EMPLOYMENT TRIBUNALS

Claimant: Ms J Jones

Respondent: Proud Goulburn Accountants

Heard at: Manchester via Cloud Video Platform

On: 04 February 2022
25 February 2022
04 March 2022 (in Chambers)

Before: Employment Judge Dennehy

REPRESENTATION:

Claimant: In person
Respondent: Mr Simon Hoyle (Consultant)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1.The claimant was an employee of the respondent from 01 February 2016 until 31 October 2020.

2. The claimant is entitled to a redundancy payment of £926.

3. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment and is ordered to pay to the claimant the sum of £624 gross.

4. The respondent is ordered to pay the claimant additional compensation of £624 gross pursuant to section 38 Employment Act 2002 for failure to provide the claimant with a written statement of employment particulars.

5. The claimant's claim for breach of contract for failure by the respondent to pay notice pay is dismissed.

REASONS

Introduction

1. The claimant Ms Jones was employed by the respondent as a Bookkeeper/Accounts Assistant from 01 February 2016 until her dismissal.

2. The claimant claims that she was always an employee, was dismissed fairly by way of redundancy and is owed notice pay, holiday pay, redundancy pay and compensation for failure to be given written particulars of employment. The claimant has submitted a schedule of loss in the total sum of £2,808.00.

3. The respondent contests the whole claim. It says that the claimant was never an employee, rather she was a casual worker whose manual work came to an end (**role 1**) and was then given a temporary contact on 28 February 2021 to assist with the move to Smart Vault Portal (**role 2**) and as such she is not entitled to any compensation under role 2 and any claim in relation to role 1 is out of time.

Witnesses and Evidence

4. The Tribunal heard from the claimant herself and for the respondent from Ms Nicola Taylor, a line manager for the respondent.

5. Initially there was confusion regarding the contents of the agreed version of the bundle and witnesses' statements, but this was quickly resolved and agreement was reached on a 78 page bundle of documents and witness statement from the claimant and for the respondent, Ms Taylor. Each witness was cross examined and answered the Tribunal's questions.

Issues for the Tribunal to decide

6. The agreed list of issues presented for the Tribunal to decide are as follows:

(1) Was the claimant engaged by the respondent between 1.2.16 and 28.2.20?

(2) Was there a contract?

(3) Was there mutuality of obligation?

(4) Was the Claimant an employee or a worker?

(5) Was the Claimant entitled to a contract?

(6) If the Claimant was an employee was she entitled to a redundancy payment?

(7) Is a claim for redundancy payment out of time?

(8) Was the Claimant engaged by the Respondent on a fixed term contract between 2.3.20 and 30.4.20?

(9) Was the Claimant an employee or a worker?

(10) Was the Claimant entitled to a contract of employment?

(11) Does the email at page 32 amount to a statement of main terms and particulars?

(12) Did the Claimant affirm and perform the terms of the new agreement until she was Furloughed?

(13) Were the duties to assist with the implementation of a computer system?

(14) Did the employer have a reasonable expectation that the lockdown would end and the Claimant would be brought back to complete the work she has started prior to being Furloughed?

(15) Did the Lockdown continue and was the "setting up of Smart Vault" completed in her absence?

(16) Did the Employer correctly apply CJRS and end the Claimant's Furlough and extension of her temporary contract once it became known that there was no job left for the Claimant to do?

(17) As the agreement began 2.3.20, was the Claimant entitled to a redundancy payment?

(18) As the agreement had a fixed end date, was the Claimant entitled to notice pay?

(19) Did the Claimant ever request holiday between 2.3.20 and 3.4.20?

(20) Did the Claimant ever request holiday between 4.4.20 and 30.10.20?

(21) What "other payments" is the Claimant entitled to if any?

Preliminary matters

7. There were some connection/technical problems on both days of the hearing which were eventually resolved, and all the relevant parties were able to participate by reconnecting.

8. As the claimant was a litigant in person the Tribunal advised the claimant that it cannot give her any legal advice but will assist with explaining any issues that the claimant did not understand, and the role of Judge was to ensure that a fair hearing takes place.

9. At the start of the hearing it became apparent that the first issue to be dealt with was whether the claimant was an employee or worker. Having done so the Tribunal decided that the claimant was an employee and oral reasons were given at the end of day one of hearing which are repeated below. Due to the time spent

in dealing with this matter the hearing went part heard and the final hearing was listed for a second day 25 February 2022.

Findings of Fact

10. The relevant facts are as follows. Where the Tribunal has had to resolve any conflict of evidence this is indicated how this was done at the material point. References to page numbers are the numbers of the agreed bundle of documents.

11. The claimant, Ms Jones commenced working for the respondent, Proud Goulbourn Accounts on 01 February 2016 as a Bookkeeper/Accounts Assistant. The work comprised of manual data entry of client records using Sage 50.

12. The respondent operates a firm of Accountants and has four employees. Three are full time and one is part time.

13. The claimant had been known to the respondent as a client since 2000. At the beginning of 2016 the claimant and the respondent had a conversation about the claimant undertaking some book-keeping work for the respondent. The respondent stated that "*we decided that we could offer her some work on a casual basis"*.

14. The claimant commenced working for the respondent initially for one day a week for the first month and then two days a week. There were no minimum hours agreed but the maximum was 16 hours per week.

15. The respondent confirmed when giving oral evidence that it did not give the claimant a contract of employment or statement or written particulars when she commenced employment in 2016. The claimant confirmed in oral evidence that she had received no written contract from the respondent or written statement of employment particulars.

16. The respondent confirmed in oral evidence that there was another part time employee of the respondent who did not have a written contract of employment, but all the full-time employees did have written contracts of employment.

17. The claimant was put on the payroll (payroll number 5 page 36), national insurance and tax were deducted from her monthly salary, she undertook her work from the respondent offices, she could not work from any other location, her work was checked by the respondent, she was given work to complete by the respondent, she used the respondent's equipment to carry out that work, she was given a key to the office, was allocated a car parking space, she was invited to the respondent's Christmas party, was given a Christmas bonus and undertook training with the respondent.

18. The claimant was invited to join the respondent's pension scheme on 19 August 2019 as she was not automatically enrolled as she earned less than £192 per week which was one of the criteria for automatic enrolment (page 31).

19. The claimant was initially paid £9.50 per hour and worked and average of 16 hours a week. The claimant completed daily time sheets when she undertook work for the respondent (pages 49-70). The respondent summarises the hours where the claimant worked less than 16 hours per week (pages 45-48) to support its case that the claimant was a worker.

20. The claimant and respondent both gave evidence that the hours and work were flexible. The claimant stated in her oral evidence that "*it was a flexible arrangement*" and that she" *did whatever she was asked to do*". The claimant worked flexible hours up to a maximum of 16 hours over two days a week for the respondent depending on the respondent's clients' needs.

21. The claimant gave oral evidence that she has always enjoyed her time with the respondent. She was not aware of the respondent's disciplinary policy but believed that she was subject to it. Neither party raised any issues re the claimant's performance or disciplinary record.

22. Towards the end of November 2019, the claimant suffered an accident and sustained two broken wrists. The claimant did not return to work until 04 March 2020. The claimant produced sick notes until 10 February and then until 10 March 2020. The respondent had not paid the claimant any sick pay as they were of the view, she was under the threshold to claim from the respondent. The claimant sought advice from Citizen's Advice, and she raised the matter with the HMRC Disputes team. The matter was resolved, and the claimant was paid her sick leave in June 2020 by the Respondent. The claimant gave oral evidence that the HMRC tool had confirmed that she was an employee, and the Tribunal advised the claimant that the test used by the Tribunal is not the same checklist approach.

23. Prior to the claimant being off sick the respondent had begun to think about how it could change its business model with the introduction of making tax digital which meant that there would be less manual work required and the respondent commenced changing its manual systems to an online system called the Smart Vault Portal from February 2020 onwards.

24. Sometime shortly before the 28 February 2020 a telephone conversation took place between the claimant and Ms Taylor although neither had a clear recollection of when exactly it took place, and both had a different understanding of what was said and whether the email sent on 28 February was an accurate reflection of the conversation. The Tribunal found both the claimant and respondent witness to be genuine and consistent in giving their evidence, but each was adamant in their own view of their recollection and understanding.

25. On the 28 February 2020 the respondent sent an email to the claimant to confirm the terms of the temporary work for role 2 that had been discussed on the telephone previously. The temporary work offered was to assist in the setting up the Smart Vault Portal from 28 February to 30 April 2020. The email also stated that the work was for two months, rate of pay was £9.75 per hour, to be paid on the third Friday of each month, accrual of holiday pay, any holiday accrued would be paid at the end of the temporary contract and redundancy payment up to the 28 February 2020 to be paid at the end of this contract for role 1(page 32).

26. The claimant stated in her oral evidence that she "*did not want to rock the boat*" by challenging the inaccuracies that were in the email. She says the inaccuracies in the email were that there was a new temporary contract, and the claimant believed it was instead a variation of her current terms, although she did acknowledge that this was the first time, she was put on notice of redundancy in her witness statement (para 10).

27. The respondent stated in oral evidence that she had mentioned a redundancy payment in the email because at the time the email was sent, the respondent believed that the claimant was an employee and as such would be entitled to a redundancy payment. The respondent later had a change of heart and took the view that the claimant was not an employee and therefore not entitled to a redundancy payment, but never mentioned this change to the claimant.

28. The email of the 28 February states that the term of role 2 is two months ending on 30 April 2020, and that redundancy will be paid up to the 28 February 2020 for role 1. As a matter of fact there was no break in continuity of employment.

29. The claimant returned to the office on 04 March on reduced hours and the last day she was in the respondent's office and completed work for the respondent was 19 March 2020.

30. Lockdown due to the Covid pandemic commenced on 23 March 2020.The respondent closed its offices and the claimant could not undertake her work from home.

31. The respondent placed the claimant on furlough leave with effect from 23 March 2020 and confirmed this in a letter dated 03 April 2020. The letter stated this would be a variation to the claimant's contract of employment and that her contract of employment continues (page 33). In the respondent witness statement Ms Taylor says the furlough letter was issued in error (para 14), but at no time did the respondent correct any error or communicate this to the claimant.

32. The respondent expected the furlough scheme to end in June 2020 and that the claimant could return to the office and complete the 2-month contract (para 15).

33. The claimant continued to receive payslips and P60 from the respondent.

34. The respondent gave oral evidence that the move to the Smart Vault Portal was completed without the claimant's efforts.

35. On the 23 June 2020 the respondent sent an email to the claimant advising that they would not be requiring the claimant to return to work, but she would remain on the furlough scheme although pay would be reduced to 80%. It also stated that the claimant would receive 100% pay for the month of October and this would be her notice pay. The email stated that "*we will continue to support you until the end of the scheme, however, from 1st July your pay will be reduced to 80%. You are entitled to a notice period at full pay which will treat as being for October unless you obtain alternative employment before then in which case your notice period will be brought forward.*" (page 35).

36. A letter was sent by the respondent to the claimant confirming final payslip, notice pay and enclosing P45 on 29 October 2020 (page 38-41).

37. The claimant's last day of employment with the respondent was 31 October 2020.

38. The claimant asked for a breakdown of her final payslip asking how the figures had been calculated via email dated 20 November 2020 (page 42).

39. The respondent replied on 23 November via email stating that it was gross pay for five weeks 28.9.20-26.10.20 and that the respondent did not believe that the claimant was entitled to a redundancy payment and that the respondent was not obliged to put the claimant on the furlough scheme and the respondent felt the claimant had already received an amount more than what she would have been entitled to (page 42).The claimant stated in her oral evidence that this was the first time she became aware that she was considered an employee and was not entitled to a redundancy payment.

Relevant Law

Employee or worker status

40. An "employee" is defined by Section 230(1) of the Employment Rights Act 1996 (**ERA**) as being "*an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*" Contract of employment" is defined as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. The most common starting point is found in **Ready Mixed Concrete (South East) Ltd V Minister of Pensions and National Insurance 1968/All ER433, QB** and reinforced by the Supreme Court in **Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC** namely the Tribunal must consider relevant factors in considering whether someone is an employee. An irreducible minimum to be an employee will involve control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered. A checklist is not to be used rather "*a picture has to be painted from the details*" it is a matter of evaluation of the overall effect of the details because not all the details are of equal weight or importance.

41. A "worker" is defined by Section 230 (3) ERA as being: "*an individual who has entered into or works under (or, where the employment has ceased, worked under) – (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.*"

Redundancy Pay

42. Section 98 ERA states that dismissal by way of redundancy is a fair reason for dismissal.

43. Section 135 of ERA provides the right for to a redundancy payment to be made to an employee. "*An employer shall pay a redundancy payment to any employee of his if the employer- (a) is dismissed by the employer by reason of redundancy, or (b) is eligible for a redundancy payment by reason of being laid off or kept on short time*."

44. The time limit for presenting any claim for redundancy payment is 6 months and can be found at section 164 ERA:

    "(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
    (a) the payment has been agreed and paid,
    (b) the employee has made a claim for the payment by notice in writing given to the employer,
    (c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
    (d) a complaint relating to his dismissal has been presented by the employee under section 111.

    (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
    (a) makes a claim for the payment by notice in writing given to the employer,
    (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
    (c) presents a complaint relating to his dismissal under section 111and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

    (3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—
    (a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
    (b) all the other relevant circumstances."

45. If an employee has been dismissed by reason of redundancy and has not been paid the statutory redundancy pay to which they are entitled section 163 ERA permits an employee to bring a claim to the employment tribunal which may order the employer to pay such amount as it thinks fit appropriate to compensate the worker for any financial loss arising from this non-payment.

Notice Pay

46. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 ERA.

45. An employer will be in breach of contract if they terminate an employee's contract without the contractual notice to which the employee is entitled, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.

46. A claim for breach of contract must be presented within three months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonably practicable to do so, in which case it must be submitted within what the Tribunal considers a reasonable period thereafter.

47. The aim of damages for breach of contract is to put the claimant in the position they would have been in had the contract been performed in accordance with its terms. Damages for breach of contract are, therefore, calculated on a net basis, but may need to be grossed up to take account of any tax and national insurance that may be payable on the damages. Damages relating to notice pay are subject to tax and national insurance.

Holiday Pay

48. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be mad in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the start date of the claimant's employment in the first year and, in subsequent years on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employer and employee provides for a different leave year. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

49. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in Sections 221-224 ERA with some modifications. There is no statutory cap on a week's pay for this purpose. The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 have the effect that the reference period for calculating annual leave for workers from 12 to 52 weeks.

50. Section 13 (1) ERA provides that an employer shall not a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or

consent to the making of the deduction. An employee has the right to complain to an Employment Tribunal of an authorised deduction from wages pursuant to Section 23 ERA. The definition of wages includes in Section 27 includes holiday pay.

51. A claim about an authorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Failure to provide written contract of employment

52. Section 1 ERA (in place in February 2016) states that an employee is entitled to a statement of initial employment particulars within two months of beginning employment.

53. Section 38 Employment Act 2002 provides that a failure to give statement of employment particulars can result in a minimum award of a minimum of two weeks wages up to a maximum of four weeks wages if the Tribunal considers it just and equitable in all the circumstances. Section 11(4) ERA provides that the time limit for bring a claim is within 3 months of termination.

Respondent Submissions

54. In relation to the issue of employee or worker status Mr Hoyle gave oral submissions, that putting aside the sick pay issues (as both parties had now agreed that the claimant was entitled to is and the respondent had paid it) the claimant was a worker until 28 February 2020, because: there was no formal contract, there were no formal hours, the claimant could come and go as she pleased, she did not have to accept work, she was granted use of the premises, being invited to the Christmas party does not amount to being an employee of the respondent, mutuality of obligation was not there, the claimant often worked less than sixteen hours, her work could have been completed by someone else and as such she is not entitled to any statutory redundancy pay.

55. In submissions on the final day of the hearing Mr Hoyle was honest in expressing the respondent’s confusion as to the nature of employment law and the furlough scheme during the covid pandemic. The respondent had a genuine belief that the claimant was a worker from 01 February 2016 in role 1 and it is a matter for the Tribunal to decide when work ended. On the 01 February 2020 the respondent had no more work for the claimant in role 1 and they took the action they did, and the email of 28 February 2020 was a clear communication to the claimant of what the position was and as had previously been discussed over the phone ie role 1 was over and a new role 2 was on offer. It is clear at para 10 of the claimant’s statement that she acknowledges that she is being made redundant from role 1.

56. If the redundancy date is 28 February 2020 from role 1 then her claim is out of time and cannot proceed. It follows that if 28 February 2020 is the termination date, then all her other claims in connection with role 1 are also out of time. In any event there has been no underpayment of wages by the respondent. Role 2 was to end on 30 April 2020 and but for the covid pandemic that would have happened. The government furlough scheme was "*new to us all and no one anticipated how long it would go on".* The respondent had decided that it had no work for the claimant and could no longer keep the claimant on the scheme due to the eligibility rules of the furlough scheme. The claimant now understands why she wasn't kept on the furlough scheme, and this is evidence that there was genuine misunderstanding on both sides. The respondent stated that the claimant did no work for the respondent after 19 March 2020. In role 2 there has been no leave was taken because the claimant hadn't asked for any and the respondent says it's included in the final payslip.

Claimant Submissions

57. In relation to the issue of employee or worker status the claimant gave oral submissions that she had always believed that she was an employee and had never been told anything different and was "*devastated when she didn't receive any redundancy pay*". The claimant enjoyed working for the respondent and believed that there had never been an issue until she broke her wrists and had to go to HMRC to be paid sick pay. She says that the HMRC decision demonstrates that she is an employee and that she only became aware that she wasn't considered an employee by the respondent when she read the email in November 2020.She couldn't put a claim in for redundancy any earlier because of contradictory information from the respondent ie that she was going to be paid a redundancy payment and then put on furlough. She had asked the respondent for details of her last pay slip but received none and found the whole process upsetting and says she is entitled to statutory payments that she has not yet received.

Conclusions

58. In deciding the issues, the Tribunal has not set out all the evidence heard at the hearing on 04 and 25 February 2022 but has selected those details which are most important to the decisions. Just because something is not mentioned does not mean that the Tribunal did not consider it.

Employee or worker status

59. The claimant can only claim unauthorised deductions from wages and holiday pay if is she was an employee or worker. She can only claim breach of contract for notice pay is she was an employee. To claim a redundancy payment, she must have had two years continuous service as an employee.

60. All employees are workers, but not all workers are employees and the starting point for the Tribunal is considering whether the claimant was an employee as defined in Section 230(1) ERA. The Autoclenz case has provided that the starting

point to be an employee will involve looking at control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered. A checklist is not to be used rather "*a picture has to be painted from the details*" it is a matter of evaluation of the overall effect of the details because not all the details are of equal weight or importance.

61. The Claimant worked as a Bookkeeper/Accounts assistant for the respondent and from the oral evidence given by both the claimant and respondent the following details emerged re the claimant's employment terms:
(a) she was on the respondent's payroll, national insurance and tax were deducted and was paid via monthly wages, although both parties agreed that the hours were and always had been flexible up to a maximum of 16 hours per week; (b) she had to do the work herself; (c) she used the respondent's equipment and undertook the work at the respondent's premises, she could not do her work away from the respondent's office; (d) she took instructions from the respondent, Ms Taylor and Ms Taylor made the decision as to what work the claimant should do and for which particular clients and in her oral evidence confirmed that she reviewed the claimant work; (e) she believed that she was subject to the respondents disciplinary policy, although she was not aware of where to find the policy; (f) she was given a key to the respondent's office and a car parking space; (g) she was invited to the Christmas party and received a Christmas bonus; (h) she was provided with training which the respondent paid for; (i) she confirmed many times in her oral evidence that she was never aware that she wasn't an employee; (j) as she had never been offered any terms in writing there was no record of what her status was; (k) the other part time person at the respondent's offices does not have a formal written contract; (l) she booked her holidays in advance in the same way that other employees did; (m) she was paid sick leave, albeit it after appeal to HMRC; (n) lunchbreaks were unpaid for as they were for all other employees; (o) she was asked to join the pension scheme; (p) the respondent had decided to move its manual systems on line and commenced this change whilst the claimant was off sick and whilst it had been anticipated that the claimant would assist with this change she never did; and (q) the respondent had varied the claimant terms of employment via the email of 28 February 2020 whilst the claimant was off sick;(r) there was no break between role 1 and 2.

61. Turning to the three elements identified in Autoclenz the Tribunal finds: (i) re control that the ultimate authority over the claimant rested with the respondent and at all times the claimant was subject to the respondents orders and direction; (ii) re mutuality of obligation that both parties gave evidence of a flexible hours approach because it suited them both, but once the claimant attended the respondents premises she stayed there until the work was completed; and (iii) re personal performance that the claimant herself provided the services and did not substitute any of her tasks. The respondent would only substitute if the claimant was unable to work and the respondent gave the claimant a particular client to work on.

62. The respondent had written to the claimant and stated that a redundancy payment up to 28 February 2020 would be made to her at the end of her employment (page 32). On the 23 November 2020 the respondent wrote to the claimant that they no longer believe that the claimant was entitled to a

redundancy payment (page 42). The respondent gave oral evidence that this issue was not brought to the attention of the claimant until 23 November 2020.

63. The claimant gave oral evidence that this was the first time she became aware that the respondent did not consider her an employee. She believed that she was always an employee and was entitled to a redundancy payment and this had been confirmed to her in the email of 28 February 2020 (page 32).

64. As the Tribunal had found that the claimant was an employee of the respondent, and it was not disputed that she had been unfairly dismissed by way of redundancy the claimant is entitled to a redundancy payment.

65. The respondent states that the date of termination of role 1 and how this was communicated to the claimant is clear in the email of 28 February 2020. The claimant was signed off sick from late November 2019 to 10 March 2020, yet came back to work on 04 March 2020, albeit it on reduced hours/ phased return and was placed on the furlough scheme with effect from 23 March 2020.

66. The respondent's case is that it had stated that the claimant was engaged in a new role, role 2 which was temporary in the 28 February email. It was due to an error that it had sent a letter to the claimant re furlough leave, the error being that this letter referred to employees, yet it does not bring this error to the attention of the claimant until 23 November 2020 (page 42).

67. The respondent decided that it no longer had any work for the claimant, and she was therefore not eligible to remain on the furlough scheme and advised the claimant that "*we will not be requiring you to return to work*" but that they would keep her on the furlough scheme until the end of (page 35).

68. It is unfortunate that the various communications from the respondent to the claimant contain errors and conflicting information which it failed to correct so taking this and all the above into consideration the Tribunal concludes that the claimant was in continuous employment until 31 October 2020 and the email of 28 February 2020 was a variation of the claimant's employment terms and another example of the flexible approach that both parties took throughout the claimants term of employment with the respondent.

69. Since the Tribunal has found that the claimant was an employee, she is also a worker and there is no need to consider any other part of the test of a worker. As an employee the claimant is entitled to pursue all her complaints.

Time Limits

70. The Tribunal finds that as the claimant was an employee and was in continuous employment the effective date of termination was 31 October 2020.

71. The claimant's claim was presented to the Tribunal on 03 March 2021.The claimant notified ACAS under the Early Conciliation Procedure on 31 December 2020 and the ACAS Early Conciliation Certificate was issued on 11 February 2021.

72. The Tribunal finds that the claim for a redundancy payment, unlawful deductions of wages for holiday pay, claim for breach of contract for notice pay and damages for failure to provide a written statement of employment particulars were all presented in time.

Redundancy Pay

73. As the Tribunal has found that the claimant was an employee and that she was in continuous employment since 2016, was dismissed by reason of redundancy, she was entitled to a redundancy payment.

74. The claimant was born on 15 August 1968 and had continuous service of employment with the respondent from 01 February 2016 to 31 October 2020. She was aged 52 at the date of termination and is entitled to 1.5 x gross weeks pay for each year of employment. The claimant has completed 4 years continuous service. The multiplier for calculating redundancy is therefore four. There were no other benefits.

75. The claimant's gross weekly wage was £156.00, which does not exceed the appropriate statutory maximum. The redundancy payment is therefore 1.5 x £156 = £234 x 4 = total redundancy payment of £936. 00.The Tribunal accordingly awards the claimant a redundancy payment in the sum of **£936.00.**

Holiday Pay

76. Both the claimant and respondent give oral evidence that the claimant had previously taken holidays and was entitled to holidays. The claimant took no annual leave in 2020 due to Covid. Her annual entitlement to leave was 4 weeks. The claimant submitted a schedule of loss (page 14) and the respondent did not challenge this.

77. The claimant did not receive any holiday pay and the Tribunal concludes that the respondent made an authorised deduction from wages by not paying her in lieu of this leave.

78. The Tribunal concludes that the claimant is entitled to be paid in lieu of the 4 weeks leave accrued during 2020 by the respondent. The claimant's gross weekly pay over 52 weeks was £9.75x 16 hrs = £156.00 per week x 4 weeks = **£624.00.**

79. The Tribunal calculates the amount of payment on a gross basis, but the respondent is entitled to make any deductions which are due for tax and national insurance contributions before payment is made to the claimant.

Notice Pay

80. As there was no written contract in place and no expressly agreed period of contractual notice, the claimant is entitled to reasonable notice of termination

which must not be less than the statutory minimum of notice set out in Section 86 ERA. The statutory minimum period for the claimant is one week's wages for each completed year of employment.

81. The claimant commenced employment on 01 February 2016 and the effective date of termination was 31 October 2020 which is 4 years.

82. Taking into account the various emails to the claimant the Tribunal finds that claimant was made aware in February 2020 that she was going to be made redundant at some point soon as no work was available, and the date of termination was confirmed in June 2020 and was paid in lieu of notice in her final pay in October.

83. The Tribunal draws this conclusion from the relevant facts: (a) the claimant acknowledges in her witness statement and when giving oral evidence to the Tribunal that she was aware in early February 2020 that the respondent had told her that she was going to be made redundant (para 10); (b) email from the respondent dated 23 June 2020 advising that the respondent did not require the claimant to come back to work "*the furlough scheme has been extended to the end of October …from 01 July 20 your pay will be reduced to 80%. You are entitled to a notice period at full pay which we will treat as being for October unless you obtain alternative employment before then in which case your notice period will be brought forward.*" (page35); (c) the letter from the respondent to the claimant dated 29 October 2020 stated that her notice pay was included in her final payment (page38); (d) the final payslip shows that 5 weeks at full pay were paid to the claimant (page 40); and (e) the email from the respondent dated 23 November 2020 in response to the claimant's requests a breakdown of her final payslip where the respondent states it refers to 5 weeks gross pay (page 42).

84. The Tribunal concludes that the claimant has been paid her notice and her claim for notice pay is dismissed.

Failure to provide written particulars

85. An award of additional pay under section 38 Employment Act 2002 for failure to provide a written statement of employments is possible.

86. As the Tribunal has concluded that the claimant is an employee of the respondent, she is therefore entitled under section 1 ERA to be provided with a written statement of employment particulars by no later than 2 months after the start of her employment ie by 01 April 2016. Both parties confirmed in their oral evidence that the claimant had not been given a written statement of employment particulars.

87. The respondent's case it that they always considered the claimant not to be an employee. The respondent has not put forward any evidence of any exceptional circumstances which would make it unjust or inequitable to order the respondent to pay the claimant an additional amount for this failure, so in accordance with

section 38 Employment Act 2002 the Tribunal orders the respondent to pay an additional 02 weeks' pay for this failure. If the Tribunal considers it just and equitable in all the circumstances order the respondent to pay an additional 04 weeks pay. The respondent should have provided the written statement by 01 April 2016 and the claimant's employment ended on 31 October 2020 and due to the length of time that this failure persisted the Tribunal considers it just and equitable to order the respondent to pay a further additional 2 weeks' pay ie 4 weeks pay in total which is 4 x £156 per week = **£624.**

88. The Tribunal calculates the amount of payment on a gross basis, but the respondent is entitled to make any deductions which are due for tax and national insurance contributions before payment is made to the claimant.

Employment Judge Dennehy
Date 04 March 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 17 MARCH 2022

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2402239/2021**

Name of case: **Ms J Jones** v **Proud Goulbourn Accountants**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant judgment day" is: 17 March 2022

"the calculation day" is: 18 March 2022

"the stipulated rate of interest" is: **8%**

Mr S Artingstall
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.