



EMPLOYMENT TRIBUNALS

Claimant: Mr E Jones

Respondents: 1. Hart Road Motor Company Limited (in Creditors Voluntary Liquidation)
2. Secretary of State for Business, Energy & Industrial Strategy

HELD AT: Manchester **ON:** 31 August 2017

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In person
1st Respondent: Not in attendance
2nd Respondent: Written representations

JUDGMENT

It is the judgment of the Tribunal that;

1. The claimant is entitled to an award in respect of breach of contract in the sum of **£1,283.20** being the balance of the notice period to which he was entitled. This is a gross sum, and will be subject to any appropriate deductions for tax and national insurance. The award is made against the first respondent at this stage.
2. The claimant's other claims are dismissed upon withdrawal by him.

REASONS

1. In this case the claimant, Mr Jones, initially brought claims arising out of the termination of his employment with the first respondent on 11 November 2016, when, in unfortunate circumstances he lost his employment due to the terminal illness of his employer, Mr Baird, who traded through the company that is the first respondent. In those circumstances the claimant was, of course, redundant and was entitled to various payments, and the initial claim that he made to the Tribunal was for a number of payments including a redundancy payment.

2. In due course, however, the Secretary of State was involved, and following the liquidation of the first respondent, the Secretary of State agreed to make various payments which have been made and the claimant has withdrawn all his claims in respect of the other payments owed, leaving only one matter to be determined today. That matter is in relation to notice pay, it being common ground between all parties that the claimant, having started work for the first respondent back in 1998, had the length of service which would entitle him to 12 weeks' notice.

3. The Secretary of State in dealing with his claims accepted a claim by Mr Jones for notice pay, but in doing so took, as the date on which notice was given, 30 September 2016. Consequently in the calculation that was provided by the Secretary of State, and the payment that was then made, the claimant having been given notice whilst he was still employed, his employment not ending until 11 November 2016, the calculation was that the balance of the notice period to which he was entitled at the date of termination was some six weeks, and that is the basis upon which the Secretary of State has made a payment to the claimant.

4. The claimant, however, does not agree that notice was given on 30 September 2016, but rather that it was given on 29 October 2016. Consequently the issue for the Tribunal today, and the sole issue before it, is to determine whether the Secretary of State is right to take 30 September 2016 as the relevant date, or whether the claimant has established that notice was in fact given later than that, so as to give him a further four weeks of entitlement.

5. In terms of the evidence, the first respondent, of course, being in liquidation has not attended, but a letter has been provided by Kay, Johnson & Gee who are the liquidators, and in terms of the reasoning for the date of 30 September 2016 being given as the notice date, which is the information supplied to the Secretary of State. They have set out in their letter of 10 August 2017 the reasons for that, which are basically that their understanding is that the company officially ceased to trade on 30 September 2016, and that the information provided to the company's accountants, C & R Taxation Consultancy Services, supported this information. Consequently that is the basis upon which the Secretary of State appears to have proceeded, and the basis upon which the liquidators have also proceeded. They do say in the third point they make in this letter,

"We have nothing to evidence or contradict Mr Jones' claim that he was given verbal notice of his employment being terminated around 29 October 2016 and therefore cannot confirm if this is correct or not".

6. Mr Jones has attended this morning, and has given evidence on oath. He has explained to the Tribunal the unfortunate circumstances in which he was informed by Mr Baird, effectively the first respondent, of his illness which subsequently proved to be terminal. The date upon which that occurred, the claimant has confirmed to me, was 29 October 2016. In terms of where this confusion has arisen in relation to 30 September 2016 is unclear, but Mr Jones points out that C & R Taxation had previously, in their dealings with him, made some errors in relation to his entitlements in any event, and it may well be there has been some misinformation or misunderstanding there.

7. Be that as it may, the sole question for me is when was notice given? Was it given on 30 September 2016 as the Secretary of State believes, and the liquidators believe, or was it given on 29 October 2016? As the liquidators themselves say, there is nothing to contradict Mr Jones' evidence, which I have heard today on oath, that he was given that notice verbally for the first time on 29 October 2016, and I am quite satisfied that that is therefore the operative date for the commencement of his notice, in which case he is indeed correct that the balance of the four weeks' notice pay that he is entitled to, having worked of course for the first two weeks of the notice period, and having been paid for the next six weeks by the Secretary of State, that he has indeed an outstanding entitlement to four weeks' notice.

8. The agreed rate of pay is £360 per week. Four weeks of that would produce a figure of £1,440 but at the end of that period the claimant successfully obtained paid employment for one week of that period, in which he earned £156.80. He had previously applied for and had been awarded benefits, but by the time of the last four weeks of the notice period that was not the case because he wanted, as he subsequently did, to get back into the motor trade and was looking for work in that direction.

9. Consequently, the only deduction to be made from the £1,440 of notice pay that would otherwise be due is the £156.80 and that gives a figure of £1,283.20.

10. That will be the order of the Tribunal. That is a gross sum as I understand it, however, and if any tax is due and payable on it of course that will be deducted as well.

Employment Judge Holmes

Dated: 1 September 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
5 September 2017

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2401996/2017

Name of Mr ET Jones v 1) Hart Road Motor
case(s): Company Limited (In
Voluntary Creditors
Liquidation)
2) Secretary of State for
Business, Innovation and
Skills

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 5 September 2017

"the calculation day" is: **6 September 2017**

"the stipulated rate of interest" is: 8%

MR I STOCKTON
For the Employment Tribunal Office