still solvent at that point.

8. Knowing that the company had ceased trading, Mr Wallace waited until December to see if the company had been formally declared insolvent. That did not happen by 5 December 2018 and he therefore made a further claim to the Insolvency Service at that point. He emailed them on 19 January 2019 to see if there was any progress with that. He was told on 20 January 2019 that his claim had been rejected as the respondents appeared still to be solvent. He then spoke with ACAS making a general enquiry with them as to how to proceed. ACAS told him that he required to submit a form to them as part of the Early Conciliation service. He was informed of that in early February 2019. There was no mention to him at this point or at any other point prior to that of there being a time limit. Mr Wallace did not take advice from any other party whether by way of advice from a solicitor or other person.
9. Ultimately on 7 March 2019, Mr Wallace received the Early Conciliation Certificate from ACAS and was informed that there was a three month time limit for submission of the claim for holiday pay, notice pay and wages. He submitted the claim that day. In the period between September and March, Mr Wallace was seeking alternative employment. He was of low mood during that time. He did not seek medical assistance but has been candid in saying that he was drinking more than he should have been. He was also looking after two children and trying very hard to obtain alternative employment. He sought assistance from Poppy Scotland in early March and received help with completion of a course as to interview techniques.
10. The rejections from the Insolvency Service set Mr Wallace back and made him feel down and depressed.
11. On the evidence therefore, Mr Wallace was unaware of any time limit.
12. The test I have to apply is whether I am satisfied that it was not reasonably practicable for Mr Wallace to present his claim within the three month period permitted for the holiday pay, notice pay and wages element of his claim. Being unaware of a time limit is not of itself enough to make it not reasonably practicable to have presented the claim. The ignorance or lack of awareness of that time limit requires in itself to be reasonable.

13. I accepted Mr Wallace's evidence that he had no prior knowledge of Employment Tribunal time limits and was not informed during the period prior to the issue of the ACAS Early Conciliation Certificate of there being such a time limit. The first he was aware of the time limit was on 7 March 2019. He presented the claim that day. It is true that he did not make efforts to ascertain whether there was a time limit. It simply had not occurred to him that there might be such a time limit. He was also channelling his energies towards obtaining alternative employment and to an extent pursuing the claim with the Insolvency Service. Losing his job was upsetting and caused him to drink too much which, as mentioned, he was candid in explaining to me.
14. In all those circumstances, I came to the conclusion that Mr Wallace had persuaded me that it was not reasonably practicable for him to present those elements of claim in time. I therefore extend the time period to permit them to proceed.
15. The wages claim is in respect of the 21 days of September for which Mr Wallace was unpaid. The sum due to him in that regard on the basis of his monthly pay is £2275 gross.
16. Mr Wallace was entitled to 28 days leave on a pro rata basis for the period to date of termination of his employment. He would be entitled to 21 days of leave. He had taken 10 days of leave, leaving a balance accrued but untaken of 11 days at date of termination of his employment. That equates to £1,192 as being due to him.
17. Having worked for eight years with the respondents, Mr Wallace was due 8 weeks' notice of termination of his employment at his gross salary. That amounts to an entitlement to £6,000 in lieu of notice by way of breach of contract. The redundancy payment is calculated on the basis that Mr Wallace was 43 at date of termination of his employment. He had been employed for 8 years. His weekly wage is capped at the statutory maximum applicable at the time of £508. Given his age, length of service and the

weekly wage cap applicable, that results in a payment due to him of £4,572 by way of redundancy pay.

18. Those are the sums awarded to Mr Wallace.

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Employment Judge: R Gall
Date of Judgment: 28 May 2019
Entered in register: 31 May 2019
and copied to parties

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