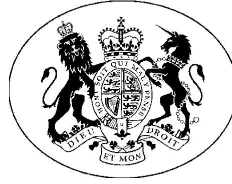

EMPLOYMENT TRIBUNALS

Claimant: Alessandro Iannicelli

Respondent: University of Nottingham

Heard at: Nottingham **On:** 14/02/2025

Before: Judge M. A Siddique

Representation
Claimant: In person
Respondent: Mr Ludford-Thomas (in house solicitor)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim for redundancy payment is not well-founded and is dismissed.

Reasons

2. The Claimant is Mr Alessandro Iannicelli and the Respondent is his former employer the University of Nottingham. The Claimant brings a claim for redundancy payment.

3. The issues were discussed at the start of the hearing. The Claimant was requested to clarify the claims he was seeking to make as section 8 of his claim form was unclear. He confirmed the only claim was for a redundancy payment. There was some discussion about the merits of the claim if I was to take the claim at its highest given that the Claimant appeared to have received a redundancy payment in excess of that which could be awarded under Section 162 Employment Rights Act 1996 (ERA). The Claimant was allowed time to consider if he wished to proceed with the claim. The Respondent was also asked to consider the issue of timeliness taking into account the case of Bentley Engineering Co Ltd v Crown and Miller 1976 ICR 225 as that appeared more relevant to the claim then the authorities referred to by the Respondent in their written submissions. After a short break the Claimant confirmed that he wished to proceed with his claim and the Respondent confirmed they still wished to challenge the claim on timeliness grounds.

4. In respect of the redundancy payment claim the issues identified were that of the timeliness of the claim, whether the Claimant could establish he was an employee and therefore continuously employed for the period between 2000 and 2007 and finally if he was entitled to a higher award of redundancy payment then he was granted.

5. During the hearing the Respondent accepted that the criteria in section 164(1)(a) and (1)(b) ERA 1996 had been met within 6 months of the redundancy.

6. In the course of the hearing, I heard evidence from the Claimant and his witness Mr Antonio Liberatori, a former colleague. Neither had prepared statements. The Claimant adopted the evidence in his ET1 form and gave some evidence in respect of the identified issues, and was cross-examined by the Respondent. Mr Liberatori gave brief evidence and was not cross examined. The Respondent called Mr Jamie Tennant, an Associate Director of HR at the University of Nottingham. He adopted his statement and was not cross-examined. I explained to the Claimant that if he disagreed with anything in the witness's statement, he should question him about it, however he chose not to ask any questions.

7. In submissions the Respondent relied on their written submissions. They submitted that the claim was out of time. They argued that the correct test for assessing timeliness was the "reasonably practicable" test, but could not identify where in the statute that test was said to apply to claims for redundancy payments but thought possibly S.111 ERA was applicable. They made no submissions in respect of the case of Bentley Engineering Co Ltd v Crown and Miller 1976 ICR 225. Their main argument was that the Claimant had engaged with ACAS and the University to raise a dispute and had an ACAS certificate issued as far back 11/01/2021 and that the Claimant had not established that it was not reasonably practicable to have made the claim before 14/10/2024, when he issued this claim. They argued that for similar reasons if the "just and equitable" test in S.164 (2) was applicable it also could not be met. The Claimant argued that it was unfair that he was not given a redundancy payment based on 19 years of employment and that he should have been given an employment contract sooner. He accepted that he made his claim late but wanted to continue his claim because he believed the circumstances were unfair.

8. In reaching my decision, I had regard to the written evidence provided in the final hearing bundle, additional evidence emailed to the court by the Claimant including his letter setting out his calculation of the Redundancy payment he claims (emailed to the Tribunal on 10/02/2025),HMRC national insurance records, bank statements covering June 2001-November 2007 and 4 certificates of recognition of attendance. I also took into account the Respondent's witness statement, written submissions and the evidence I heard during the hearing.

The relevant law

9. The right to appeal any question relating to the right to or amount of, a redundancy payment, is set out in Section 163 Employment Rights Act 1996 (ERA):

"S.163 (1)Any question arising under this Part as to—

(a)the right of an employee to a redundancy payment, or

(b)the amount of a redundancy payment,

shall be referred to and determined by an employment tribunal.
…"

10. The requirements for bringing a claim for a redundancy payment are set out in Section 164 ERA:

"S.164 (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."

11. In Bentley Engineering Co Ltd v Crown and Miller 1976 ICR 225, QBD the High Court considered the earlier equivalent legislation to S.164(1), namely S.21 of the Redundancy Payments Act 1965 :

    "Section 21 provides:
    "Not withstanding anything in the preceding provisions of this Part of this Act, an employee shall not be entitled to a redundancy payment unless, before the end of the period of six months beginning with the relevant date" –

    and it is common ground here that the "relevant date" is the date of dismissal -

    "(a) the payment has been agreed and paid, or
    (b) the employee has made a claim for the payment by notice in writing given to the employer, or
    (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to a tribunal in accordance with regulations made under Part III of this Act."

    And held that:

    "…the effect of section 21 is to divest the employee of his entitlement to a redundancy payment, unless, within the period of six months specified, he does one of the acts described in paragraphs (a), (b) or (c). If he does not, his right is divested. If he does, his right is preserved. So, it is not like the ordinary limitation provision which merely bars the remedy; the effect is to extinguish the remedy.
    …..
    I have come to the conclusion that Mr. Smith's argument on this point is right. I will summarise it again, as I understand it, and it is this: one must of necessity approach section 21 assuming the existence of a claimant prima facie entitled to a redundancy payment. And what is said is, not that he cannot bring his claim after a particular period of time, or anything of that kind; what is said is that, unless he does (a), (b) or (c), he shall not be entitled to that which previously prima facie he was entitled. Consequently, if he establishes that he has taken one of the steps set out in (a), (b) or (c), he is no longer not to be entitled. In other words, the operation of it is purely negative and he is in the position that he would have been in, if this particular restriction had not existed."

12. In submissions the Respondent made reference to the "reasonably practicable" test in S.111 ERA which states:

"S.111.(1)A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a)before the end of the period of three months beginning with the effective date of termination, or

(b)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."

13. How to calculate the amount of a redundancy payment is set out in S.162 ERA. The relevant parts of which state:

    "S.162 (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)."

14. In respect of identifying who has the status of "employee", Section 230 of the Employment Rights Act 1996 (ERA) provides as follows.
    "230 (1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
    (2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
    (3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or,

where the employment has ceased, worked under)— (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed. (5) In this Act "employment"— (a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and (b) in relation to a worker, means employment under his contract; and "employed" shall be construed accordingly."

15. When assessing whether the Claimant had the status of employee when he worked for the Respondent between 2000 and 2007 I considered, as a starting point, the judgment of Mr Justice MacKenna in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, QBD*. He stated:
'A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.'

16. In this case there are factors which support the proposition that the Claimant was an employee or a worker but there are also factors which detract from that and overall, there is no single determining factor. I must apply what is described as a multiple test as described above. I must decide what the true situation was in the circumstances of this case.

Findings of fact

17. I find that the Claimant was taken on as a casual worker on 25/09/2000 with the University of Nottingham as a catering assistant. This role included various tasks such as delivering food to campus, setting up rooms for catering purposes and on occasion serving.

18. The Claimant held this status, as a casual worker, until he signed his employment contract and was taken on as an employee on 01/11/2007 (Bundle page 104). The Claimant in evidence also self-described himself as a casual worker in evidence and questioned why he was not taken on as an employee sooner. When questioned about why he should be treated as having the status of an employee during the period between 2000 and

2007 he indicated that he should be treated as an employee because he worked there every day between Monday to Friday and paid his taxes.

19. I take into account the Claimant's HMRC record which is consistent with him regularly working at the University of Nottingham. I also take into account certificates of attendance which cover June 2002- January 2003. His witness confirmed that the University was very busy in 2000 and the Claimant was able to join as a casual worker based on his recommendation. HMRC records also indicate that the Claimant also worked elsewhere in 2000/2001, 2005/2006, 2006/2007 and 2007/2008 initially at the Dorchester restaurant and later in the Marino restaurant. The Claimant accepted that he was never issued a written contract or agreement when he first worked for the Respondent. The Claimant provided little further evidence as to the conditions of his work, any obligations he had to the Respondent during this period or any other details of substance as to is working conditions. The Respondent confirmed their evidence that they did not keep records of casual workers from that period. Whilst the Tribunal accepts that the Claimant did carry out work for the Respondent on a regular basis between 25/09/2000 until 01/11/2007 and that he was taxed as an employee rather than self-employed by HMRC, and whilst due weight is given to those factors, there is an absence of evidence of any mutuality of obligation or control during this period, in particular there is no reliable evidence that the Respondent was required to provide the Claimant work during this period and that the Claimant was obliged to accept it. This means that the Claimant has not satisfied the Tribunal through evidence that his status at the University of Nottingham during the period of 2000-2007 was as an employee.

20. The Tribunal accepts that after 01/11/2007, until he was made redundant on 31/07/2020, he was an employee. The undisputed evidence is that the University of Nottingham ran a Voluntary Redundancy Scheme (VR). This was an enhanced redundancy scheme, where redundancy payments were based initially on 1.95 times the number of weeks' pay awarded by the UK statutory scheme. This scheme was only open to employees and not casual workers- this is confirmed in the written redundancy scheme at 2.1. The scheme was notified to relevant members of staff on 07/05/2020 (bundle (page 133) setting out the relevant criteria. The Claimant applied for a voluntary redundancy quote and this was sent to him by email on 20/05/2020 (page 141). The quote confirmed that based on his personal circumstances his voluntary redundancy lump sum would be £11,833.61- and 12-weeks additional pay of £4,045.68. An email was provided for contact if any of the information was incorrect. There is no evidence that the Claimant challenged or queried the quote at this stage.

21. Following receipt of the quote the Appellant applied for and was successful in being granted voluntary redundancy.

22. The Claimant was made redundant on 31/07/2020. His last pay slip dated 30/07/2020 indicated he was paid a, slightly different albeit higher then

quoted, redundancy payment of £13,519.29 and an additional payment in lieu of notice.

23. In approximately December 2020 the Claimant was no longer happy with the amount of his redundancy payment and initially tried to contact the University by telephone and when this was not successful, he approached Acas. The Early Conciliation (EC) certificate indicates date of receipt by Acas of the EC notification was 19/12/2020. The Claimant's dispute was that he believed that the quote which he was given and had accepted was based on 12 years continuous service as an employee and he considered he had been in 19 years full service- a shortfall of 7 years. The Claimant accepted that his weekly salary of £337.14, as recorded by the Respondent, was correct and indeed his own calculations, submitted by email to the Tribunal on 10/02/2025, were based on the same figures. The Claimant was seeking redundancy payment for an additional 7 years of service.

24. The Claimant approached his employer by email in early January 2021 to challenge the amount and dispute his record of employment. That this approach was in early January 2021, and therefore within 6 months of the redundancy on 31/07/2020, is not in dispute by the Respondent.

25. As noted above, the Claimant had an Acas certificate issued on 11/01/2021. However, the Claimant did not bring Tribunal proceedings but continued to email the Respondent. In evidence the Claimant confirmed he was aware of the time limits for making a claim in the Tribunal but did not make a claim in 2021 because he was unsure of the costs associated with bringing an employment Tribunal claim. So, he did not make a claim at the time of the Acas certificate. However, in 2024 he changed his mind and decided to make the claim late. The Tribunal accordingly finds that the reason for the delay in making a claim between January 2021 and October 2024 was not a lack of knowledge about the time limits or a lack of knowledge that a claim could be brought in the Tribunal but a wariness about possible costs associated with making an employment Tribunal claim.

26. A claim was eventually filed with the Tribunal on 14 October 2024.

Conclusions

27. On the issue of timeliness I find that the claim for redundancy payment is in time. The Respondent accepted that the criteria in S164(1)(a) and (b) ERA were met within the requisite 6-month period and, specifically that the Claimant had put in writing his challenge to the amount of redundancy payment received, thereby satisfying S.164(1)(b) ERA. Applying Bentley Engineering Co Ltd v Crown and Miller 1976 ICR 225 the Tribunal finds that once one of those acts, identified in S.164, have been completed the Tribunal claim can be pursued anytime thereafter. In this case the claim for

redundancy payment was made before the Tribunal over 3 years and 9 months later.

28. Whilst the Respondent argued that the "reasonably practicable" test was applicable they could only point to S.111 ERA in support of that submissions. However, S.111 relates to the test for a claim for unfair dismissal and as no such claim is pursued here it is not applicable. Similarly, the test of "just and equitable" in S.164(2) only applies if the Claimant has failed to meet the initial test in S.164(1). However, on the facts of this case it is accepted that the criteria in S.164(1) are met so S.164(2) does not fall for consideration. Had the "reasonably practicable" test applied in this case, the Tribunal would have found that the Claimant could not meet it, as it is clear that at least from January 2021 the Claimant was aware of his right to bring a claim before the Tribunal as well as the time limits for doing so, as evidenced by his approach to Acas and the issue of an Early Conciliation certificate in January 2021, as well as his own evidence before the Tribunal. The fact that the Claimant was wary about possible costs of bringing a claim did not mean that it was not reasonably practicable for him to bring a claim before October 2024. The delay of at least 3 years and 9 months was particularly excessive and based on the above findings was not reasonable. However, as noted above the test for bringing an in-time claim for a redundancy payment is set out in S.164 ERA and that has been met. As such the claim for redundancy payment is in time.

29. It is not disputed that the Claimant was at least a casual member of staff between October 2000 and 31 October 2007. However as found above, given the lack of evidence, the Tribunal did not accept that the Claimant had established that he was an employee during this period. Applying the test in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, QBD* the Tribunal was not satisfied that there was a mutuality of obligation. As noted above while the Claimant was working regularly for the Respondent between the identified period between 2000 and 2007 he did not provide any evidence that there was any obligation on the Respondent to provide work, to those in the Claimant's position who were taken on as casual workers, without any contract of employment. Nor was there any evidence that he was obliged to accept any work offered and perform it. Consequently, it is not accepted that he had the status of "employee" between 25/09/2000 and 31/10/2007.

30. Therefore, the calculation of the redundancy payment under the Voluntary Redundancy scheme, based on 12 years of continuous service as an employee, was correct and the Claimant was awarded the amount due. This is consistent with the redundancy scheme being specifically designed for employees and not for casual workers and was confirmed in the unchallenged evidence of Mr Tennant.

31. Furthermore, if the Tribunal was in error and the Claimant could properly be considered an employee from the start of his work with the Claimant on

25/09/2000, the Tribunal would not be able to award the Claimant any greater sum than he has already received. This is because the Claimant has made a claim for a redundancy payment. The calculation for the amount of a redundancy payment is set out in Section 162 ERA. As, at the start of the award period the Claimant was over the age of 41, he was entitled to a payment of 1.5 times his weekly salary (£337.14), for each year of continuous employment. Taking his case at its highest, so on his account of 19 years continuous service, and applying the method of calculation in Section 162, he was entitled to a redundancy payment of £9,608.48 (£337.14 x 1.5 x 19). As the Claimant readily accepts, he was paid significantly more than this under the voluntary redundancy scheme operated by the Respondent.

32. Whilst the Claimant may believe it unfair that he was not paid more for redundancy and not paid for the years where he was a casual member of staff the Tribunal has found that he was paid a redundancy payment which was more than that required by the statutory provisions and even if treating his years of continuous service as starting from 25/09/2000 the Tribunal is unable to award more under the statute, by way of redundancy payment, then he was already paid.

33. For the above reasons the claim for redundancy payment is not well-founded and is dismissed.

Approved by:
Employment Judge M. A Siddique

03/03/2025

JUDGMENT SENT TO THE PARTIES ON

......04 March 2025....................................

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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. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/