



# ***EMPLOYMENT TRIBUNALS*** **(SCOTLAND)**

Case No: 4113869/2019 (P)

Employment Judge M Robison

Mr J Allan

Claimant

John Bennett Funeral Directors Ltd

Respondent

## **JUDGMENT**

The claim is struck out under rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds that it has no reasonable prospect of success in terms of rule 37(1) (a).

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# REASONS

1. The claimant in this case made a claim for statutory redundancy pay and holiday pay.
  2. Following a case management preliminary hearing which took place on 14 April 2020 by telephone conference call, and was presided over by EJ Sutherland, the respondent paid the claimant the requisite statutory redundancy pay. The claimant subsequently withdrew his claim for holiday pay, since it was accepted that it had been paid in full.
  3. EJ Sutherland noted the claimant's view that had he not raised Tribunal proceedings he would not have received payment of his redundancy pay. EJ Sutherland stated at paragraph 6 of her note that, "The Tribunal does not have jurisdiction to award interest on late payment of redundancy pay. However, under section 163 [of the Employment Rights Act] where a Tribunal determines that an employee has a right to a redundancy payment it may order the employer to pay such an amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment". The claimant was directed to advise the respondent within the next 28 days of any such losses (with examples of loss of interest on investing or cost of borrowing, in respect of amount of the redundancy payment). EJ Sutherland suggested that given the relatively small sums involved, that an informal resolution between the parties could be reached.
  4. In a response to the discussion at the preliminary hearing dated 31 May 2020, the claimant set out the interest he claimed he was due on the late payment. The respondent responded by e-mail dated 4 June 2020 stating their understanding that the Tribunal did not have jurisdiction to award interest on late payments, only losses incurred by the claimant, whereas the request was clearly for interest and did not list any losses, therefore they considered that no payment was due.
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5. The sums sought in the response of 31 May 2020 relate to judicial interest which would be paid following non-payment of a judgment. No judgment was however issued in this case. The claimant did not then set out any losses which he said had been incurred by him due to late payment, as he was requested to do.
  6. By e-mail dated 4 August 2020, the claimant was given a further 14 days in which to set out the financial loss actually sustained by him attributable to the non-payment of the redundancy payment, and to provide documentary evidence to support his loss.
  7. There being no reply a reminder was sent on 1 October 2018. There being no reply to that correspondence either, by letter dated 5 November 2020, a strike out warning was issued to the claimant on the grounds that the claim had not been actively pursued.
  8. The claimant responded by e-mail dated 19 November, referring to the note of 14 April and his response of 31 May. He argued, by reference to section 163 of the Employment Rights Act, that he had clearly stated the loss which he sought.
  9. The claimant stated that "if the judge insists I will ask for written costs to borrow the said amount of money from a bank for this period of time". The claimant therefore does appear to understand that the kind of losses which are envisaged by section 163 are those where he had a requirement to pay for the cost of borrowing the relevant sum. It is clear from his response that he did not do so, and I take it from the fact that he has not make an application for any relevant losses, or provided any relevant evidence to support such losses, that he has not in fact suffered any relevant losses.
  10. This is a case where the claimant has had a reasonable opportunity to make representations both at a hearing, and in writing. Although the claimant has responded to the strike out warning letter, as previously advised by EJ Sutherland, this Tribunal has no jurisdiction to hear the claimant's outstanding claim for interest at the judicial rate on the late payment of the redundancy payment.
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11.1 find therefore that the claim has no reasonable prospects of success under section 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The claim is therefore struck out.

**Employment Judge: M Robison**  
**Date of Judgment: 26 November 2020**  
**Entered in register: 26 November 2020**  
**and copied to parties**