



## EMPLOYMENT TRIBUNALS

Claimant

**Mr S Chinery**

Respondent

**v Reigate Ex-Serviceman's Social Club Ltd**

## PRELIMINARY HEARING

**Heard at: London South by CVP**

**On: 27 and 28 July 2022**

**Before: Employment Judge O'Neill**

**Appearance:**

**For the Claimant: In person**

**For the Respondent: No appearance**

## JUDGMENT

1. The claim redundancy pay succeeds and the claimant is awarded a redundancy payment of £2268.
2. The claim for notice pay succeeds, and the claimant is awarded £1512.
3. The claim for holiday accrued but not taken at the date of dismissal succeeds and the claimant is awarded £252.
4. The total of the above awards is £4032.

## Reasons

### Introduction

1. These claims are for a redundancy payment, notice pay and holiday pay for holiday accrued but not taken.
2. The claimant appeared in person, produced a witness statement and gave evidence on oath. His witness, Mr Michael Ley gave evidence under oath and produced a witness statement.
3. I considered the unsigned statement of Mrs R Ley, the wife of Mr Michael Ley, who was the club secretary at the time of dismissal. Unfortunately, Mrs Ley has passed away, but her husband, who was himself a member of the club and a former committee member confirmed that she had told him about the matters

contained in her statement. In the circumstances I gave weight to her unsigned statement.

4. The respondents did not appear at all and left no message with the Tribunal explaining the absence or asking for an adjournment. Until 26 July 2022 it had been professionally represented. I am satisfied that the respondent had notice of the hearing. Taking into account previous case management orders it would appear that the respondent has a history of failing to comply with notices and orders. I therefore decided not to delay the hearing of the claim, which had been lodged on 11 January 2020, any longer.
5. I considered the ET3 and the statements proffered by the respondent, although I gave little weight to them as the respondent witnesses were not present to adopt their statements or be cross-examined. I treated the witness statement of Nicky Todd similarly.

### **The Claims and Issues**

6. The claims and issues were identified by Judge Morton as follows
  - a) Was the Claimant dismissed by the Respondent? That is, was the notice terminating the Claimant's employment given by someone with authority to act as the Respondent's representative?
  - b) In all the circumstances, including any involvement of the Claimant's father in the decision, was the Claimant entitled to rely on the notice of termination as having been given by someone with authority to act on behalf of the Respondent?
  - c) What was the reason for dismissal? Was there a redundancy situation?
  - d) How long had the Claimant been continuously employed by the Respondent?
  - e) If the Claimant is entitled to a redundancy payment how should it be calculated?
  - f) What was the Claimant's entitlement to notice pay and holiday pay?

### **The Law**

7. Redundancy  
Employment Rights Act 1996 (ERA 1996)  
S135 - the right to a redundancy payment  
S 139 - a redundancy situation  
S162 - amount of redundancy payment
8. Notice Pay  
S 86 - ERA1996 - minimum notice
9. Holiday pay  
Working Time Regulations 1998 (as amended)  
13 and 13 A annual entitlement to holiday  
14 - compensation for holiday accrued but not taken at date of termination

## Facts

10. The claimant was continuously employed from 1 October 2005 until his dismissal on 3 October 2019, at which time he had 14 years of continuous service. His statement of terms and conditions confirms this service. The claimant confirms this service. The claimant explained that he had periods of service with some gaps before 2005, but since 1 October 2005 he has been continuously employed without any gaps. I accept the claimant evidence on this point. His last role was that of cleaner although during the course of his service he had undertaken other duties as well.
11. The respondent is a social club. It is also a limited company. It has a constitution and rules setting out the authority of the executive committee and its officers.
12. At the time of the claimant's dismissal, Mrs R Ley, was the Secretary and Treasurer. The claimant's father, Mr Derek Chinery was the President. The Vice President's position was vacant. There were three other members of the committee who were not officers of the club, namely Mr A Hill, Mr M. Knight and Ms N Todd.
13. Mr Ley, who had been a member of the Executive Committee until February 2019, confirmed that the executive committee make decisions on a show of hands and where the members were not all in agreement a majority decision would be carried.
14. At the time of the dismissal the HMRC was claiming a tax debt of almost £39,000 from the club and by a letter dated 23<sup>rd</sup> of September 2019 the HMRC had issued a winding up warning. The club's bank statements showed the club to be overdrawn by nearly £10,000. The bank had refused to honour a direct debit payment to the beer supplier.
15. Matters came to a head when at the beginning of October there was a serious leak through the roof of the building affecting the electrics and the electrician declared the wiring to be unsafe and estimated repair costs of about £10,000.
16. Mrs Ley had shared this information with the claimant and her husband. She told them that she was very worried about the club's financial situation and had taken professional advice and feared that the club was trading unlawfully as a limited company when it was unable to meet its financial liabilities.
17. Mrs Ley, in conjunction with the President and Mrs Todd decided that the club would have to close and the claimant be made redundant. I accept the evidence of the claimant that he was the only employee with more than two years' service. The claimant accepts that Mr Hill and Mr Knight were not involved in the decision-making process. However, I also note that their presence would have been unlikely to make any difference to the decision of the majority of the executive committee, which was to close the club with immediate effect.
18. On 3 October 2019 Mrs Ley sent to the claimant by email, a letter of dismissal by reason of redundancy. The letter was said to be written on behalf of the executive committee.

Its opening paragraph reads as follows 'it is with regret that the executive committee have decided that Reigate Ex-Serviceman's Social Club Ltd has ceased to trade with immediate effect. Consequently, your employment will terminate by reason of redundancy.'

It goes on to say 'as your continuous service with us is more than two years .... you are entitled to a redundancy payment.'

The letter confirms that the club is insolvent.

The letter ends 'on a personal note, I am sorry that your employment with Reigate Ex-serviceman's Social Club has come to an end in this way'.

19. I find that the claimant was entitled to view that letter as having been sent with authority by the secretary on behalf of the committee, and that he had been dismissed by reason of redundancy.
20. Under the rules of the club the executive committee are in overall charge and have the power to dismiss (R7.1.1). The secretary is empowered under rule 7.5 to carry out the decisions of the executive committee, including overseeing staff. The claimant tells me and I accept, that the secretary is the person in charge of the running of the club on an everyday basis and directs the staff and that hiring and firing and disciplinary matters go through the secretary.
21. On 4 October 2019 the claimant attended the club with Mrs Ley and her husband in order to collect his wages and was there in the presence of Mr Hudson, who objected to the closure of the club. The claimant tells me and I accept that Mr Hudson was proposing running the club, staffed by member volunteers and not paid employees. Mr Hudson was leading a faction of members who objected to the club's closure. In the days that followed no one from the club contacted the claimant to enquire as to why he had not attended work, nor to reassure him that he was still employed. I find the respondent to be disingenuous when in its ET3 it says 'the employment only ended when Mr Chinery failed to turn up for work'. I do not accept that is what happened. I find that he was dismissed on 3 October 2019 by reason of redundancy.
22. The claimant was not paid notice pay, redundancy pay or payment for holidays accrued but not taken.
23. The statement of terms and conditions, provides for a holiday year beginning on 1 April which the claimant accepts. The claimant says and I accept that at the time of his dismissal he worked five days per week and was paid £126 per week. He was given by Mrs Ley a statement of the holidays taken in the year ending 31<sup>st</sup> of March 2019 and beginning 1 April 2019. The claimant accepts this is a true record. It shows that he had no outstanding holiday at the year-end 31 March 2019. It shows that as at 3 October 2019, he had taken four days holiday.
24. At the date of dismissal. The claimant had been employed for 14 years and was entitled to 12 weeks statutory notice.
25. At the date of dismissal, the claimant was 49 years old (date of birth 5 May 1970) and had 14 years' service and weekly gross pay of £126.
26. At the date of dismissal, the respondent intended to cease operating as a club with immediate effect.

## Conclusions

27. The claimant was dismissed on 3 October 2019 by letter from the club secretary Mrs R. Ley acting on behalf of the executive committee.
28. In all the circumstances, the claimant was entitled to rely on this letter. Under the rules of the club the secretary is charged with carrying out the administration of the club on behalf of the committee and in practice is in charge of the operation of the club and its employees.
29. I am satisfied that the club was in a financial crisis. I accept that Mrs Ley had been advised that the club (which was also a limited company) was likely to be trading unlawfully being unable to meet its financial obligations. I am satisfied that she, along with Mr D Chinery and Ms N Todd made the decision to close the club and dismiss the claimant in good faith given the financial situation and the state of the building and in reaching this conclusion, I bear in mind the relationship between the President and the claimant.
30. The reason for the dismissal was redundancy as set out in Mrs Ley's letter of 3 October 2019 in that they intended to close the club with immediate effect. Even if an alternative plan, as proposed by Mr Hudson been adopted, it was dependent on running the club with volunteers and the requirement for paid employees had ceased.
31. Redundancy Pay: At the date of dismissal the claimant had 14 years' service, was aged 49, was paid £126 per week for a five-day week. Under section 162 ERA 1996 he was entitled to 18 weeks' pay because of the age factor.

18 x £126 equals £2268

32. Notice: He received no notice or pay in lieu of notice. He was entitled to 12 weeks notice under section 86 ERA 1996.

12 x £126 equals £1512

33. Holiday Pay: The holiday year began on 1 April 2019. The claimant had taken four days holiday in the holiday year to 3 October 2019. His statutory entitlement to annual holiday would have been 28 days. For the proportion of the year to 3 October 2019 he would have been entitled to 14 days. Having taken four days holiday, it left 10 days (2 weeks) holiday accrued but not taken at the date of dismissal.

2 x £126 equals £252

### 34. Summary Total

Redundancy Payment	£ 2268
Notice Pay	£ 1512
Holiday Pay	£ 252
Total	<hr/> £ 4032

**Application for Costs**

35. The claimant's application for costs (preparation of time order) is refused. In the Employment Tribunal costs remain the exception and not the rule and I do not consider the Respondents conduct including its failure to appear today to have been vexatious, abusive or otherwise unreasonable.

28 July 2022

**Employment Judge O'Neill**