



EMPLOYMENT TRIBUNALS

Claimant: Miss S Hennigan

Respondent (1): DSLLS Limited (In creditors voluntary liquidation)
Respondent (2): Secretary of State for Business Energy and Industrial Strategy

HELD by Cloud Video Platform (CVP) (Leeds) ON: 15 November 2022

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person
Respondent (1): Did not appear and was not represented
Respondent (2): Did not appear and was not represented

JUDGMENT

1. The claimant having made a claim for a redundancy payment after the end of the period of six months beginning with the relevant date but during the period of six months immediately following the first period of six months and the employee having made a claim for the redundancy payment by notice in writing given to the employer within the meaning of section 164(2)(a) Employment Rights Act 1996 it appears to the Tribunal to be just and equitable that the claimant should receive a redundancy payment.
2. The Tribunal has awarded redundancy payment payable by the first respondent and/or the second respondent to the claimant as follows:

Gross week's pay - £170.51 multiplied by three years' service multiplied by the formula 1.5 – redundancy payment - £2117.30

REASONS

1. Claim

1.1. A redundancy payment.

2. Issue

The issue in this case relates to whether it is just and equitable that the employee should receive a redundancy payment notwithstanding the fact that she failed to make an application during the period of six months beginning with the relevant date and whether the application which she did make during the period of six months immediately following the first period of six months is such that it appears to the Tribunal to be just and equitable that the claimant should receive a redundancy payment.

3. The Law

The Tribunal has to have regard to the following provisions of the law:

3.1. Section 164(2) Employment Rights Act 1996

“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 such a claim for the payment by notice in writing given to the employer,

.....

And it appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment”

3.2. Section 164(1) deals with the first six month period.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities)

4.1. The claimant was employed by the first respondent ultimately as a care manager. She had also worked as a carer and then a senior carer, doing home visits. The date of commencement of the claimant’s employment was 4 March 2018. Her date of birth is 18 May 1969.

4.2. The claimant was made redundant on 17 August 2021. The first respondent did not go into liquidation until 7 July 2022.

4.3. The claimant did not receive a redundancy payment from the first respondent following her redundancy and she contacted the financial director of the first respondent to find out where her money was. He stated that the provisional liquidators, Wilson Field, were asking the first respondent for information. The claimant would be paid but not until the first respondent went into liquidation.

- 4.4. The claimant made regular contact with the financial director of the first respondent. During this time the claimant did not make a claim for a redundancy payment to the Employment Tribunal because she was not aware that she could. The claimant did not take advice independently of the first respondent or the provisional liquidators who continually informed her that matters were being sorted.
- 4.5. The claimant phoned the provisional liquidators on 6 June 2022. They finally sent her an email with the case reference for the first respondent.
- 4.6. The claimant made an application to the first respondent's representative, Wilson Field. The second respondent considers that this was a written claim within section 164(2)(a) Employment Rights Act 1996.
- 4.7. The claimant gave evidence that she felt wrongfully informed by the first respondent and the provisional liquidators because they did not explain to her that she might or might not be entitled to a redundancy payment. The claimant is satisfied that she was made redundant on 17 August 2021.
- 4.8. Until she made her application on 20 June 2022 the claimant did rely on the first respondent and on information provided by the provisional liquidators and neither informed her that there was a time limit.
- 4.9. The claimant's gross weekly wage was £470.51.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. Under normal circumstances an employee does not have any right to a redundancy payment before the end of the period of six months in respect of which circumstances apply which are not relevant to this claim (see section 164(1) Employment Rights Act 1996).
- 5.2. If an employee is out of that first six month period and in this case makes a claim for a redundancy payment by notice in writing given to the employer a Tribunal can nevertheless extend the first period of six months by a maximum of another period of six months if it is just and equitable for the employee to receive a redundancy payment.
- 5.3. It is not in dispute that the notice the claimant gave on 20 June 2022 to the first respondent's representative namely the provisional liquidator was a written claim within section 164(2)(a) Employment Rights Act 1996.
- 5.4. The claimant did not make a claim within the first period of six months but did so on or about 10 months from the effective date of termination.
- 5.5. That is a long time but during that period the claimant did not take any independent advice relying as she did on information given to her by the first respondent and the provisional liquidators. Indeed this evidence was unchallenged as neither respondent was present at the hearing nor did the provisional liquidators give evidence.
- 5.6. The Tribunal takes the view that it would be just and equitable to allow this claim which is a matter for discretion of the Tribunal. In exercising

that discretion the Tribunal takes into account the lack of knowledge of the claimant in this area, of the fact that the first respondent and the provisional liquidator effectively guided the claimant out of the first six month period and failed to give her information to enable her to secure her position.

- 5.7. In the circumstances the Tribunal considers it just and equitable to award a redundancy payment outside the first six month time limit, but within the second six month time limit.

6. Remedy

The Tribunal awards a redundancy payment payable by the first respondent and/or the second respondent to the claimant, the gross weekly payment being £470.51, multiplied by three years' service, multiplied by the formula 1.5 making a total of £2117.30.

Employment Judge Shulman

Date: 22 November 2022