



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4101928/2023 Hearing by Cloud Video Platform at Edinburgh on 23
May 2023

Employment Judge: M A Macleod

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Cheryl McAllister

Claimant
In Person

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Bathgate Family Law Practice Ltd

Respondent
Not Present and
Not Represented

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the claimant's claims
succeed, being undefended, and that the respondent is ordered to pay to the
claimant the sum of Eight Thousand Five Hundred Pounds (£8,500) in
respect of a redundancy payment and 12 weeks' notice pay; the notice
payment shall be subject to the deduction of tax and national insurance; and
the notice payment has been reduced by £500 to take account of the
payment made by the respondent to the claimant at the start of March 2023.

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REASONS

1. The claimant presented a claim to the Employment Tribunal on 3 March 2023, in which she complained that she had been unlawfully deprived of notice pay and a redundancy payment.
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2. No ET3 was received from the respondent.
3. A Hearing was listed to take place by Cloud Video Platform (CVP) on 23 May 2023. The claimant appeared on her own behalf. There was no appearance from the respondent.
- 10 4. The claimant gave evidence, briefly, under oath.
5. The following findings in fact were made by the Tribunal.
6. The claimant, whose date of birth is 5 August 1982, commenced employment with the respondent, a legal firm owned and operated by Michael Burns, solicitor, on 1 December 2010. The claimant worked as an assistant to Mr Burns, carrying out secretarial, reception and paralegal tasks on his behalf.
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7. On 23 January 2023, Mr Burns asked the claimant to come into his room. He told her that he could no longer run the respondent business, and that he was unable to afford to pay creditors, including the claimant. He confirmed that he would pay her until 31 January 2023. In effect, she was told that Mr Burns was closing the business with immediate effect.
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8. The claimant attended work on one more day, to collect personal belongings and return keys to Mr Burns, on 26 January 2023.
9. The respondent paid the claimant her full salary until 31 January 2023, but did not pay her beyond that date, nor did they make any payment to her in relation to a redundancy payment. Mr Burns told the claimant on 26 January that he did not have the funds to pay and therefore she would not be entitled to a redundancy payment.
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10. The respondent did not furnish the claimant with a written statement of terms and conditions of employment, and the claimant had no recollection of any notice provisions having been provided.

5 11. The claimant contacted Mr Burns at the end of February, having received no payment from the respondent in relation to that month. Shortly thereafter, Mr Burns made payment to her personal bank account of the sum of £500. He did not explain what the payment related to. He made no further payments to the claimant.

10 12. The claimant was paid £19,500 per annum (gross). Her gross weekly pay was £375.

Decision

13. The claimant's claim, being undefended, succeeds. She was made redundant and is entitled to a redundancy payment; and is entitled to receive a notice payment.

15 14. The claimant's redundancy payment is calculated as follows, in terms of section 162 of the Employment Rights Act 1996:

(a) The claimant was born on 5 August 1982. As at the date of termination of her employment (31 January 2023), the claimant was 40 years of age.

20 (b) At no stage in her employment was the claimant employed for a full year in which she was not below the age of 40 nor below the age of 22.

(c) Accordingly, she had been continuously employed for 12 completed years' service as at the date of termination of her employment.

(d) She was therefore **entitled to a redundancy payment of 12 x 1 x £375, which totals £4,500.**

25 15. So far as her notice payment is concerned, there is no evidence of any contractual notice period available to her. As a result, the claimant relies upon the statutory notice period, which, under section 86(1) of the

Employment Rights Act 1996, is 12 weeks, on the basis that she was continuously employed for 12 years.

16. The claimant is therefore **entitled to a notice payment of 12 weeks' pay, which amounts to £4,500 (gross), from which payments of tax and national insurance would require to be made.**

17. The respondent paid the claimant up to 31 January 2023, which is the point at which the notice period would be due to commence. The only deduction to be made at this stage is represented by the payment of £500 made to the claimant by the respondent at the start of March 2023.

18. Accordingly, the claimant is entitled to a notice payment of £4,000 (gross).

19. The claimant's claim therefore succeeds and the respondent is ordered to pay to the claimant the sum of £8,500, subject to the deduction of tax and national insurance in relation to the notice payment made above (£4,000).

Employment Judge: M Macleod
Date of Judgment: 23 May 2023
Entered in register: 25 May 2023
and copied to parties

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