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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100186/2020

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Held on 1 September 2020 (P)
(By written submissions)

Mr Gordon Paterson

Claimant

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Forth Roofing Service (Lanark) Ltd

Respondent
No appearance

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decided the claimant was an employee of the respondent and is entitled to a redundancy payment. The respondent is ordered to pay to the claimant a redundancy payment of £3,606.

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on the 15 January 2020, seeking payment of a redundancy payment, notice and holiday pay. The payments were said to be due following the respondent ceasing to trade.
2. The respondent did not enter a response.
3. A case management Preliminary Hearing took place on 1 July, because it appeared there were issues of timebar regarding the complaints of notice and

holiday pay and an issue whether the claimant, who is a Director of the respondent, was also an employee.

4. The claimant confirmed he wished to withdraw the complaints relating to payment of notice and holiday pay. Accordingly, the only claim before the Tribunal is one for a redundancy payment, and there is no timebar issue in respect of that complaint.
5. An Employment Judge decided the claim could be determined on the papers.
6. The claimant has provided documents in support of his position that he was an employee of the respondent. I had regard to those documents and the claim form and I made the following findings of fact.

Findings of fact

7. The respondent company was incorporated on 22 August 2006. The claimant has been a Director of the respondent since that date.
8. The claimant is noted on the various documents he produced as having been “employed” since 17 July 1989.
9. The respondent company was not financially viable and the Directors decided to cease trading in July 2019.
10. The claimant’s employment terminated on 18 August 2019. The reason for the termination of the claimant’s employment was redundancy.
11. The claimant produced a document entitled Employee Year To Date Summary, in respect of his employment; together with a pay slip, a P60 and a P45. These documents confirmed (i) a start of employment date of 17 July 1989, (ii) earnings of £240.40 gross per week and £205.06 net per week and (iii) the payment of tax and national insurance and pension contributions.

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Discussion and Decision

12. I had regard firstly to the issue of whether the claimant was an employee of the respondent. I was satisfied that he was an employee of the respondent, and I based that decision on the documents provided by the claimant which demonstrated an employer/employee relationship.

5 13. I noted the respondent company was not incorporated until 22 August 2006. The subsequent documents noted the claimant as having been employed from the 17 July 1989. There was no evidence however to clarify who had employed the claimant in the period 1989 to 2006, or how he had become employed by the respondent, or whether he had been in partnership, or
10 whether he had been self-employed prior to establishing the respondent company. In those circumstances I considered it was not possible to conclude the claimant had been an employee since 1989. I accordingly decided the claimant was an employee from 22 August 2006 until 19 August 2019.

14. I was satisfied the claimant's employment was terminated for reasons of
15 redundancy. The claimant is entitled to be paid a redundancy payment. I calculate that payment to be £3,606 (being 15 weeks v £240.40 gross per week).

20 Employment Judge: Lucy Wiseman
Date of Judgment: 03 September 2020
Entered in register: 08 September 2020
and copied to parties

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