



EMPLOYMENT TRIBUNALS

Claimant: Mr Máté Libics

Respondent: 2nd Generation Facades Ltd

Heard at: Cardiff Employment Tribunal, by video

On: 1 February 2022

Before: Employment Judge E Macdonald

Representation

Claimant: Ms Gyarmathi

Respondent: the Respondent neither attended nor was represented

RESERVED JUDGMENT

1. The claims are in time.
2. The claim for statutory redundancy pay succeeds. The Respondent is ordered to pay the Claimant the sum of **£1,632** in respect of statutory redundancy pay.
3. The claim for notice pay succeeds. The Respondent is ordered to pay the Claimant the sum of **£1,714.24 (net)** in respect of notice pay.
4. The claim in respect of holiday pay succeeds. The respondent is ordered to pay the Claimant the sum of **£3,099.04 (gross)** in respect of accrued but untaken annual leave.
5. The claim for unlawful deductions from wages is well-founded. The Respondent is ordered to pay the Claimant the sum of **£1,507.60 (net)** in respect of unlawful deductions and **£209** in respect of compensation pursuant to s 23(2) ERA 1996.
6. No order is made in respect of pension loss; the Claimant did not pursue this claim.
7. No adjustment for failure to comply with a provision of a relevant ACAS Code of Practice is made.
8. No award is made for injury to feelings: the Tribunal has no jurisdiction to make such an award in these proceedings.
9. **The total sum payable is £8,161.88**

REASONS

Introduction

1. By a Form ET1 received on 20 September 2021 the Claimant brought claims for redundancy pay; notice pay; holiday pay; and arrears of pay.
2. The Respondent did not present a response, either by 9 December 2021 as required or at all.
3. On 30 December 2021 Employment Judge Jenkins wrote to the parties stating that pursuant to r 21 of the Employment Tribunals Rules of Procedure 2013 it was not appropriate to issue a judgment because there was a concern that the claims for unpaid wages and holiday pay were not brought within the required time.
4. This hearing was therefore listed to determine whether those claims were brought in time, and, if not, whether it was reasonably practicable for them to have been brought in time and, if not, whether they were brought in a further reasonable period. The hearing was then to consider what compensation to award.
5. The Claimant attended the hearing accompanied by his partner, Ms Gyarmathi.
6. At the outset of the hearing I explored with the Claimant whether there had been any contact from the Respondent since the proceedings had been issued. The Claimant confirmed that there had been no such contact. I was also informed by the clerk that the Respondent had not responded to anything regarding the Employment Tribunals and this case. I therefore decided to proceed with the hearing notwithstanding the absence of the Respondent (pursuant to r 47 of the Rules). Had the Respondent attended, it would only have been able to participate to the extent that I permitted under r 21 of the Rules.
7. The Claimant provided a bundle of documentation running to 73 pages, which I read and considered. The Claimant also provided a witness statement dated 19 January 2022 and a Schedule of Loss dated 29 November 2021.
8. The Schedule of Loss contained an element relating to pension loss. The Claimant confirmed that he did not wish to apply to amend his claim. The claim for pension loss does not appear in the ET1 and was therefore not considered.
9. At the outset of the hearing the Claimant confirmed that he wished me to make a determination on the claim for injury to feelings.
10. The Claimant also confirmed that he advanced his claim for holiday pay as a claim for breach of contract.
11. At the conclusion of the hearing I explained to the Claimant that I intended to issue a reserved judgment.

Law

12. S 13(3) Employment Rights Act 1996 provides:

“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

13. Section 23(2) Employment Rights Act 1996 provides:

“. . . an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of 3 months beginning with (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made.”

14. Section 3 Employment Tribunals (Extension of Jurisdiction) (England and Wales) Order 1994 provides:

“Proceedings may be brought before an employment tribunal in respect of a claim for the recovery of damages or any other sum . . . 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 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”

15. Section 7 Employment Tribunals (Extension of Jurisdiction) (England and Wales) Order 1994 provides, insofar as is material:

“Subject to Article 8B an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented –

- a) Within the period of three months beginning with the effective date of termination of the contract giving rise to the claim . . .

[. . .]

16. Section 97 Employment Rights Act 1996 provides, insofar as is material:

Effective date of termination.

(1) Subject to the following provisions of this section, in this Part “the effective date of termination”—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[. . .]

17. Where a contract is terminable by payment in lieu of notice, both notice and payment in lieu of notice are required in order to terminate the contract of employment: *Societe Generale, London Branch v Geys* [2012] UKSC 63
18. Section 8B of the 1994 Order contains provisions which extend the time limit in s 7 to reflect the period of Early Conciliation.
19. Regulation 13 Working Time Regulations 1998 provides that a worker is entitled to four weeks' annual leave in each leave year.
20. Regulation 13A Working Time Regulations provides that a worker is entitled to a further 1.6 weeks' annual leave in each leave year. That statutory entitlement may be carried forward by virtue of a relevant agreement.
21. Section 207A Trade Union & Labour Relations (Consolidation) Act 1992 provides that if, in the case of proceedings to which that section applies, it appears to the tribunal that the claim concerns a matter to which a relevant Code of Practice applies; the employer has failed to comply with the Code in relation to that matter; and that failure was unreasonable; then the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

Facts

22. Mr Libics began working for the Respondent as a Manufacturing Engineer on 1 January 2018. His contractual hours were 40 hours per week.
23. On 10 November 2019 the Claimant signed a "Form for Existing Employees" which indicated that the Claimant had been provided with an updated statement of main terms of employment. That document explained that the Employee Handbook formed part of the claimant's Contract of Employment except where the contrary was expressly stated.
24. The contractual hours were 40 hours / week, 8am – 5pm, Monday – Friday, at a rate of £14/h. The weekly rate of pay was £560 / week (gross).
25. On 5 October 2020 the Claimant booked annual leave for 1 December 2020 through to 11 December 2020, a period of 9 days; 14 December through to 18 December 2020 (a period of 5 days); and 21 December 2020 through to 24 December 2020 (a period of 4 days). The total holiday booked for December 2020 was therefore 18 days. The Claimant explained in his witness statement that these were holidays ". . . that I did not have a chance to take over the year."
26. In evidence, the Claimant was uncertain as to how many days of annual leave he had in fact taken in 2020, and explained that it would have been "worst case scenario, no more than 4". I reject the Claimant's evidence on this specific point, on the basis that if in October 2020 he was seeking to book his remaining annual leave allowance, there would be no reason why he would not have booked the remaining 4 working days of December also as annual leave.

27. I therefore find as a fact that, of his (2020) contractual annual leave allowance, the Claimant had 18 days remaining as of 5 October 2020.
28. On 3 November 2020 the Claimant was called into the office and told that he was to be made redundant.
29. In that meeting, the Claimant was told by Lyn Davies, a Director of the Respondent company, that he could carry over his holidays to the next year. That related to holidays which were, at that point, untaken.
30. By letter dated 16 November 2020 the Claimant was put on furlough. The start date for furlough is stated to be 3 November 2020. The letter explained that “[y]ou will continue to receive 100% of your wage whilst you are a furloughed worker.” The furlough period was indefinite (expressed to be “under continuous review”).
31. He received furlough pay through to February 2021, but he received no pay after 5 March 2021.
32. On 23 April 2021, following a request by the Claimant for a meeting, it was agreed that the Claimant would be made redundant. During that meeting, the Claimant did not, by his own admission, bring up the issue of holiday pay. However, the Respondent agreed that its accounts department would calculate the missed payments (that is, unpaid wages) and redundancy pay.
33. By a letter dated 23 April 2021 the Respondent wrote to the Claimant providing “formal notice of dismissal due to redundancy.” That letter stated that the Claimant’s length of service entitled him to 3 weeks’ notice, and included the following sentence:
- “You will receive your 3 weeks’ notice, any untaken holiday and redundancy pay including any further monies owed by way of expenses within the next 4 weeks.”
34. The Respondent sent a further letter dated 30 April 2021 which stated, insofar as is material:

Untaken Annual Leave Allowance

£0

Redundancy / weeks pay – employment began on Jan 2018

£3 weeks (1 week per year)

Plus 1 weeks full pay

Total of 4 weeks full pay

£2108.88 (net)

Unpaid Wages

£2898.86 (net)

Unpaid expenses

£0

TOTAL due = £5,007.74

Your P45 will be processed by our payroll department and issued to your home address along with a final payslip for the above calculation.

35. The payment was not made. The Claimant called the Respondent’s office and met with Lyn Davies, who promised that the payment would be made in 2 weeks’ time.

36. A payment of £350 from the Respondent was received by the Claimant on 14 May 2021.
37. On 23 May 2021 the Claimant messaged Lyn Davies, but with no response. A further message was sent on 27 May, with no response; and a further message on 3 June 2021. At that point Mr Davies replied saying that he was in hospital and would get back to the Claimant.
38. On 22 July 2021 the Claimant sent Colin McKenzie (another Director of the Respondent) a message, asking Mr McKenzie to look into the payment. The response was “will do”.
39. On 4 August 2021 the Claimant asked his partner, Ms Gyarmathi, to start the grievance procedure. The grievance letter was sent in the next day, 5 August 2021. The only response from the Respondent was an email from Mr Davies asking the Claimant to fill out a form titled “Request to Access Personnel data (sic)”. No response to that grievance was ever received.

The Contract of Employment

40. The Statement of Main Terms of Employment states, insofar as is material, as follows:

PROBATIONARY PERIOD

You join us on an initial probationary period of three months . . . You will be informed of the outcome of your probationary period by a Director and you should not consider your probationary period to have passed until such notification has been received.

[. . .]

HOURS OF WORK

Your normal work hours are not variable . . .

REMUNERATION

Your wage is currently £14.00 per hour, payable weekly in arrears . . .

ANNUAL LEAVE AND PUBLIC / BANK HOLIDAYS

Your holiday year begins on 1st January and ends on 31st December each year, during which you will receive a paid holiday entitlement of 20 days in addition to the public / bank holidays . . . [i]n your first holiday year your entitlement will be proportionate to the amount of time left in the holiday year.

On the completion of two years continuous employment, your holiday entitlement will increase to 25 days in addition to public / bank holidays . . .

The public / bank holidays each year are [New Year’s Day, Good Friday, Easter Monday, and the first Monday in May] . . .

In the event of termination of employment holiday entitlement will be calculated as 1/12th of the annual entitlement for each completed month of service during that holiday year . . .

41. The Statement of Main Terms provides that the employer is required to give 4 weeks’ notice of termination of employment on successful completion of the

probationary period (but less than 5 years' service). The employee is also subject to a 4-week notice period. There is provision for payment in lieu of notice.

42. I find that the Statement of Main Terms accurately records the terms of the contract of employment.

Time limits

43. I find that the date on which the outstanding sums were "properly payable" is the date 4 weeks after the date of the letter informing the Claimant of redundancy, i.e. 21 May 2021, being the date by which the Claimant had been told that he would be paid outstanding sums.

44. Early Conciliation began on 9 August 2021, within the primary time limit of 3 months less one day. The period of Early Conciliation was 42 days. The Claimant had, in any event, one (calendar) month after the certificate was issued in order to present his claim. The claim is accordingly in time in relation to the s 23 ERA 1996 claim.

45. As to the contractual claim (under the 1994 Order), I find that termination of the contract without notice required payment in lieu of notice not only to be intimated, but also to be paid (applying *Geys*). It follows that the effective date of termination is the expiry of the contractual notice: 21 May 2021. The claim for breach of contract is also in time.

46. The deductions from wages clearly form a series of deductions, and accordingly all fall within time.

47. If I were wrong about the date on which the outstanding sums were "properly payable", then I would have found in any event that time for the unlawful deductions claim ran from 14 May 2021 (the date of the last payment which was in fact made, and is in the sum of £350). In that case, the claim would also be in time.

Remedy

Statutory redundancy pay

48. The claimant is entitled to a statutory redundancy payment. He was 31 years old at the date of termination and had been employed for 3 complete years. The statutory cap on a "week's pay" is £544 at the material time. **3 x £544 = £1,632.**

Notice pay

49. The contractual notice period was 4 weeks. The Claimant's payslips indicate that gross pay of £560 / week is equivalent to £428.56 / week (net). **4 x £428.56 = £1,714.24.**

Holiday pay

50. The Claimant's contractual annual leave entitlement was 29 days from 1 January 2020 onwards. I find that the Claimant had taken 11 days annual

leave in 2020, but it was agreed that he would carry the balance (18 days) forward to 2021. His contractual holiday pay accrued at the rate of 1/12th of his total entitlement per complete month. At the date of termination, 21 May 2021, his accrued entitlement was therefore (4/12 x 29 days = 9.67 days (to 2 decimal points)).

51. At the date of termination his accrued but untaken annual leave entitlement was therefore 27.67 days. He is entitled to be paid in respect of that accrued but untaken annual leave as follows: **27.67 x £14 / hour x 8 hours = £3,099.04**

Under-paid wages

52. The Claimant provided screenshots of payments into his bank account. Those screenshots show regular payments in the sum of £428.56 up to and including Friday 5 February 2021.
53. From 6 February 2021 – 14 May 2021 the Claimant received the following sums: £342.68 x 2; £342.68; £285.70; £350. That is a total of £1,663.74.
54. The Claimant is owed wages in the period 6 February 2021 – 23 April 2021, a period of 7 weeks 2 days. 7.4 weeks x £428.56 / week (net) = £3,171.34.
55. The net amount due to the Claimant in respect of under-paid wages is: **£3,171.34 (amount due) - £1,663.74 (amount paid) = £1,507.60 (net).**

Other sums

56. The Claimant needed to buy a new (used) car to accommodate a new child. To fix his existing car would have not been economically viable. But for the breach of contract and/or unlawful deductions, the Claimant would have purchased a new (used) car, but instead carried out temporary repairs to his existing car at a cost of £209.
57. Where an employment tribunal finds a complaint under s 23 Employment Rights Act 1996 well-founded, it must make a declaration, and may order the employer to pay to the worker, in addition to any amount to be paid under s 23(1) of that Act, “such amount as the tribunal considers appropriate in all the circumstances for any loss sustained by him which is attributable to the matter complained of.”
58. I consider it appropriate in all the circumstances to order the Respondent to pay to the claimant the sum of **£209** for the loss set out above.

Injury to feelings

59. The Tribunal has no jurisdiction to make any award for injury to feelings in this case.

ACAS uplift

60. The Claimant sought an uplift pursuant to s 207A TULR(C)A 1992 on the basis that a grievance had been submitted and that the Respondent had

failed entirely to respond to that grievance. The grievance post-dated the termination of employment.

61. I do not consider that the claim “concerns a matter to which a relevant Code of Practice applies”, and accordingly make no award for failure to follow the ACAS Code.

62. In any event, I would not have considered it “just and equitable” to increase the award in this case.

Employment Judge **E Macdonald**

Date **2 February 2022**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
4 February 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche