



EMPLOYMENT TRIBUNALS

Claimant: Ms C McVay

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 wrongful dismissal is well-founded and the respondent is ordered to pay to the claimant notice pay in the sum of £2307.72 gross subject to any statutory deductions the respondent may be obliged to make.
5. The claimant's claim for accrued and outstanding holiday pay pursuant to Regulation 14 of the Working Time Regulations 1998 is well-founded and the respondent is ordered to pay to the claimant holiday pay in the sum of £2202.34 net.
6. The claimant's claim for unfair dismissal is not well-founded and is dismissed.
7. When the proceedings were begun in the Tribunal, the respondent was in breach of its duty under section 1 of ERA and, pursuant to section 38 of the Employment Act 2002, it is just and equitable to award 2 weeks wages capped at the rate of £571 per week. The respondent is ordered to pay to the claimant 2 weeks wages in the sum of £1142.
8. 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 did not have a contract of employment with the respondent. She began her employment with the respondent on 4 July 2016 and was dismissed on 30 September 2022 by reason of redundancy. The claimant believes that over solicitors were entitled to 3 months contractual notice, however no evidence of this has been provided to this Tribunal. In the circumstances, I am not satisfied that there was ever an agreement between the claimant and the respondent that she would be entitled to receive 3 months notice and I find that the claimant was entitled to the statutory minimum notice as provided in section 86 of the Employment Rights Act 1996 (ERA) which is one weeks notice for each complete year of service. In those circumstances, the claimant was entitled to receive 6 weeks notice from the respondent. The claimant net income per month was £4796.95 which, when multiplied by 12 and divided by 52, it gives a weekly net sum of £1106.99. 6 weeks notice would therefore give a total of £6641.94.

The claimant received a payment in respect of notice pay from the Redundancy Payment Services in the sum of £1923.45, leaving a balance of £4718.49. The claimant began her new employment on 4 October 2022 and was earning £70,000 per annum, which was £20,000 per annum less than what she had been earning with the respondent. The claimant is required to give credit for income she has received during the notice period in accordance with the ordinary rules on mitigation of loss. As the claimant has not provided her net income from her new employment, I can only make the calculation on a gross basis. The claimant gross weekly earnings with the respondent were in the sum of £1730.77. The claimant gross earnings with her new employer were in the sum of £1346.15. The difference between the 2 sums is £384.62 per week. I find that the claimant's claim for wrongful dismissal is well-founded and she is entitled to receive the difference between the payments you would have received from the respondent for 6 weeks notice less the amount she has received in her new employment which gives a total of £2307.72 gross. The respondent is ordered to pay to the claimant notice pay in the sum of £2307.72 gross subject to any statutory deductions the respondent may be obliged to make.

9. The claimant has claimed that she was entitled to receive payment for 22 days of accrued outstanding annual leave at the date of termination, however the Insolvency Service stated in their letter dated 25 January 2023 that the claimant was entitled to 14.93 days of accrued and outstanding annual leave. The claimant has not provided any evidence that her annual leave entitlement was greater than the 14.93 days accepted by the Insolvency Service and I am satisfied that that is the correct annual leave entitlement for the claimant at the effective date of termination. The claimant has received a partial payment for the 14.93 days accrued and outstanding annual leave from the Redundancy Payment Services in the sum of £1625.47 gross (£1300.38 net). The claimant calculates her net daily rate of pay in the sum of £234.61. Given that the claimant was entitled to receive payment for 14.93 days at the rate of £234.61, the claimant's entitlement to accrued and outstanding annual leave at the date of termination would have been £3502.72 net. Giving credit for the amount received from the Redundancy Payment Services, the outstanding amount is £2202.34. I find that the claimant's claim for accrued outstanding annual leave pursuant to Regulation 14 of the Working Time Regulations 1998 is well-founded. The respondent is ordered to pay to the claimant accrued and outstanding holiday pay in the sum of £2202.34 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. The claimant accepts in her witness statement that the reason for her dismissal was redundancy and she has received a redundancy payment from the Insolvency Service. Redundancy is a potentially fair reason for dismissal under section 98(2) ERA. The claimant has made a claim for unfair dismissal but has failed to provide any evidence in her witness statement as to why she says the dismissal was unfair. Looking at all the evidence in the round, I am satisfied that the respondent acted reasonably in treating the redundancy as a sufficient reason to dismiss the claimant in accordance with the substantial merits of the case. There is no evidence in front of me that the respondent could have taken any other action or that alternative employment was available. In the circumstances I find that the claimant's dismissal fell within the range of reasonable responses open to the employer. The claimant's claim for unfair dismissal is not well-founded and is dismissed.
12. The claimant has requested an uplift to the compensation awarded to her on the basis that she never received a statement of terms and conditions of employment from the respondent. I find that there has been a failure by the respondent to provide the claimant with a statement of her main terms and conditions of employment as required by section 1 of ERA and, in accordance with section 38 of the Employment Act 2002 I find that when the proceedings were begun in the Tribunal the respondent was in breach of its duty under section 1 of ERA and that it is just and

equitable to award 2 weeks wages capped at the rate of £571 per week. The respondent is ordered to pay to the claimant 2 weeks wages in the sum of £1142.

13. 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