



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Barber

First Respondent: Stoneleigh Dental Practice Ltd (in voluntary liquidation)

Second Respondent: Anju Bhatia

Heard at: Bury St Edmunds (via CVP)

On: 12 January 2024

Before: Employment Judge Graham

Representation

Claimant: In person

Respondent: Did not attend

JUDGMENT

1. The claim against the First Respondent for a redundancy payment is well founded. The First Respondent must pay the Claimant the following:
 - 1.1 Redundancy payment – **£810 gross**
2. The claim against the Second Respondent is dismissed.

REASONS

Introduction

1. This claim brought by Mrs Barber (3301721/2023) formed part of three claims forms arising out of the same facts. The first two claims were brought by Mrs Hudson (3300651/2023) and Mrs Langley (3301683/2023) and these were heard in September 2023 and judgment was handed down at that time.
2. The Respondent is a dental practice and the Claimant worked as a Dental Nurse.

3. By ET1 dated 7 February 2023 the Claimant makes complaints with respect to a redundancy payment only. The ET1 was sent to both Respondents on or around 16 March 2023. The Respondents were notified that a Response was due by 13 April 2023. No ET3 was received.
4. On 24 July 2023 the ET1s were re-served by the Tribunal on the basis that the service at the address provided by the Claimant was unlikely to come to the attention of the Respondents. The Respondents were notified that the original time limit still applied even if it had already expired. The Respondents were notified that if they wished to defend the matter they should complete the ET3 Response and should explain why it was not submitted within the original time limit.
5. On 2 August 2023 the First Respondent filed an ET3 denying the complaint but indicating that the Respondent had ceased trading and entered into voluntary liquidation in early 2023. The defence was as follows:

“Stoneleigh Dental Practice Limited became insolvent due to the impact of the Directors divorcing and the impact of COVID. The landlord of the premises changed the locks without notice in July 2022 and the dental practice was effectively lost. Three members of staff were employed at that time and were left without jobs. Liquidators were not employed for 8 months as the other Director needed a court direction to persuade her to do so.”

6. Details were provided of the liquidator, and further:

“I am a director of another dental practice close by and was able employ the 3 members off staff in that business on the same pay and conditions (not TUPE as separate [sic] legal entity).”

7. It was unclear who had authored the ET3 Response but the details of the First Respondent’s representative were the Liquidator. The ET3 confirmed that the details provided by the Claimant with respect to ACAS Early Conciliation were correct as were the details she had provided about her hours, dates of employment and earnings.
8. No ET3 Response appears to have been filed by the Second Respondent. It was clear that the Second Respondent was not the Claimant’s employer and the Claimant agreed with me that she had no objections to proceedings being dismissed against Mrs Bhatia.

Hearing

9. 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.
10. The Claimant was in attendance and I was provided with copies of her payslips and a letter from the Respondent dated 25 July 2022 confirming that the Respondent closed permanently on 18 July 2022.
11. The hearing was conducted via CVP and there were no technical issues.

Issues

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

Redundancy payment:

12.1 Was there a redundancy situation?

12.2 Have the claim for a redundancy payment been brought within time? Were they brought within six months of the relevant date?

12.3 If not, did the Claimant within a further six month period:

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

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

(c) present a complaint relating to his dismissal under section 111 Employment Rights Act 1996

12.4 If so, would it also be just and equitable to extend time?

12.5 What redundancy payments is the Claimant owed?

Findings of fact

13. 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.

14. The facts in this matter are relatively straightforward. The Respondent was a dental practice owned by Mr Sandeep Bhatia and his wife Mrs Anfu Bhatia. They are joint shareholders and directors.

15. The Claimant's employment started on 11 September 2018 and she worked as a dental nurse.

16. The Claimant became aware that the directors were getting divorced. On 14 July the Claimant went to work as usual. On or around 15 July 2023 the landlord of the Respondent's business premises locked the building which prevented the staff from gaining access. The Claimant was made aware after her colleagues called her. During that weekend the Claimant contacted Mr Bhatia who explained that the premises had been locked by the landlord and that the business had ceased trading but she would be welcome to work for him in the future.

17. 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....

18. The letter is signed by A Bhatia and S Bhatia as directors.
19. I find that the Claimant’s employment terminated on 25 July 2022 when she was informed that the First Respondent had ceased trading.
20. The Claimant sought to engage with the Respondent directors, specifically Mr Bhatia, over the subsequent weeks and months.
21. It was not until the Claimant engaged with ACAS around six months after the termination of her employment that she had the benefit of any advice or support. The Claimant filed her ET1 on 7 February 2023 and she acknowledges that this was outside of six months but she had been attempting to engage with Mr Bhatia up to then.
22. At the date of the termination of employment, the Claimant was aged 38, she had 3 years’ service with the Respondent, and her gross weekly wage was £270. This figure was reached by taking an average of the last three months’ payslips, dividing this figure by three to produce a monthly average, and then multiplying this by twelve months and dividing it by 52 weeks.
23. I understand that following discussions with Mr Bhatia, the Claimant has gone on to work for him at a separate dental practice in the Windsor area from October 2022.

Law

Redundancy payment

24. 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).

25. 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.

26. 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.

27. 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.*

Conclusions and analysis

28. It is clear that this was a redundancy situation and was accepted as such by the First 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 the Claimant filed her ET1 outside of the six month period under s. 164 ERA 1996. Whilst the claim has been brought out of time, it is just and equitable to extend time as the Claimant filed her ET1 within the second six month period.

29. 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 the Claimant, and she has engaged with the Respondent through its director Mr Bhatia since the closure of the business.

I find that the Claimant 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 Claimant engaged with ACAS that she had the benefit of any advice or support. Accordingly it is just and equitable to extend the time limit for bringing this claim.

30. I have calculated the redundancy payment as follows. 3 years service x weekly wage of £270 x 1 multiplier = £810.

31. The First Respondent is Ordered to pay the Claimant the sum of £810 gross.

Employment Judge Graham

Date 12 January 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

..31 January 2024.....

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FOR THE TRIBUNAL OFFICE