



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Sargant

Respondent: Mr Lee Dean

JUDGMENT

1. The response is struck out.
2. In accordance with the provisions of Section 135 of the Employment Rights Act 1996 it is declared that the claimant was dismissed by reason of redundancy and so is entitled to a redundancy payment in the sum of £2,740 calculated in accordance with the provisions of Section 162 of the Act.
3. In accordance with the provisions of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 the complaint for the recovery of damages for breach of contract succeeds and the respondent is ordered to pay to the claimant forthwith damages in the sum of £3,120.

REASONS

1. In its case management summary sent to the parties on 20 December 2018 following a Preliminary Hearing which the Respondent did not attend, the Tribunal commented as follows:

“In any event, the tribunal considers that it may be appropriate to strike out his defence in respect of the complaints seeking redundancy pay and damages for breach of contract. It appears to be undisputed that the respondent made a decision to end his tenancy and to cease trading in circumstances where he did not consider it to be financially viable to stay in business. The Old Harrow pub was then closed. That appears to be a classic redundancy situation and indeed there appears again to be no dispute but that the claimant’s employment was indeed terminated with immediate effect without therefore any notice or subsequent payment in lieu of notice. The respondent’s position is that he was left with no choice but to close the business and that he is looking at going into

bankruptcy. That is not however a defence to the liability to make a statutory redundancy payment or to pay wages in lieu of notice.....

In the event that it is appropriate to enter Judgment in the claimant's favour without the need for a further hearing, her redundancy pay entitlement is assessed as being in the sum of £2,740 (applying a multiplier of 10 on account of the claimant having 12 years' service but 4 years when she was under the age of 22 against gross weekly pay of £274). The claimant's net weekly pay was £260 and her notice entitlement was to 12 weeks giving a figure potentially due in respect of damages for breach of contract of £3,120."

2. The Respondent was in the Tribunal's Orders sent to the parties on 20 December 2018 asked to explain the basis, if any, for such entitlements not arising and warned that consideration might be given to striking out the response on the basis that it has no reasonable prospect of success.
3. The Respondent by email of 2 January 2019 in reply has said that he had no option but to "liquidise" the business due to financial difficulty, referring then to a water leak, the Respondent being unable to pay for necessary repairs and then having no choice but to close the business. Whilst they may be understandable reasons for the action the Respondent took, they do not remove liability to make redundancy payments and make payments in lieu of notice to staff dismissed as a result. The Respondent indeed has no reasonable prospect of success in defending these claims.

Employment Judge Maidment

11 January 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE