Case No: 2300791/2022
2300792/2022

EMPLOYMENT TRIBUNALS

Claimants: **(1) E Feltin**
(2) C Nelson

Respondents: **(1) Voombox Ltd**
(2) Atlas Mobile Ltd
(3) Marriage Allowance Benefit Ltd
(4) Lead Labs Ltd
(5) Data Labs Global Ltd

Heard at: London South via CVP **On:** **13 October 2022**

Before: Employment Judge Atkins (sitting alone)

Representation
Claimants: Attended in person
Respondents: Represented by Mr Simon Blackburn, director of the Respondents

RESERVED JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. Upon withdrawal by the Claimants, the claim against the First Respondent is dismissed.
2. Upon withdrawal by the Claimants, the claim against the Second Respondent is dismissed.
3. Upon withdrawal by the Claimants, the claim against the Third Respondent is dismissed.
4. Upon withdrawal by the Claimants, the claim against the Fourth Respondent is dismissed.
5. In respect of the Fifth Respondent:
   (a) the claims of unfair dismissal are not well founded and so they fail;
   (b) the claims in respect of redundancy payments are well founded, and the Fifth Respondent must pay:
      a. the First Claimant the gross sum of £9,711.46;
      b. the Second Claimant the gross sum of £10,865.30;
   (c) the claims in respect of payments in lieu of notice are well founded, and the Fifth Respondent must pay each Claimant the gross sum of £7,500; and
   (d) the claim in respect of payments in lieu of holiday are not well founded and so they fail.

REASONS

Claims and Issues

1. The First Claimant claims that he was unfairly dismissed by one or more of the Respondents. He also claims that he is owed a redundancy payment, payment in lieu of notice, and unpaid holiday pay.

2. The Second Claimant also claims that he was unfairly dismissed by one or more of the Respondents. He also claims that he is owed a redundancy payment, payment in lieu of notice, and unpaid holiday pay.

3. The Respondents are corporate bodies which are said to act as vehicles for various work streams. The First and Second Claimant worked on these work streams and were paid by the corporate bodies at various times.

4. It is necessary to go into some detail about the Respondents.

5. The First Respondent is Voombox Ltd, company number 12060318, incorporated in June 2019. The First Claimant was a director of this company from incorporation in June 2019 until June 2021, and was also a shareholder. This company was dissolved on 13 December 2022 and no action can now continue against it.

6. The Second Respondent is Atlas Mobile Ltd, company number 08376624. The First Claimant and Mr Blackburn were directors between 2013 and 2019. There is evidence in the bundle that the First Claimant was a shareholder in 2016, and that the First and Second Claimants were shareholders in 2018. This company was dissolved on 27 October 2020 and no claim can be made against it.

7. The Third Respondent is Marriage Allowance Benefit Ltd, company number 10929871, incorporated in 2017. The current company name was adopted in February 2022. This company was formerly named Vaniki Ltd between February 2022 and June 2019. Before that, it was named Lead Labs Ltd between incorporation in 2017 and June 2019. This First Claimant was a director between 2017 and July 2018. The Third Respondent was 50% owned by the Second Respondent from incorporation in 2017 until June 2019. The First Claimant held shares in this company in 2019 but appears to have passed on his shares in May 2021. This company is still active.

8. The Fourth Respondent is Lead Labs Ltd, company number 12060054, incorporated in June 2019. The First Claimant was a director and a shareholder of this company. This company upon incorporation took up the name given up by the Third Respondent. This company was dissolved on 27 October 2020 and no claim can be made against it.

9. The Fifth Respondent is Data Labs (Global) Ltd, company number 11137754, incorporated in January 2018. It was 100% owned by the Third Respondent from incorporation in January 2018 until November 2018. It was then 100% owned by the Second Respondent until June 2019. The First Claimant became a shareholder in June 2019 and still held shares in 2021. The First Claimant was a director between incorporation in 2018 until June 2021. This company is still active although an application has been made for it to be struck off the register. This application was suspended on 11 October 2022 when the Registrar received an objection to it being struck off.

10. There is another linked company, Pension Tax Refund Ltd, company number 04132964, which is not listed as a Respondent. This company remains active. The First Claimant was a director between April 2001 and January 2020. There is evidence in the bundle that the First Claimant was also a shareholder in 2001. Mr Blackburn has been and remains a director of this company. It was previously named:
    (a) Safari Mobile Ltd from June 2013 to March 2022;
    (b) Switchfire Ltd from June 2001 to June 2013; and
    (c) Regalmatch Ltd from incorporation in December 2000 to June 2001.

11. At the hearing, the parties agreed that the Claimants were employees, and that the Fifth Respondent was the employer at the time that the employment ended.

12. The Claimants accordingly withdrew their claims against the other Respondents. I note that in any case the claims against the First, Second, and Fourth Respondents could not longer continue due to their dissolution, but this is now academic.

13. A list of issues was not prepared prior to the hearing. I accordingly canvassed the issues with the parties. They were content that the issues for me to decide are:
    (a) Whether the Claimants were unfairly dismissed, and if so, what compensation was owed to them.
    (b) Whether the Claimants were entitled to redundancy pay, and if so, what pay was owed.
    (c) Whether the Claimants were entitled to payment in lieu of notice and, if so, what payment was owed.
    (d) Whether the Claimants were entitled to payment in respect of holiday pay and, if so, what payment was owed.

Procedure, documents, and evidence heard

14. I remind myself that the purpose of this judgment is to explain my decision and the reasons for it. The parties are well aware of the issue and the evidence. It is accordingly not necessary to cover every single piece of evidence in order to do so. I can confirm that I have read and taken into account all of the evidence, whether or not it is explicitly mentioned in this judgment.

Documents

15. I have seen a bundle submitted by the Claimants which is paginated to 306 pages.

16. At the hearing it emerged that the Respondents had sent a letter to the Tribunal dated 7 July 2022. A copy was provided on the day. The letter indicated that attached to it were a number of further documents. They are listed as:
    (a) An annual return for Pension Tax Refund Ltd (then Safari Mobile Ltd), filed in January 2016.
    (b) An annual return for the Second Respondent, filed in January 2016.
    (c) An accountant's letter dated August 2017 regarding the partition of Pension Tax Refund Ltd (then Safari Mobile Ltd).
    (d) An annual return for Pension Tax Refund Ltd (then Safari Mobile Ltd), filed in December 2017.
    (e) A SH03 return for the Second Respondent.
    (f) An email from the First Claimant confirming the closure of the Second Respondent.
    (g) A return for the Second Respondent confirming its closure.
    (h) A return for Lead Labs Ltd.
    (i) A return for Lead Labs Ltd confirming its closure.
    (j) A business plan drafted by the First Claimant.
    (k) A return for Data Labs Ltd.
    (l) P11s, P45s and salary slips for the First and Second Claimants.
    (m) Some further emails between the Claimants and the Respondents concerning the redundancy proposal.

17. At the hearing the Respondents produced copies of (b), (k), and (m). They also produced the P45s and salary slips listed at (l), but not the P11s. Documents (b), (h), and (k) were also separately included in the bundle.

18. It took some time to establish whether any more of these documents had in fact been served. Eventually, the original file was examined. The email which attached the letter of 7 July 2022 did not have any other attachments. No other email could be found with any of these documents attached.

19. It follows that, other that those documents listed at paragraph 17 above, none of the further documents supposedly supplied by the Respondent had in fact been supplied.

20. I do not consider that there is any need for me to see any of the missing documents to resolve the issues in the case.

Evidence

21. The First and Second Claimants gave witness evidence on their own behalf.

22. The First Claimant set out how he had had been one of the founders of the first company in the group in 2001 (now named Pension Tax Refund Ltd and not a Respondent), with Mr Simon Blackburn. He was a director of the

company and took the title of Operations Director. Mr Blackburn was also a director and took the title of Managing Director.

23. The business grew over the years. When a new business was set up, other companies were set up as vehicles for them (namely, the Respondents). The First Claimant was a director of them and took the title of Operations Director in each one. Mr Blackburn also duplicated his role between the Respondent. The First Claimant was paid his remuneration from one or other of the companies at any given time.

24. It is not necessary to go through the history of all of the companies, with one exception. In 2013, apparently for tax reasons, the company now named Pension Tax Refund Ltd surrendered a part of its business to the newly incorporated Second Respondent. This has been described as a 'demerger' of the now named Pension Tax Refund Ltd. I will come to the arguments about the effect of this 'demerger' below.

25. The First Claimant's P60 and wage slips confirm that, at the time his employment came to an end, he was being paid by the Fifth Respondent, who is listed as his employer.

26. The First Claimant described in his evidence how the various companies were run as a single going concern. They shared an office address (at various times 105 Ladbroke Grove, 66 Wilton Road, Capital Tower and then Berkely Square House), a telephone number, and interchangeable email addresses. The Claimants, Mr Blackburn, and the management team all worked on the different work streams for which each different company was a vehicle. The Claimants, Mr Blackburn, and other members of the management team had the same role and title at each company. The companies were provided with HR support from the same provider. The companies had the same registered office and the same auditors.

27. The First Claimant also said that he was provided with work equipment, including a computer and a high speed connection line, by the companies. He did not identify any particular company which provided him with this work equipment.

28. The First Claimant said in oral evidence that he did not know, and was not told, which company had formally employed him: he took the view that he was employed by the group of companies as a whole. In the alternative, he took the view that his employment was TUPE transferred to each company within the group as his formal employment moved from company to company.

29. The First Claimant accordingly contends that his employment was continuous since 2001. The continuity of his employment is established either by virtue of the companies being "associated employers" within the meaning of section 231 Employment Rights Act 1996, or by his employment having been TUPE transferred between the companies when each one was remunerating him.

30. It is not wholly clear what the First Claimant was paid, or by who, over this period. During the early days of the business, the First Claimant says he was not paid cash (between 2011 and 2003 he has a separate income from providing consultancy services). There is a record of National Insurance contributions which indicates that the First Claimant was receiving a salary by the financial year 2004/5. However, there is very little evidence as to what he was paid over the years, or by whom. The First Claimant acknowledges that his salary fluctuated over the years. His salary was only a part of his reward package, which included other items such as shares, dividends, consultancy fees, and licensing fees. His reward package was paid in such a way as to enable the least amount of tax to be paid upon it. There is no suggestion that this was in any way unlawful under the taxation legislation applicable at the time. His salary was paid from time to time by different companies within the group, most recently by the Fifth Respondent as can be seen from the payslips and P45s supplied by the Respondent. He did not have any control over who paid him, this was arranged by the Finance Department which supported all of the Respondents.

31. There is evidence in the bundle of payments made to the First Claimant from Pension Tax Refund Ltd (between 2001 and 2005, and in 2009-2013). Some of these payments were made into a joint account held by the First and Second Claimants but there is other evidence which indicates some of these payments were made on respect of the First Claimant. There are two payments from Pension Tax Refund Ltd in May and June 2020, described as payments in respect of “consultancy”.

32. There is also evidence in the bundle of payments made to the First Claimant by the Second, Fourth and Fifth Respondents.

33. The First Claimant says that he and Mr Blackburn did not bother drawing up a contract of employment at the time the business was started in 2001. This was because they did not know if it would last.

34. The First Claimant says that employment contracts were drawn up for other staff employed by the business. It is not clear why at no point one was not prepared for the First Claimant.

35. On 4 June 2021 Mr Blackburn became the majority owner of the Respondents. On the same date, the Claimants were furloughed.

36. There is a letter in the bundle dated 11 June 2021 which said that the relationships between the First Claimant and Mr Blackburn had irretrievably broken down, and offered the First Claimant the option of resigning his directorships before Mr Blackburn, as majority shareholder, removed them. On 20 June 2021 Mr Blackburn (as majority shareholder) removed the First Claimant from his roles as a director of the Respondents.

37. On 5 October 2021 Mr Blackburn gave the Claimants a letter (dated 1 October 2021) saying that they were at risk of redundancy. The letter says that this is because the Respondents have been severely affected by the COVID pandemic, have suffered trade and investment losses, have had to

stop marketing, and there is no more work for the Claimants to do. The letter suggests that the Claimants' employment began on 1 April 2021. The letter invites the Claimants to a meeting to discuss the potential redundancy and possible alternatives to it. It informs the of their right to bring a colleague or union representative and confirms a final decision will not be taken until after consultation.

38. On 19 October 2021 the First Claimant write to Mr Blackburn to claim that both Claimant's continuous employment began in 2001.

39. On 1 November 2021 Mr Blackburn wrote to the First Claimant saying that the effect of the 'demerger' between the company now named Pension Tax Ltd and the Second Respondent was that the employment relationship was severed. It was said that a complete separation between the two companies, including the end of the Claimants' employment relationship with the company now named Pension Tax Ltd, was necessary to satisfy HMRC rules on business investments.

40. On 3 and 15 November 2021 the First Claimant had meetings with Mr Blackburn to discuss the proposed redundancy.

41. The First Claimant records that on 3 November 2021 Mr Blackburn told him that the reason for the redundancy was because the Respondents' financial situation continued to deteriorate, and that they were being kept open only to process claims as they came in and to manage the client accounts. Mr Blackburn was pessimistic that anything could be done apart from winding the companies down. Mr Blackburn also said that "Greg" and "Antonia" were also being made redundant for the same reason, but a number of other staff were being kept on to do administrative tasks ("James, Dace and Jude"). Mr Blackburn proposed that the First Claimant, "Greg" and "Antonia" would receive a redundancy payment of £5,000. Mr Blackburn told the First Claimant that he would remain in post himself to manage the Respondents while they were being wound down.

42. On 16 November Mr Blackburn gave the First Claimant a notice of redundancy, terminating his employment. It said that his position was redundant due to the financial difficulties being experienced by the Respondents. It said that his notice period was one month, and that accordingly his notice would terminate in November 2021. It offered him a payment of £5,000. This represented a £2,500 salary for November and December 2021. These were paid to the First Claimant on 30 November 2021 and 3 December 2021 respectively.

43. On 13 January 2022 at approximately 12:50pm the First Claimant appealed the decision to make him redundant. He asserted that his continuous employment began in 2001, that his selection for redundancy was not fair (given that he was capable of taking an alternative role, namely that assumed by Mr Blackburn), and that the correct process was not followed.

44. On 13 January 2022 at approximately 1:30pm Mr Blackburn replied. He said that he was dealing with a recent bereavement and would not be able to attend to this matter for 2 weeks.

45. On 13 January 2022 at approximately 2:00pm the Second Claimant also appealed the decision to make him redundant. He adopted, in the round, the same points made by the First Claimant,

46. On 17 January 2022 Mr Blackburn replied to both Claimants. He denied that the Second Claimant had worked for the company for 20 years. He asserted that the First Claimant was responsible for a c£2,000,000 loss on unrealistic business proposals relating to software and marketing. He declined to engage with the matter any further.

47. Since January 2022 the First Claimant has sought alternative employment in a number of roles.

48. The Second Claimant is the civil partner of the First Claimant. The Second Claimant says that he had been employed by Pension Tax Refund Ltd (then named Safari Mobile Ltd) in 2001 as an IT Manager. He confirmed in his oral evidence that he had a contract of employment but has lost it.

49. The Second Claimant largely adopted the chronology given by the First Claimant above. He also asserts continuous employment since 2001, and was paid at various points by each of the various Respondents and also Pension Tax Refund Ltd. He was a full time worker by 2008. In May 2009 he reduced his hours and became a remote worker. He was also remunerated by way of salary, dividends, consultancy fees, and licensing fees.

50. There is evidence in the bundle that the Second Claimant was paid monies by Pension Tax Refund Ltd (then named Switchfire Ltd) between 2002 and 2013. Some of these payments were made into a joint account held by the First and Second Claimants but there is other evidence which indicates some of these payments were made on respect of the Second Claimant.

51. The Second Claimant says that after the “demerger” in 2013, he continued to be paid by Pension Tax Refund Ltd (then named Safari Mobile Ltd) between:
    (a) February 2015 to August 2016;
    (b) November 2016;
    (c) May 2019; and
    (d) February to April 2020.

52. There are records of payments to the Second Claimant from Pension Tax Refund Ltd in 2013, 2014, 2015, 2019, and 2020. Some are described as ‘consultancy’. There is also evidence in the bundle of payments into the Claimant’s joint account on behalf of Pension Tax Refund Ltd in 2014, 2015, 2016. A claim for tax credit for the financial year 2018/19 lists the Second Claimant as a third party subcontractor.

53. During this period the Second Claimant also received payments from Connect Mobile Ltd (an Irish registered company owing monies to Pension Refund Tax Ltd, to discharge that debt), Nelson Handly Associates Ltd (a company set up to process payments for the First Claimant's consultancy services and said to be inactive), and from the Second and Fifth Respondents. He did not have any control over who paid him, this was arranged by the Finance Department which supported all of the Respondents. He admits that this was an "unorthodox arrangement". When giving his oral evidence, it was put to him that payment was split between him and the First Claimants for reasons of tax efficiency, rather than to remunerate him for work that he had done. He said that this was "true in a sense", but reiterated that he had actually carried our work for the Respondents for which he was paid.

54. The Second Claimant also agreed that at the point that his employment was terminated, the Fifth Respondent was his employer.

55. The Second Claimant was not involved in the discussions of 3 and 15 November 2021. Nor did he receive a letter notifying him that he was made redundant.

56. The Second Claimant has not sought alternative employment. He says that this is because his skill set is so specialised as to be obsolete, and that at the age of 60 he would not be an attractive potential employee. It is not clear why his skills in low level HTTP data exchange are obsolete given that he himself says that the industry continues to use low level HTTP data exchange, particularly in payment processing.

57. Mr Blackburn, the majority owner of the Respondents, gave witness evidence on behalf of the Respondents.

58. Mr Blackburn contended that the effect of the 2013 'demerger' was to sever all relationships between the Claimants and the Pension Tax Refund Ltd. There is a document in the bundle which described the 2013 'demerger'. It reads:

    "[Pension Tax Refund Ltd] *is a growing successful mobile phone content delivery platform and content provider and retailer. However, with increasing regulatory pressure the directors feel it is important to separate out the mobile phone technology element of their existing business. It has therefore been decided to form a separate business that would provide technology services to the existing company but can more easily without conflicts of interests sell these services to external clients. To maintain the separate commercial identity away from* [Pension Tax Refund Ltd] *it is thought most appropriate to use a directly held sister company* – [the Second Respondent] *than use another group company.*"

59. There is also a letter in the bundle dated 7 June 2021, from Mr Blackburn. It stated, in respect of the 2013 'demerger':

"*You were employed by* [Pension Tax Refund Ltd] *until Dec 2017. Your employment was terminated with* [Pension Tax Refund Ltd] *on the event of your share sale back to* [Pension Tax Refund Ltd] *for you to realise the entrepreneurial relief which was achieved and from which you benefitted with a payment of circa £700,000.*"

60. The First Claimant agreed in his oral evidence that his shares in Pension Tax Refund Ltd had been sold. He could not agree the exact amount which he was paid. He did not know whether HMRC had made it a condition of the 'demerger' that his employment was terminated. His understanding was that the sale did not terminate his employment relationship with Pension Tax Refund Ltd.

61. Mr Blackburn in his oral evidence said that his role as the remaining director was to manage the orderly winding up of the companies. They were going out of business and there was no money left. He was to be made redundant as well. He said confirmed that he was not being paid a salary for the winding up role. His last salary payment was in November 2021. His expenses were being covered, but that was all.

62. The letter of 7 June 2021 also stated that all directors had now been made redundant due to the financial situations of the company. It candidly said that there was no money left other than that which was being used to cancel long term contracts, pay off government debts, and close the companies in an orderly fashion. Mr Blackburn in his oral evidence confirmed that was the case.

63. The Claimants did not dispute that the companies were not financially viable, nor that they were being wound up. Mr Blackburn put it to the First Claimant that all of the directors had agreed that they would be paid and would then walk away. The First Claimant denied agreeing to such terms.

64. The First Claimant was asked why he was seeking an order for compensation against the Respondents in the knowledge they would be unable to pay any sum due. The First Claimant said that he envisaged recovering monies from a Government fund set up to protect employees who were made redundant but whose employers were unable to pay them their redundancy payments due to insolvency. The First Claimant has also said as much in emails which were in the papers.

65. The First Claimant's ET1 states that he was paid £2,500 gross per month. It records that he took part in an employer's pension scheme, but no other benefits. In his oral evidence, the First Claimant agreed that this was the correct amount of salary. The First Claimant also said that he did not keep records of holiday.

66. The First Claimant has submitted ACAS certificates in respect of all five Respondents.

67. The Second Claimant has not submitted an ET1 or any ACAS certificates. He is listed in the First Claimant's ET1 as part of a multiple claim.

68. The Claimants submitted that:
    (a) This was not a real redundancy. It was an exercise carried out in order to get rid of them due to the personal animosity between the First Claimant and Mr Blackburn.
    (b) The First Claimant should have been offered the role taken by Mr Blackburn (namely, to manage the winding up of the Respondents). The First Claimant said that he was unaware that this role existed or that Mr Blackburn had nominated himself for it. However, in his oral evidence the First Claimant also said that, although he was capable of undertaking this role, he would not have accepted the role on the basis that Mr Blackburn was carrying it out (namely, without a salary).
    (c) The correct redundancy process was not followed by the Fifth Respondent. For example, they did not provide a written statement of how the redundancy payment was calculated. The First Claimant in his oral evidence said that while he recognised that the Respondents were in the process of being wound up, the correct process should still have been followed.
    (d) The Fifth Respondent did not follow the ACAS Code of Practice. For example:
        (i) They did not consider first terminating temporary or contract workers.
        (ii) They did not consider a change to working hours.
        (iii) They did not make a redundancy plan.
        (iv) They did not discuss skills and experience needed for the future.
        (v) They did not set or score criteria for the retention of employees.
        (vi) They did not set out an appeal process.
        (vii) They did not offer proper support to the Claimants.

69. The Claimants claim redundancy pay, payment in lieu of notice, and holiday pay.

70. Mr Blackburn for the Respondents submitted that it was a real redundancy. The Respondents had run out of money and were being wound up. There was no longer a role for either Claimant as a result. The dismissal was accordingly not unfair. The Respondents were small companies, did not have a HR Department, and did not have the financial resources to pay for external assistance with HR matters. No matter what process was followed, the result would have been the same – the Claimants would have been made redundant as the companies were going bust. The Claimant's claim was not worth the time and effort of making it as there was nothing left to pay them with.

71. At the end of the hearing I reserved my judgment. Following the hearing, further efforts were made to try and locate the papers said to have been submitted by the Respondents. The results are set out above. This has unfortunately caused some delay.

72. In making this decision, I have taken account of all of the evidence before me, even if I have not mentioned any specific part of it.

Findings of fact

73. It is accepted by all parties that the Claimants were employed by the Fifth Respondent, and that they were dismissed from employment. I find that both Claimants were dismissed from their employment on 16 November 2021.

74. It is also accepted by all parties that each Claimant was paid a gross salary of £2,500 per month.

75. It is also accepted by all parties that each Claimant was paid the gross sum of £5,000 upon the termination of their employment.

76. The Claimant's claim that they have been continuously employed since 2001. The Respondents dispute that. They calculate the start date of employment as 1 April 2021, although have provided no evidence to substantiate that assertion. They also say that the effect of the 2013 'demerger' was to break the continuous employment. No evidence has been put before me to establish that this was a requirement of HMRC. Other than Mr Blackburn's assertion, no documentary evidence has been provided to show what effect upon the 'demerger' has upon the Claimants' employment status.

77. Section 231 of the Employment Rights Act 1996 states:

    "***231 Associated employers.***
    For the purposes of this Act any two employers shall be treated as associated if—
    (a) one is a company of which the other (directly or indirectly) has control, or
    (b) both are companies of which a third person (directly or indirectly) has control;
    and "associated employer" shall be construed accordingly."

78. The First Claimant notes that a third person can be a partnership, per Da Silva v Composite Mouldings and Design Ltd [2009] ICR 416. However, there is no evidence of any partnership agreement having been entered into. The First Claimant admits in his statement that he, Mr Blackburn, and the other shareholders never drew up a shareholders agreement.

79. The evidence shows that the Respondents, as well as Pension Tax Refund Ltd, were being run as a group of companies. They were being directly controlled by the same people – inter alia, the First Claimant and Mr Blackburn. At times they have been owned in whole or in part by each other. They are all clearly companies which a third person has control of. They are 'associated companies' within in the meaning of section 231.

80. The evidence also shows that, despite the claimed effect of the 2013 'demerger', both the First and Second Claimant were being paid by Pension Tax Refund Ltd after 2013. This further demonstrates that Pension Tax Refund Ltd was an 'associated company' even after the 2103 'demerger'.

81. I also bear in mind section 210(5) of the Employment Rights Act 1996, which states that "*A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.*" There is no evidence to show that the Claimants' involvement with the various companies was not continuous.

82. For these reasons, I find that the Claimants were in continuous employment since 2001.

83. The Claimants have claimed that they were selected for redundancy due to a personal animosity between the First Claimant and Mr Blackburn. No evidence has been provided to establish that assertion, and I reject it.

84. The evidence both on the documents and at the hearing was clear that the Respondents were going out of business, were no longer financially viable, and were being wound up. The Claimants do not seriously dispute that.

85. Section 139(1) of the Employment Rights Act 1996 defines a dismissal for redundancy as follows:

"*(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*
(a) the fact that his employer has ceased or intends to cease—
(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or
(b) the fact that the requirements of that business—
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
have ceased or diminished or are expected to cease or diminish."

86. I find that at the time that the Claimants were dismissed, the Respondents were intending to cease entirely the business for the purposes of which the Claimants were employed.

87. I accordingly find that the principal reason that the Claimants were dismissed was because the Respondents were going out of business and so their jobs would no longer exist. The Claimants were dismissed for reasons of redundancy.

88. No evidence has been put before me that either Claimant was entitled to any particular notice period. It is for the Claimants to establish, with sufficient evidence to discharge the burden of proof, that they were entitled to any particular notice period. They have not. The First Claimant did not have a contract and did not show me any other form of agreement about notice. The Second Claimant's contract of employment has been lost. He did not put forward any evidence about what it said his notice period was, nor any

other form of agreement about notice. I accordingly find that the Claimants were entitled only to the statutory notice period under the Employment Rights Act 1996. I calculate this as 12 weeks in light of my finding above that both Claimants have been continuously employed since 2001, for over 12 years.

89. Neither Claimant has put before me any evidence about holidays. There is no evidence to show what holiday they were entitled to or what they had taken. As I have noted above, there was no documentary evidence about the terms of employment. Crucially, there was no evidence to show that there was any entitlement to holiday outstanding but not taken on 16 November 2021. It is for the Claimants to prove that they were entitled to holiday that was outstanding and not taken. They have not. I accordingly find that they were not entitled to any pay in lieu of holiday.

Reasons

Unfair dismissal

90. I have found above that the Claimants were dismissed for reasons of redundancy. This is a potentially fair reason for dismissal, per section 98(2)(c) of the Employment Rights Act 1996.

91. The question of whether or not the Claimants were unfairly dismissed is determined by section 98(4) of the Employment Rights Act 1996, which reads:

“*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.”

92. I note that the Respondents were small businesses. They did not have a dedicated HR function. Nor, at the time of the dismissal, did they have any financial resources to seek external help with the process of dismissal.

93. The Employment Appeal Tribunal in Williams v Compair Maxam Ltd [1982] ILR 83 held that a reasonable employer will give an employee as much warning as possible of impending redundancies, will consult them about the decision and about alternative to redundancy, and take reasonable steps to find alternatives (such a redeployment to a different job).

94. In this case the Claimants were consulted. I have not been shown any evidence to suggest, nor has it been submitted to me, that they could or should have been consulted at more length.

95. The pool for redundancy encompassed all employees of the Respondents. Even Mr Blackburn was to be made redundant. No issue about the selection of the pool of employees, or the basis upon which individuals in that pool were selected, arises. No selection criteria were set to identify people who were not being made redundant, as there were no such people.

96. It is also the case that there were no alternatives to redundancy. The Respondents were going out of business and all jobs were also ceasing to exist. I reject the suggestion that the First Claimant could have been redeployed into the role taken by Mr Blackburn. On his own evidence, he would not have accepted it. It was accordingly not a viable option for redeployment, and there were no other options.

97. In all of the circumstances I find that the employer (which in this case if the Fifth Respondent) acted reasonably as treading redundancy as a sufficient reason for dismissing the Claimants.

98. For those reasons, the claims of unfair dismissal must fail.

Redundancy payment

99. Although the Claimants were fairly dismissed, they are still entitled to a redundancy payment in respect of their dismissal.

100. The statutory formula for calculating the basic award of a redundancy payment is:
    (1) 0.5 week's pay for each year the employee was in employment while under the age of 22;
    (2) 1 week's pay for each year the employee was in employment while aged between 22 to 40; and
    (3) 1.5 week's pay for each year the employee was in employment while aged 41 or more.

101. This is subject to the statutory cap of £17,130.

102. Both Claimants were paid the same, £2,500 goss per calendar month. Multiplied by 12 this gives the sum of £30,000 for a year's salary. Divided by 52 that gives a gross payment of £576.92 per week.

103. The Respondents group of companies was first established on 25 April 2001. The First Claimant was involved from the start, and so I have treated this as the first day of the First Claimant's employment.

104. The First Claimant was 35 years old when he was first employed. He was employed for 6 years whilst aged between 22 and 40. He was then employed for a further 13 years (until 25 April 2021, his employment ceasing on November 2021). His entitlement to a basic award was therefore:

1 weeks pay	x	6		
£576.92	x	6	=	£3,461.52

1.5 weeks pay	x	13		
£865.38	x	13	=	£11,249.94
				___________
				£14,711.46

105. The Second Claimant said that he was employed very soon after the business was started on 25 April 2001, but does not give an exact date. He says that he received his first pay and the end of the month of June 2001. I therefore take his first day of employment as 1 June 2001.

106. The Second Claimant was 39 years old when he was first employed. He was employed for 2 years whilst aged between 22 and 40. He was then employed for a further 17 years (until 1 June 2021, his employment ceasing on 16 November 2021). His entitlement to a basic award was therefore:

1 weeks pay	x	2		
£576.92	x	2	=	£1,153.84
1.5 weeks pay	x	17		
£865.38	x	17	=	£14,711.46
				___________
				£15,865.30

107. However, as the claim for unfair dismissal fails, there is no entitlement to a compensatory award.

108. The Claimants have already been paid £5,000 each. This was said to be a redundancy payment. This then must be deducted from the payments as calculated above.

109. This means that the First Claimant is entitled to an outstanding redundancy payment of £9,711.46 (gross), and the Second Claimant is entitled to an outstanding redundancy payment of £10,865.30 (gross).

Payment in lieu of notice

110. As the payment of £5,000 was not said to be in lieu of notice, it follows that the Claimants have not been paid any monies in lieu of notice.

111. There was no document in front of me that established any contractual entitlement to notice for either Claimant. In the absence of any evidence about contractual notice, I have found above that each Claimant was entitled to 12 weeks statutory notice under the Employment Rights Act 1996. Each Claimant was paid £2,500 gross per month. Taking that as a payment in respect of 4 weeks, the sum due to each Claimant is accordingly:

4 weeks	x	3	=	12 weeks
£2,500	x	3	=	£7,500

112. It follows that each Claimant is entitled to the sum of £7,500 in respect of notice payments.

Payment in lieu of holiday

113. As I have found above that the Claimants have not demonstrated that they were entitled to any holiday that was not taken at the time of this dismissal, these claims are not well founded and so they must fail.

Conclusions

114. For the reasons give above, the claims of unfair dismissal and holiday pay fail, but the claims in respect of redundancy pay and notice pay succeed.

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Employment Judge Atkins
Date: 18 January 2023

Sent to the parties on
Date: 24 January 2023

Note
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.

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