



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Stott

**First Respondent:** Ukrainian Social Club Dnipro

**Second Respondent:** Ms L Edgworth

**Third Respondent:** Mr J Pilipczuk

**Heard at:** Southampton (by CVP)

**On:** 25 April 2025

**Before:** Employment Judge Yallop

## REPRESENTATION:

**Claimant:** In person

**First Respondent:** Mr E Nebesniak

**Second Respondent:** In person

**Third Respondent:** In person

## RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

### Time limits

1. The complaints for notice pay and holiday pay were not presented within the applicable time limit, but it was not reasonably practicable to do so. The complaints were presented within a further reasonable period. The complaints will therefore proceed.
2. The complaint of failure to pay a redundancy payment was not presented within the applicable time limit and the Claimant did not make a written claim for the payment to her employer within that period. However, the Claimant did present her claim during the period of six months immediately thereafter, and it is just and equitable that the Claimant should receive a redundancy payment. The complaint will therefore proceed.

### Claimant's employer

3. The First Respondent is an unincorporated association, so has no legal identity. The members, including Committee Members, are jointly and severally liable for the First Respondent's debts and obligations. All complaints against the First Respondent are therefore dismissed.

### Notice Pay

4. The complaint of breach of contract in relation to notice pay is well-founded.
5. The Second and Third Respondent, being joint and severally liable, shall pay the Claimant **£4,312.00** 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

6. The complaint in respect of holiday pay is well-founded. The Second and Third Respondent made an unauthorised deduction from the Claimant's wages by failing to pay the Claimant for holidays accrued but not taken on the date the Claimant's employment ended.
7. The Second and Third Respondent, being joint and severally liable, shall pay the Claimant **£801.57**. The Claimant is responsible for paying any tax or National Insurance.

### Redundancy Payment

8. Under section 163 Employment Rights Act 1996 it is determined that the Claimant is entitled to a redundancy payment of **£10,780**, which shall be paid to the Claimant by the Second and Third Respondent (who are joint and severally liable for this sum).

## REASONS

### Introduction

1. The Claimant worked at the Ukrainian Social Club Dnipro, the First Respondent, as bar staff, from 22 July 2001 to 28 August 2023. The First Respondent is an unincorporated association that was set up to provide information and facilities for its members.

2. On 28 August 2023, the Claimant was dismissed, as it was decided that the First Respondent could no longer afford to operate. The Claimant attempted to recover pay in lieu of notice and a redundancy payment from the Insolvency Service, but her claim was refused. She therefore lodged a claim with the Employment Tribunal.
3. The First Respondent contests the claim on the basis that the Claimant should be able to apply for the monies from the Insolvency Service once HMRC has finished its processes relating to outstanding VAT returns. The Second and Third Respondents contest the claim on the basis that they were volunteering for the First Respondent and were not the Claimant's employer.
4. I conducted a hearing on 25 April 2025 to determine the Claimant's claim.

### **Preliminary matters and late evidence**

5. Before I heard any evidence, I agreed that the Claimant could be assisted by her daughter, Miss Yulia Lyulchuk. Although the Claimant speaks English, she wanted her daughter to help by translating anything she did not fully understand and to make submissions on her behalf. I considered this to be a reasonable request, and that it would enable a fair and just hearing in accordance with the overriding objective.
6. The Claimant said that she had indicated at the Preliminary Hearing on 31 January 2025 that she was no longer claiming for holiday pay. However, she had then been able to check with the person who paid her wages and they confirmed that she was owed 77 holiday hours. She therefore asked for that complaint to proceed. I checked the Order from the Preliminary Hearing, which confirmed that the Claimant no longer claimed for holiday pay, but there was no Order dismissing the claim. I asked each of the Respondents whether they disputed the holiday pay claim of 77 hours. Mr Nebesniak confirmed on behalf of the First Respondent that 77 hours was correct, and the Second and Third Respondents did not dispute the amount. I therefore decided to allow the complaint to proceed on the basis that there was no prejudice to the Respondents in relation to their preparation for the hearing, and there would be prejudice to the Claimant in refusing her application.
7. During the hearing, I agreed to accept two additional documents into evidence. These were:
  - a. the final page of the dismissal letter that had been sent to the Claimant, which was signed by the Second and Third Respondent.
  - b. The Claimant's employment contract from 2009.

8. These documents were helpful to the Tribunal and accepting them into evidence did not prejudice the parties, as all parties had a copy of the contract and had seen the dismissal letter. The dismissal letter was also already in the bundle, but only the first page. It was therefore in accordance with the overriding objective to admit the late evidence.
9. I explained to the parties that I had not received witness statements from any of the Respondents, but that I did have the statement attached to the First Respondent's response (which Mr Nebesniak said he had written), and I also had the responses from the Second and Third Respondents. I asked the parties whether any of them objected to Mr Nebesniak and the Second and Third Respondents giving oral evidence, with me treating those documents as their evidence in chief. None of the parties objected. I decided that it was in accordance with the overriding objective to proceed on that basis, as: the evidence was highly relevant to the issues I had to determine; the positions of each of the witnesses was clear from their responses, so there was no prejudice to any party in terms of being unable to prepare for the hearing; and it was not proportionate to adjourn, given the delay and costs involved.

## Issues

10. I agreed with the parties that the issues I needed to determine, were as follows:
  - Time Limit - notice pay**
    - a. Was the complaint made within the appropriate time limit?
    - b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
    - c. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
  - Time Limit - redundancy payment**
    - d. Was the complaint made to the Tribunal within the appropriate time limit, or did the Claimant make a written claim for the payment to her employer within that period?
    - e. If not, was the complaint to the Tribunal or the Claimant's employer made during the period of six months immediately thereafter, and is it just and equitable that the Claimant should receive a redundancy payment?
  - Redundancy Payment**
    - f. Was the Claimant dismissed for a genuine redundancy reason (This was not in dispute).
    - g. How much redundancy pay is owed to the Claimant?
  - Notice pay**
    - h. What was the Claimant's notice period? The Claimant asserts 12 weeks.
    - i. Was the Claimant paid for that notice period?
    - j. If not, what is the Claimant owed?

**Liability**

k. Who was the Claimant's employer?

11. Deciding that the Claimant's claim for holiday would be considered meant I also needed to determine the following issues:

**Holiday pay**

- a. Was the complaint made within the appropriate time limit?
- b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- c. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
- d. Was the Claimant entitled to be paid in respect of accrued but untaken holiday when her employment ended?
- e. How much is the Claimant owed?

**Findings of Fact**

12. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
13. The Claimant worked at the Ukrainian Social Club Dnipro, the First Respondent, as bar staff, from 22 July 2001. She was the only employee working at the Club.
14. The First Respondent is an unincorporated association in Gloucester, with a rule book setting out how the Club should operate. The Club was based in the Ukrainian Social Club building, which is owned by the Association of Ukrainians of Great Britain. The Club paid rent to the Association to use those premises, and was separate from the Association, having its own management Committee and finances.
15. In 2021, the Chairman and Treasurer of the Club, Peter Olijnyk, sadly died. The Second and Third Respondents were the only other Committee Members at the time of his death, and despite attempts being made, no-one could be found to take on the Chairman or Treasurer role.
16. At the time of Mr Olijnyk's death, Mr Nebesniak was the Chair of the Association of Ukrainians, Gloucester Branch (which was the Club's landlord), so he decided to help sort out the problems the Club was experiencing. Mr Nebesniak started working with the Second and Third Respondents, and brought in new volunteers to help carry out some of the duties that Mr Olijnyk had previously undertaken, including paying the Claimant's wages. Mr Nebesniak said these people were treated as an 'emergency committee'. The Club was experiencing financial difficulties, as fewer people had been using its facilities after the Covid-19

pandemic ended, and the Club had not been collecting membership subscriptions for years and had no official members, just patrons who drank at the bar. It was decided that the Club was not financially viable, so on 1 June 2023, Mr Nebesniak sought advice about winding up the Club.

17. Mr Nebesniak was advised that the Claimant would be entitled to a substantial sum on the termination of her employment, which the Club could not afford. He was given details of the Insolvency Service, and his understanding was that the Claimant could apply to them for payment of the money she would be owed on the termination of her employment because the Club was insolvent. He therefore prepared a letter to the Claimant informing her of her dismissal, which was signed by the Second and Third Respondents under the heading 'Emergency Committee Members'. The letter was then sent to the Claimant on 22 August 2023. It stated that the Club's Committee had decided to cease trading the bar and the Claimant's employment was terminated with effect from 28 August 2023. The letter also said: 'In most circumstances, the Redundancy Payment Services ("RPS") make a payment to you if you are owed money.' There was then information on how to make a claim, which included the following: 'You will need a case reference number to be able to submit an online claim. This reference will be sent to you by Siann Huntley who together with Andrew Beckingham of Leonard Curtis have been instructed to wind up the business.'
18. It took a long time for the Club's position to be assessed by Leonard Curtis. The Claimant was concerned about this and chased Mr Nebesniak for the case reference number that the dismissal letter had said she needed to make a claim. However, as she knew the Club had no money and had been told she should apply to the Insolvency Service for any monies owed to her, she did not make a written request to anyone connected with the Club for those payments. Mr Nebesniak told the Claimant to wait, as the Club's accounts had been neglected after Mr Olijnyk's death and there were issues that needed to be resolved in relation to outstanding bills and creditors. However, in April 2024, Leonard Curtis informed Mr Nebesniak that they were unable to proceed with winding up the Club because they could not determine its legal status.
19. Mr Nebesniak told the Claimant of this and said steps were still being taken to wind up the Club. The Claimant sought advice from a Citizen's Advice Bureau and was told to contact ACAS, as when she received an ACAS certificate she would be able to claim the payments from the Insolvency Service. On 8 May 2024, the Claimant contacted ACAS, and she received her certificate on 13 May 2024. Mr Nebesniak then contacted the Claimant and gave her more instructions for claiming via the Insolvency Service.
20. The Claimant telephoned the Insolvency Service and was advised that she should email certain information and her ACAS certificate to the address provided by Mr Nebesniak. The Claimant did this and was sent a form, which she completed and returned. On 7 June 2024, the Claimant received a letter from the

Insolvency Service refusing her claim on the basis that her employer was not insolvent and had not refused or been unable to pay her a redundancy payment. The letter referred to her making a claim to the Employment Tribunal. The Claimant submitted her claim to the Tribunal that same day.

21. Since Leonard Curtis ceased assisting with the winding up of the Club's business, Mr Nebesniak has been working with HMRC to get outstanding VAT returns submitted, so that the Club's tax account could be closed. He said that everything was finally submitted on 23 April 2025, so the Claimant should soon receive the information she needs to be able to make a claim to the Insolvency Service.
22. The Second Respondent gave evidence that she had volunteered to become a Committee Member at the Club in 2017 and she took on the role of Secretary. This meant she attended Committee meetings and took minutes. The Committee had weekly meetings about matters such as maintenance and events, but the Second Respondent did not have any involvement in the Club's finances. After Mr Olijnyk died, there were not enough people to have a valid Committee and no meetings took place, so she technically became a volunteer. She said that other people also volunteered to help out and she continued her involvement with the Committee because she wanted to keep the Club running, as her father had been involved in starting it in the 1960s. When asked why she thought she had ceased being a Committee Member, she said the section at rule 10 onwards of the Club's rule book made that clear. It says the management of the Club would be in the hands of 7 full members elected by voting at the Annual General Meeting (AGM) of the Club, but the Club never had 7 members. It also says: 'The Committee shall retire annually but be eligible for re-election at the Annual General Meeting'. When asked if she had taken steps to retire after Mr Olijnyk's death, she said she had wanted to retire, but did not want to leave the Claimant in limbo, and there was no-one to resign to anyway, as there was no Chairman and the Club did not have AGMs. When asked why she had signed the Claimant's dismissal letter, she said that she was only a volunteer after Mr Olijnyk's death, but had signed it when Mr Nebesniak had asked her because the Claimant needed to be dismissed in writing.
23. The Third Respondent gave evidence that he and the Second Respondent were Committee Members in the period that Mr Olijnyk was Chairman. They would have weekly meetings to discuss the general running of the Club and Mr Olijnyk did the accounting. After Mr Olijnyk had died, he and the Second Respondent carried on helping with the Club as volunteers. He said that at that point there was no Committee to step down from, as there was no Chair and there were no AGMs.
24. On the subject of employees, the Club's rules state as follows: 'The Committee shall have the power to employ a Steward and such other personnel for work in the Club House as they may deem necessary'. The Claimant's contract from

2009 states that 'Gloucester Ukrainian Social Club' was the Claimant's employer, which is a different name to that used by the Club at the time of the Claimant's dismissal. However, the contract was signed by Mr Olijnyk and there was no dispute between the parties that the Claimant was employed at the First Respondent.

25. I find that the First Respondent is an unincorporated association, so has no legal identity. It therefore cannot be liable to the Claimant for any payments she is entitled to receive on the termination of her employment. As an incorporated association does not have a legal identity enabling it to enter into contracts in its own name, the members, including Committee Members, are jointly and severally liable for the association's debts and obligations.
26. The Club continued to operate after the death of Mr Olijnyk and the Claimant continued to be employed. It therefore cannot be the case that Mr Olijnyk was the Claimant's employer, which was what Mr Nebesniak suggested. I find that the Second and Third Respondents took no action to resign as Committee Members and they therefore remained in those roles at the time of the Claimant's dismissal. They were the only two Committee Members and there were no other members of the Club. This means that legally the Second and Third Respondents were the Claimant's employers and are jointly and severally liable for any monies that the Claimant is owed in connection with the termination of her employment.
27. When the Claimant's employment ended on 28 August 2023, the Claimant was 57 years' old and had 22 years' service working at the Club. She worked 37 hours a week and earnt £385 gross per week, which equated to £352 a week net.
28. Mr Nebesniak confirmed that the amount the Claimant has claimed as a redundancy payment is correct and she is entitled to 77 hours of holiday pay and 12 weeks' notice. The Second and Third Respondents said they did not have any involvement in employing and paying the Claimant, so they did not know whether the amounts were correct, but they did not dispute them. I find that on the termination of her employment, the Claimant had accrued but untaken holiday of 77 hours. She was entitled to receive payment in respect of that holiday and did not consent in writing to it not being paid. I also find that the Claimant was entitled to 12 weeks' notice on the termination of her employment.
29. I find that the Claimant took reasonable steps to try to mitigate her loss, including searching online for new employment and attending interviews. She found a job with Janes Pantry, which she started on 4 October 2024.



## Relevant law and conclusions – time limits

30. Section s164 Employment Rights Act 1996 (ERA) provides that an employment tribunal shall not consider a claim for a redundancy payment unless one of the following 4 events has taken place within the 6-month period beginning with the relevant date:
  - a. the payment is agreed and paid;
  - b. the employee makes a written claim for the payment to the employer;
  - c. the question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal; or
  - d. the employee presents a claim of unfair dismissal to a tribunal under s111 ERA.
31. There is provision for extending the time limit beyond the initial 6 months if during the 6 months immediately thereafter, the employee took one of the steps explained above, and it appears just and equitable to the tribunal that the employee should receive a redundancy payment, having regard to the reason shown by the employee for his or her failure to take any of the specified steps earlier and to all the other relevant circumstances.
32. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented within the period of 3 months beginning with the effective date of termination. That time limit can however be extended under Article 7 where the tribunal is satisfied that it was not 'reasonably practicable' for the complaint to be presented in time, and it was presented 'within such further period as the tribunal considers reasonable'.
33. Section 23(2) ERA provides that an Employment Tribunal shall not consider a complaint of unlawful deductions from wages unless it is presented before the end of the period of 3 months beginning with the date of payment of the wages from which the deduction was made. However, section 23(4) allows for the claim to be considered if the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented in time, and it is presented within such further period as the tribunal considers reasonable.
34. 'Reasonably practicable' means 'reasonably feasible': *Palmer v Southend on Sea Borough Council* [1084] IRLR 119 (CA).
35. The onus of proving that these time limit tests are satisfied, rests with the Claimant.
36. The primary time limit for the presentation of the Claimant's complaints in relation to notice pay and holiday pay was 27 November 2023. The Claimant did not

contact ACAS until 8 May 2024, at which point her complaints were already out of time. She therefore did not present her complaints within the applicable time limit. However, I find that until the date she lodged her claim with the Tribunal, the Claimant reasonably believed that she could not claim any payments from the Club. The Claimant had been told in her dismissal letter that she needed to claim her termination payments from the Insolvency Service, and she knew that the Club had no money. She chased Mr Nebesniak for the information she needed to make her claim and sought advice on the process from people not connected with the Club, including a Citizens Advice Bureau, ACAS and the Insolvency Service. She then promptly followed the advice she received. As soon as it became clear that she could not claim any termination payments from the Insolvency Service, she lodged a claim with the Tribunal, doing this on the same day that she received the Insolvency Service's rejection letter. I therefore conclude that it was not reasonably practicable for the Claimant to have made her complaints in relation to holiday pay and notice pay in time, but that she presented them within a reasonable further period.

37. The primary time limit for the presentation of the complaint of failure to pay a redundancy payment was 27 February 2024. The Claimant did not contact ACAS until 8 May 2024, at which point her complaint was already out of time. She did not write during the period of the primary time limit to anyone connected with the First Respondent requesting a redundancy payment. However, she did lodge her complaint with the Tribunal within the 6 months after 27 February 2024, on 7 June 2024. I therefore need to determine whether it would be just and equitable for the Claimant to receive a redundancy payment, having regard to the reason for her failure to take the required steps earlier, and to all the other relevant circumstances.
38. The Respondents agree that the Claimant was made redundant, and given the circumstances I have described above, the Claimant acted reasonably in waiting until she did to lodge her claim. As the Claimant did not believe she could claim any money from the First Respondent, she also acted reasonably in not seeking in writing a payment from anyone connected with it. In all the circumstances, I conclude that it would be just and equitable for the Claimant to receive a redundancy payment, and her complaint can therefore proceed.

### **Relevant law and conclusions – notice pay**

39. I have found that the Claimant was entitled to 12 weeks' notice of termination of employment, but was given only 6 days' notice. The Claimant took reasonable steps to mitigate her loss, but was unable to do so. She is therefore awarded damages equivalent to her remaining notice of 11 weeks and 1 day (which is 56 working days), calculated as follows:

- a. The Claimant was paid £385 gross per week, which multiplied by 52 weeks and divided by 260 working days gives a gross daily rate of £77.
- b.  $£77 \times 56 \text{ days} = £4,312$ .

### **Relevant law and conclusions – holiday pay**

- 40. Section 13 ERA provides that an employer shall not make a deduction from the wages of a worker unless:
  - a. the deduction is required or authorised by statute, or by a provision in the worker's contract that the worker has received or been notified of in writing, or
  - b. the worker has given prior written consent.
- 41. Under s13(3) ERA there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
- 42. I have found that the Claimant was entitled to receive payment for 77 hours of holiday following the termination of her employment. The circumstances in s13 ERA did not apply. The Claimant is therefore entitled to receive £801.57, which has been calculated as follows:
  - a. The Claimant was paid £385 gross per week, which divided by her 37 hours a week = £10.41 per hour
  - b.  $£10.41 \times 77 \text{ hours} = £801.57$

### **Relevant law and conclusions – statutory redundancy payment**

- 43. The parties agree that the Claimant was dismissed by reason of redundancy. It is clear from the evidence of the Club's financial and operational difficulties, and the attempts that have been taken to wind up the business, that this was the case. The Claimant is therefore entitled to a statutory redundancy payment of £10,780 calculated in accordance with s162 ERA, as follows:
  - a.  $1 \times £385 \times 4 \text{ years when the Claimant was aged under 41} = £1,540$
  - b.  $1.5 \times £385 \times 16 \text{ years when the Claimant was aged 41 or over} = £9,240$
  - c. Total = £10,780.

**Approved by:**

**Employment Judge Yallop**

**Dated: 9 May 2025**

Judgment and reasons sent to the parties on: 6 June 2025

Jade Lobb  
For the Tribunal

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