



EMPLOYMENT TRIBUNALS

1st Claimant **Mr Trevor Heselton**
2nd Claimant **Mr David Baines**

Respondent **Toolbox Supply Company Ltd**

HELD by CVP at Newcastle CFT ON: 5 October 2022

BEFORE: Employment Judge Langridge

REPRESENTATION:

Claimants: **In person**
Respondent: **Mr Andrew Wainwright, Director**

JUDGMENT

In the case of the first claimant:

1. The claimant is entitled to a statutory redundancy payment in the amount of £7,344.
2. The claimant is entitled to five days' holiday pay amounting to £573.75 gross, subject to any statutory deductions which are due.
3. The claimant was entitled to nine weeks' notice of termination of his employment but was given only two weeks' notice, leaving a balance of seven weeks' notice due to him. The gross calculation of this sum is £4,016.25 but from that sum must be deducted the gross equivalent of the claimant's earnings received in that seven week period which he estimates at £250 net. The remaining balance shall be paid net of any statutory deductions that are due to be paid.

In the case of the second claimant:

4. The claimant is entitled to a statutory redundancy payment in the amount of £2,677.50.

5. The claimant is entitled to five days' holiday pay amounting to £382.50 gross, subject to any statutory deductions which are due.
6. The claimant was entitled to seven weeks' notice of termination of his employment and was given only two, leaving a balance of five weeks' notice. However, the claimant is not entitled to any compensation for failure to give this notice as he was able to fully mitigate his loss by earning more in his new employment.

REASONS

1. The parties attended today's video hearing without any documents or pay records to assist the Tribunal in calculating any entitlements that might be due, though it proved possible to complete the hearing with the benefit of mainly oral evidence. Both claimants gave evidence and provided information about their terms and conditions as best they were able to recall without the benefit of any documentation. Mr Wainwright on behalf of the respondent was also able to provide some limited information about wages. All parties preferred to go ahead with the hearing rather than adjourn to provide further evidence, the existence and extent of which was in doubt.
2. It was not in dispute that the respondent company ceased trading with effect from 18 March 2022 and that the claimants had both been given notice of termination on 4 March 2022. It was also not in dispute that the reason for termination was redundancy. Both claimants having worked for over two continuous years with the respondent, I was satisfied that they were entitled to a statutory redundancy payment.
3. It was also not in dispute that the claimants had been given less notice than their statutory entitlement of one week for each complete year of service. In the case of the second claimant, it transpired that he began work immediately after his redundancy on a higher rate of pay and so no loss was suffered as a result of the short notice.
4. In the case of the first claimant, he has set up a new business in which the second claimant is employed. While the business develops he is restricting his PAYE earnings to a net sum of £250 per week. He was unable to provide a gross figure. On the basis of the information the first claimant was able to provide, I calculated his seven weeks' notice based on a net income with the respondent of £420 per week. This amounts to £2,940, less seven weeks' net pay at £250 received from his own business, leaving a balance of around £1,190. However, in the absence of a gross figure being available today I was unable to complete the calculation of the balance due to be offset against the gross amount of seven weeks' pay totalling £4,016.25.
5. During the hearing there was some discussion about the position with annual leave, particularly whether the claimants had an agreement from the respondent to carry forward unused leave from 2021. In the event, neither claimant pursued that aspect of his claim and indicated that they were content to recover annual leave from 1 January 2022 until 18 March 2022. The parties were in agreement that the annual entitlement was 20 days plus eight bank

holidays. On a pro rata basis, this meant that six days accrued during 2022, of which one bank holiday was taken and paid for on 1 January leaving a balance of five days' pay due.

SE Langridge

Employment Judge
Date 24 October 2022

JUDGMENT SENT TO THE PARTIES ON

Date: 25 October 2022

Mrs. T. Hussain
FOR THE TRIBUNAL OFFICE

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