



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Hudson
Mrs A Langley
Mrs D Barber

Respondent: Stoneleigh Dental Practice Ltd (in voluntary liquidation)

Heard at: Bury St Edmunds (via CVP)

On: 8 September 2023

Before: Employment Judge Graham

Representation
Claimant: Mrs Hudson and Mrs Langley (Mrs Barber did not attend)
Respondent: Did not attend

JUDGMENT

1. The claim brought by Mrs Barber (3301721/2023) is adjourned and will be relisted.
2. With respect to the claims brought by Mrs Hudson (3300651/2023), the claims for a redundancy payment, notice pay and holiday pay are well founded. Mrs Hudson is entitled to the following:
 - 2.1 Redundancy payment – **£5,382** gross
 - 2.2 Damages for breach of contract (notice pay) - **£3,588** gross
 - 2.3 Holiday pay - **£225.93** subject to statutory deductions.
3. With respect to the claims brought by Mrs Langley (3301683/2023) the claims for a redundancy payment, notice pay and holiday pay are well founded. Mrs Langley is entitled to the following:
 - 3.1 Redundancy payment – **£15,460.50** gross
 - 3.2 Damages for breach of contract (notice pay) - **£6,184.20** gross
 - 3.3 Holiday pay - **£439.04** subject to statutory deductions.

REASONS

Introduction

1. The Respondent is a dental practice. Mrs Langley worked for the Respondent as Dental Practice Manager, Mrs Hudson worked as a Head Dental Nurse, and Mrs Barber worked as a Dental Nurse.
2. By ET1 dated 25 January 2023 Mrs Hudson makes complaints with respect to a redundancy payment, notice pay and holiday pay.
3. By ET1 dated 6 February 2023 Mrs Langley makes complaints with respect to a redundancy payment, notice pay and holiday pay.
4. By ET1 dated 7 February 2023 Mrs Barber makes complaints with respect to a redundancy payment only.
5. The Respondent filed ET3s denying the complaints but indicating that the Respondent had ceased trading and entered into voluntary liquidation in early 2023.

Hearing

6. The Respondent did not attend the hearing, however I decided to proceed in the absence of the Respondent as it was clear that the Respondent would have been aware.
7. Mrs Barber did not attend. I was provided with an email from Mrs Barber dated 4 September 2023 in which she stated that she was unable to attend due to unforeseen family circumstances. This had not been addressed by the Tribunal in advance of today's hearing. I therefore decided to adjourn the hearing solely in respect of Mrs Barber's claim and I have directed that it will be relisted.
8. Mrs Hudson and Mrs Langley were in attendance however I was not provided with any documents save for their ET1 claim forms. I therefore directed them to file evidence with the Tribunal during a brief break. Mrs Hudson provided me copies of her payslips, a letter from the Respondent dated 3 November 2020 which confirmed her hours, and also a letter from the Respondent dated 25 July 2022 confirming that the Respondent closed permanently on 18 July 2022. Mrs Langley experienced some issues with her email but was able to send the Tribunal a copy of her payslip and she held up other payslips to the camera.
9. The hearing was conducted via CVP and there were no technical issues.

Issues

10. There was no agreed list of issues presented to me, however it was clear that the following issues needed to be decided by me.

11. With respect to the claims for a redundancy payment:

- 11.1 Was there a redundancy situation?
- 11.2 Have the claims for a redundancy payment been brought within time?
Were they brought within six months of the relevant date?
- 11.3 If not, did the Claimants within a further six month period:
 - (a) makes a claim for the payment by notice in writing given to the employer,
 - (b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
 - (c) presents a complaint relating to his dismissal under section 111 Employment Rights Act 1996
- 11.4 If so, would it also be just and equitable to extend time?
- 11.5 What redundancy payments are they owed?

12. With respect to the breach of contract claim for notice pay:

- 12.1 Were the Claimants entitled to be paid their notice?
- 12.2 Were the claims brought in time?
- 12.3 If not, was it reasonably practicable for the claims to have been brought in time?
- 12.4 If not, were they presented within such further period as the Tribunal considers reasonable?
- 12.5 How much notice pay are the Claimants owed?

13. With respect to the claims for holiday pay:

- 13.1 Did the Respondent fail to pay the Claimants for annual leave the Claimants had accrued but not taken when their employment ended?
- 13.2 Have the claims been brought within time?
- 13.3 If not, was it reasonably practicable for the claims to have been brought in time?
- 13.4 If not, were they presented within such further period as the Tribunal considers reasonable?
- 13.5 How much are the Claimants owed?

Findings of fact

- 14. From the information and evidence before the Tribunal I made the following

findings of fact. I made my findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. I do not set out in this judgment all of the evidence which I heard but only my principal findings of fact, those necessary to enable me to reach conclusions on the issues to be decided.

15. The facts in this matter are relatively straightforward. The Respondent is a dental practice owned by Mr Sandeep Bhatia and his wife Mrs Anfu Bhatia. They are joint shareholders and directors.
16. Mrs Langley commenced employment with the Respondent on 8 July 1998 and at the time her employment ended she was working as a dental practice manager. Mrs Hudson's employment started on 10 June 2010 and she worked as a head dental nurse.
17. Mrs Langley and Mrs Hudson were aware the business was entering into financial difficulty and they later became aware that the directors were getting divorced. On 16 July 2023 the landlord of the Respondent's business premises locked the building which prevented the staff from gaining access. Mrs Langley spoke to Mr Bhatia who confirmed this to be the case and he spoke to her again on 18 July 2022 and then met with her on 20 July 2022 where he asked her to continue working and to call the patients to let them know what had happened. Mrs Hudson worked on both 20 and 21 July 2022.
18. On 25 July 2023 the Respondent sent the following letter to the staff:

"As you know, Stoneleigh Dental Practice closed permanently on 18th July 2022.

Unfortunately, this means that your employment has ceased with immediate effect i.e you have been made redundant as the business is insolvent and has ceased trading.

The nature of the closure of Stoneleigh was rapid and I was unable to give you notice. Your rights to claim for loss of notice and redundancy pay are available on the Gov.uk website.

If you have any questions or concerns please forward to the Company Registered Address....
19. The letter is signed by A Bhatia and S Bhatia as directors.
20. I find that Mrs Hudson and Mrs Langley's employment terminated on 25 July 2022 when they were informed that the Respondent had ceased trading. Neither Claimant was given their notice period.
21. Mrs Hudson and Mrs Langley sought to engage with the Respondent directors, specifically Mr Bhatia, over the subsequent weeks and months. Mr Bhatia told Mrs Hudson and Mrs Langley that the Respondent could not go into liquidation until Mrs Bhatia agreed, however she had not cooperated.

Subsequent information from Mr Bhatia suggested that there had been court proceedings and an order with respect to liquidation, and that Ms Bhatia was starting to cooperate and he sought to assure them that the redundancy pay was in hand. However, in January 2023 Mr Bhatia confirmed that it was looking unlikely that a redundancy payment would be made as Mrs Bhatia was not cooperating.

22. It was not until the Claimants engaged with ACAS that they realised the time limits for bringing their claims. Until that time they did not have the benefit of any advice or support. Mrs Hudson filed her ET1 on 25 January 2023, followed by Mrs Langley who filed hers on 6 February 2023.
23. At the time of issuing their ET1 claim forms none of these payments had been made to them.
24. At the date of the termination of employment, Mrs Langley was aged 64, she had 24 years' service with the Respondent, and her gross weekly wage was £515.35. Mrs Langley's holiday year was from 1 February to 31 January, and at the time of her dismissal her accrued but untaken annual leave was 3.5 days.
25. At the date of the termination of employment, Mrs Hudson was aged 53, she had 12 years' service with the Respondent, and her gross weekly wage was £299. Mrs Hudson's holiday year was from 1 February to 31 January, and at the time of her dismissal her accrued but untaken annual leave was 2 days.
26. I understand that following discussions with Mr Bhatia, both Mrs Hudson and Mrs Langley have gone on to work for him at a separate dental practice in the Windsor area from October 2022.

Law

Redundancy payment

27. Section 135 Employment Rights Act 1996 provides:

The right.

(1) An employer shall pay a redundancy payment to any employee of his if the employee—

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

(2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

28. Section 155 Employment Rights Act 1996 provides:

Qualifying period of employment.

An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

29. Section 162 Employment Rights Act 1996 provides:

Amount of a redundancy payment.

(1) The amount of a redundancy payment shall be calculated by—

(a) determining the period, ending with the relevant date, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) “the appropriate amount” means—

(a) one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week’s pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week’s pay for each year of employment not within paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

30. Section 164 Employment Rights Act provides:

Claims for redundancy payment.

(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

(a) the payment has been agreed and paid,

(b) the employee has made a claim for the payment by notice in writing given to the employer,

(c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or

(d) a complaint relating to his dismissal has been presented by the employee under section 111.

(2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—

(a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an employment tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under section 111,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.

Notice / Breach of contract

31. Article 7 Employment Tribunal Extension of Jurisdiction Order (England and Wales) Order 1994 provides:

Extension of jurisdiction

Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee's employment.

32. Article 7 Employment Tribunal Extension of Jurisdiction Order (England and Wales) Order 1994 provides:

Time within which proceedings may be brought

7. Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or

(ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

Annual leave

33. The combined effect of regulations 13 and 13A of the Working Time Regulations 1998 is that a worker is entitled to 5.6 weeks' paid annual leave per year.
34. Pursuant to regulation 14 of the Working Time Regulations, a worker whose employment is terminated during their leave year is entitled to receive a payment in lieu of any paid annual leave that they have accrued, on a pro rata basis, during their leave year, but have not taken.
35. Such a payment in lieu is calculated on the basis that the worker receives one day's pay for each day of accrued but untaken annual leave. Clause 10 of the Claimant's contract of employment confers a contractual right analogous to the statutory right conferred by regulation 14.
36. There is no right to payment for annual leave which has yet to accrue.

37. While holiday entitlement is commonly expressed by reference to days, or sometimes even by reference to hours, it is important to note that the Working Time Regulations express the entitlement by reference to weeks. In determining what is a week's pay for the purposes of a claim to accrued but untaken annual leave, the relevant provision is subsection 221(2) of the Employment Rights Act 1996, which provides as follows:

Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

38. Regulation 30 Working Time Regulations 1998 provides:

(1) A worker may present a complaint to an employment tribunal that his employer—

...

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

...

Conclusions and analysis

39. It is clear that this was a redundancy situation and was accepted as such by the Respondent in the letter dated 25 July 2022. I have already found the date of dismissal to be 25 July 2022. Proceedings for a redundancy payment should be made within six months of the relevant date. I find that Mrs Hudson filed her ET1 on the last day possible to bring her claim under s. 164 ERA 1996. If I am wrong on that and the claim has been brought out

of time, it is just and equitable to extend time as Mrs Hudson filed her ET1 within the second six month period.

40. I consider that it is just and equitable to extend time given the manner in which the Respondent engaged in the redundancy process. There was no information or consultation with Mrs Hudson, and she has engaged with the Respondent through its director Mr Bhatia repeatedly since the closure of the business and she was initially and repeatedly assured that payment would be made, however in January 2023 she was told that it would not. I find that Mrs Hudson acted swiftly and filed her ET1 once it became clear that the payments owing to her were not going to be made. It was not until the Claimants engaged with ACAS that they realised the time limits for bringing their claims. Until that time they did not have the benefit of any advice or support. Accordingly it is just and equitable to extend the time limit for bringing this claim.
41. I have calculated the redundancy payment as follows. 12 years service x weekly wage of £299 x 1.5 multiplier = £5,382.
42. With respect to Mrs Langley I find that she did not file her ET1 within six months of the relevant date, however she then filed it 13 days later and within the second six month period. I consider that it is just and equitable to extend time for Mrs Langley on precisely the same basis as I have done for Mrs Hudson above.
43. I have calculated the redundancy payment as follows. 20 years service (capped) x weekly wage of £515.35 x 1.5 multiplier = £15,460.50.
44. As regards the claims for notice pay and holiday pay, these have been presented out of time for the purposes of Article 7 Employment Tribunal Extension of Jurisdiction Order (England and Wales) Order 1994, and also Regulation 30 Working Time Regulations 1998.
45. Nevertheless I consider that it was not reasonably practicable for either Claimant to have brought their claims within time, given the findings I have made about the manner in which their redundancies were handled by the Respondent, including the assurances given that payments would be made which unfortunately turned out to be inaccurate. I consider that the claims for the notice pay and also holiday pay were made within a further period which was reasonable in the circumstances and therefore I am content for the time limit to be extended so that the complaints could be considered.
46. With respect to Mrs Hudson her notice entitlement was the maximum of 12 weeks at £299 per week which amounts to £3,588. Mrs Hudson had 2 days of annual leave accrued at the time her employment ended which she had not been paid for. I calculated this to be £225.93 based upon an hourly rate of £13.29 multiplied by 8.5 hours per day multiplied by two days.
47. With respect to Mrs Langley her notice entitlement was the maximum of 12 weeks at £515.35 per week which amounts to £6,184.20. Mrs Langley had 3.5 days of annual leave accrued at the time her employment ended which she had not been paid for. I calculated this to be £439.04 based upon an

**Case No: 3300651/2023
3301683/2023
3301721/2023**

hourly rate of £15.68 multiplied by 8 hours per day multiplied by three and a half days.

Employment Judge Graham

Date 8 September 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

7 November 2023

FOR THE TRIBUNAL OFFICE