



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105423/2022

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Held in Chambers on 23 December 2022

Employment Judge P O'Donnell

Mr Hugh Wearing

Claimant

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Apex Décor Ltd

Respondent

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RECONSIDERATION JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Claimant's application for reconsideration is granted and the judgment of 11 November 2022 is hereby revoked.

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The Tribunal has decided to substitute a judgment that Claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £3420 (Three thousand, four hundred and twenty pounds).

REASONS

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1. The Claimant had various complaints relating to the termination of his employment. The majority of these were withdrawn and the only claim remaining for determination was one for redundancy pay.
2. No response was lodged in respect of the claim and the Tribunal (Employment Judge O'Donnell) issued a judgment on 11 November 2022 under Rule 21 awarding the Claimant redundancy pay in the sum of £2228.70. This sum

was calculated using the figures provided on the ET1 for the Claimant's gross weekly wage.

3. An application for reconsideration was lodged on the Claimant's behalf by email dated 21 November 2022. The email explained that it had not been appreciated at the time at which the ET1 had been submitted that the Claimant had been paid less than the National Minimum Wage (NMW). It set out a calculation showing that the Claimant's earnings when translated into an hourly rate came out at £6.18 per hour with NMW being £9.50 at the relevant time.
4. The Respondent was given the opportunity to comment on the application but no response was received.
5. In *Paggetti v Cobb* [2002] IRLR 861, it was held that a "week's pay" for the purposes of calculating statutory payments such as basic award in an unfair dismissal claim or statutory redundancy pay must be calculated on the basis of NMW where the actual pay of the claimant was below this. To do otherwise was held to be an error of law which ignores the legal obligation to pay NMW.
6. In these circumstances, the Tribunal considers that it is in the interests of justice in terms of Rule 70 for the judgment dated 11 November 2022 to be revoked and substituted with a judgment calculating redundancy pay on the basis of NMW hourly rate.
7. The Claimant worked 24 hours a week and so, at £9.50 an hour, his gross weekly wage under NMW should have been £228 per week. The Claimant had 10 years' service and was 74 years old at the date of termination. He was therefore entitled to 1.5 weeks' pay for each year which is 15 weeks' pay.

8. The Claimant is, therefore, entitled to a statutory redundancy payment of £3420 (15 x £228).

Employment Judge: P O'Donnell
Date of Judgment: 23 December 2022
Entered in register: 30 December 2022
and copied to parties