

# THE INDUSTRIAL TRIBUNALS

CASE REF: 14591/19

**CLAIMANT:** Margaret Therese Hamill

**RESPONDENT:** Savages Shop Ltd

## DECISION

The decision of the tribunal is that the claimant is entitled to an award of £6,155.40 in respect of a redundancy payment.

### CONSTITUTION OF TRIBUNAL:

**Employment Judge (sitting alone):** Employment Judge Wimpres

### APPEARANCES:

**The claimant appeared in person and was not represented.**

**The respondent did not attend the hearing and was not represented.**

### SOURCES OF EVIDENCE

1. The tribunal heard oral evidence from the claimant and she provided the tribunal with copies of the pay slips received by her from 21 December 2018 up until the end of her employment, together with her P45.

### THE CLAIM AND THE RESPONSE

2. The claimant brought a claim for a redundancy payment following the termination of her employment with the respondent on 25 January 2019. The claim was lodged in the tribunal office on 3 July 2019 and was issued to the respondent on 16 August 2019. The respondent did not file a response and did not attend the hearing. The claim form was posted to the respondent by letter of 16 August 2019.

### THE ISSUES

3. (i) Whether the claim was brought within time.  
(ii) Whether the claim for a redundancy payment has been made out.  
(iii) The amount of any redundancy payment.

## THE FACTS

4. The claimant's date of birth is 15 November 1957. The claimant commenced employment with the respondent as a bookkeeper on 10 November 1985 and her employment ended on 25 January 2019. Accordingly, on her final day of employment the claimant was aged 61 having completed 33 completed years of service. The address of the respondent business is 31-33 Monaghan Street, Newry, Co. Down, BT35 6BB. The claimant worked 20 hours per week on a Part-time basis and her duties include working on the shop counter as well as bookkeeping. The claimant's gross pay was £205.18 per week and her net pay was £200.00 per week. The respondent business employed two full-time employees, two part-time employees and four or five young staff at weekends.
5. The respondent business closed down on 25 January 2019 having been in difficulty for some time with the existing stock being sold off during January 2019. The claimant was paid her final week's pay but no funds were available to make a redundancy payment.
6. The claimant has been in receipt of Jobseeker's Allowance since 22 February 2019.
7. The claimant brought a previous claim for redundancy [7041/19] on 8 March 2019. It was issued by the tribunal office on 19 April 2019 but was subsequently withdrawn by the claimant on 3 May 2019 on the basis that she no longer wished to pursue her claim for a redundancy payment as the respondent was a small business and she had a good relationship with the owner. The claimant then changed her mind in July 2019 on learning that a former colleague in the respondent business had brought a successful redundancy claim. The claimant understands that the respondent business has entered into a company voluntary arrangement.

## THE LAW

8. Redundancy is defined in Article 174 of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order") as follows:

*"174 (1) For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if a dismissal is wholly or mainly attributable to –*

*(a) the fact that his employer has ceased or intends to cease –*

*(i) to carry on the business for the purposes of which the employee was employed by him, or*

*(ii) to carry on that business in the place where the employee was so employed, or*

*(b) the fact that the requirements of that business -*

*(i) for employees to carry out work of a particular kind, or*

- (ii) *for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.”*

9. Article 197 makes provision for the calculation of a redundancy payment as follows:

*“197. (1) The amount of a redundancy payment shall be calculated by:-*

- (a) *determining the period, ending with the relevant date, during which the employee has been continuously employed,*
- (b) *reckoning backwards from the end of that period the number of years of employment falling within that period, and*
- (c) *allowing the appropriate amount for each of those years of employment.*

*(2) In paragraph (1)(c) “the appropriate amount” means:-*

- (a) *one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,*
- (b) *one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and*
- (c) *half a week's pay for each year of employment not within sub-paragraph (a) or (b).*

*(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.”*

10. Articles 198 and 199 also contain important provisions in respect of redundancy:

*“198. (1) Any question arising under this Part as to:-*

- (a) *the right of an employee to a redundancy payment, or*
- (b) *the amount of a redundancy payment, shall be referred to and determined by an industrial tribunal.*

*(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.*

199. (1) *An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date:-*

- (a) *the payment has been agreed and paid,*
- (b) *the employee has made a claim for the payment by notice in writing given to the employer,*
- (c) *a question as to the employee's right to, or the amount of, the payment has been referred to an industrial tribunal, or*
- (d) *a complaint relating to his dismissal has been presented by the employee under Article 145.*

(2) *An employee is not deprived of his right to a redundancy payment by paragraph (1) if, during the period of six months immediately following the period mentioned in that paragraph, the employee:-*

- (a) *makes a claim for the payment by notice in writing given to the employer,*
- (b) *refers to an industrial tribunal a question as to his right to, or the amount of, the payment, or*
- (c) *presents a complaint relating to his dismissal under Article 145, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.*

(3) *In determining under paragraph (2) whether it is just and equitable that an employee should receive a redundancy payment an industrial tribunal shall have regard to:-*

- (a) *the reason shown by the employee for his failure to take any such step as is referred to in paragraph (2) within the period mentioned in paragraph (1), and*
- (b) *all the other relevant circumstances.”*

## **CONCLUSIONS**

11. (i) Whether the claim was brought within time.

Although the claimant previously issued and withdrew an identical claim for redundancy there is nothing to prevent her from issuing a further claim based on the same facts which she done. The claimant's effective date of termination is 25 January 2019 and the date on which she lodged her second claim was 3 July 2019. Thus her claim to redundancy payment was made within 6 months of the termination of her employment and falls within Article 199 of the 1996 Order and is brought on time.

(ii) Whether the claim for a redundancy payment has been made out.

The claimant's oral evidence establishes that the respondent business ceased to trade on 25 January 2019 and I am satisfied that the termination of the claimant's employment falls within the definition of redundancy as set out in Article 174 (1) (a) (i) of the 1996 Order. Accordingly the claimant is entitled to a redundancy payment.

- (iii) The amount of the redundancy payment

Using the statutory formula set out in Article 197 of the 1996 Order the claimant is entitled to 30 weeks redundancy pay.

## **AWARD**

12. Redundancy Pay

$$30 \times \text{£}205.18 = \text{£}6,155.40$$

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

**Employment Judge:**

**Date and place of hearing: 7 November 2019, Belfast.**

**Date decision recorded in register and issued to parties:**