



EMPLOYMENT TRIBUNALS

Claimant: Roxanne Tantum
Sherry Sharp (apologies given for non-attendance)
Kirsty Pagan
Melissa Tate

Respondent: Clare West T/A Sher plus two hairdressers

Heard at: Nottingham

On: Monday, 26 March 2018

Before: Employment Judge Britton (sitting alone)

Representatives

Claimant: Sarah Newton (friend and lay representative)
for all 4 claimants

Respondent: Not attended

JUDGMENT

1. As to the claims other than that for redundancy, then having been presented out of time, it is hereby determined that it was not reasonably practicable to have presented the claims within time and that they were presented within a reasonable period thereafter. Thus, the claims can be pursued.
2. The claims of **Roxanne Tantum** succeed as follows:
 - 2.1 The Respondent is ordered to pay her a redundancy payment of £1,260. This is calculated as follows:

Number of years' of completed service at effective date of termination 16 June 2016 = 7.

Age of effective date of termination = 30.

Wage was £180 per week

Therefore, redundancy payment = $7 \times 180 = £1,260$.

For the purposes of The Secretary of State Section 166 of The Employment Rights Act 1996 applies to this section of this award.

- 2.2 The Respondent is ordered to pay her damages by way of failure to pay statutory notice pay, namely $7 \times 180 = \text{£}1,260$ gross, taxable if applicable in the hands of the recipient.
- 2.3 The claim for unlawful deduction (non-payment) of wages succeeds. The Respondent will pay the Claimant compensation of 2 days wages (namely $\text{£}95$ gross taxable in the hands of the recipient).
- 2.4 The claim for non-payment of outstanding statutory holiday pay succeeds and the Respondent will pay the Claimant $\text{£}224.10$.

3. As to **Kirsty Pagan**:

- 3.1 The Respondent is ordered to pay the Claimant a redundancy payment of $\text{£}1,320$. For the purposes of The Secretary of State the calculation is as follows:

Date of birth 11/4/1987 = 30 at effective date of termination 16 June 2017 = 14 years' completed service.

Weekly wage = $\text{£}120$

Therefore, redundancy payment = $11 \times 120 = \text{£}1,320$.

For the benefit of The Secretary of State Section 166 of The Employment Rights Act 1996 applies to this section of this award.

- 3.2 The Respondent is ordered to pay the Claimant damages by reason of breach of contract (failure to pay notice pay) in the sum of $\text{£}1,440$ ($12 \times \text{£}120$) taxable in the hands of the recipient.
- 3.3 The claim for unpaid statutory holiday entitlement succeeds. Three days holiday pay being the entitlement and the Respondent is accordingly ordered to pay the Claimant compensation in the sum of $\text{£}298.80$.

4. As to **Melissa Tate**:

- 4.1 The claim for statutory redundancy payment succeeds and the Respondent is ordered to pay the Claimant the sum of $\text{£}1,800$. For the benefit of The Secretary of State the calculations are as follows:

Date of birth 4/1/1980. Age at effective date of termination 16 June 2017 = 37.

Continuity of service commenced 20 October 2001.

A weekly wage was $\text{£}120$.

Therefore, the redundancy payment is $15 \times \text{£}120 = \text{£}1,800$.

For the benefit of The Secretary of State Section 166 of The Employment Rights Act 1996 applies to this section of this award.

- 4.2 The Respondent will pay the Claimant damages by way of compensation for breach of contract (failure to pay statutory notice pay) with the

entitlement being $12 \times \text{£}120 = \text{£}1,440$ gross taxable in the hands of the recipient.

5. As to **Sherry Sharp**:

- 5.1 The Respondent is ordered to pay the Claimant statutory redundancy payment of $\text{£}6,240$. The calculation is as follows:

Date of birth 29/02/1964 = 53 at effective date of termination (16/06/2017).

Completed years' of service, employment having started in October 1983 = 33 years.

Weekly wage (32 hours \times 7.50) = $\text{£}240$.

Therefore, statutory redundancy entitlement = $26 \times 240 = \text{£}6,240$.

For the benefit of The Secretary of State Section 166 of The Employment Rights Act 1996 applies to this section of this award.

- 5.2 The Respondent will pay the Claimant damages for breach of contract (failure to pay notice pay) of $(12 \times \text{£}240) = \text{£}2,880$.
- 5.3 The claim for non-payment of outstanding statutory holiday pay succeeds and the Respondent will pay the Claimant $\text{£}298.80$ taxable in the hands of the recipient.
- 5.4 The claim for unlawful deduction (non-payment) of wages succeeds. The Claimant having not been paid for her last two days of working, and the Respondent will pay the Claimant compensation of $(16 \times 7.5) = \text{£}120$ taxable in the hands of the recipient.

REASONS

Background

1. Three of the Claimants have attended, apologies given for non-attendance by Sherry Sharp, and they have all been represented before me by Sarah Newton (friend and lay representative). The Respondent has not attended and has provided no explanation.
2. The Claimants presented their claim to Tribunal (ET1) on 9 November 2017. There was an ACAS EC certificate but of only one day's duration: 3 November 2017. The claims are for redundancy (RPT): notice pay; outstanding wages and holiday pay. The time limit for presenting the RPT is 6 months from the Effective date of termination (EDT) but for the other claims it is three months. The EDT for reasons I shall come to was 16 June 2017, thus other than the RPT the claims are out of time. Thus in due I shall determine whether it was not reasonably practicable to present the claim before 9 November and so that I can extend time.. As to the pleaded scenario, the four claimants (all of them hairdressers) had lengthy

service accrued with the Respondent hairdresser, in particular by reason of two sale and purchases of the business over the years, which constituted TUPE's. Of that I have no doubt.

3. On Thursday 16 June, they were presented, and in particular by Sherry and Roxanne, with clear proof that the business had shut. There was a notice to that effect posted on the front door; the shutters were down and the keys that the hairdressers had to allow themselves into the premises, would not work. It turned out that the local authority, which owned these premises, had foreclosed for substantial rent arrears, and furthermore I've learnt today, it became clear as the weeks ensued that the Respondent, Clare West, hadn't paid such as the electricity or the water bill for some time.
4. Attempts to discuss matters with her came to nought, suffice it to say that she didn't want to talk about it. In those circumstances all these Claimants lost their jobs. The effective date of termination is 16 June 2017.
5. Over the next few weeks, with the help of Sarah, there was an attempt made to try and revive a hairdressers on this site, which is in a deprived part of the Nottingham suburbs, namely Bestwood. The hairdresser facility had over the years served the community well and was in many ways a hub. Suffice it to say that via the good offices of the local authority, eventually Sarah (by way of forming a limited company – namely Evolution Hair Studio Limited) was granted a new tenancy of the premises. But there was a delay in that happening because the council first of all had to allow Clare West the opportunity to clear the arrears, and in that respect avoid the foreclosure, albeit the Council had changed the locks; but she did not take the opportunity – doubtless because she has no funds. Once this period had ensued the hairdressers re-opened and the Claimants resumed working. Bu the gap in time is such that there was no TUPE from Claire Ward to Evolution.
6. So I can readily see that in terms of the presentation of the Claim first these Claimants were preoccupied with helping Sarah to see if they could salvage something out of what had happened and keep themselves in a job. In passing, neither Sarah nor the others, knows anything at all about employment law.
7. What then happened was via ACAS they tried to see if they could get the monies that they are owed sorted out with Clare in some satisfactory manner. They also contacted the Insolvency Service, but were informed that as Clare was not formally insolvent it was under no obligation to pay the outstanding monies. Finally, Sarah, who I find to be a very honest person, when she was in contact with ACAS starting well before the issue of the ACAS EC, was not told that there was a three month time limit to present a claim.
8. In the circumstances I therefore conclude that it was not reasonably practicable to bring the claims for such as notice pay and outstanding wages before this happened. Therefore, I am going to permit that part of the claim to proceed. The remaining claiming for RPT was of course always in time.
9. I have considered the response (ET3) from Clare West. However, it is

untenable. She seems to be seeking to argue that because the Claimants in some way or another obtained the premises and what was inside them, that she escapes her liabilities. But first, I have already made the point that it was the local authority that foreclosed upon her and then she closed the business. Second the Claimants were then only allowed access by the local authority to collect their own possessions and in particular their scissors and other personal tools of their trade. They took nothing else and Sarah at the onset of the new business purchased such as new chairs.

10. So, what it means t put simply, is that when Clare closed the business, that was a redundancy for the Claimants. The new business did not get going for at least a month thereafter; and therefore there is no continuity and there was no transfer (TUPE) – if that is what she is trying to argue.
11. As to the length of service of these Claimants, Clare seems to be saying: “well I’m not sure when they started, but I think it was X date, but I don’t have any particulars.” But she has not come along today¹ to provide any evidence at all to contradict each of the Claimants who have been able to tell me exactly when they started; or in the case of Sherry, because she couldn’t come today because she was sick, the other three Claimant’s all know when Sherry started as they have always worked closely. So, I have all the information that I need.
12. Suffice it to say, none of these Claimants have been paid redundancy, or wages in lieu of notice, or applicable outstanding wages for the week when the business was shut, or accrued outstanding holiday pay. Accordingly I have made the judgments set out above.
13. Finally, for the benefit of The Secretary of State, of course as regards the redundancy payment the provisions of Section 166 of The Employment Rights Act 1996 apply to the awards that I have made.

Employment Judge P Britton
Date: 9 May 2018

JUDGMENT SENT TO THE PARTIES ON

19 May 2018

FOR THE TRIBUNAL OFFICE