



EMPLOYMENT TRIBUNALS

Claimant: Mr. V Sobczyk
Respondent: Cambridge Hotel Limited
Heard at: London South
On: 25.5.22
Before: Employment Judge McLaren
Representation
Claimant In Person
Respondent: Did not attend

Written Reasons

1. By an order of the Employment Appeal Tribunal dated 26 February 2025 (which was received by the Employment Tribunal on 28 March 2025) I am invited to provide "written reasons for the judgement dated 16th of April 2024 without which the appeal may not be able to be fairly considered." This has been clarified as the date of the corrected Remedy Judgment of the decision of the 25 May 2022.
2. There are some difficulties in complying with this order. As the claim was brought in 2020 and concluded in 2023 the file has been archived and administration staff cannot find it.
3. The liability hearing for the claim brought by Mr Sobczyk against the Cambridge Hotel Ltd was heard on 12 October and 14 December 2021. The claimant attended in person and the respondent was represented by counsel. Witnesses of the respondent also attended. Judgment and reasons were signed by me on 28 December 2021 and sent out in March 2022.
4. The liability reasons explained that I did not have sufficient information on the calculation of a week's pay in order to calculate the payment in lieu of notice and statutory redundancy pay, these being the only two claims for which I found the claimant was entitled to a financial award.
5. A remedy hearing was listed on 25 May 2022. The claimant attended. The respondent did not. As reasons for the judgment were given orally at the

remedy hearing, written reasons were not provided.

6. As previously set out in correspondence of 19 February 2025 to the Employment Appeal Tribunal, at some point in 2022 the claimant made an application to correct mathematical errors in the remedy judgment. Administration sent out a certificate of correction and corrected judgment on 10 January 2023. The total amount of the award remained the same.
7. While I retained some notes of my reasoning for the remedy judgment given orally on 25 May 2022, I have not retained any notes of the reasons for the correction made by me in January 2023. I do not have a copy of the request by the claimant setting out the reason for these corrections and the figures that he gave in his evidence. Any manuscript notes that I made at the time, together with a copy of the claimant's request, would have been put on the file which cannot be found.
8. I am therefore providing written reasons for the remedy judgement given in May 2022 based on my retained notes. I have amended these as best I can based on such recollection as I have of the recalculation and the claimant's application. The reasons set out below do not therefore wholly reflect the oral reasons given, but identify the methodology adopted, which was not altered but it does not address the figures that were set out.

Reasons noted at the time the oral decision was given.

1. Judgment had been sent to the parties on 10 March 2022 and the decision was that the claims for payment in lieu of notice of four weeks pay and statutory redundancy pay succeeded. The decision also found that the claimant's hours varied from week to week. While he was paid £9 an hour from August 2020, his pay varied quite substantially from month to month based on the hours he worked
2. The amounts due to the claimant for his pay in lieu of notice and full statutory redundancy pay could not be calculated at the time as there was insufficient information which would allow me to have calculated a week's pay. I had been provided with figures on a monthly basis only. I therefore listed the hearing for remedy in order to identify a week's pay.
3. The respondent did not attend. Their representative who was on the record was contacted and he advised the tribunal he was no longer acting. The representative's details were those held on file. The file indicated that the notice of the hearing had been sent appropriately to the name on record. I concluded that it was a matter for that representative to have notified their client and to have shared the date of the employment tribunal. The respondent was aware from the liability decision that remedy was to be determined and on what basis. The liability decision expressly called this out.
4. Bearing in mind the overriding objective and the need for proportionality, as I was satisfied that the respondent had been properly notified by the tribunal of today's hearing I went ahead in their absence.
5. In reaching my decision on remedy I heard evidence from the claimant and reviewed the documentation that had been submitted as part of the first hearing bundle.

Finding of facts (remedy)

6. The claimant had previously provided some copy payslips which showed that in November 2020 he was paid £656.03 with £144 being for basic pay, the rest being holiday pay. There was also a payslip for October 2020 which showed a payment of £1269. There was no payslip for September 2020 but the claimant agreed that he had received a particular amount in September 2020. This figure was incorrectly noted in my oral reasons I no longer have a note of what the corrected figure that the claimant gave me was.
7. The claimant gave evidence that he generally worked 48 hours a week and it could vary. He accepted that in September he worked the same amount in every week and it was a busy month.
8. The figure for his pay for the whole of September can be used to calculate his pay for the period from 8 September onwards (that being the start of the 12 week period ending with the effective date of termination on 30 November 2020) by taking the figure for the whole month, dividing it by four, that being the number of weeks in that month and multiplying the resulting figure by three. That is the number of weeks in the month once one excludes the 1 - 8 September 2020.
9. I accept the claimant's evidence that no holiday was taken in this 12 week period from 8 September to 30 November 2020.
10. I have previously found that claimant had 4 continuous years of service and had worked all these years over the age of 41.

Relevant Law

11. Both payment in lieu of notice and redundancy pay are calculated based on the amount of a week's pay. The calculation of a week's pay is set out in sections 221 – 229 of the Employment Rights Act 1996. On the facts I had found, the claimant had no normal working hours and therefore the relevant section is 224.
12. This specifies that, where there are no normal working hours, the amount of the week's pay is the amount of the employee's average weekly remuneration in the period of 12 weeks ending, where the calculation date is the last ever week, with that week, and otherwise with the last complete week. The section also specifies that in arriving at the average weekly remuneration no account shall be taken of the weeks in which no remuneration was payable and remuneration in earlier weeks is to be brought in to bring up to 12 the number of weeks of which account is taken.
13. Where redundancy pay is due, then the figure for a week's pay is either that calculated using this method, or, if that sum is more, then the appropriate statutory weeks pay. At the relevant time a week's pay for the purposes of statutory redundancy was £538.

Conclusion

14. Applying the relevant law I conclude as follows. The claimant had variable pay as the hours he worked varied from week to week.

15. I have found that the claimant was paid a certain amount September for the whole month (as noted and no longer have details of this figure), £1269 for October and £144 for November. He did not take any holiday during this period. The appropriate calculation is therefore the 12 week period from 8 September to 30 November 2020.
16. As I have found that the claimant worked the same number of hours in every week in September his adjusted pay, excluding the first week, was calculated by taking the figure for the whole month, dividing it by four, that being the number of weeks in that month and multiplying the resulting figure by three.(NB the oral reasons set out the maths but I have not done so here as the figures were corrected)
17. To calculate his average weekly pay I have therefore taken the 3 week figure I calculated for September (again the oral reasons set out a figure which was then corrected and which based on the figures I do have must have been calculated as being £1,296), £1,269 for the weeks in October and £144 as the total for November.
18. This gives a total of £ 2,709 which, when divided by 12 gives a week's pay as agreed with the claimant as being rounded up to £226. This is a gross figure.
19. Pay in lieu of notice would be based on a net figure which I am unable to calculate. The gross figure is calculated as a week's pay multiplied by four. I have therefore awarded a gross figure and specified that it is less appropriate tax.
20. Redundancy pay is calculated on gross week's pay and, as the claimant's actual weekly pay is less than the statutory maximum the figure of £226 is used to calculate this. The calculation is $\text{£}226 \times 1 \frac{1}{2} \times 4$, to reflect the claimant's age and length of service. This gives a figure of £1,356. This is not subject to tax.
21. It is for these reasons that I have awarded the claimant in total £2,260.

**Approved by Employment Judge McLaren
Date: 31 March 2025**

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