



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Lopez

Respondent: 1) Da Marios Ltd
2) Mr R Lamsika

Heard at: Leeds (by telephone) **On:** 28 January 2021

Before: Employment Judge Parkin sitting alone

Representation

Claimant: In person

For both respondents: Mr R Lamsika, Director and in person

JUDGMENT

The judgment of the Tribunal is that:

- 1) The ET3 response was accepted out of time;
- 2) The claimant was continuously employed by the first respondent and its predecessors in title from 1996 to 30 June 2020;
- 3) The claimant is entitled to redundancy payment in the sum of £3,932.50 representing the maximum 20 years continuous employment (15 of which were when aged over 41 years) at her weekly pay of £143;
- 4) The first respondent dismissed the claimant in breach of contract by failing to give statutory minimum notice of 12 weeks or to pay her in lieu. The first respondent is ordered to pay her damages for breach of contract in the sum of £1,716.00 (12 weeks' gross and also net pay).
- 5) Pursuant to Regulation 14 of the Working Time Regulations 1998, the first respondent is ordered to pay the claimant compensation for accrued paid annual leave due on termination of employment in the sum of £400.00 (gross and net).
- 6) The first respondent failed to provide the claimant with a statement of particulars of her main terms and conditions of employment. Pursuant to section 38 of the employment act 2002, the respondent is ordered to pay her two weeks' pay in the sum of £286.00

REASONS

1. “Code A” (Audio) in the heading indicates that this was a remote hearing by telephone conference call.
2. By her ET1 claim presented on 2 October 2020, the claimant claimed a redundancy payment, notice pay and holiday pay in respect of the termination of her employment by the respondent on 30 June 2020, following a period of furlough. She set out her calculation of entitlements carefully, contending no payments had been made by her employer and that she was claiming an additional payment to reflect the lack of written contract or employment particulars.
3. Initially, no response was presented; the response presented on 12 January 2021 (after the claim had been re-served with the second respondent joined in the proceedings) was about three weeks out of time. At this hearing, the second respondent confirmed that he was not resisting the claim so much as putting the claimant to proof of her full continuous employment with the predecessor in title which owned the restaurant when she started employment. In the circumstances, the Tribunal accepted the response out of time and permitted the respondents to take part.
4. The claimant gave oral evidence confirming the content of her claim form and that of additional documents sent to the tribunal by her CAB advisor relating to the initial employment with Campagna Restaurant (Leeds) Ltd run by Peter and Mario Campagna (which had not been copied to the respondents). She accepted that her former employer was the limited company, Da Marios Ltd, which had taken over the restaurant in 2013 as Mr Lamsika maintained.
5. The tribunal found on the balance of probabilities that the claimant had been continuously employed since early 1996 at the restaurant as a cleaner and was earning £143 per week when she was put on furlough in March 2020. This was both her gross and her net (take home) pay. No notice was given and no payments were made in respect of the termination of her employment for redundancy by the first respondent taking effect on 30 June 2020. Her date of birth is 9 November 1963, having over 20 years continuous employment (of which 15 were when aged over 41 years) prior to termination of employment on 30 June. She had no paid annual leave in the holiday year of 2020 before that termination. She had never been provided with a written contract or written statement of particulars of the main terms of her contract of employment.
6. Accordingly, applying the statutory rights found at section 86 and part XI of the Employment Rights Act 1996, the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, regulations 13 to 14 of the Working Time Regulations 1998 and section 38 of the Employment Act 2002, the Tribunal concluded the client was entitled to a redundancy payment in the sum of £3,932.50, statutory minimum notice pay of £1,716.00, compensation for accrued paid annual leave untaken date of termination in the sum of £400.40. Finally, it awards 2 weeks’ pay in the sum of £286.00 under section 38 of the 2002 Act in respect of the respondent’s failure to provide a written statement of particulars of employment.

Employment Judge Parkin

Date 28 January 2021