EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104731/2020

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Final Hearing held in person in Glasgow on 1 December 2022;
and deliberation (in chambers) on 2 December 2022

Employment Judge Ian McPherson

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Mrs Emma Thomson — **Claimant**
In Person

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Corinne Clark-Robinson
(formerly trading as CCR Catering) — **Respondent**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The reserved Judgment of the Employment Tribunal is that:

25 (1) The Tribunal finds that the claimant was made redundant by the respondent on or about 23 March 2020, when the respondent ceased trading at the Puttery, Tulliallan Golf Club, and issued her with a P45 confirming termination of her employment;

30 (2) As such, the claimant is entitled to a statutory redundancy payment from the respondent ; and

(3) The Tribunal accordingly **orders** the respondent to pay to the claimant, **within the next 7 days following issue of this Judgment to both parties**,

35 a statutory redundancy payment in the agreed sum of **FOUR HUNDRED AND THIRTY-NINE POUNDS, THIRTY-FOUR PENCE (£439.34).**

REASONS

Introduction

1. This case called before me as an Employment Judge sitting alone on Thursday, 1 December 2022, for a one-day Final Hearing in person for full disposal of the case, including remedy if appropriate, as per Notice of Final Hearing issued to both parties by the Tribunal on 12 August 2022.

2. The claimant attended, unrepresented, but accompanied by her husband, Mr Mark Thomson, for moral support, but not as a witness. The respondent attended, unrepresented, but accompanied by her sister, Ms Rhonda Clark Milne, for moral support, but not as a witness.

Clarification of the Issues before the Tribunal

3. As both parties were unrepresented, with no previous experience of the Tribunal (other than their appearance before Employment Judge Eccles at an earlier Preliminary Hearing, about which I say more later in these Reasons), I took time at the start of this Hearing to clarify the only remaining issues before the Tribunal, namely (1) was the claimant made redundant by the respondent and, (2) if so, was she entitled to a redundancy payment from her, and, (3) if so, in what amount ?

4. I also took time to explain the process and procedure to be adopted at this Final Hearing, and allowed both parties, during the first adjournment of proceedings, to borrow and read relevant law that I identified for them within my bench copy of ***Butterworths Employment Law Handbook***.

5. As per standard paragraphs 4 and 5 of the Notice of Final Hearing, both parties were told to bring 3 copies together with the originals (i.e., 4 sets of documents in total) of any document which they considered relevant to their case and which they wished the Judge to take into account and, where possible, to liaise and provide a joint set of documents which included both sides' documents.

6. In the event, despite a subsequent letter to both parties from the Tribunal, dated 24 November 2022, reminding them of the requirements from that Notice of Final Hearing about documents, and that hard copy documents, indexed and chronologically paginated, should be lodged with the Tribunal in good time before the start of the Hearing, there was no joint set of documents, and, instead, both claimant and respondent produced at this Hearing their own limited documentation, some of which had previously been produced to Judge Eccles, plus a copy of her Judgment issued on 25 July 2022.

7. The claimant lodged at this Hearing a short-written statement. It referred to evidence that she had presented at a Preliminary Hearing stated to be on 28 March 2022. She agreed that date was in error, and she was referring to her evidence to Employment Judge Eccles on 24 June 2022.

8. Her statement advised that : "***I have tried my hardest to sort this out with Corrine amicably through ACAS to no avail. After discussions with ACAS last week, I believe there is nothing more I could have done, I have continued contact with ACAS during this whole process. Unfortunately, Corrine has not co-operated with ACAS which has led us to where we are today."***

9. In her written statement lodged with the Tribunal, at the start of this Final Hearing, the respondent had stated that : "***I feel that the false information given by Emma lead the court to the decision to TUPI*** (sic) ***Emma across. I did try to tell the court that Emma had given this false information. I said at the time that the conversation never took place. I have brought with me documentation that proves Emma did not tell the truth and mislead the court. I took over the Franchise at The Puttery on 7th December 209 and Emma didn't start until 6th January 2020 so I don't understand how she feels as if she was transferred."***

10. The respondent agreed that an email she had sent to Glasgow ET, on 23 November 2022, at 15:25, but not copied to the claimant, as she should have, per **Rule 92**, was not relevant or necessary for this Final Hearing. It was a "***to whom it may concern"*** email of 2 August 2022 from an Eli Urquhart, House

Convenor, at Tulliallan Golf Club, relating to the claimant when employed by the previous Puttery franchisee, Barry Finlayson. It had not been linked to the Tribunal's casefile at the time of receipt, as the respondent had not included the case number reference.

11. To assist the conduct of the Hearing, as there was no agreed Joint Bundle of Documents, I extracted from the casefile, and placed on the witness table for use by both parties, when answering my questions, a copy of the ET1 claim form, as also a copy of the ET3 response form.

12. In the course of this Final Hearing, as issues arose in evidence, and both parties advised me that they had other documents on their mobile phone, or at the respondent's accountant's office, the Judge exceptionally granted permission for them to be emailed to the Tribunal administration, and printed off hard copy by the Tribunal clerk for use by the Judge and both parties, so as to allow the case to progress and conclude within the single allocated sitting day, and in furtherance of the Tribunal's overriding objective under **Rule 2** to deal with the case fairly and justly.

13. Additional documents were emailed into Glasgow ET by the claimant on December 2022 at 10:44 (copy payslips), and again at 12:51, 13:05 and 13:31, including P45, dated 31 March 2020 and payslip dated 27 March 2020, and Facebook screenshots from the Puttery (8 May to 27 June 2020), and by the respondent at 13:35 (being P45, dated 31 March 2020 and payslip dated 27 March 2020).

14. With the assistance of the Tribunal administration, and co-operation with both parties, despite several adjournments of proceedings, from time to time, I was able to hear oral evidence from both parties, evidence in chief being elicited, of consent of both parties, by me asking structured and focused questions of the respondent first, then the claimant, and each of them then cross-examined by the other, and I heard short oral closing submissions from each of them.

15. I reserved my decision to be issued in writing, at a later date, and I proceeded to private deliberation in chambers the following day. This is my reserved judgment following that private deliberation.

Background

16. This claim was originally presented to the Tribunal on 3 September 2020, along with another claim brought by the claimant's son, Dean Thomson (case no. 4104733/2020). Both claims, against the same respondent, were combined by Order dated 27 November 2020.

17. The claim brought by this claimant was for unfair dismissal, redundancy payment and notice pay. The claims brought by the second claimant (Mr D Thomson) were for unfair dismissal, holiday pay and notice pay. The claims were both defended by the respondent, and preliminary issues of time bar and qualifying service were identified.

18. After sundry procedure, the combined claims were thereafter listed for a Preliminary Hearing in person before an Employment Judge sitting alone at the Glasgow ET to consider whether (i) the claims were time barred and (ii) the claimants have qualifying service to proceed with a claim of unfair dismissal.

19. A Preliminary Hearing listed for 28 March 2022 was postponed, as was a relisted Preliminary Hearing fixed for 23 May 2022. At the third attempt, the cases proceeded to a Preliminary Hearing in person, before Employment Judge Frances Eccles, held on 24 June 2022, where the claimants represented themselves and gave evidence.

20. The respondent was represented by Ms Corinne Clark-Robinson, business owner, and she too gave evidence. The claimants provided the Tribunal with productions (C1-3) including HMRC records of the first claimant's taxable income from 20 February 2018 to 27 March 2020 (C3). The respondent was permitted to lodge a written statement (R1).

Preliminary Hearing Judgment

21. That earlier Tribunal informed the parties of its decision at the Preliminary Hearing held on 24 June 2022, and reasons were given orally. The respondent then requested written reasons. Subsequently, by written

Judgment and Reasons dated 22 July 2022, sent to both parties on 25 July 2022, Employment Judge Eccles' decision was confirmed in writing:

> "***The Judgment of the Employment Tribunal is that (a) the Tribunal has jurisdiction to consider the first claimant's claim for a redundancy payment & (b) the Tribunal does not have jurisdiction to consider (i) the first claimants' claims of unfair dismissal and notice pay and (ii) the second claimant's claim of unfair dismissal, notice pay and holiday pay."***

22. At paragraph 14 of her Reasons, Judge Eccles stated that:

> ***"The first claimant's length of service was in dispute. Having considered all of the evidence before it, the Tribunal was satisfied that the first claimant's contract of employment transferred to the respondent on 6 January 2020 when the respondent began to operate the Puttery. The Tribunal accepted the first claimant's evidence that within a matter of days after Barry Finlayson stopped trading she was employed by the respondent and continued in her position as Front of House. The Puttery was referred to by the respondent as a business and it was not in dispute that the claimant was employed as Front of House immediately before the business transferred to the respondent and began to operate the Puttery. In terms of Regulation 4 of the TUPE Regulations 2006 the Tribunal was satisfied that the first claimant's contract of employment with the transferor – Barry Finlayson – did not terminate when the Puttery transferred to the respondent and by the date of her dismissal, the claimant had been continuously employed for over two years."***

23. Further, Judge Eccles held, at paragraph 15 of her Reasons, that :

> ***"For the reasons given above, the first claimant's claim of unfair dismissal is time barred. The claim for a redundancy payment is not time barred. In addition, the claimant has sufficient qualifying service – two years - to apply for a redundancy payment and***

accordingly, this part, of the claim, if settlement cannot be agreed between the parties, will proceed."

Respondent's Application for Reconsideration of Judgment rejected

5 24. On 4 August 2022, the respondent emailed the Glasgow ET, at 10:40, and stated that she wished for Judge Eccles : "… ***to reconsider the decision for unfair dismissal. I have proof that Emma Thomson employment was terminated when Barry Findlaysons*** (sic) ***franchise ended at the Puttery. Emma Thomson misled the judge during her statement. I have written***
10 ***evidence from the committee at Tulliallan Golf Club which supports this. I also have confirmation of dates."***

25. In an email later that same day to Glasgow ET, sent at 17:58, in reply to the Tribunal's request at 15:44 for her to confirm what she wanted Judge Eccles to reconsider, as her judgment had confirmed that neither claim for unfair
15 dismissal should proceed, only the first claimant's claim for redundancy pay to proceed to a hearing, the respondent further stated that from information received by her from the management at Tulliallan Golf Club, Emma Thomson would not be entitled to 2 years redundancy, there was a break in her employment, Mrs Thomson was not truthful with Judge Eccles and that is why
20 the respondent was asking for the judgment to be reconsidered.

26. Following consideration by Employment Judge Eccles, the respondents' application for reconsideration of the Judgment issued on 25 July 2022 was rejected by Judge Eccles, as intimated to the respondent by letter from the Tribunal dated 9 August 2022, as the respondent's application did not set out
25 why that earlier Judgment requires to be reconsidered, and the respondent had not confirmed that she had copied it to the claimants.

27. The respondent did not further pursue reconsideration, nor did she seek to appeal Judge Eccles' judgment to the Employment Appeal Tribunal within the 42-day period allowed to her on 25 July 2022. Her reconsideration
30 application, although rejected, had been timeously submitted within the 14-day period allowed for that process.

28. While, at this Final Hearing, the respondent invited me to, in effect, reconsider Judge Eccles decision (and in particular a part of it, as I explain later in these Reasons), I had to advise the claimant that Judge Eccles' judgment was now unchallengeable, as the claimant had not appealed against it, and I could not go behind it, and make other different findings about her various earlier periods of employment working at the Puttery.

Findings in fact

29. From the available evidence at this Final Hearing, the Tribunal has found the following material facts to be admitted or proved:

(1) The Puttery is a restaurant on the premises of Tulliallan Golf Club.

(2) The claimant, Mrs Emma Thomson, now aged 35, was formerly employed as Front of House Supervisor at the Puttery by Tulliallan Golf Club from on or about 20 February 2018 to on or about 10 April 2019.

(3) Thereafter, she was employed by Barry Finlayson from on or about 11 April 2019 to on or about 2 January 2020.

(4) From 6 January 2020, the respondent took over operation of the Puttery.

(5) She continued to employ the claimant , on the basis of 20 hours per week, at £9.50 hour, as Front of House for the respondent, until on or about 23 March 2020 when her employment was terminated by the respondent.

(6) The respondent advised the Tribunal that she employed the claimant on a trial period of 3 months, from 6 January 2020, and she agreed in her evidence to this Tribunal that she never issued the claimant with any written particulars of employment, detailing the terms on which she employed the claimant.

(7) The respondent's business at the Puttery ceased to operate from on or about 23 March 2020 on account of closedown due to Covid-19 pandemic national lockdown restrictions.

(8) The respondent recalled getting a telephone call from the Golf Club on 22 March 2020 telling her not to open up the following day due to Covid restrictions.

(9) At that time of the closure, the respondent employed the claimant and 4 other employees at the Puttery.

(10) They were the claimant's son (Dean), the respondent's son (James), a waitress (Chloe), and the chef (Catherine Cameron).

(11) The respondent was the owner of the business trading as CCR Catering, and she worked at The Puttery too. She described it as being a function suite at Tulliallan Golf Club.

(12) During the lockdown, the respondent furloughed the chef, but not any other employees. The claimant was not furloughed by the respondent.

(13) The claimant contacted ACAS after she had noticed on social media that the Puttery had re-opened. She was concerned that she had not been contacted by the respondent about returning to work.

(14) In particular, the claimant notified ACAS on 8 July 2020, and they issued the ACAS early conciliation certificate on 29 July 2020.

(15) The claimant thereafter presented her ET1 claim form to the Tribunal on 3 September 2020.

(16) Throughout the duration of these Tribunal proceedings, the claimant has continued to pursue her claim for a statutory redundancy payment from the respondent.

(17) In her evidence to this Tribunal, the claimant stated that she has been following advice from ACAS and trying to resolve her claim against the respondent without coming to this court.

(18) The respondent has disputed liability, in her ET3 response, lodged on 25 September 2020, and subsequently, up to and including at this Final Hearing before the Tribunal.

(19) At this Final Hearing, the respondent accepted, from the Facebook posts lodged by the claimant, that her CCR Catering business at the Puttery had resumed in part from 28 May 2020, with takeaway, and more fully with a new takeaway menu from 14 June 2020. She could not recall the actual date in July 2020 from which it opened up again.

(20) The respondent had not sought to re-employ the claimant after the Puttery reopened from May / June 2020.

(21) Following closure of the Puttery, on or about 23 March 2020, the claimant's employment with the respondent was terminated.

(22) She received a P45 dated 24 March 2020 from the respondent's accountant showing her leaving date as 27 March 2020. A copy was produced to the Tribunal, showing her pay in that employment as £1,904.55.

(23) The claimant subsequently received an amended P45, dated 31 March 2020, after the respondent included her outstanding holiday pay of £152. A copy of that amended P45 was produced to the Tribunal, showing her pay in that employment as £2,056.55.

(24) The claimant produced to the Tribunal, for use at this Final Hearing, copy payslips from the respondent, covering most, but not all, of the payments referred to in the HMRC record of her earnings while employed by the respondent.

(25) The respondent accepted, in her evidence to this Tribunal, that her business ceased during the closure of The Puttery from on or about 23 March 2029, due to the Covid restrictions.

(26) At this Final Hearing, the respondent further advised the Tribunal that her business contract with Tulliallan Golf Club was terminated by them in August 2020, and that is when her business, with her operating as a sole trader, and trading as

CCR Catering, permanently ceased trading, and her business closed, on or about 26 August 2020.

(27) The respondent thought that her accountant advised HMRC in August / September 2020 that she was no longer trading on her own account.

(28) If it had not been for Covid, the respondent's evidence to this Tribunal is that her business at The Puttery would still have been operating up until August 2020, when her contract with the Golf Club was terminated by them giving her one week's notice.

(29) There was produced to this Tribunal a copy of the HMRC record for the claimant showing her earnings while employed by the respondent, and previously by Mr Finlayson, and previously by Tulliallan Golf Club.

(30) The HMRC record for the claimant while employed by the respondent, as produced to the Tribunal, covers the period from 10 January 2020 to 27 March 2020, and shows taxable income of £2,056.55.

(31) At this Final Hearing, the respondent advised this Tribunal that her accountant, whom she identified as Donoghue & Co, Falkirk, had calculated that the claimant was due a redundancy payment of **£477.76**, based on 2 years' service, as per the handwritten calculation written on that document produced to the Tribunal, but she disputed that the claimant was entitled to any redundancy payment from her.

(32) As per that handwritten calculation, it was written that based on an average of **£238.88** per week (based on 6 weeks' earnings from 10 January to 21 February 2020) the claimant was due 2 weeks' redundancy pay totalling **£477.76**.

(33) The claimant advised the Tribunal, at this Final Hearing, that using the Gov.UK redundancy payment calculator, she had calculated that she was due a statutory redundancy payment from the respondent in the sum of **£439.34**, based on her then age (33) as at 23 March 2020, her 2 years' continuous

employment with the respondent, and her average weekly wage calculated by her as **£219.67**.

(34) She advised the Tribunal that she had not shared her proposed figure with the respondent, in advance of this Final Hearing, explaining that the respondent had not co-operated with her, via ACAS.

(35) While at this Final Hearing the respondent initially stated that she accepted the claimant was due **£477.76**, if the Tribunal found in the claimant's favour, she stated that she did not agree that there had been a redundancy situation, and that she did not think it was a redundancy due to the circumstances where her business had had to close due to Covid-19.

(36) When the claimant provided her proposed figure of **£439.34**, the respondent stated that, if the Tribunal found for the claimant, she agreed that that lower figure was the sum due as a redundancy payment, and the claimant stated that she would be happy to accept that lower amount.

Tribunal's Assessment of the Evidence led at the Final Hearing

30. The Tribunal heard sworn evidence from each of the respondent, and claimant, in turn, and they both answered questions asked of them by me as the Judge. Each of them also cross-examined the other.

31. Both parties came across as straightforward, plain-speaking individuals, and while the claimant spoke more confidently, and came across as a credible and reliable witness, the respondent's evidence was much vaguer, she had difficulty remembering key dates and figures, and as such there are doubts about her reliability as a witness.

32. The respondent disputed the claimant's start date of 3 January 2018, despite having agreed that date in her ET3 response, explaining that she only employed the claimant from 6 January 2020. Having agreed 23 March 2020 as the end date, in her ET3 response, the respondent's evidence at this

Hearing was that she was not sure, given the P45 stated 27 March 2020 as the leaving date, and the end date could have been anytime in the week before. She thought 27 March 2020 was stated as it would be the end of a week's payroll.

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33. She thought she had been told by the Golf Club on 22 March 2020 that the Puttery would have to close. She could not say when the P45 was issued, nor what date it gave. When the claimant then provided a copy, she agreed it was issued on 24 March 2020, and gave 27 March 2020 as the leaving date.

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34. The respondent conceded that she had not thought to ask her accountant to come and give evidence to this Tribunal, and that she had not paid any attention to the dates and figures given in the claimant's P45, as this was processed by her accountant.

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35. She accepted that she had not appealed against Judge Eccles' finding that the claimant had more than 2 years' continuous employment due to TUPE.

36. In her evidence in chief to the Tribunal, the respondent stated that it was only
20 the claimant who had pursued her for redundancy pay, and she felt that the claimant was "***trying to get easy money***."

37. When the claimant was asked about this, when she was examined in chief by the Judge, she stated that she looked upon the respondent's statement as
25 being "***slanderous***", and she did not agree with her view. The business had closed on 23 March 2020, due to Covid, and she believed she was entitled to a redundancy payment as she had not been re-employed by the respondent, who had re-opened her business in May / June 2020, albeit it shut permanently from August 2020.

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38. The respondent stated further that she believed the claimant had brought her claim for "***ulterior purposes***", stating that that view was her personal opinion, and nobody else had done that to her. While the claimant was only employed

by her for about 13 weeks, the respondent further stated that most of the time she was off on the sick, and she had received statutory sick pay.

39. There was no real dispute between the parties as to the material facts, which are quite simple, but as regards the application of the relevant legal principles, the respondent contesting that there had been any redundancy situation although, having read the statutory definition in **Section 139 of the Employment Rights Act 1996** (when she borrowed my green ***Butterworths Handbook***), she did state that she did not really understand that definition, despite me explaining it to both parties at the start of this Hearing.

40. The respondent advised me that she did not believe the claimant was redundant, but if the Tribunal found that she was, then she accepted that the claimant is due a redundancy payment of **£439.34**.

Parties' closing submissions to the Tribunal

41. In delivering her short closing submission, the respondent stated that she did not accept the claimant's claim for a redundancy payment being due to her.

42. She added that she regretted now not having pursued her rejected reconsideration application, and not having appealed Judge Eccles' Judgment, and added that she felt it would be unfair if the claimant received an award from the Tribunal, as that would be money from the respondent that she does not think the claimant is entitled to. She re-iterated that she does not believe the claimant has been truthful to Judge Eccles.

43. In response to the respondent's oral submissions, the claimant stated that she sought judgment for **£439.34** as a redundancy payment due to her from the respondent. She added that she has provided everything asked for, and there is evidence to support her claim.

44. She highlighted how the respondent had not challenged that the business closed for Covid, and it did not re-open for a period, and when it did, she was

not re-employed by the respondent. The work ceased for everybody at The Puttery, excerpt the furloughed chef, and that to pay the claimant a redundancy payment is not unfair, as it is what is due to her by law.

5 45. In a very short final reply, the respondent stated that she agreed that the business had closed for everybody, and it was the same situation for everyone due to Covid, but she still does nor believe that the claimant is entitled to a redundancy payment.

Relevant Law, and Issues for the Tribunal

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46. As neither party at this Final Hearing was legally represented, I did not expect them to address me on the relevant law, and, in clarification of the issues, at the start of this Hearing, I drew to their specific attention the terms of certain statutory provisions, namely **Sections 139, 162 and 163 of the Employment**
15 **Rights Act 1996** ("***ERA***") dealing with the definition of redundancy, amount of redundancy payment, and reference to Employment Tribunal, respectively.

47. It is not appropriate or proportionate to recite those statutory provisions in full, but I quote from them, as and where required, in my discussion and deliberation later in these Reasons.

20 48. **Section 135 of ERA** refers to the right to a redundancy payment from an employer if an employee is dismissed by reason of redundancy, and, for the purposes of this case, the next material part of the legislation is the definition of redundancy set forth in **Section 139**, which so far as material for present purposes, states that:

25 ***Redundancy.***

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

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(a) the fact that his employer has ceased or intends to cease—

> ***(i)*** ***to carry on the business for the purposes of which the employee was employed by him, or***
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> ***(ii)*** ***to carry on that business in the place where the employee was so employed, or***
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> ***(b) the fact that the requirements of that business—***
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> ***(i)*** ***for employees to carry out work of a particular kind, or***
>
> ***(ii)*** ***for employees to carry out work of a particular kind in the place where the employee was employed by the employer,***
>
> ***have ceased or diminished or are expected to cease or diminish.***
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> ***(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.***

49. Given the terms of **Section 163(2) of ERA**, I had the respondent lead her evidence first at this Final Hearing, as that statutory provision provides that : "***For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.***"

50. As referred to above, at paragraph 2 of these Reasons, the issues to be determined by this Tribunal were identified as follows:

    1) was the claimant made redundant by the respondent ?

    2) if so, was she entitled to a redundancy payment from her ?

    3) if so, in what amount ?

Discussion & Deliberation

Effective Date of Termination of Employment, and Qualifying Period

51. In Judge Eccles' findings of fact, at paragraph 3 of her Reasons, and again at paragraph 8, she found that the effective date of termination of the claimants' employment with the respondent was 23 March 2020. I have adopted that finding of fact into my own findings, at paragraph 21 of these Reasons, although the P45 issued to the claimant shows 27 March 2020 as her leaving date.

52. As Judge Eccles held, this claimant brought her claim for a redundancy payment, within 6 months from the effective date of termination under **Section 164 of ERA.** On the basis that the effective date of termination was 23 March 2020 and the claim was presented on 3 September 2020, her claim for a redundancy payment was presented in time.

53. **Section 155 of ERA** deals with the qualifying period of employment for a redundancy payment. It provides that : "***An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.***"

54. For the reasons given by Judge Eccles, there has already been a judicial determination about the claimant's qualifying service with the respondent, and her predecessors, so there is no doubt that she has sufficient qualifying service to seek a redundancy payment from the respondent.

55. While the respondent says that she only employed the claimant from 6 January 2020, she has chosen to leave out of account that as a result of the TUPE transfer from Mr Finlayson to her, the claimant's continuity of employment continued, unbroken, and the respondent inherited all rights and obligations of the employer.

Dismissal

56. The claimant as a former employee of the respondent seeking a redundancy payment firstly requires to establish that she has been dismissed. Under **Section 136 of ERA**, an employee is dismissed if their contract of employment is terminated by the employer either with or without notice.

57. It is for the employee to prove, on the balance of probabilities, that there has been a dismissal. The Tribunal must therefore decide whether it was more likely than not that the contract was terminated by dismissal rather than by either resignation or mutual agreement.

58. On the evidence heard, the Tribunal is satisfied that the claimant was dismissed by the respondent, a fact confirmed by the issue of her P45 by the respondent. There was no evidence of any resignation by the claimant, nor a mutually agreed termination of her employment.

Redundancy situation

59. The real issue in the present case is the answer to this question : **was the claimant dismissed by reason of redundancy**? Dismissal established, there is a presumption in a claim for statutory redundancy payment that an employee has been dismissed for redundancy unless the contrary is proved.

60. On the evidence before the Tribunal, the respondent has failed to prove the contrary, so the statutory presumption of redundancy applies, and, anyway, the evidence supports the claimant's case that she was dismissed for redundancy. The claimant's workplace at The Puttery had closed. At the point when employment came to an end, the business had ceased

61. Indeed, even on the respondent's own evidence, she agreed that the requirements of her catering business to have employees working at the Puttery on and after 23 March 2020 ceased on account of the Covid-19 restrictions.

62. She did not know then how long the lock down would last, and in that regard, she was in the same situation as everybody else in UK. When restrictions were lifted, her business resumed some operation in May 2020, and more

fully in June 2020, so the cessation proved to be temporary, rather than permanent, although it became permanent cessation in August 2020 when Tulliallan Golf Club then terminated its contract with the respondent.

63. The claimant's case clearly falls within the statutory definition of redundancy, and so the Tribunal has found, as a matter of fact, that the claimant was made redundant by the respondent on or about 23 March 2020, when the respondent ceased trading at the Puttery, Tulliallan Golf Club, and issued her with a P45 confirming termination of her employment.

Amount of Redundancy Payment

64. As such, the claimant is entitled to a statutory redundancy payment from the respondent, and the Tribunal accordingly orders the respondent to pay to the claimant a statutory redundancy payment in the agreed sum of **£439.34.**

65. In her closing submission to the Tribunal, the respondent asked whether, if the Tribunal found against her, she could pay the claimant by instalments. As I explained to her then, the Tribunal (unlike the Sheriff sitting in a civil court) has no express statutory power to order payment by instalments.

66. In terms of **Rule 66 of the Employment Tribunal Rules of Procedure 2013**, a party shall comply with a judgment or order for the payment of an amount of money within 14 days of the date of the judgment or order, unless – (a) the judgment or order specifies a different date for compliance, or (b) the Tribunal has sisted the proceedings or judgment.

67. Given the delay to date in getting this case to a Final Hearing, I have decided to order payment within 7 days, rather than 14 days. I have not sisted the proceedings, and I was not asked to do so, by either party. As such, in terms of **Rule 65**, this Judgment takes effect from the day it is made, and payment within 7 days of this Judgment being sent to parties.

68. No Consent Judgment was proposed in this case, under **Rule 64**, as while the respondent accepted and agreed the sum claimed by the claimant, in the event that she was found liable, she disputed that she was liable for any

statutory redundancy payment to her, so parties had regrettably been unable to settle matters between themselves, and perhaps via ACAS, without proceeding to this Final Hearing for judicial determination.

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Employment Judge: G. I McPherson
Date of Judgement: 5 December 2022
Entered in register: 6 December 2022
and copied to parties

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