



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Charlton

Respondent: Short Richardson and Forth Limited In Voluntary Liquidation

JUDGMENT ON LIABILITY AND REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Employment Tribunal is as follows:

1. The claimant's claim under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") of a failure by the respondent to comply with the requirements of section 188 of the 1992 Act is well-founded.
2. The Tribunal orders the respondent by way of a protective award under section 189(3) of the 1992 Act to pay to the claimant a payment equivalent to remuneration for the period of 90 days beginning on 30 September 2022.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to the protective award.
4. The claimant's claim for accrued and outstanding holiday pay pursuant to Regulation 14 of the Working Time Regulations 1996 is not well-founded and is dismissed.
5. The claimant's claim for wrongful dismissal is well-founded. The respondent is ordered to pay to the claimant notice pay in the sum of £37.70 net.
6. No award is made in respect of pension contributions.

REASONS

1. The claimant submitted her ET1 form to the Employment Tribunal on 31 December 2022. A copy of the claim form was forwarded to the respondent at their registered office address by the Tribunal on 18 January 2023 and the respondent had until 15 February 2023 to file a response.

2. The respondent entered into voluntarily liquidation on 12 January 2023. The liquidator wrote to the Tribunal on 2 February 2023 stating that he did not intend to admit or defend any claim.
3. On 5 September 2022 respondent informed employees that the company would cease to provide legal services after 30 September 2022. The respondent proposed to dismiss as redundant 20 or more employees based at 4 Mosley Street, Newcastle upon Tyne. The first dismissal took effect on 30 September 2022 and the last dismissal took effect on 30 November 2022.
4. There was no proper warning or consultation undertaken with a recognised trade union or the claimant. There was no consultation with the claimant between 5 September 2022 and 30 September 2022. No employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.
5. In the circumstances, the respondent is in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 30 September 2022.
6. The respondent is advised of the provisions of regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within ten days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
 - a. The name, address and national insurance number of the claimant to whom the award relates; and
 - b. The date of termination of the employment of the claimant.
7. The respondent will not be required to make any payment under the protective award until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the respondent.
8. The claimant was entitled to 3.86 days of accrued and outstanding holidays at the date of termination, as set out in the letter from the Insolvency Service dated 22 February 2023, and she received a payment from the Redundancy Payment Services in the sum of £252.23 gross (£200.55 net) in respect of the accrued and outstanding holiday pay. The claimant has claimed 6 days holiday pay on her schedule of loss, however her witness statement gives no evidence about how she has calculated her entitlement to 6 days as opposed to the 3.86 days of annual leave which has been already awarded. In the circumstances, I am not satisfied that the claimant has any further entitlement to accrued and outstanding annual leave and, therefore, I find that the claimant's claim for accrued and outstanding holiday pay is not well-founded and it is dismissed.
9. The claimant has claimed loss of 3 months notice pay on her schedule of loss, however no evidence has been provided in the witness statement or the accompanying documentation to prove that the claimant was entitled to 3 months contractual notice. The insolvency service determined that the claimant was entitled to one week's notice as set out in their letter dated 23 February 2023. In the circumstances, I am satisfied that the claimant was entitled to receive one week's notice from the respondent at the date of termination. The claimant's employment came to an end on 30 September 2022 and she was not given any notice. The Redundancy Payment Services have paid the sum of £326.92 gross (£251.35 net) to the claimant in respect of her

notice pay entitlement. The claimant's claim for wrongful dismissal is well-founded because she was dismissed without proper notice. The claimant was entitled to the sum of £332.50 gross per week from the respondent which equates to £289.05 net per week. Giving credit for the amount received from the Redundancy Payment Services, the respondent is ordered to pay to the claimant notice pay the sum of £37.70 net.

10. The claimant's claim for outstanding pension contributions is being dealt with by Clumber Consultancy and, therefore, no award is made by this Tribunal.
11. As no response has been received by the Tribunal from the Respondent, the above Judgment has been entered without a hearing on the basis of the information provided by the claimant and in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013.

Employment Judge Arullendran

Date: 4 July 2023