



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4101427/2020 A

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Held remotely in Glasgow on 23 July 2020 by CVP

Employment Judge: D Hoey

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Mr Kevin Shanks

**Claimant
Represented by:
Himself**

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BR1618 Ltd

**Respondent
Represented by:
Not present**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The correct respondent to these proceedings is BR1618 Ltd.
- 25 2. The claims of unfair dismissal and unlawful age discrimination are dismissed upon the claimant's withdrawal of said claims.
3. The claimant was dismissed in breach of contract and the respondent shall pay the claimant: (a) the damages in the gross sum of **£5,525** in respect of the failure to pay the claimant 2 month's notice taking account of the unreasonable failure to comply with the ACAS Code of Practice and (b) the gross sum of £2040 to reflect the failure to issue the claimant with a written statement of particulars.

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E.T. Z4 (WR)

REASONS

Introduction

1 In a claim form presented on 11 March 2020 the claimant stated that he had
5 been employed indicated that he had been employed from 27 September
2019 until 15 February 2020. He was employed as "premises manager". He
ticked the boxes for unfair dismissal, age discrimination and notice pay (and
said he was also claiming wrongful dismissal). Early conciliation via ACAS
took place between 11 February 2020 and 11 March 2020.

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The claim is undefended

2 No response form/ET3 was lodged on behalf of the respondent. The claim
was therefore undefended and there was no evidence presented by the
respondent.

15 3 In the absence of a response from the respondent, while the rules would allow
a judgment to be issued if it were possible to do so from the information
provided, a remote hearing was fixed to allow the claimant to provide the
further information.

20 4 The claimant attended the remote hearing himself. The respondent was not
present nor represented.

Correct respondent

5 The respondent was identified in the ET1 as "Alyson Finnigan BR1618 Ltd".
Early conciliation had progressed in respect of BR1618 Ltd.

25 6 At the outset of the hearing it was clear that the correct respondent was
BR1618 Ltd and the designation was changed to reflect this. That was the
claimant's employer and is the legal entity responsible for the sums sought.

Issues

7 At the outset of the hearing we discussed the claims before the Tribunal.

8 The claimant had sought to claim ordinary unfair dismissal as he believed he
5 had been dismissed by the director to make way for one of her friends. As the
claimant had less than 2 year's service he accepted that he did not have
sufficient qualifying service to claim unfair dismissal and that this claim was
being withdrawn and should be dismissed.

9 The claimant also accepted that other than ticking the box "age
10 discrimination" he had not set out any claim for age discrimination. The real
basis of his claim was that the director had dismissed the claimant to make
way for her friend. On that basis, the claimant withdrew the claim for age
discrimination and consented to its dismissal.

10 It was agreed that the claims before the Tribunal and the issues to be
15 determined in this case are as follows:

a. **Notice pay:** to what notice was the claimant entitled and what sums
are due, the claimant having been dismissed summarily? The claimant
argued that he had been told that he was due to be given 2 month's
notice if his employment were to end and he had not been paid this.

20 b. **Other sums:** Was the claimant entitled to an uplift due to the
respondent's failure to comply with the ACAS Code of Practice in
relation to Disciplinary and Grievance matters (as he had asked for
payment and this had been ignored) and to 2 or 4 weeks pay given the
failure to provide the claimant with a written statement of particulars?

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Findings in fact

11 The Tribunal makes the following findings in fact from the evidence presented
to the Tribunal.

12 The claimant was engaged as premises manager by the respondent from 27 September 2019 until 15 February 2020.

13 The claimant was not issued with a written statement of particulars in respect of his employment. The claimant asked on multiple occasions for his written contract during his employment. The respondent refused to provide the claimant with a copy of his written contract.

14 The claimant was told at the commencement of his employment that given he was a manager, his notice period would be 2 months. This meant the employer or the employee required to give 2 month's notice to end the contract.

15 On 15 February 2020 the claimant was summarily dismissed. There was no procedure that led to the claimant's dismissal and he was dismissed without any notice. He was dismissed because his manager wanted to employ her friend.

16 Despite repeated requests for payment by the claimant for the sums due both verbally and in writing, the respondent refused to pay the claimant or engage with him.

17 The claimant earned the gross amount of £510 a week from the respondent. His gross monthly pay is therefore £510 multiplied by 52 which is £26,520 divided by 12 which is £2,210.

18 His net weekly pay was £456 a week.

19 Following his dismissal, the claimant sought alternative work but did not secure alternative work.

Law

Notice pay

5 19. Section 86 of the Employment Rights Act 1996 provides employees with a minimum period of notice. For the claimant, given he has 2 complete years of employment, he is entitled to a minimum of 2 week's statutory notice.

10 20. If the parties agreed a greater period of notice, the greater period of notice would become the contractual notice period.

21. Failure to pay contractual notice when due would amount to a breach of contract in respect of which an award could be made.

15 22. An employee is not entitled to be paid notice if the employee is guilty of misconduct which would justify summary termination of the contract. There requires to be evidence to support said summary termination.

Uplift

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23. Under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 where a claim that is made is one of those which featured in Schedule A2, which includes a claim for breach of contract (such as failure to pay notice pay), a Tribunal can increase an award made by up to 25% if the employer unreasonably failed to comply with a relevant Code of Practice, which includes the ACAS Code of Practice in relation to disciplinary and grievance matters. A failure to comply would occur where an employee seeks payment in writing from his employer of sum contractually due and the employer fails to engage in that process.

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Failure to provide written statement

24. Under section 38 of the Employment Act 2002 a Tribunal can increase an award made in claims that are set out in Schedule 5 (which includes claims for breach of contract) by 2 weeks or 4 weeks (if it is just and equitable to do so), where no written statement of particulars was given to the claimant.

Decision and reasons

25.1 shall deal with each issue in turn.

Notice pay

20 The claimant was told that he was due to receive (and give) 2 month's notice in the event his employment was to end. I am satisfied therefore that he is entitled to 2 month's notice. He was not given that notice, and there is no evidence to challenge his right to receive this.

21 The claimant is therefore entitled to 2 month's notice under his contract. He is therefore due to be paid £2,210 x 2 which is £4,420 by way of notice pay.

22 The gross sum is awarded given the impact of the taxation regime upon the award.

Unreasonable failure to comply with the ACAS Code

23 Given the claimant had repeatedly asked for payment and such requests had not been met, I find that the claimant is entitled to an uplift in respect of the foregoing award of 25%. There was an unreasonable failure by the respondent to comply with the ACAS Code in this regard and it is just and equitable to award the claimant an uplift of 25% which would be a further £1,105.

24 The total sum to which the claimant is entitled is therefore £5,525.

Failure to provide written statement of particulars

25 Finally, as the respondent had not been issued with written particulars and
given he had repeatedly asked for a copy, I am satisfied that it is just to award
5 the claimant 4 week's gross pay under section 38 of the Employment Act
2002. In this regard he is awarded 4 x £510 which is £2,040.

Summary

26 In summary the respondent shall pay to the claimant:-

10 (1) 2 month's notice pay increased by 25% resulting in the total gross sum
of £5,525; and

(2) Compensation in respect of the failure to issue a written statement in
the gross sum of £2,040.

Employment Judge: David Hoey
Date of Judgment: 24 July 2020
Entered in register: 29 July 2020
and copied to parties

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