

THE INDUSTRIAL TRIBUNALS

CASE REF: 7105/19

CLAIMANT: Michelle Louise Lavery

RESPONDENT: Oonagh Maginn & Andrew Maginn t/a O-Zone

CASE REF: 7106/19

CLAIMANT: Finola McDowell

RESPONDENT: Oonagh Maginn & Andrew Maginn t/a O-Zone

CASE REF: 7107/19

CLAIMANT: Charlene Holland

RESPONDENT: Oonagh Maginn & Andrew Maginn t/a O-Zone

DECISION

The decision of the tribunal is that the claimants' claims against the respondent are well-founded and it makes awards for unfair dismissal, notice pay and redundancy payments as set out in the body of the decision.

CONSTITUTION OF TRIBUNAL

Employment Judge (sitting alone): Employment Judge Greene

APPEARANCES:

The claimants were represented by Mr M Mason of Mark Mason Employment Law. The respondent did not enter a response to any of these proceedings and there was not any representation at hearing by or on behalf of the respondent.

1. The tribunal heard evidence from all three claimants. It also received a bundle of documents, of some 40 pages, a written submission and oral submissions on behalf of the claimants by their representative Mr M Mason.

CLAIM AND RESPONSE

2. Each of the claimants brought a claim on 21 March 2019. In their claims they each claimed that they were unfairly dismissed, were entitled to a redundancy payment and were entitled to notice pay. The respondents did not enter a response to any of the claims.

THE ISSUES

3. The legal issues for determination by the tribunal were as follows:-
 - (1) Are the claimants entitled to a redundancy payment, pursuant to Part XII of The Employment Rights (Northern Ireland) Order 1996?
 - (2) Did the claimants suffer an unlawful deduction from wages pursuant to Article 55 of The Employment Rights (Northern Ireland) Order 1996 or a breach of contract pursuant to Article 7 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994, by reason of the failure of the respondents to pay to them notice pay?
 - (3) Were the claimants unfairly dismissed pursuant to The Employment Rights (Northern Ireland) Order 1996?
 - (4) Did the claimants suffer an automatically unfair dismissal and therefore are they entitled to an uplift in any award of compensation?
 - (5) Should the claimants succeed in their claims for a redundancy payment, unlawful deduction from wages or breach of contract, are they entitled to an uplift in any award of compensation.

FINDINGS OF FACT

4.
 - (1) Claimant, Michelle Louise Lavery, was born on 15 June 1988. She worked with the respondent from 1 June 2010 until 16 March 2019 as a hairdresser. She earned per hour £7.83 gross and £7.74 net. She worked 23 hours per week.
 - (2) Claimant, Finola McDowell, was born on 16 March 1989. She worked with the respondent from 1 March 2013 until 16 March 2019 as a hairdresser. She earned £7.83 per hour gross and net. She worked 16 hours per week.
 - (3) Claimant, Charlene Holland, was born on 10 October 1985. She worked for the respondent from 1 October 2005 until 16 March 2019 as a hairdresser. She earned £7.83 per hour gross and net. She worked 16 hours per week.
 - (4) The respondents carry out a hairdressing business at 46 Loughmoney Road, Downpatrick, BT30 7UG.
 - (5) On 15 March 2019 Ms Oonagh Maginn informed all three claimants that the respondents were closing the business on 16 March 2019.

- (6) The claimants asked Ms Maginn about notice pay and redundancy pay and she told them to, "get it from the government".
- (7) The business duly closed on 16 March 2019 when another occupier took over the business to run it as a beauty salon.
- (8) None of the claimants claimed nor has there been any suggestion by anyone else that there was a transfer of undertaking.
- (9) Since 16 March 2019 the claimants have not received any notice pay or redundancy payment. In addition they alleged that they have been automatically unfairly dismissed.
- (10) Michelle Lavery claimed £1,440.72 by way of notice pay and £1,440.72 by way of a redundancy payment.
- (11) Finola McDowell claimed £751.68 by way of notice pay and £751.68 by way of a redundancy payment.
- (12) Charlene Holland claimed £1,503.36 by way of notice pay and £1,503.36 by way of a redundancy payment.
- (13) None of the claimants was given any warning of the closure of the business or their dismissal prior to being told on 15 March 2019.
- (14) As part of their claims each claimant is claiming that the dismissal was automatically unfair by reason of having breached the statutory dismissal procedures and that they are entitled to an uplift of 50% on any award of compensation in relation to any of their claims.
- (15) None of the claimants is claiming a loss of earnings as part of their unfair dismissal claim.

THE LAW

5. (1) An employer is required to give notice to any employee who has had their contract of employment terminated if they have been continuously employed for one month or more. The amount of notice is one week for each year of service up to a maximum of 12 years. (Article 118 The Employment Rights (Northern Ireland) Order 1996).
- (2) An employer shall pay a redundancy payment to any employee if the employee is dismissed by the employer by reason of redundancy. (Article 170 The Employment Rights (Northern Ireland) Order 1996).
- (3) An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him. (Article 174 The Employment Rights (Northern Ireland) Order 1996).

- (4) The amount of a redundancy payment is calculated in accordance with Article 197 The Employment Rights (Northern Ireland) Order 1996.
- (5) To establish that a dismissal is not unfair an employer must establish the reason for the dismissal and that it is one of the statutory reasons that render a dismissal not unfair. If an employer establishes both of these requirements then whether the dismissal was fair or not depends on whether in all the circumstances the employer acted fairly and reasonably in treating the reason as a sufficient reason for dismissing the employee. (Article 130A The Employment Rights (Northern Ireland) Order 1996).
- (6) Where an employee is dismissed and the statutory dismissal procedure is applicable but has not been completed and the non-completion is wholly or mainly attributable to the failure of the employer to comply with its requirements the dismissal is automatically unfair. (Article 130A The Employment Rights (Northern Ireland) Order 1996).
- (7) Where an automatically unfair dismissal has occurred a tribunal shall consider whether to increase any award to the employee. (Article 17(3) and (4) The Employment Rights (Northern Ireland) Order 2003).
- (8) Article 17 of the 2003 Order applies to proceedings before an industrial tribunal relating to any claim under any of the jurisdictions listed in Schedule 2. Where it appears to the industrial tribunal that:-
 - (a) The claim to which the proceedings relates concerns a matter to which one of the statutory procedures applies,
 - (b) the statutory procedure was not completed before the proceedings were begun, and
 - (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure, it shall, subject to paragraph (4), increase any award which it makes to the employee by 10% and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50%.
- (9) The duty to increase by 10% does not apply if there are exceptional circumstances which would make an increase of that percentage unjust or unequitable, in which case the tribunal may make no increase or increase of a lesser percentage as it considers just and equitable in all the circumstances (Article 17(4) The Employment Rights (Northern Ireland) Order 2003).
- (10) Schedule 2 of the 2003 Order lists the jurisdictions to which Article 17 applies. It includes claims under Article 55 of The Employment Rights (Northern Ireland) Order 1996 (unauthorised deductions and payments) and Article 145 of the 1996 Order (unfair dismissal) and Article 198 of the 1996 Order (redundancy payments) and The Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1954 (breach of employment contract and termination).

- (11) In the decision of **Tim Arrow and Sons (a firm) v Onley UKEAT/0527/08/RN** the Employment Appeal Tribunal applied the uplift provisions to an award of holiday pay and a week's pay. It did not apply any uplift to the claimant's claim for notice pay or redundancy because the tribunal hearing the matter had not made any award in relation to either of these matters. It appears that the tribunal hearing this claim at first instance found that the employer had been in breach of both the statutory dismissal procedure and the statutory grievance procedures, which findings were upheld by the EAT.

APPLICATION OF THE LAW AND THE FINDINGS OF FACTS TO THE ISSUES

6. (1) The respondent has not put in a response to these claims and therefore the only evidence before the tribunal was that given by the claimants.
- (2) The tribunal accepts that all the claimants were dismissed, effective from 16 March 2019.
- (3) The tribunal accepts that none of the claimants was given any notice of their dismissal prior to 15 March 2019.
- (4) The tribunal accepts that none of the claimants was paid any notice pay or asked to work in lieu of notice pay nor were they given a redundancy payment.
- (5) The tribunal is satisfied that the claimants were entitled to the statutory notice by reason of the respondent having dismissed them. They are therefore entitled to pay in lieu of notice which the tribunal measures at £1,423.36 for Michelle Louise Lavery; £751.68 for Finola McDowell; and £1,503.36 for Charlene Holland.
- (6) The tribunal is further satisfied that a redundancy situation obtained on the 16 March 2019 when the claimants were dismissed and that they were all made redundant.
- (7) The tribunal is satisfied that each claimant is entitled to a redundancy payment which it measures as £1,440.72 for Michelle Louise Lavery; £751.68 for Finola McDowell and £1,503.36 for Charlene Holland.
- (8) In relation to the claimant's claims for notice pay, redundancy pay or breach of contract the tribunal does not award any uplift.
- (9) In so concluding the tribunal had regard to the following matters:-
- (a) With the change in the law removing the legal obligation to engage in the statutory grievance procedure the only statutory procedures remaining with legal requirements are the statutory dismissal and disciplinary procedures pursuant to The Employment (Northern Ireland) Order 2003.
- (b) In order for an uplift to apply (Article 17 The Employment Rights (Northern Ireland) Order 2003) there is a requirement that it is a matter

to which one of the statutory procedures applies (Article 17(3)(a)). The only remaining statutory procedure to which it could apply is the statutory dismissal at disciplinary procedure.

- (c) Claims for a redundancy payment, or unlawful deduction from wages or breach of contract do not attract the uplift provision as they do not fall within the remit of the statutory dismissal and disciplinary procedures.
 - (d) The EAT decision in **Tim Arrow and Sons** (a firm) **v Onley**, which awarded an uplift to awards for holiday pay and a week's pay concerned a claim that both the grievance and dismissal procedures had been breached. The uplift may relate to breaches of the grievance procedure only and therefore it is not authority for an award in the instant claim where the only possible statutory procedure is the dismissal and disciplinary procedure.
- (10) The tribunal is satisfied that each of the claimants was unfairly dismissed. The tribunal is satisfied that the respondents have not satisfied the statutory test that can render a dismissal not unfair pursuant to Article 130 of The Employment Rights (Northern Ireland) Order 1996.
- (11) The tribunal is further satisfied that the respondents have not followed the statutory dismissal procedures in any way and that the dismissals are automatically unfair. The tribunal considers that an uplift of 50% is appropriate. The tribunal orders the respondents to pay to each of the claimants' compensation for an automatically unfair dismissal as set out below.
- (12) The claimants are not claiming any financial loss since their dismissal.

Unfair Dismissal

Michelle Louise Lavery

Basic Award

£180.09 x 8 = £1,440.72

Redundancy payment = -£1,440.72

Net basic award £0.00

Compensatory award

Loss of statutory rights = £300.00

Uplift of 50% = £150.00

Total compensatory award £450.00

Total compensation £450.00

Finola McDowell

Basic award

£125.28 x 6 = £751.68

Redundancy payment = -£751.68

Net basic award = £0.00

Compensatory award

Loss of statutory rights = £300.00

Uplift of 50% = £150.00

Total compensatory award = £450.00

Total compensation = £450.00

Charlene Holland

Basic award

£125.28 x 12 = £1,503.36

Redundancy payment = -£1,503.36

Net basic award = £0.00

Compensatory award

Loss of statutory rights = £300.00

Uplift of 50% = £150.00

Total compensatory award = £450.00

Total compensation = £450.00

7. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 30 August 2019 and 16 September 2019, Belfast.

Date decision recorded in register and issued to parties: