EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002465/2025

Held in Aberdeen via Cloud Video Platform (CVP) on 9 July 2026

Employment Judge A Kemp

Mr P Davidson	**Claimant** **In Person**
Campsie Retail Ltd	**Respondent** **Represented by:** **Mr C Hunt -** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant was employed by the respondent from January 2020 to 30 April 2025.

2. The claimant was dismissed by the respondent by reason of redundancy on 30 April 2025.

3. The claimant is entitled to a statutory redundancy payment of **TWO THOUSAND EIGHT HUNDRED AND FORTY SIX POUNDS TWENTY FIVE PENCE (£2,846.25)** payable by the respondent.

4. The Tribunal does not have jurisdiction over the breach of contract claim and it is dismissed.

REASONS

Introduction

1. This is a Final Hearing to determine claims for a statutory redundancy payment and notice pay (which is a claim for breach of contract) by the claimant against the respondent. The claimant is a party litigant, and the respondent was represented by its director Mr Hunt. Neither had experience of Tribunal proceedings, and before the hearing commenced I explained how it would be conducted, about the giving of evidence, cross examination covering any point that was disputed or that would be (or had been) raised in

evidence by the other party, re-examination, the making of submissions, and the issues to be determined.

2. The claimant had provided documents in advance, most but not all of which were spoken to in evidence. The respondent had not provided any documents and Mr Hunt confirmed that he did not seek to do so, saying that there were none.

3. A Preliminary Heairng had been held on 13 March 2026 after which case management orders were issued, together with a Note.

Issues

4. The issues I identified at the start of the hearing, which the parties were content with, are:

   (i) Which entity was the claimant’s employer at the date of termination of employment?

   (ii) Was redundancy the reason for termination of employment?

   (iii) Was it not reasonably practicable for the claimant to have commenced the claim timeously?

   (iv) If so, was it commenced within a reasonable period?

   (v) If either claim succeeds to what remedy is the claimant entitled?

Evidence

5. The claimant and Mr Hunt each gave evidence, and I asked questions of both under Rule 41 to elicit facts.

Facts

6. I found the following facts, material to the issues before the Tribunal, to have been established:

7. The claimant is Mr Paul Davidson.

8. The respondent is Campsie Retail Ltd. It is a company incorporated under the Companies Acts.

9. The claimant employed the respondent with effect from January 2020 [no date within that month was given in evidence]. When the claimant started employment no statement of particulars of employment as required by section 1 of the Employment Rights Act 1996 was provided to him.

10. The claimant worked at a unit in the Union Square centre, Aberdeen, operated by the respondent under the trading name Dr Fix.

11. The respondent paid the claimant’s wages and issued him with payslips in the period from 30 January 2020 to 7 March 2023.

12. From 31 March 2023 to 2 April 2024 the claimant’s wages were paid by Kilwinnet Retail Ltd.

13. No document intimating the termination of his employment with the respondent was provided to the claimant. No statement of particulars of employment was provided to the claimant by Kilwinnet Retail Ltd.

14. From 29 April 2024 to 31 March 2025 the claimant’s wages were paid by The Wee Engraving Company Limited.

15. In around late January 2025 Mr Hunt, the director of the respondent, explained to the claimant that the lease for the unit at which he worked may not be renewed, and that if alternative premises could not be found it would close.

16. Attempts were made by Mr Hunt and the claimant to find alternative premises. Mr Hunt sought to sell the business of Dr Fix, which would have led to the claimant being transferred with it. Those attempts to find new premises or sell the business did not succeed. At 30 April 2025 the business of Dr Fix ended, and the claimant’s employment was terminated.

17. The respondent issued payslips for payments to the claimant on 30 April 2025 and 31 May 2025.

18. Payment of the sums due in the payslip dated 22 May 2025 was made by the Wee Engraving Company Limited.

19. The claimant was not paid any statutory redundancy payment, nor did he receive notice of termination of employment.

20. The claimant wrote to Mr Hunt on 27 June 2025 and 17 July 2025 seeking to resolve matters amicably. He sought a redundancy payment and payment for notice. Mr Hunt did not reply to either letter.

21. The claimant commenced Early Conciliation on 6 August 2025. ACAS issued a certificate for that on 17 September 2025. The Claim Form in this case was presented on 14 October 2025.

22. The claimant did not commence early conciliation on or before 29 July 2025 as he sought to resolve matters amicably with the respondent.

23. Each of the respondent, Kilwinnet Retail Limited and the Wee Engraving Company Limited are associated companies and each have Mr Hunt as director.

24. The claimant's wages, gross, prior to the termination of employment were £379.50 per week.

Law

25. The right to a statutory redundancy payment derives from the Employment Rights Act 1996 ("the Act"). Redundancy is defined in section 139. There requires to be continuous service under section 155. Details of the calculation of the payment are in section 162. There is a presumption of redundancy by section 163. A claim to the Tribunal for a statutory redundancy payment may be made within six months of the effective date of termination under section 164.

26. The employer is defined in section 230. Guidance on the issue of which entity is the employer was given by the EAT in ***Clark v Harney Westwood & Riegels [2021] IRLR 528***. Where there is no clear documentary evidence the identity of the employer is dependent on consideration of all of the evidence n very broad summary.

27. There is a requirement to issue a statement of particulars of employment under section 1, and to issue a statement of changes under section 4, of the Act. There is a right to a minimum period of notice of termination of employment under section 86 of the Act.

28. A claim for breach of contract may be pursued in the Tribunal under the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order 1994 ("the Order"). Regulation 7 of the Order provides in summary that a claim must be commenced within three months of the effective date of termination of employment, and Regulation 8B has provisions extending that for early conciliation. In summary of these provisions, early conciliation must commence one day less than three months after the effective date of termination unless it was not reasonably practicable to have done so, and that is then done within a reasonable period of time thereafter.

29. The same test appears in the law as to unfair dismissal, and case law has generally developed in that context. It is equally relevant to the present case.

30. The burden of proof is on the claimant to prove that it was not reasonably practicable to present the complaint in time: ***Porter v Bandridge Ltd [1978] IRLR 271.***

31. The question of what is reasonably practicable is explained in a number of authorities. In ***Palmer and Saunders v Southend on Sea Borough Council***

[1984] IRLR 119, a decision of the Court of Appeal, the court suggested that it is appropriate: "*to ask colloquially and untrammelled by too much legal logic, 'Was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months'*?" That, it explained, is a question of fact for the Tribunal taking account of all the circumstances.

32. In ***Asda Stores Ltd v Kauser UKEAT/0165/07,*** a decision of the Employment Appeal Tribunal, Lady Smith at paragraph 17 commented that:

"….. the word 'practicable' means possible and possible is a synonym for feasible. The short point seems to be that the court has been astute to underline the need to be aware that the relevant test is not simply a matter of looking at what was possible but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done."

33. In ***Marks and Spencer plc v Williams-Ryan [2005] IRLR 562*** the Court of Appeal stated that "*The first principle is that section 111(2) should be given a liberal interpretation in favour of the employee."* It set out the issues to consider when deciding the test of reasonable practicability, which included (i) what the claimant knew with regard to the time-limit; (ii) what knowledge the claimant should reasonably have had; and (iii) whether he was legally represented.

34. In ***Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490***, the Court of Appeal re-stated that the test of reasonable practicability should be given a liberal interpretation in favour of the employee. The claimant in that case did not have professional advice, which was held to be a factor in his favour.

35. The nature of the test was considered in ***Cygnet Behavioural Health Ltd v Britton [2022] EAT 18***, in which it was stated that

"the employment judge directed himself that section 111(2) should be given a liberal construction in favour of the employee, citing **Dedman v. British Building & Engineering Appliances Ltd [1974] ICR 53, CA***. In my judgment, I note that this is not reflective of the way that section 111(2) has been interpreted and applied by the Court of Appeal in more recent cases. The test is a strict one and, perhaps in contrast to the 'just and equitable' extension in other statutory contexts, there is no valid basis for approaching the case on the basis that the ET should attempt to give the 'not reasonably practicable' test a liberal construction in favour of the claimant."*

36. It is, with great respect to the EAT, difficult to understand that last sentence except in the context of a distinction with the test in discrimination law. The reference to a liberal interpretation in favour of the employee had itself been made in ***Williams-Ryan,*** which the EAT in ***Britton*** cited, and although

Brophy was not mentioned it had re-stated that principle. ***Williams-Ryan*** and ***Brophy*** are both Court of Appeal authority. ***Britton*** was also doubted by the EAT in ***Cross v NHS Somerset Clinical Commissioning Group [2024] EAT 20.*** Each of the two Court of Appeal authorities is not necessarily binding on a Tribunal in Scotland but they are worthy of considerable respect, particularly in relation to a UK-wide statutory provision where there is nothing particular in Scots Law which would not make it applicable. I consider that the Court of Appeal comments should be preferred to those in ***Britton,*** and followed, in this respect.

37. It appears to me firstly that the statutory words must be applied, and secondly that in doing so a liberal interpretation of those words in favour of the employee is permissible, against the statutory test of reasonable practicability, and not whether what the claimant did was reasonable. There is no strict approach, but the onus falls on the claimant. All of the circumstances are to be considered when making that assessment.

Discussion

38. I deal with the issues as follows:

Who was the employer?

39. It was clear that both witnesses sought to give honest evidence, and the factual dispute centred around which entity was the employer. Where there was a dispute of fact I preferred the evidence of the claimant. It was given in a straightforward and candid manner, referenced documents he had produced, and I considered it convincing. The evidence for the respondent was contradicted by documents the claimant had produced, the respondent not having done so, and he accepted that there had been breaches of statutory requirements, not least as to a statement of particulars of employment.

40. It was not disputed that from January 2020 onwards, at least for a period, the employer of the claimant was the respondent. Mr Hunt then alleges that it changed initially to Kilwinnet Retail Ltd and then the Wee Engraving Company Limited, and that that latter entity was the employer at the time of termination. He alleges that the respondent only paid sums at the end, in effect, to assist. The Wee Engraving Company Limited had been placed in voluntary liquidation, a matter addressed in the Preliminary Hearing Note.

41. I did not accept the respondent’s evidence. It is clear that simply paying wages from another company does not change the employer. Many employers pay wages through different companies. If there is to be a change in employer, at the very least that requires to be intimated to the employee, and confirmed in writing. There requires to be a statement of particulars issued by an employer

at the commencement of employment. None of the entities did so. If there is a change, that change must be confirmed in writing. That was also not done. If there is liable to be a transfer of undertaking under the Transfer of Undertakings (Protection of Employment) Regulations 2006, as would appear almost inevitable from what Mr Hunt described, that required written intimation in advance under those Regulations. No such intimation was suggested. That none of those things happened is strong evidence against what the respondent sought to argue for.

42. That the respondent was the employer it seemed to me did not, as a matter of fact or law, change. Mr Hunt said that emails had been sent to the claimant about the employer at the time, with very basic detail about the new employer, but they were not produced. He said that all emails had been lost about eighteen months ago. More significantly however he had not put to the claimant in cross examination that emails had been sent, nor had the respondent applied for an order for disclosure of those emails from the claimant who allegedly received them, as it could under the Rules have done. I did not consider that the respondent had proved that any document intimating a proposed change of employer had been sent.

43. The claimant’s evidence was that the respondent had been his employer. That was supported by the last two payslips issued by the respondent at and around the time of termination.

44. In any event, even if that had been done, the parties are clearly all associated employers for the purposes of the Act, and what was said to have been done as a form of assistance at the end of the employment was not vouched by any written document. Instead it was contradicted by there being the said last two wage slips issued by the respondent.

45. The sense from the evidence as a whole is that Mr Hunt did not appreciate his legal duties, operated across the three companies in a very loose manner, and that the employer at the time of termination was the respondent. My finding is that the respondent had been the employer throughout the claimant’s employment.

Was there a redundancy

46. The respondent was therefore the employer at the date of termination. It was not in dispute but that the employment came to an end on 30 April 2025. The effective date of termination was that date, and it was a dismissal by the respondent.

47. The business that employed the claimant closed down. There is a statutory presumption of redundancy, and in any event it is as clear as it can be that the claimant was redundant. That was the sole reason for the dismissal.

48. It is clear that the claimant is entitled to a statutory redundancy payment, and that his claim for that is within the jurisdiction of the Tribunal.

Is there jurisdiction over the breach of contract claim

49. I turn to the claim for notice pay, which is for breach of contract. It was not pursued in time. Early Conciliation was not commenced by 29 July 2025 which was the date by which that was required. The test I must apply is explained above. The onus is on the claimant to establish that it was not reasonably practicable to have commenced the claim on time. The only reason for being late put forward by the claimant in his evidence is that he sought to resolve matters amicably. That is laudable, but I regret to conclude that it is not sufficient given the authorities in this area even giving the provision a liberal construction. In all the circumstances it seems to me that investigating when the claim ought to have been commenced by, then commencing Early Conciliation within the time period required, which still allowed a possibility of amicable resolution as that is precisely what that process is intended to achieve, was reasonably possible. In my view it was simple to have been achieved, with nothing indicating in the evidence that that was not the case. I do not consider that the onus has been discharged and I must therefore hold that the claim for breach of contract in relation to notice pay is not within the jurisdiction of the Employment Tribunal. Accordingly it must be dismissed.

50. For the avoidance of doubt that does not mean that the claimant cannot proceed with a claim for breach of contract. The timebar provisions for that claim in the civil courts are of five years.

What remedy is the claimant entitled to

51. I turn to remedy. There was limited evidence as to pay. The payslip for 30 April 2025, for that month as payslips were issued at the end of the month, was issued by the respondent and showed a gross pay of £1,644.50 and a net pay of £1,479.94. Payslips for the two preceding months were not before me. Bank records for the claimant showed that he received net payments for March 2025 of £1,452.09 and for February 2025 of £1,527.80 both from the Wee Engraving Company Limited.

52. The calculation of a week’s pay for these purposes is determined by Chapter II of Part XVI of the Act. The claimant’s earnings varied on a monthly basis according to the hours worked. In brief summary an average of them is taken for the period of twelve weeks preceding the termination.

53. Doing the best I can from the material I have it appears to me appropriate to base it on the gross monthly pay for April 2025, although it may have been slightly higher overall, such that this is the lower figure than it might have been had there been fuller materials before me. That equates to a week’s pay of

£379.50. Applying the statutory formula I award the claimant the statutory redundancy payment set out above.

Penalty

54. Employment Tribunals have a discretionary power in certain circumstances to order employers to pay a financial penalty to the Secretary of State, under the Employment Tribunals Act 1996 section 12A, which was inserted by section 16 of the Enterprise and Regulatory Reform Act 2013. It has subsequently been amended.

55. The provision is as follows:

“***12A Financial penalties***

(1) Where an employment tribunal determining a claim involving an employer and a worker—

(a) concludes that the employer has breached any of the worker's rights to which the claim relates, and

(b) is of the opinion that the breach has one or more aggravating features,

the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).

(2) The tribunal shall have regard to an employer's ability to pay

(a) in deciding whether to order the employer to pay a penalty under this section;

(b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.

(3) The amount of a penalty under this section shall be—

(a) at least £100;

(b) no more than £20,000.

This subsection does not apply where subsection (5) or (7) applies.

(4) Subsection (5) applies where an employment tribunal—

(a) makes a financial award against an employer on a claim, and

(b) also orders the employer to pay a penalty under this section in respect of the claim.

(5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—

(a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;

(b) if the amount of the financial award is more than £40,000, the amount of the penalty shall be £20,000.

(6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—

(a) considers together two or more claims involving different workers but the same employer, and

(b) orders the employer to pay a penalty under this section in respect of any of those claims.

(7) In such a case—

(a) the amount of the penalties in total shall be at least £100;

(b) the amount of a penalty in respect of a particular claim shall be—

(i) no more than £20,000, and

(ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.

But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).

(8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section

(9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—

(a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal's recommendation),

> *(b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc),*
>
> *(c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal's recommendation), or*
>
> *(d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.*
>
> *(10) An employer's liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.*
>
> *(11) In this section—*
>
> *"claim"—*
>
> *(a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and*
>
> *(b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;*
>
> *"employer" has the same meaning as in Part 4A of the Employment Rights Act 1996, ………*
>
> *"financial award" means an award of a sum of money, but does not including anything payable by virtue of section 13*
>
> *"worker" has the same meaning as in Part 4A of the Employment Rights Act 1996, …….".*

56. This power was granted to tribunals, according to the Explanatory Notes to the 2013 Act by which that amendment was introduced:

    "to encourage employers to take appropriate steps to ensure that they meet their obligations in respect of their employees, and to reduce deliberate and repeated breaches of employment law".

57. The Explanatory Notes also comment on the factors that a Tribunal might take into account as follows:

"An employment tribunal may be more likely to find that the employer's behaviour in breaching the law had aggravating features where the action was deliberate or committed with malice, the employer was an organisation with a dedicated human resources team, or where the employer had repeatedly breached the employment right concerned. The employment tribunal may be less likely to find that the employer's behaviour in breaching the law had aggravating features where an employer has been in operation for only a short period of time, is a micro business, has only a limited human resources function, or the breach was a genuine mistake."

58. It seems to me that the respondent's position was untenable. It had failed to comply with a number of its statutory duties. They included providing a statement of particulars of employment, although a claim for that was not made by the claimant, payment of the redundancy payment and damages for breach of contract in relation to notice due to the claimant. They sought to take advantage of the arrangements Mr Hunt made over companies he appears to control, and the absence of the very documentation that is required from employers.

59. The position at the start of employment was not disputed, and that was that the respondent was the employer. No statement of particulars was issued, but payslips were in their name. Despite there not being a claim for the absence of a statement of particulars before me it is I consider a factor that is not irrelevant to the question of penalty. The last two payslips, those at termination, were also in name of the respondent. For the reasons I have found, the employer was the respondent.

60. It is beyond serious argument but that redundancy was the reason for the termination and that a statutory redundancy payment was payable by the respondent. The failure to do so is I consider wholly unreasonable, and likely to be a deliberate attempt by the respondent at avoiding the duty it has in law.

61. As there was a redundancy, notice required to be given. Mr Hunt's evidence of a discussion about the possibility of the closure of the business comes nowhere near giving what amounts in law to notice of termination of employment. The respondent appears to be in breach of contract in not giving that notice, and it also appears to me on a provisional basis that although the claim for that is not within the jurisdiction of the Tribunal, for the reason given above, that is a matter of background that is not irrelevant to consideration of penalty.

62. I consider that there might have been a breach of the claimant's rights which was serious, in that he was quite clearly dismissed for redundancy without the appropriate payments being made to him, and that there were aggravating features by the actions of the respondent in not paying what was clearly due,

and also by seeking to rely on its own failures to provide documentation that the law requires. It is appropriate to allow the respondent to comment on the position before any decision is taken, which will also give it an opportunity to make payment to the claimant voluntarily of notice, being five week's pay which is the minimum period of notice under section 86, should it choose to do so, without further litigation being necessary. If it does, which is a matter for it, and confirms that it has done so in its response, that is a matter that will go substantially in its favour in this exercise of discretion of considering whether or not to impose a penalty.

63. I also require to consider the issue of ability to pay under sub-section 2(a), and the respondent has an opportunity to set out that, with supporting documentation, and make any other comments on any circumstance it considers relevant.

64. The respondent has 14 days from the date of this Judgment being sent to it to respond in relation to the issue of penalty with its written arguments and any supporting documentation it wishes to provide.

65. A decision on whether or not to issue a penalty will be made after the respondent has responded or the 14 day period has elapsed. For the avoidance of doubt, if a penalty were to be imposed that is not paid to the claimant, but to the Secretary of State.

Date sent to parties **17 July 2026**