



# EMPLOYMENT TRIBUNALS

## Claimant

Mr Steve Kenny

## Respondent

Five Star Taxis Limited

v

**Heard at:** Norwich

**On:** 26 May 2022

**Before:** Employment Judge Postle

## Appearances

**For the Claimants:** Mr Aggrey Orleans, Counsel

**For the Respondent:** Did not attend and was not represented

## JUDGMENT

1. The Claimant was unfairly dismissed.
2. The Respondents were in breach of contract for failing to pay notice pay.
3. The Claimant was entitled to accrued holiday pay at the time of his dismissal.
4. The Respondents are Ordered to pay a basic award in the sum of: £9,277.13.
5. The Respondents are Ordered to pay damages for breach of contract and failure to pay notice, in the sum of: £4,800.00.
6. The Claimant is entitled to a compensatory award totalling: £4,960.00 and the Respondents are Ordered to pay that sum.
7. The Claimant is entitled to an award for loss of benefits in the sum of: £7,125.00.
8. The Claimant is entitled to 9.92 accrued days holiday pay and the Respondents are Ordered to pay to the Claimant: £793.60.
9. For failure to provide a statement of terms, the Respondents are Ordered to pay: £1,600.00.

10. The Claimant is entitled to an award for loss of statutory rights in the sum of: £600.00.
11. The Claimant is entitled to interest for the period on the notice pay, holiday pay and basic award; the Respondents are Ordered to pay: £2,610.72.
12. The Claimant is entitled to interest in the mid-point of the compensatory award; the Respondents are Ordered to pay: £1,059.50.
13. The TOTAL award payable by the Respondent is: **£32,825.95**
14. The compensatory award for the period 16 March 2020 until 28 September 2020, is subject to recoupment.
15. The Respondents are Ordered to pay a contribution towards the Claimant's costs, limited to £10,000.

## REASONS

1. The Claimant issued a claim for unfair dismissal in respect of the Respondents making the Claimant redundant without any warning, consultation or consideration of a pool of candidates or selection. The Claimant having been employed in various roles by the Respondents from January 2003 until his dismissal on 16 March 2020.
2. The Respondent filed a Response at that stage they were represented by a firm of Solicitors; a response being that the Claimant resigned with immediate effect on 23 March 2020.
3. In this Tribunal we have the benefit of a Bundle of documents consisting of 124 pages. The Tribunal also has the benefit of a Witness Statement from the Claimant. The Claimant also gave evidence (this morning) through his prepared Witness Statement.
4. Apparently, the Respondents although originally represented, failed to comply with any of the Tribunal's Orders of 2 January 2022. Particularly, there is no Witness Statement from the Respondents.
5. It is noted the Respondents' Solicitors came off the record on 4 April 2022, sometime after the Tribunal's Orders were made. On 23 May 2022, Mr Khangura the Managing Director of Five Star Taxis Limited, wrote to the Claimant's Solicitors, copied to Norwich Employment Tribunal, in which he indicated,

*"I am the sole Director of the company; however I am extremely unwell and have people advising me. I am currently taking professional advice as regards the future of the company.*

*I am currently not fully aware of the company's financial position, or indeed all the detail regarding the Claimant's claim.*

*Whilst I realise that this is short notice, I would ask for an adjournment of the Hearing for at least one month to enable me to resolve the above outlying position."*

6. Given the lateness of the Application and the fact that Mr Khangura has provided no evidence that he is not fit to attend the Tribunal Hearing, Employment Judge Warren refused the Application and the parties were notified the Hearing was proceeding on 26 May 2022.
7. Having heard evidence from the Claimant, the Tribunal was satisfied the Claimant was dismissed by reason of redundancy and in support of that, contrary to the Respondent's assertion, there is a letter dated 23 March 2020 (page 48 of the Bundle) from the Respondent signed by Mr Oliver Hunt Director of Five Star Taxis Limited, which reads as follows,

*"This is to confirm that the employment of Mr Steve Kenny whose most recent role at Five Star Taxis Limited as acting Company Secretary, having held various different positions since starting in January 2003, has ended due to redundancy, the week ending Sunday 15 March as a direct result of financial hardship placed on the company due to the Covid-19 outbreak. The rapidly developing global situation resulted in Five Star Taxis being a 75% down turn in sales in the space of three days forcing reduction in workforce in an attempt to reduce costs to a sustainable level.*

*If you require any more information, please feel free to contact our office and I will be happy to offer any help that I can".*
8. Page 89 of the Bundle is from Five Star Taxis, a P45 confirming the Claimant's employment ended on 16 March 2020.
9. As an alternative, the Claimant was offered a driving job on a self-employed basis. Given the climate, the Claimant's health condition of type 2 Diabetes and hypertension, he was considered a vulnerable person and needed to 'shield' given the Government Health Guidelines at the time with the Covid-19 pandemic.
10. The Claimant's redundancy came about without any warning, consultation or consideration of a pool of employees for selection. There being Mr Hunt doing the same job as the Claimant and Ms McLaughlin doing the same job as the Claimant, albeit on a part time basis.
11. The Claimant's recent pay slips show his income as: gross £488.27, net £400 per week.

12. The Claimant had been employed from 15 January 2003 to 16 March 2020. He had 17 years complete service and was aged 45 years at the date of dismissal.
13. The Claimant is therefore entitled to the following award:-

<b>Awards and Amounts Payable to the Claimant</b>	<b>£s</b>
Basic award	£ 9,277.13
12 weeks net notice pay at £400 per week	£ 4,800.00
<i>Compensatory Award:</i>	
From 16 June 2020 to 28 September 2020, when the Claimant found alternative employment, 14 weeks -	
On the basis that had some form of procedure been followed, it would have taken 6 weeks to happen	£ 2,400.00
8 weeks given a chance that the Claimant might have been offered part time work, a 20% reduction	£ 2,560.00
<i>Loss of Benefits:</i>	
Namely a company car, the rate the Respondent offered was £120 per week, a company car rate courtesy of taxes (current place of work) is £182.50; this equates to £62.50 x 114 weeks	£ 7,125.00
<i>Holiday Pay:</i>	
The Claimant's leave year was the financial year; pro-rata entitlement being 26.92 days. The Claimant took 17 days. The amount of holiday accrued at termination 9.92, which equals	£ 793.60
<i>Failure to provide written statement of terms:</i>	
Four weeks	£ 1,600.00
Loss of statutory rights	£ 600.00
<b>SUB-TOTAL</b>	<b>£29,155.73</b>
<i>Interest:</i>	
On the notice pay, holiday pay and basic award at the County Court rate of 8% is	£ 2,610.72
On the compensatory award at the mid-point is, 400 days again at the County Court rate of 8% is	£ 1,059.50
<b>FINAL TOTAL</b>	<b>£32,825.95</b>

14. Recoupment applies to this award for the period 16 March 2020 to 28 September 2020.

15. At the conclusion of the proceedings, Counsel for the Claimant made an Application for costs under Rules 74 of the Employment Tribunal Rules of Procedure, particularly 56(1),

The Tribunal may make a Costs Order or an Preparation Time Order and shall consider whether to do so where it considers that-

- a. a party (or that party's Representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
  - b. any claim or response had no reasonable prospect of success; or
  - c. ...
16. The Tribunal reminds itself under Rule 84, when deciding whether to make a Costs Order, the Tribunal may have regard to the paying party's ability to pay.
17. The basis of the Claimant's Application is that the Respondents have acted unreasonably in the conduct of these proceedings, particularly in their ET3 when they were represented. Their defence was that the Claimant resigned which as Counsel for the Claimant suggests, flies in the face of document 48, a letter from the Respondents clearly stating the Claimant had been made redundant.
18. That is further compounded by the fact that the Solicitors go off the record in April and the Respondent's Managing Director seeks a very late postponement a few days before the Hearing, set against the background of a total non-compliance by the Respondents with the Tribunal's Orders which were made on 2 January 2022 at a time when the Respondents were legally represented.
19. The Claimant has incurred a wholly unreasonable amount of costs in bringing and pursuing this case and ensuring the Tribunal's Orders are complied with and the case is ready for Hearing today. The Costs, including Counsel's brief for the listed two days is in excess of £10,000.

## **Conclusions**

20. Clearly the Respondents have acted unreasonably in the conduct of these proceedings. Particularly in their defence filed by their lawyers at the time suggesting that the Claimant had resigned which clearly is a total contradiction to their own letter from the Respondent at page 48 confirming that the Claimant had been dismissed by reason of redundancy. That in itself is unreasonable behaviour in the way the proceedings have been conducted, added to the fact there has been a complete lack of compliance by the Respondent and a failure to attend today's Hearing after seeking a very late postponement.

21. In those circumstances, clearly the Tribunal should exercise its discretion and award costs. The Respondent being a well known taxi firm in Norwich who will have the means to pay and are therefore Ordered to pay a contribution towards the Claimant's costs, limited to £10,000.

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Employment Judge Postle

Date: 30 June 2022

Sent to the parties on: 7 July 2022.

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For the Tribunal Office.