



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111028/2018**

**Held in Glasgow on 12 October 2018**

**Employment Judge: Michelle Sutherland (sitting alone)**

5 **Mary Odonnel**

**Claimant  
In Person**

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**UDC Services Limited**

**Respondent  
No appearance**

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**JUDGEMENT OF THE EMPLOYMENT TRIBUNAL**

The judgement of the Tribunal is that -

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1. The claim for breach of contract through failure to give statutory notice of termination succeeds and the Respondent is ordered to pay the Claimant the sum of £2,160 (gross).
  2. The claim for statutory redundancy pay succeeds and the Respondent is ordered to pay the Claimant the sum of £4,320 (gross).
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  3. The claim for holidays accrued but taken at the termination date fails and is dismissed.
  4. The sums are to be paid without deduction and it is for the Claimant to account
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  - to the Inland Revenue for any income tax and national insurance due.

**REASONS****Introduction**

1. The Claimant presented complaints of failure to pay redundancy pay, holiday pay and notice pay.  
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2. The Claimant's complaints were heard together with those of Mrs Angela Smith Case Number 4111030/2018.
3. A final hearing was held on 12 October 2018. The Respondent did not attend io having advised previously that they would not be in attendance.
4. The Claimant and Mrs Angela Smith lodged a set of productions.
5. The Claimant and Mrs Angela Smith gave evidence on their own behalf.  
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6. The Claimant did not make written or oral submissions.

**Findings of Fact**

7. The tribunal makes the following findings of fact -  
208. The Claimant was employed by Jacqueline Ritchie trading as Upstairs Downstairs Cleaning ('t/a UDC') from 1 March 1995 until 1997 when the Claimant had an extended absence from work through ill health. UDC provided domestic cleaning services in Lanarkshire and the Claimant was employed by them as a domestic cleaner. The Claimant resumed employment with Jacqueline Ritchie t/a UDC on or before 21 June 1999, and continued to be employed by her until 25 1 December 2010. The Respondent was incorporated on 1 December 2010. Jacqueline Ritchie is sole director and sole shareholder of the Respondent. The UDC business of providing domestic cleaning services in Lanarkshire transferred from Jacqueline Ritchie to the Respondent on or about 1 December 2010. The 30 Claimant was employed by the Respondent as a domestic cleaner from 1 December 2010 until her termination effective 22 June 2018.

9. During her employment with the Respondent, the Claimant worked 23 hours a week Tuesday to Friday and was paid the national minimum wage, latterly £180 a week gross. The Claimant was not provided with a written contract by either Jacqueline Ritchie t/a UDC or by the Respondent.

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10. The Respondent operated the holiday year in line with the financial year from 5 April to 4 April. There was no specified contractual holiday entitlement. The Claimant had 8 days holiday in the period 5 April 2018 to 22 June 2018.

io 11. The Respondent took the decision to cease trading following the loss of a client. On 22 June 2018 the Respondent gave the Claimant notice that her employment was to terminate with immediate effect.

12. The Claimant's date of birth is 3 October 1966 and the Claimant was age 51 at  
15 the termination date.

### Relevant law

#### Continuous employment

13. Under Section 218 of the Employment Rights Act ('ERA') 1996 if a business or an undertaking is transferred from one person to another, the period of  
20 employment of an employee at the time of the transfer in the business or undertaking counts as a period of employment with the transferee and the transfer does not break the continuity of the period of employment.

14. Under Regulation 3 of the Transfer of Undertakings (Protection of Employment) ('TUPE') Regulations 2006 there is a relevant transfer of an undertaking or part  
25 of an undertaking to another person where there is a transfer of an economic entity which retains its identity. An economic entity is an organised grouping of resources which has the objective of pursuing an economic activity.

30 15. Under Regulation 4 of TUPE Regulations 2006 except where an employee objects, a contact of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to

the relevant transfer, shall have effect after the transfer as if originally made between that person and the transferee.

#### A week's pay

16. Under Section 221 of the ERA 1996 where an employee has normal working hours, and where their pay does not vary either with the time of that work (shift work) or the amount of the work done (piece work), a week's pay for the purpose of calculating redundancy pay, holiday pay and notice pay is the amount which is payable if the employee works those normal working hours.
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1017. Under Section 227 of the ERA 1996 a week's pay is subject to a statutory cap of £479 for the purposes of calculating redundancy pay (but not notice or holiday pay)-

#### Statutory Notice

18. Under Section 86 of the ERA 1996 an employee is entitled to one week's notice for each year of continuous employment up to a maximum of 12 week's notice.
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19. A claim for statutory notice may be brought as a contract claim under Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. Under Article 7 a contract claim must be brought within 3 months of the effective date of termination.
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#### Redundancy Pay

20. Under Section 135 of the ERA 1996 an employer shall pay a redundancy payment to an employee if the employee is dismissed by reason of redundancy.
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21. Under Section 139 of the ERA 1996 an employee is dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the employer's business is ceasing or there is a diminished requirement for employees to undertake work of a particular kind (either generally or in the place where the employee was employed).

22. Under Section 162 of the ERA 1996 the amount of a redundancy payment for every whole year during which the employee had been continuously employed (up to a maximum of 20 years) is 1 week's pay for each year of employment below the age of 41 and 1.5 week's for years at or over age 41. For the purposes of calculating a redundancy payment the period of employment is extended to include the period of statutory notice.

23. Under Section 164 of the ERA 1996 a claim for redundancy payment must be made before the end of 6 months of certain specified events including presenting a complaint of unfair dismissal.

#### Holiday Pay

24. Under Regulations 13 and 13A of the Working Time Regulations ('WTR') 1998 a worker is entitled in each leave year to a period of 5.6 weeks leave. A worker's leave year starts on the date provided in a relevant agreement, failing which 1 October (if their employment commenced prior to 1 October 1998), failing which the date on which their employment begins. Under Regulation 2, a relevant agreement means in summary an incorporated collective agreement or a written agreement. Under Regulations 14 and 16 of the WTR 1998 where a worker's employment is terminated during the course of their leave year the employer shall make a payment of a week's pay in respect of each week of accrued but untaken leave pro-rated accordingly. Under Regulation 30 a claim must be made within 3 months, or if not reasonably practicable, within such further reasonable period.

#### Discussion and decision

##### 25 Continuous employment

25. UDC amounted to an organised grouping of resources which had the objective of pursuing an economic activity namely the provision of domestic cleaning services in Lanarkshire. The business of UDC was transferred from Jacqueline Ritchie to the Respondent on 1 December 2010. The staff transferred Jacqueline Ritchie to the Respondent. The activities of the business before and after transfer were broadly similar. There was therefore the transfer of an economic entity which retained its identity on transfer to the Respondent. Accordingly there was

a transfer of an undertaking under TUPE Regulations 2006 from Jacqueline Ritchie to the Respondent.

26. The Claimant was assigned to the organised grouping of resources and/or employees that transferred from Jacqueline Ritchie to the Respondent. The Claimant's contact of employment with Jacqueline Ritchie had the effect after the transfer as if originally made between the Claimant and the Respondent. Accordingly the Claimant had 19 whole years of continuous service (21 June 1999 to 22 June 2018).

io A week's pay

27. The Claimant had normal working hours, her pay did not vary with the time of that work or the amount of the work done, and accordingly a week's pay for the purpose of calculating her entitlement to redundancy pay, holiday pay and notice pay is the amount which is payable if she worked those normal working hours, namely £180 a week (gross).

Statutory Notice

28. The Claimant is entitled to one week's notice for each year of continuous employment up to a maximum of 12 week's notice. The Claimant has 19 years of continuous service and is therefore entitled to 12 week's notice. A week's pay is £180 gross. Accordingly the Respondent is due to pay the Claimant notice pay in sum of £2160 (gross) (£180 x 12 weeks).

29. The claim for statutory notice was made on 4 July 2018 and accordingly was in time.

25 Redundancy Pay

30. The Claimant was dismissed because the Respondent's business was ceasing and accordingly Claimant was dismissed by reason of redundancy. The amount of a redundancy payment for every whole year during which the employee had been continuously employed is 1 week's pay for each year of employment below the age of 41 and 1.5 week's for years at or over age 41. The Claimant had 9 years' service below age 41 and 10 years service' at age 41 and over. The

Claimant is therefore entitled to 24 weeks redundancy pay (9 years + (10 years x 1.5)). Accordingly the Respondent is due to pay to the Claimant redundancy pay in sum of £4,320 (gross) (£180 x 24 weeks).

- 5 31. The claim for redundancy pay was made on 4 July 2018 and accordingly was in time.

#### Holiday Pay

- io 32. The Claimant is entitled to 5.6 weeks leave in each leave year. The Claimant agreed to a leave year of 5 April to 4 April. By the termination date of 22 June 2018 the Claimant had accrued 1.2 week's leave (5.6 x 11 weeks/ 52 weeks). By the termination date the Claimant had taken 2 weeks of leave (8 days) and accordingly the Claimant is not due any payment in respect of accrued but untaken leave and the claim is dismissed.

- 15 33. Parties expressed concern about the Respondent's ability to pay. Parties are urged to seek independent legal advice and to contact the Redundancy Payments Service.

20 **Employment Judge: M Sutherland**  
**Date of Judgment: 12 October 2018**  
**Entered in register: 18 October 2018**  
**and copied to parties**