



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000655/2024**

5

**Held in Glasgow via Cloud Video Platform (CVP) on 23 September 2024**

**Employment Judge Campbell**

10 **Mr A Graham**

**Claimant  
In Person**

15 **Kterio Limited (in Liquidation)**

**Respondent  
No appearance and  
No representation**

20

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the tribunal is that:

1. The claimant' claim for a statutory redundancy payment succeeds.
2. The claimant's claim for accrued annual leave succeeds.
3. The claimant is therefore awarded the following:
  - 25 a. A statutory redundancy payment of £1,903.86,
  - b. A compensatory award of £819.59 in respect of his unfair dismissal,  
and
  - c. The sum of £614.40 in respect of accrued and unpaid holidays.
4. The respondent is ordered to pay those sums to the claimant.

30

## REASONS

### General

1. The claim was heard on 23 September 2024 by video. The claimant attended the hearing and gave evidence. The respondent had not submitted a response form (ET3) in reply to the claim, had made no further attempt to become involved in the proceedings, and was not represented at the hearing.
2. On 3 September 2024 WSM Marks Bloom LLP, registered as insolvency licence holders by the Institute of Chartered Accountants of England and Wales, wrote to the tribunal. They confirmed that the respondent was placed in creditors' voluntary liquidation on 1 August 2024 and that their Douglas Pinteau was appointed as its liquidator. Mr Pinteau was aware of the hearing but said that he did not intend to join it or be represented at it. No further submissions in relation to the claim were made.
3. Prior to that, on 17 July 2024, the tribunal issued a judgment in the claimant's favour relating to his unfair dismissal claim. The claim was found to be successful on that date. The judgment was issued to the claimant the following day, with only the question of remedy remaining to be dealt with.
4. This judgment was arrived at on the basis of evidence provided by the claimant via documents and orally.

### Findings of fact

The following relevant findings were made based on the evidence provided.

1. The claimant was employed by the respondent as a Reporting Analyst between 18 October 2021 and 31 May 2024. His salary was £34,650 per annum and he received £2,887.50 per month and £634.62 per week, those figures gross.
2. The claimant was entitled to 28 days of annual leave in total, with the respondent adopting the calendar year as its holiday year. He had accrued 12 days by his termination date. He had no holidays accrued from a previous

year. He used eight days in 2024. He therefore had four days accrued and untaken at his termination date. He was not paid for those days.

3. The claimant was told by email in the evening of Friday 22 March 2024 that his role was to be made redundant. This was the first he knew of the plan. He saw the email the following Monday. It gave little or no further detail, for example in relation to any new roles being created, any attempts which would be made to redeploy the claimant, what further steps there would be in any consultation process, what payments he would receive if his employment was terminated, and when if so that might occur.
4. The claimant asked his manager, Mr Riding, for further information. Mr Riding said he was waiting on further external advice or guidance, and would update the claimant. This did not occur despite the claimant making a number of further requests. The claimant was eventually offered a call with another manager, which it transpired he was going to hold whilst travelling in a car with his wife present. The call took place but the manager was still unable to confirm key details of the situation, including a proposed termination date.
5. The claimant was eventually given notice of termination of his employment on or around 13 May 2024, which was to occur on 22 June 2024.
6. The claimant had been seeking alternative roles outside the respondent and was able to secure one. He was given a start date of Monday 3 June 2024 and so offered to leave on Friday 31 May. That was agreed by the respondent.
7. The claimant's new position is full time and he has no reason to believe that it will come to an end in the foreseeable future. He earns slightly more than he did with the respondent and his pension options are equivalent, hence he has no ongoing financial loss from 3 June 2024 onwards.

## **Discussion and decision**

### *Redundancy payment*

8. The claimant was found to have been unfairly dismissed by the respondent. The reason for his dismissal was redundancy. His role was removed. He was

entitled to a statutory redundancy payment, which he did not receive. His date of birth is 18 April 1979 and he was 45 at the date of termination. His right to a redundancy pay is not negated by his bringing forward the termination date of his contract, after being given notice of termination by the respondent. His service with the respondent began on 18 October 2021. He had therefore completed two full years of service. His gross weekly pay was £634.62 which was below the statutory cap of £700. He is therefore entitled to £1903.86, being two weeks' gross pay uplifted by 50% to reflect his age.

*Unfair dismissal – basic and compensatory award, loss of employment rights and uplift*

9. As the claimant was unfairly dismissed, he would normally be entitled to a basic award of compensation. However, the fact that he is to be paid a statutory redundancy payment of the same amount, calculated in the same way, effectively cancels this out and no award is made.

10. A compensatory award is normally made, covering the monetary losses of an unfairly dismissed claimant. The claimant's only loss of that type is pay for the two days in between his termination date with the respondent and his start date with his new employer. In gross terms that is £190 (£34,650 divided by 365 days and multiplied by two). It is his net loss that he should be compensated for, as that is what he would have received. That figure is calculated to be £155.67, subject to the tribunal's position regarding an uplift dealt with below.

11. From the date he commenced his new role the claimant ceased to suffer any financial loss, as that role paid him slightly more than the respondent.

12. The claimant sought the sum of £500 to compensate him for the loss of employment rights and entitlements caused by his dismissal. He had gained two years of service, giving him the right to a redundancy payment and to claim unfair dismissal. He had lost those rights and would need to wait a further two years before earning them again. It is common for employment tribunals to recognise this loss and award a sum to reflect the disadvantage suffered. The claimant is awarded £500 under this heading.

13. The claimant sought an uplift in the compensation awarded to him as a result of the respondent not following the ACAS Code on Disciplinary and Grievance Procedures. The tribunal has power to increase an award of compensation for unfair dismissal by up to 25% if an employer fails to respond properly to a written grievance or to follow certain procedures in some types of dismissal. The claimant did raise a written grievance, alleging among other things that no process was followed and that he should have been paid a statutory redundancy payment. An uplift is competent in his case. As the respondent completely failed to either follow a dismissal process, or to respond to his grievance, his compensatory award of £155.67 is increased by 25% to £194.59. The award in respect of loss of employment rights is similarly increased from £500 to £625.

#### *Accrued holidays*

14. The respondent adopts the calendar year as its holiday year. The claimant had accrued four days that he had not taken by his termination date. Nor was he paid for them. The gross value of four days' pay is £380, equivalent to £311.34 net.

15. No reduction or uplift is applied to those figures as they relate to rights separate from the grievance and his dismissal (and the question of its fairness).

#### **Conclusion**

16. The respondent is accordingly ordered to pay the claimant the sums calculated as above in compensation for his successful claims.

**Employment Judge: B Campbell**  
**Date of Judgment: 01 October 2024**  
**Entered in register: 02 October 2024**  
**and copied to parties**

