



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr. Derek Fisher**

v

**Browns Lane Garage Limited**

**Heard at: Birmingham by CVP On: 19 November 2021**

**Before: Employment Judge Wedderspoon**

**Representation:**

**Claimant: Ms. Cole, Lay representative**

**Respondents: In Person**

### JUDGMENT

1. The claimant's claim for a redundancy payment is well founded. The claimant is awarded £9,030.
2. The claimant's claim for notice pay is well founded and he is awarded £5,040 gross. The respondent is to account for any tax or national insurance on this payment.

### REASONS

1. By claim form dated 23 July 2020, the claimant brought claims for notice pay and redundancy pay. There is no dispute that the claimant was made redundant by the respondent on 30 June 2020. The claimant's case is that the sum paid to him failed to take account of his 20 year service with the employer from 1999.
2. The respondent disputes that there is any shortfall in payments. The respondent's case is that the respondent employed the claimant from 2016 only.
3. The Tribunal bundle was provided with a 302 page bundle. The claimant gave evidence and the respondent's director Andy Foxall gave evidence.  
Facts
4. The claimant commenced his employment at Browns Lane Garage from September 1999 as a mechanic. He was made redundant on 30 June 2020. The business was originally owned by John Manning. The claimant produced payslips to the Tribunal dated in 2005 and in 2018 and a P60 dated 2000 evidencing employment at the garage over this period.
5. Following the death of the owner, the garage continued to trade and the claimant continued to work and be paid as a mechanic at the garage by the Manning family. In effect the business continued to trade as an going concern.
6. The respondent purchased Browns Lane Garage and from 1 May 2016 changed the name of the business to Browns Lane Garage Limited. Jean Manning executor of Mr. Manning's estate entered into a sale agreement

with Browns Lane Garage Limited on 30 April 2016. In the sale agreement the business is described as “the business of a motor vehicle garage and petrol station carried on by the seller at the property”. Employees are defined as “the persons now employed by the seller in the business details of whom are set out in the first schedule.” The first schedule lists the employees and includes the claimant. Pursuant to paragraph 7.1 of the agreement it states “the employees contracts of employment shall at completion be transferred to the buyer under the Transfer of Undertaking (Protection of Employment) Regulations 2006

7. The claimant did not receive a P45. At the time of the transfer the claimant was not given a new contract of employment and has never received a contract of employment from the respondent. The contract of employment provided in the bundle downloaded from the Department for Business, Innovation and Skills is an example contract and does not state the claimant’s name or any information about the claimant’s employment. The Tribunal accepted the claimant’s evidence he had never seen this document before and the respondent had not provided him with a contract of employment.
8. On 27 May 2016 the claimant was provided with and signed a salary summary and statement confirming a remuneration package with the respondent. The Tribunal finds that this document varied the terms and conditions the claimant had with the previous owner as it clearly states “any previous arrangement with John Manning with regards to remuneration, payments in cash or any other benefits such as use of cars or fuel either on or off record accounted for or not are my responsibility along with any tax that may be due.” This did not evidence the commencement of employment with the respondent; it was simply a variation of contractual terms only.
9. By email dated 27 March 2020 the respondent placed the claimant on furlough due to the COVID pandemic. By email dated 27 May 2020 the respondent invited the claimant and other employees to a meeting at the garage on Friday 29 May 2020. The claimant and his colleagues were informed by Mr. Foxall that the garage was closing and he would be made redundant on 30 June 2020. This was confirmed by email on the same date.
10. On 4 June 2020 the claimant emailed the respondent to request confirmation as to what he was expected to receive by way of redundancy. Mr. Foxall replied “Lynn has worked this out as far as we know at this point but I will need to speak to her tomorrow to get it off her. It will also depend if I can sell enough assets by the end of June which I’m working at each day. I will get back in touch tomorrow.”
11. Following a request from the respondent for the claimant to go into Browns Lane garage to help clear out the garage whilst placed on furlough the claimant emailed Mr. Foxall stating “I do not want to jeopardise my June furlough payment from the government as they have been very clear in the rules that you should not undertake any work for your employer whilst furloughed.” He went on to explain he was a 56 year old man who had worked for the garage for 20 years and only wanted what he was legally entitled to. He stated that he taken advice from ACAS and an employment lawyer and he requested 20 years service for his redundancy pay and 12 weeks notice and all unused holiday until 30 June 2020.
12. By email dated 11 June 2020 the respondent replied stating “The business known as Browns Lane Garage Limited your employer as you have said

started trading on May 1 2016 and it was at that point in time your employment began. Your previous employer, John Manning a sole trader ceased trading when he died. This point along with the termination of any other agreement you had with Mr. manning such as your off record salary, holiday etc was confirmed in writing signed by you with your first months salary.”

13. On 15 June 2020 the claimant submitted a written grievance. He requested that his redundancy payment be calculated in accordance with his 20 years’ service with the respondent; he receive 12 weeks’ notice pay and 6 month unused accrued holiday pay to 30 June 2020. The claimant chased for a response on 25 June. The respondent rejected the claimant’s grievance stating that when the sole trader died in 2016 the business died. The respondent confirmed that all employment contracts were carried over from the previous employer in an email dated 16 June 2020.

#### Submissions

14. The respondent does not challenge that there was a TUPE transfer or that the claimant commenced work at the garage in 1999 as a mechanic. His case is that the respondent employed the claimant from 2016 and relies upon the document signed by the claimant about changes in the workplace. He does not challenge that the claimant received any notice pay.
15. The claimant’s case is that he has had continuous employment throughout from 1999. On this basis he has 20 years service and is entitled to a redundancy payment on that basis plus 12 weeks notice; he says he received no notice pay.

#### Law

16. Section 86 of the Employment Rights Act 1996 (the ERA) sets out the minimum periods of notice required to terminate a contract of employment. Where an employee is employed for 4 years; his notice period is 4 weeks. Where employed for 20 years his notice period is 12 weeks.
17. Redundancy payments are calculated pursuant to section 162 of the ERA 1996 by taking account of the period of employment and reckoning backwards from the end of that period the number of years of employment and allowing 1 year for every year over the age of 22 and 1.5 years for every year over 41 years of age.
18. Pursuant to section 218 of the ERA 1996 the period of an employee in the business at the time of the transfer counts as a period of employment with the transferee and the transfer does not break the continuity of the period of employment.
19. Where the employment contract is an individual employer rather than a company the death of that employer will automatically dissolve the contract (see *Farrow v Wilson* 1869 LR CP 744). The contract comes to an end. This is subject to the statutory provision contained in section 218 (4) ERA 1996 which states that the death of the employer does not break the continuity of employment if the employee is then employed by the deceased personal representatives.

#### Conclusions

20. The respondent does not dispute that the claimant commenced his employment at the garage in September 1999. The Tribunal finds that the claimant was employed by the respondent from 1999 until June 2020 when

he was made redundant. Following the death of Mr. Manning, the claimant continued to work as a mechanic and was paid accordingly. The business did not close but continued to trade; the claimant continued to work at the garage; did not receive a P45 or any notice that his employment had ended and he was paid as a mechanic by the Manning family. The Tribunal finds his employment continued and was effectively taken on by the executor of the Mr. Mannings' estate. Pursuant to section 218 (4) of the ERA the death of Mr. Manning did not break the continuity of employment because the claimant became employed by Mr. Manning's personal representatives.

21. By sale agreement 30 April 2016 the respondent purchased the business and the terms are clear : employees such as the claimant transferred to the respondent. The claimant's employment continued, and he was transferred to the respondent. Mr. Foxall in fact recognised this by his email dated 16 June 2020.
22. In respect of the signing of the document dated 27 May 2016, that did not mark as the respondent contends, the start of the claimant's employment relationship with the respondent. The document was simply a variation of the employment terms the claimant continued to be employed upon. It was not a new period of employment. It simply clarified the terms upon which the claimant continued to be employed.
23. By June 2020 the claimant had service with the respondent of 20 years. The claimant was born on 10 March 1964. He was employed for 15 years over the age of 41 and is entitled to  $1.5 \times 15 = 22.5$  years plus 5 years at 1 year; this equates to 27.5 years. There is no dispute that the claimant's gross salary was £420 per week. Therefore, he is entitled to £11,550 in redundancy pay. The respondent paid the claimant a redundancy sum of £2,520; the shortfall is £9030. The claimant is awarded £9,030 redundancy pay. The claimant contends he received no notice pay; this was unchallenged by the respondent in cross examination. 12 weeks notice amounts to £5,040 and the claimant is awarded this sum. The total award is £14,070.

**Employment Judge Wedderspoon**

**19/11/2021**

Sent to the parties on: 02/12/2021

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