



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Tomlinson

**Respondent:** RW Taylor Joinery Limited

**Heard at:** Nottingham **On:** 18 June 2024

**Before:** Employment Judge McTigue sitting alone

## **Representation**

Claimant: In Person

Respondent: No attendance

# JUDGMENT

## **Redundancy Payment**

1. Under section 163 Employment Rights Act 1996 it is determined that the claimant is entitled to a redundancy payment of £15,417.

## **Notice Pay**

2. The complaint of breach of contract in relation to notice pay is well-founded. The respondent shall pay the claimant £7,190 as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.

## **Holiday Pay**

3. The complaint in respect of holiday pay is dismissed upon withdrawal by the claimant.

## **Failure to provide a written statement of employment particulars**

4. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is just and equitable to make an award of an amount equal to four weeks' gross

pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant £2,284.

The total amount the respondent shall pay the claimant is **£24,891**.

# REASONS

## Introduction

5. The claimant was employed as a joiner by the respondent. He claims that he was dismissed by reason of redundancy on 31 March 2023. ACAS was notified of the early conciliation procedure on 4 April 2023 and the certificate was issued on 25 April 2023. The ET1 was presented on 25 April 2023.

## Claims and Issues

6. Originally, the claimant sought a statutory redundancy payment, compensation for accrued but untaken annual leave and damages for breach of contract in respect of notice pay. Before me today, the claimant withdrew his complaint in respect of compensation for accrued but untaken annual leave.
7. There has already been one preliminary hearing in respect of this matter. That was held before my colleague, EJ R Clark, on 20 November 2023. The purpose of that hearing was to determine whether or not the claimant was an employee of the respondent. At that hearing, it was determined that the claimant was an employee of the respondent. As a consequence, the claims in respect of a statutory redundancy payment and breach of contract were permitted to proceed to final hearing.

## Procedure, documents and evidence heard

8. The respondent did not attend today's final hearing. My clerk telephoned Mr R Taylor of the respondent to ascertain the reason for absence. Mr Taylor stated that he had not received the notice of hearing. He informed the clerk that his email address, which he had previously provided to the tribunal in his ET3 form, was no longer valid. When my clerk asked Mr Taylor if he could attend the tribunal today, Mr Taylor said he could not and that he thought the case had been resolved last year. Finally, my clerk informed Mr Taylor that the hearing could proceed in his absence. Mr Taylor stated that he was happy for the hearing to proceed in his absence. He did not request a postponement.
9. Taking all of the above information into account I decided to proceed in the respondent's absence as permitted by Rule 47. I am satisfied that the notice of the hearing was emailed to respondent. If a party changes their correspondence details, it is that party's responsibility to inform the tribunal of the change. The respondent therefore had notice of today's hearing. I also note that Mr Taylor indicated he was happy for the hearing to proceed

in his absence and he did not request a postponement.

10. The claimant attended and represented himself. The tribunal heard evidence from the claimant under oath. The claimant had prepared a witness statement and also attached four documents to the statement that he said supported his case.

### **Findings of Fact**

11. I am assisted in my findings by the previous fact-finding exercise undertaken by EJ R Clark. I take those into account here.
12. The claimant initially started work for the respondent on 23 September 1983 as an apprentice bench joiner. He was an employee of the respondent from that date, until the date of his dismissal on 31 March 2023.
13. Due to the length of his continuous employment, the claimant was entitled to 12 weeks' notice from the respondent upon the termination of his employment. He did not receive 12 weeks' notice. Instead on 17 March 2023 the claimant became aware that the respondent was going to cease trading at the end of that month. He became aware of that after having received email correspondence from Quilter Pensions on that same date informing him that his pension contributions had been stopped by the respondent (Document 3).
14. As the claimant was aware by that point in time that Mr Taylor was deciding on the future of the company, he spoke with Mr Taylor that same date. I find it more likely than not that, on 17 March 2023, Mr Taylor provided the claimant with oral notice that the respondent would cease trading on 31 March 2023. Indeed, shortly after, the claimant went out of his way to draft a document dated 21 March 2023 which stated that the respondent would cease trading on 31 March 2023. The claimant then ensured Mr Taylor signed that document on 21 March 2023 (Document 4). To draft such a document, the claimant must have had notice that the business was to cease trading at the end of the month. The effect of this is that the claimant only received 2 weeks' notice of the impending business closure.
15. On 31 March 2023 the respondent ceased trading. At that point in time, the claimant was its sole employee. He was 55 years of age and had been continuously employed by the respondent for 39 years. His net weekly pay at his effective date of termination was £719.00 and his gross weekly pay was £960.42.
16. I also find that at no point during his period of employment with the respondent was the claimant provided with a contract of employment or a written statement of employment particulars.

### **Law**

#### Redundancy

17. Redundancy is defined in section 139 of the Employment Right Act 1996

("ERA 1996"):

**"139. — Redundancy.**

**(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—**

**(a) the fact that his employer has ceased or intends to cease—**

**(i) to carry on the business for the purposes of which the employee was employed by him, or**

**(ii) to carry on that business in the place where the employee was so employed, or**

**(b) the fact that the requirements of that business—**

**(i) for employees to carry out work of a particular kind, or**

**(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,**

**have ceased or diminished or are expected to cease or diminish."**

18. The leading case on establishing whether an employee has been dismissed by reason of redundancy is the EAT decision in **Safeway Stores plc v Burrell [1997] IRLR 200**, which was approved by the House of Lords in **Murray and another v Foyle Meats Ltd (Northern Ireland) [1999] IRLR 562**. In **Safeway**, the EAT formulated a three-stage test for applying section 139 of ERA 1996:

*1. Was the employee dismissed?*

*2. If so, had the requirements of the business for employees to carry out work of a particular kind ceased or diminished (or did one of the other economic states of affairs in section 139(1) of ERA 1996 exist)?*

*3. If so, was the dismissal of the employee caused wholly or mainly by the state of affairs identified at stage 2 above?*

19. Any issues relating to an employee's right to a statutory redundancy payment or to the amount of such a payment fall within the jurisdiction of the tribunal — s.163(1) ERA 1996. For the purposes of any such complaint, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy – s163(2) ERA 1996.

### Notice Pay

20. In respect of the notice pay claim, the claim is effectively a breach of contract claim under the jurisdiction of the Tribunal by virtue of section 3 of the Employment Tribunal's Extension of Jurisdiction (England & Wales) Order 1994. This 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 Wales would under 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 termination of the employee's employment.

21. Section 86 of the ERA 1996 provides:

**86.— Rights of employer and employee to minimum notice.**

**(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—**

**(a) is not less than one week's notice if his period of continuous employment is less than two years,**

**(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and**

**(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.**

Written statement of employment particulars

22. The legal requirement to provide workers with a written statement of their employment particulars is contained in ss.1-6 of the ERA 1996. Section 38 of the Employment Act 2002 states that a tribunal must award compensation to a worker where, on a successful claim being made under any of the tribunal jurisdictions listed in Schedule 5, it becomes evident that the employer was in breach of its duty to provide full and accurate written particulars under S.1 ERA. The list of jurisdictions set out in Schedule 5 includes redundancy payments, and breach of contract complaints.

## Conclusions

23. The claimant was an employee who was dismissed by reason of redundancy on 31 March 2023. As the respondent ceased trading entirely that day, the claimant was redundant within the meaning of s.139(1)(a)(i) ERA 1996. He did not receive a statutory redundancy payment from the respondent or any other ex gratia payment. The claimant is entitled to statutory redundancy payment.

24. The claimant was entitled to 12 weeks' notice of dismissal but as he was only made aware of his impending dismissal on 17 March 2023, he only received 2 weeks' notice. There is a shortfall of 10 weeks for which he is due damages.

25. The claimant did not receive a written statement of employment particulars. There were no exceptional circumstances that would make an award of an amount equal to two weeks' gross pay unjust or inequitable. Indeed, on the evidence before me, it is just and equitable to make an award of an amount equal to four weeks' gross pay.

26. To assist the parties, I set out below the workings in relation to how the sums due to the claimant were calculated.

**Remedy**

**1. Details**

Effective Date of Termination	31/03/2023
Period of continuous service (years)	39
Age at Effective Date of Termination	55
Remedy hearing date	18/06/2024
Statutory notice period (weeks)	12
Net weekly pay at EDT	719.00
Gross weekly pay at EDT	960.42

**2. Redundancy Payment**

Number of qualifying weeks (27) x Gross weekly pay (capped at £571.00)	15,417.00
<b>Total redundancy payment</b>	<b>15,417.00</b>

**3. Damages for wrongful dismissal**

Loss of earnings	7,190.00
Damages period (10) x Net weekly pay (£719.00)	
<b>Total damages</b>	<b>7,190.00</b>

**4. Failure to provide written particulars**

Number of weeks (4) x Gross weekly pay (capped at £571.00)	2,284.00
<b>Total</b>	<b>2,284.00</b>

**5. Summary totals**

Redundancy payment	15,417.00
Wrongful dismissal	7,190.00
Failure to provide written particulars	2,284.00
<b>Total due to claimant</b>	<b>24,891.00</b>

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**Employment Judge McTigue**

**Date: 18 June 2024**

JUDGMENT & REASONS SENT TO THE PARTIES ON

....19 June 2024.....

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FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>