



Case Numbers: 1302877/2022

1302878/2022

Type V

# EMPLOYMENT TRIBUNALS

BETWEEN

AND

Claimant  
(1) Ms M Darby  
(2) Ms M Haynes

Respondent  
Ms V Clyde

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham ON 16 March 2023

EMPLOYMENT JUDGE GASKELL

### Representation

For the Claimants: In Person

For Respondent: In Person

## JUDGMENT

(Issued to the parties on 16 March 2023. Reproduced here for ease of reference)

The judgment of the Tribunal is that:

1. Awards are made to each claimant as follows:-

1.1	<b>1302877/2022</b>	<b>Ms M Darby</b>	
	Unpaid Redundancy Payment		£ 22.20
	Unpaid Notice Pay		£ 304.00(net)
	Unpaid Holiday Pay		£ 138.78(net)
	<b>Total</b>		<b>£ 465.58(net)</b>

1.2	<b>1302878/2022</b>	<b>Ms M Haynes</b>	
	Unpaid Redundancy Payment		£1824.00
	Unpaid Notice Pay		£1216.00(net)
	Unpaid Holiday Pay		£ 384.35(net)
	<b>Total</b>		<b>£3424.35(net)</b>

2. The sums awarded at Paragraph 1 above have been calculated net of income tax and national insurance contributions on the basis that upon payment thereof the respondent will make an appropriate and corresponding payment to HMRC.

## REASONS

1 Full reasons for the judgement were given orally at the conclusion of the hearing on 16 March 2023. These written reasons are given in response to a request from the respondent dated 28 March 2023 made pursuant to Rule 62(3) of the Employment Tribunals Rules of Procedure 2013.

2 The first claimant in this case is Mrs Michelle Darby who was employed as a Café Assistant by the respondent, Mrs Victoria Clyde, at her café premises in Brierley Hill Market Hall from 24 January 2020 until 15 April 2022 when she was dismissed by reason of redundancy. The second claimant is Miss Melanie Haynes who was employed by the respondent in the same capacity and at the same premises from 8 September 2015 until 15 April 2022. She too was dismissed by reason of redundancy. The café which the claimants worked ceased trading. The claimants are sisters.

3 By claim forms which they presented to the tribunal on 10 June 2022, the claimants bring claims against the respondent for the following:

- (a) Unpaid statutory redundancy payment.
- (b) Unpaid notice pay.
- (c) Unpaid holiday pay.

4 I heard evidence from each of the claimants and from the respondent in the following facts are not in dispute:

- (a) The first claimant was born on 24 July 1970. She was employed by the respondent from 24 January 2020 until 15 April 2022. Accordingly she was 49 years of age when her employment commenced and 51 years of age when she was dismissed.
- (b) The second claimant was born on 28 May 1973. She was employed by the respondent from 8 September 2015 until 15 April 2022. Accordingly she was 42 years of age when her employment commenced and 48 years of age when she was dismissed.
- (c) Sometime around 17 March 2022, the respondent informed the claimants that it was her intention to close the business. However, at that time there was no certainty as to the date of closure, and it was not until 14 April 2022 that the claimants were informed that the business was closing and that they would be redundant from the following day.
- (d) The claimants were paid at the rate of the National Minimum Wage: with effect from 1 April 2022 this was £9.50 per hour. The claimants each worked 16 hours per week. Prior to 1 April 2022 the rate of pay was lower at £8.91 per hour. Until earlier in 2022 the first claimant had only been working four hours per week.

- (e) The café did not open on Mondays. Therefore in an ordinary working week the claimants would not work Monday and accordingly would not work on any bank holiday falling on a Monday. For a period of seven months in 2020/21 the claimants were on furlough being paid at the rate of 80% of their normal earnings. The claimants had each been permitted to take and we paid for four weeks holiday each year when working. No enhancement had been paid for any holiday taken during furlough.
- (f) Upon terminating the first claimant's employment the respondent made a purported statutory redundancy payment of £456 she made no payment for notice and none for accrued holidays.
- (g) Upon terminating the second claimant's employment, the respondent made no payments at all - by way of statutory redundancy payment or otherwise.

#### *Statutory Redundancy Payments*

5 The respondent did not dispute that the claimants were entitled to a redundancy payment. In the case of the first claimant, she had purported to make the payment but had miscalculated the amount. For reasons which she did not explain, no payment at all had been made to the second claimant. Applying the formula set out in **Section 162 of the Employment Rights Act 1996**, and having regard to their ages during employment and their lengths of service, the statutory redundancy payment payable to the first claimant is equivalent to 3 weeks wages at £152 per week a total of £456. The statutory redundancy payment due to the second claimant is the equivalent of 12 weeks wages at £152 per week a total of £1824.

6 Upon dismissing the first claimant, a payment purporting to be the statutory redundancy payment had been made in the sum of £433.20 a shortfall of £22.80. The reason for the discrepancy is that the respondent had calculated by reference to an average of the first claimant's last 12 weeks earnings - and this included a period before the increase in the National Minimum Wage effective from 1 April 2022. The use of the average of 12 weeks is appropriate in a case where an employee does not have fixed earnings. But in this case the claimants' earnings were fixed at £9.50 per hour for 16 hours per week.

7 Accordingly I award the sum of £22.80 to the first claimant in respect of the statutory redundancy payment and the sum of £1824 to the second claimant.

#### *Notice Pay*

8 The respondent's position is that because the claimants were warned on 17 March 2022 that the café would be closing, adequate notice had been given and no payment was due in lieu of notice. The claimants were each entitled to

notice of the termination of employment to be calculated in accordance with Section 86 of the Employment Rights Act 1996, this entitled them each to one week's notice for each complete year of continuous employment. The first claimant was therefore entitled to 2 weeks' notice and the second claimant to 8 weeks' notice. Crucially, the period of notice could only begin to run from the date upon which the claimants were told of the date of termination. Effectively therefore, the claimants were given no notice at all. Accordingly, the first claimant is entitled to a payment in lieu of notice of £304. And the second claimant is entitled to a payment in lieu of notice in the sum of £1216.

### *Holiday Pay*

9 The general pattern for the payment of holiday pay was that the claimants were permitted to take four weeks holiday per year. Because effectively bank holidays were not working days for them, no additional holiday allowance was made in respect of the bank holidays. But this is an error of calculation because the statutory right under the **Working Time Regulations 1998** is not to 4 weeks holiday in addition to bank holiday, but for 5.6 weeks holiday. Accordingly it is clear that holiday pay has been underpaid and I propose to make an award in respect of the last two years under payment.

10 The holiday calculation is made more complex by the fact that there was a period of furlough. During that period, both claimants took holidays but were not paid the additional 20% of the salary to which they would have been entitled to at work. Accordingly, my calculation is that for the holiday year 2020/2021 they are entitled to 20% of their salary for a total of 5.6 weeks. For the holiday year 2021/2022, when four weeks holiday was taken and paid for, they are entitled to 1.6 weeks additional holiday pay.

11 In the case of the first claimant, this calculation equates to £138.78 and in the case of the second claimant, the calculation equates to £384.35. Those are the awards which I have made.

Employment Judge Gaskell  
26 May 2023