



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105430/2023, 4105431/2023, 4106367/2023, 4105446/2023, and
4105453/2023

5

Held by Cloud Video Platform (CVP) in Glasgow on 29 January 2024

Employment Judge M Robison

10 **Ms E Muir**

**First Claimant
In Person**

15 **Mr A Slicer**

**Second Claimant
In Person**

20 **Miss E Horsley**

**Third Claimant
In Person**

20

Miss K Beggs

**Fourth Claimant
In Person**

25

Mr J D Maxwell

**Fifth Claimant
In Person**

30 **Muir Slicer Associates Ltd**

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 The judgment of the Employment Tribunal is that:

1. These claims are combined.
2. The first, second and third claimants' claims for notice pay and holiday pay are lodged out of time and are therefore dismissed.
3. The fourth claimant's claims for notice pay, holiday pay and arrears of pay are
40 lodged out of time and are therefore dismissed.

4. The fifth claimant's claims for unfair dismissal, notice pay, holiday pay and arrears of pay are lodged out of time and are dismissed.
5. The first, second, fourth and fifth claimants' claims for redundancy payment are lodged within time.
- 5 6. The fifth claimant's claim is lodged outwith time, but it is just and equitable that she should receive a redundancy payment.
7. The respondent will pay to the claimants the following sums in respect of redundancy payments:
 - a. To the first claimant the sum of £15,988;
 - 10 b. To the second claimant the sum of £15,000;
 - c. To the third claimant the sum of £2,430;
 - d. To the fourth claimant the sum of £1,795.50; and
 - e. To the fifth claimant the sum of £13,511.17.

REASONS

- 15 1. The first claimant, Ms E Muir, lodged a claim in the Employment Tribunal, which was a multiple including a claim by the second claimant, Mr Spicer, on 21 September 2023, claiming redundancy pay, notice pay and holiday pay.
2. The third claimant, Miss Horsley, lodged a claim on 18 October 2023 claiming redundancy pay, notice pay and holiday pay.
- 20 3. The fourth claimant, Miss K Beggs, lodged a claim on 21 September 2023, claiming redundancy pay, notice pay, holiday pay and arrears of pay.
4. A claim was lodged on behalf of the fifth claimant, Mr J D Maxwell, by his solicitor, Mr P McGowan, on 21 September 2023.
5. No defence has been lodged and these claims proceed as undefended.
- 25 6. These claims were listed together for a final hearing to consider the questions of time-bar, liability and remedy. I decided that these claims should be

combined because they relate essentially to the same facts and circumstances.

7. At the final hearing, which was heard on cloud video platform, I had intended to hear evidence first about the issue of time bar and then to issue an oral judgment. Thereafter, in the event that some or all claims were deemed to be in time, I had intended to hear evidence on the substantive claims from all parties.
8. However, it became clear during the hearing that there were a large number of documents which had not been lodged which supported the claimants' evidence and which confirmed dates which they could not recall.
9. Further there were a number of technical issues, particularly in relation to Mr Maxwell's connection, such that just before he was due to give evidence he was unable to proceed by video so joined at that point by telephone.
10. As it transpired then, I decided that, after hearing evidence from all five claimants, it would be premature to issue an ex tempore judgment without having seen the documentary evidence to support it, which parties sent in after the hearing had adjourned.
11. Given my decision that only the redundancy claim is in time, and given that I had the information I needed to make judgments in relation to the redundancy claim, I decided that I did not require in any event to hear any further evidence I therefore issue judgment awarding all five claimants redundancy pay as calculated below.
12. My decision is based on the following findings in fact and relevant law.

25 Findings in fact

13. On the basis of the evidence heard and the documents lodged, the Tribunal finds the following facts admitted or proved.

14. The first claimant Ms E Muir commenced employment with the respondent 21 October 2001, until her employment was terminated on 27 February 2023. She was 57 as at the date of termination, and her gross monthly salary £3333.33.
- 5 15. The second claimant Mr A Spicer had been continuously employed since 24 February 2003 when his employment was terminated on 27 February 2023. He was 61 as at the date of termination and his gross monthly pay was £2,166.67.
16. The third claimant, Miss Horsley, had been continuously employed from 14
10 May 2014 when her employment was terminated on 27 February 2023. She was 40 years old at the time of the termination of her employment. Her gross monthly was £1170.
17. The fourth claimant, Miss Begg, had been continuously employed since 24
15 July 2013 on the termination of her employment on 27 February 2023, when she was 33 years old and her gross monthly salary was £864.50.
18. On the termination of his employment on 27 February 2023, Mr Maxwell, the fifth claimant, had been continuously employed since 20 March 2006. He was 64 as at the date of termination, and his average monthly gross wage was £2296.
- 20 19. The respondent company latterly had one director, namely Ms Marie Muir, who is the sister of the first claimant, one-time director, but latterly employee of the respondent company, along with the other four claimants.
20. On 27 February 2023 at around 9.30 pm all five claimants received an e-mail
25 from Ms M Muir, director of the respondent, without warning or notice, that the respondent was unable to continue in business and had ceased to trade with effect from 27 February 2023.
21. That was followed up by a letter dated 2 March 2023, in essentially the same terms, which stated, “the company has reached the limit of its banking facilities, I cannot take on any more debt on behalf of the company, and there
30 are no monies available to make further payments to anyone. I know that it is

of little comfort, but I have applied to the Government's Redundancy Payment Service for assistance in making redundancy payments to you. You will need to apply on your own behalf and should be able to make the claim online. I have enclosed information which may be useful".

5 22. The claimants subsequently contacted Ms M Muir by telephone who led them to believe that she was taking appropriate steps to obtain redundancy payments for them. They understood that she was waiting for a redundancy payment reference number to allow her to make claims on their behalf.

10 23. A number of the claimants contacted Ms M Muir for updates. Ms Muir advised the claimants on 10 March 2023 that "the Redundancy Payment Service are considering our application. They cannot give out a reference number until a decision has been reached on our application and you cannot lodge an online claim until that time. As soon as I have a reference number which I can share with you I will let you know".

15 24. On 11 April 2023, Ms M Muir e-mailed the claimants forwarding them an e-mail which she had received from the redundancy payments service. That e-mail stated "the Insolvency Service cannot make payments on behalf of an Active Employer without the guarantee of a full repayment being received". Ms M Muir was advised that "as no repayment can be made we would advise
20 that you contact the employees to inform them that the business does not have the funds to pay the Redundancy Pay owed to the employees. They should contact ACAS or Citizens Advice in order to know what the next steps would be in order to claim what is owed to them by the company. As previously stated, the company is still active, therefore ACAS would possibly advise that
25 the best option would be to submit an Employment Tribunal claim".

25. Ms Muir stated in her e-mail that "as you can see from this, the Redundancy Payment Service cannot make any payment as the Company is not in a position to repay any monies paid out...I have applied for the Company to be struck off. The Company cannot go Formally Insolvent as it does not have the
30 funds available to pay an Insolvency Payment Service...as recommended by

the Redundancy Payment Service, you should approach either Citizens Advice or Acas to receive further advice”.

26. Around that time, Mr Slicer attempted to obtain advice from the CAB but was not able to speak to anyone who was able to give advice about this situation.
5 Miss Beggs also contacted ACAS and Miss Horsley contacted the CAB.
27. On 11 April 2023, Ms E Muir asked Ms M Muir to chase up the position with regard to her application for the company to be struck off as a matter of urgency. She asked her to confirm “as soon as its done so we can all get together and contact whoever we need to contact. Ms M Muir advised in
10 response that she was waiting for an “authentication code” from companies house before she could complete the application for the company to be struck off.
28. On 2 May 2023, Ms M Muir advised the claimants that she still had not received the authentication code from companies house so she had made a
15 postal application rather than an online one.
29. In April or May, Mr Spicer contacted ACAS and understood from what he was told that if he pursued a claim in the employment tribunal it would be 40 to 44 weeks before there was a hearing. He discussed the matter with Mr Maxwell and came to the view that they would be better off waiting until the respondent
20 company was struck off.
30. In May or June, Mr Maxwell was advised by his local welfare rights group to contact the CAB and he was passed from one CAB to another, where the adviser there told him to contact ACAS. Mr Maxwell did subsequently contact ACAS but decided that there was no point in conciliation. He thought that
25 perhaps he had been given advice about time limits but could not remember from whom.
31. On 16 June and 24 July 2023, Miss Begg contacted Ms M Muir for an update but received no reply.
32. On 7 August 2023, Ms E Muir contacted ACAS on behalf of all of the claimants
30 except Miss Horsley. Miss Horsley contacted ACAS on 12 August 2023.

33. On 16 August 2023, Ms E Muir advised ACAS that she had been nominated by the others to represent the group.
34. On 23 August 2023, EC certificates were issued for all the claimants.
35. The e-mail enclosing the certificate explains how to make a claim to an employment tribunal, and states that the recipient should “make sure you submit your claim on time” and states that “you have at least 1 month from the date you receive the certificate if you notified ACAS of the dispute within your time limit. If you’re concerned you might be out of time, make your claim as soon as possible. The employment judge will decide whether to accept it”.
- 10 36. On 23 August 2023, Ms E Muir spoke to someone at ACAS who advised that they should get legal advice. Later that day she contacted Strathclyde Law Clinic by e-mail for advice. She received an e-mail response dated 30 August 2023. She did not proceed with that enquiry. She spoke to a member of staff at Govan Law Centre who advised that they could not take on the case due to pressure of work but that they should contact another solicitor.
- 15
37. In early September, Ms E Muir contacted Mr Paul McGowan, solicitor. She obtained permission for him to contact the other claimants. He advised the claimants to send in applications to the employment tribunal which they did on 21 September 2023 because there were no funds to pay him to represent them.
- 20
38. Mr McGowan lodged an application on behalf of the fifth claimant, Mr Maxwell, on that same date 21 September 2023.
39. On 25 September 2023, after she had contacted him, Mr McGowan advised Misss Horsley to lodge a claim without delay. She did not however lodge her claim until 18 October 2023, due to not finding time as a recently separated single parent who had obtained full-time employment.
- 25
40. The claims lodged by all claimants were accepted by the employment tribunal but the claimants were issued with a standard letter advising that it appeared that part of the claim had been submitted outwith the correct time limit.

Relevant law

41. The law relating to time limits in respect of claims relating to unpaid notice pay is contained the Employment Rights Act 1996 Act (the 1996 Act) and the Employment Tribunals (Extension of Jurisdiction (Scotland) Order 1994 (the
5 1994 Order).
42. Article 7 of the 1994 Order states that an employment tribunal shall not entertain a complaint in respect of an employee's contract unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. Article 7(c) states that
10 where a tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time, then a complaint can be lodged within such further period as the tribunal considers reasonable.
43. The law relating to time limits in respect of arrears of holiday pay is contained in the Working Time Regulations 1998. Regulation 30(2) states that an
15 employment tribunal shall not consider a complaint unless it is presented before the end of the period of three months beginning with the date on which it is alleged that the payment should have been made, or 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
20 end of that period of three months.
44. Section 23(1) of the 1996 Act states that a worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages (arrears of pay).
45. Section 23(2) states that an employment tribunal shall not consider a
25 complaint unless it is presented before the end of the period of three months beginning with the day of payment of the wages from which the deduction was made.
46. Section 23(4) states that where the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the

appropriate date, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

47. Section 111(2) of the 1996 Act states that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination or 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 months.
48. Thus in relation to each of these claims, the tribunal must consider whether it was not reasonably practicable for the claimant to present their claim in time, the burden of proof lying with the claimant. If the claimant succeeds in showing that it was not reasonably practicable to present the claim in time, then the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable.
49. The Court of Appeal considered the correct approach to the test of reasonable practicability (*Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490). Lord Justice Underhill summarised the essential points as follows:
- a. The test should be given “a liberal interpretation in favour of the employee” (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 479, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53);
 - b. The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was “reasonably feasible” for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119....
 - c. If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable

for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;

5

d. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*)...

e. The test of reasonable practicability is one of fact and not law (*Palmer*).

10 50. Section 135 of the 1996 Act states that an employer shall pay a redundancy payment to an employee if his employee is dismissed by reason of redundancy.

15 51. Claims in respect of redundancy payments require to be determined by an employment tribunal under s. 163 of the 1996 Act. Section 164 states that an employee does not have any right to a redundancy payment, unless, before the end of the period of six months from the date of dismissal, an employee has made a claim for the payment by notice in writing given to the employer (s164(1)(b); or the question as to the employee's right to, or the amount of, the payment (s164(1)(c), or a claim for unfair dismissal, has been referred to an employment tribunal (s164(1)(d).

20

25 52. An employee is not however deprived of his right to a redundancy payment, if, during the period of six months immediately following the six months after the date of dismissal, the employee makes a claim for the payment by notice in writing given to the employer; or refers the question as to his right to, or the amount of, the payment, or makes a claim for unfair dismissal to the employment tribunal, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment (s.164(2)).

25

53. These time limits are extended for early conciliation in terms of s.164(5).

30 54. In determining whether or not it is just and equitable that an employee in these circumstances should receive a redundancy payment, the employment

30

tribunal shall have regard to the reason shown by the employee for his failure to make a claim in writing for a redundancy payment or to lodge a claim in the employment tribunal; and all the other relevant circumstances (s. 164(3)).

55. Section 162(1) states that the amount of a redundancy payment shall be
5 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 of each of those years of employment.

10 56. Section 162(2) states that the appropriate amount means (a) one and a half week's 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 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) and (b).

15 57. A week's pay is subject to a maximum, which as at 27 February 2023 was £571.

58. The relevant date for the purposes of calculating the redundancy payment is the effective date of termination, that is, in terms of s.145(a) where the contract is terminated by notice, the date on which that notice expires; where
20 the dismissal is without notice, the date of which the termination takes effect (s.145(b)).

Tribunal deliberations and decision

Time bar - unfair dismissal, breach of contract, holiday pay and arrears of pay

59. The claimants' employment was terminated on 27 February 2023.

25 60. Claims for unfair dismissal, breach of contract, holiday pay and arrears of pay must be lodged within three months of the date of termination, unless parties have contacted ACAS within that three month period, whose notification operates to extend the time limit.

61. The claimants should therefore have lodged these claims, or at least contacted ACAS, by 26 May 2023. The claimants did not contact ACAS until 7 August 2023. Their claims were therefore already lodged out of time so no extension for conciliation could operate to extend the time limit. The claimants
5 did not lodge claims until 21 September 2023 in the case of all claimants except Miss Horsley who lodged her claim on 18 October 2023.
62. Thus I find that these claims were lodged out of time. However, I have a certain discretion to allow claims which are out of time. This relates to the circumstances where it was not reasonably practicable for the claim to have
10 been lodged in time.
63. By reference to the guidance provided by Underhill LJ set out above, I am obliged to give the test “a liberal interpretation in favour of the employee”. Further, the test relates not only to physical impracticability, but I require to consider whether it was reasonably feasible that the claim could have been
15 presented in time. This includes where an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case.
64. In such circumstances, the question is whether that ignorance or mistake is reasonable. This is a case where the claimants missed the time limit because
20 they were ignorant about the existence of the time limit. The Tribunal must question whether ignorance of the time limit was reasonable, taking account of any enquiries which the claimant or their adviser should have made.
65. While I appreciate that the claimants said that they were relying on Ms M Muir and feel let down by her, as Miss Horsley recognised, that was a mistake on
25 their part. This is especially where they were getting advice, periodically, to contact external agencies about how to pursue the claims.
66. I noted in particular that even in the first letter dated 2 March 2023 from Ms Muir, she stated they they would require to apply for redundancy payments on their own behalf. Then on 11 April, she forwarded the letter from RPS which
30 stated the claimants should contact ACAS or CAB and that the likely advice

was to submit a claim in the employment tribunal, and she recommended that course of action.

5 67. Although the claimants could not remember exactly what they did and when, their evidence was they had all at some stage and to some extent approached ACAS or the CAB. Obviously I cannot know exactly what advice was given and whether or not time limits were in fact mentioned, but what is clear is that they did not apparently take the advice that they were given. For example, Mr Spicer in discussion with Mr Maxwell thought it was not appropriate to lodge a claim in the employment tribunal if it would take 40-44 weeks to get to a hearing (advice which I should say, for claims lodged in Scotland at least is clearly not correct) and Mr Maxwell said when that he did not think there was any point in conciliation. Clearly, these are misunderstandings on the part of the claimants.

15 68. By the time Ms Muir contacted ACAS formally on behalf of all of the claimant (and advised Miss Horsley to do so), by 7 August in fact it was already too late. By the time she contacted a solicitor the time limit for lodging such claims was well past.

20 69. Given the advice which the claimants were getting at least to get advice, and given that they did not act on that advice, either because they misunderstood it or because they did not think that it was appropriate to follow it, I could not say that the claimants were ignorant of the need to lodge claims, or at least initiate EC with ACAS and their stated ignorance of the time limit could not be said to be reasonable.

25 70. The test is a two stage one: if I find that it was not reasonably practicable to have lodged the claim in time, then I must find that the claimant lodged the claim within a reasonable period after it became reasonably practicable, for the extension to be permitted. In the circumstances of this case, I did not require to consider that second stage.

30 71. I therefore do not find that it was not reasonably practicable to have lodged these claims in time.

Time bar – redundancy pay

72. The law relating to time bar for redundancy payments set out above is different. Claimants have six months from the date of termination of their employment to intimate an intention to apply for a redundancy payment.
- 5 73. The claimants required then to have intimated the claim or to have lodged a claim in the employment tribunal within six months of the termination of their employment, that is they required to do so by 26 August 2023.
74. The EC procedures apply to the redundancy payment which operates to extend the time to lodge the claim, here to one month after the end of the
10 conciliation period, which in this case was for all claimants 23 August 2023.
75. To be in time, redundancy claims thus ought to have been lodged by 23 September 2023. The claims for the first, second, fourth and fifth claimants were lodged on 21 September 2023. Thus their claims are lodged in time.
76. While the third claimant, Miss Horsley intimated her claim to ACAS on 12
15 August 2023, the EC certificate was also issued on 23 August 2023. The time limit for lodging a claim thus extended to 23 September 2023.
77. Despite being advised to by a solicitor, the she did not lodge her claim until 18 October 2023. So her claim is lodged out of time.
78. However, where a claim seeking redundancy payment has been referred to
20 an employment tribunal within the six months following the initial six month period, a tribunal can decide that an employee should receive a redundancy payment if that would be just and equitable.
79. Although the claimant got advice about lodging a claim, given her reliance on
25 Ms M Muir initially and her colleagues subsequently, and given her personal circumstances, and balancing the prejudice to the respondent against the prejudice to the claimant, who would otherwise not receive a redundancy payment, I find that it is just and equitable that the third claimant should receive a redundancy payment.

Redundancy payments

80. By 27 February 2023, Ms E Muir had been continuously employed since 21 October 2001, that is she worked for the respondent for 21 complete years. She was 57 as at the date of termination. Ms Muir lodged payslips showing that her gross monthly pay was £3333.33. Her average weekly wage was therefore £769.23. However, the maximum weekly wage for the purposes of the redundancy pay calculation at that time was £571. Applying the rule relating to the appropriate amount, Ms Muir is entitled to (7 years x 1 x £571) + (14 x 1.5 x £571), that is a total of £15,988.
81. Mr Spicer had been continuously employed since 24 February 2003, and had therefore completed 20 years of service. He was 61 as at the date of termination. Mr Spicer submitted payslips which show his gross monthly pay was £2,166.67. His gross average weekly wage was therefore £500. The total sum due then was (20 x 1.5 x £500), that is a total of £15,000.
82. Miss Horsley had been continuously employed from 14 May 2014, that is she had worked for the respondent for 9 complete years. She was 40 years old at the time of the termination of her employment. Her gross monthly £1170 monthly average weekly wage was £270. Accordingly she is entitled to (9 x 1 x £270) which is a total of £2,430.
83. Miss Begg had been continuously employed since 24 July 2013 and had therefore completed 9 full years of service as at the date of termination, when she was 33 years old. Her gross monthly salary was £864.50, so average weekly gross wage was £199.50. She is therefore entitled to (9 x 1 x £199.50) which is a total of £1,795.50.
84. Mr Maxwell had been continuously employed since 20 March 2006, that is for 17 years. He was 64 as at the date of termination, and his monthly gross wage was £2296, which gives an average weekly gross pay of £529.85.

85. He is therefore entitled to $(17 \times 1.5 \times \text{£}529.85)$ that is a total of £13,511.17.

5

M Robison

Employment Judge

2 February 2024

10

Date

Date sent to parties

5 February 2024

15