



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Jacqueline Walmsley

**Respondent:** (1) Brookhouse Assets Limited & (2) The Secretary of State for the Department of Business and Trade

**JUDGMENT** having been given at the hearing and reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, reasons are set out as follows.

## REASONS

### The hearing and proceeding without the respondents

1. There was no Response received from either respondent in this case, so neither respondent had any right to be heard at this hearing, without the permission of the Employment Judge.
2. This case was listed for a remote hearing for which there was no objection received from the claimant or, indeed, from the respondent. The form of remote hearing was a video hearing through HM Courts & Tribunal Service.
3. The respondents did not participate in the hearing. A notice of hearing had been sent to the address the claimant had given on his Claim Form. I was satisfied that the respondents' either knew or, more likely, ought to have known about this hearing. The claimant and her representative were able to dial-in and join the hearing, without problem. I delayed the start of the hearing slightly to check the Tribunal's file and there was no recent correspondence from the respondents. The hearing clerk checked to see if there was any more recent, or indeed any correspondence, that had not made its way to the Tribunal file and there was none.
4. There was no application for postpone this hearing. Indeed, I could not think of any purpose in postponing as it was in the interests of justice to proceed. The parties had been advised of this hearing. If I postponed the hearing of my own volition, then any future hearing would likely be in the same predicament, and I cannot postpone matters indefinitely. I

determined that it was appropriate to proceed in the respondent's absence pursuant to rule 47 of the Employment Tribunal Rules of Procedure 2013, notwithstanding the respondents had not entered any Response.

## **Proceedings**

5. The Employment Tribunal received a Claim Form from the claimant on 30 June 2023. This followed a period of ACAS Early Conciliation from 31 March 2023 to 3 April 2023 for the first respondent and 19 June 2023 to 26 June 2023 for the second respondent. The claimant claimed a redundancy payment only.

6. The details of complaint contended that the first respondent was now a dormant company but not insolvent and that in accordance with section 166(1)(a) Employment Rights Act 1996 ("ERA") that she had taken all reasonable steps to recover her redundancy payment from her former employer and that this remained unpaid. The claimant said that she received a response from the second respondent, which stated that primary responsibility for the redundancy payment rested with the first respondent and the second respondent refused to pay this because the first respondent had not entered a state of insolvency.

7. The second respondent contended in its letter to the claimant of 22 August 2023 that that respondent may only make a redundancy payment to the claimant in 2 scenarios. First, if the employer was insolvent within one of the definitions in s166(5) ERA (see s166(1)(b) ERA) or, second, if the claimant has "*taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and the employer has refused or failed to pay it or has paid part of it or has refused or failed to pay the balance...*"

8. The second respondent contended that it required the Employment Tribunal to decide whether a redundancy payment was due and should the first respondent fail to paid this, then it would be responsible for the redundancy payment in due course.

## **Evidence**

9. The claimant had prepared a short hearing bundle of 56 pages. This contained the relevant pleadings, correspondence between the parties, her contract of employment and the claimant's wages slips.

10. The claimant did not provide a separate witness statement, but her details of complaint was clear, and I utilised this as her witness statement. The claimant confirmed the information contained within her detailed of complaint and I asked her a number of questions, as appropriate. The claimant's evidence was both credible and consistent with the documents provided.

## **The law**

11. S139 Employment Rights Act 1996 ("ERA") defines 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.

12. S135 ERA provides:

- (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.

**My findings of fact**

13. I made the following findings of fact.
14. The claimant commenced employment with the first respondent on 7 July 2018. She worked as a care assistant.
15. The claimant was informed in a meeting with Mr Iqbal, a director, on 8 December 2022 that the first respondent was closing down by 13 January 2023 and that all staff would be made redundant in the intervening period. Mr Iqbal advised staff to attend a meeting on 6 February 2023 (i.e. after the home closed) and that he would pay outstanding monies owed to them.
16. The claimant was dismissed by reason of redundancy on 6 January 2023.
17. The claimant attended the meeting of 6 February 2023, and she was paid her outstanding wages, but not any redundancy pay.

**Determination**

18. I'm satisfied the claimant was made redundant. The claimant was dismissed by reason of the closure of the respondent's business. This is redundancy under s139(1)(a)(i) ERA. The care home closed and there was no work for the claimant. Her date of dismissal was 6 January 2024.
19. The claimant was entitled to a redundancy payment under s135 ERA. She had completed 4 years' service, her age factor was 1.5 and her gross pay was £342 per week. Therefore, she was entitled to a redundancy payment of £2,052.

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Employment Judge Tobin  
Date: 25 August 2024

JUDGMENT SENT TO THE PARTIES ON

Date: 28 August 2024

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FOR THE TRIBUNAL OFFICE

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