



EMPLOYMENT TRIBUNALS

Claimant: Mr C Sawyer
Mr J Paxton

Respondent: Mr Sean Readett as executor of the estate of Mr Michael Readett (trading as Lakes Roofing) (deceased)

Heard at: Manchester by CVP

On: 7 November 2022

Before:

Representation

Claimants: Both in person

Respondent: Mr Sean Readett in person

RESERVED JUDGMENT

1. The Claimants' claim in respect of the Respondent's failure to pay holiday pay was withdrawn and is dismissed.
2. The Claimants' claims for the Respondent's failure to pay statutory redundancy pay are dismissed.

REASONS

Claims

1. The claimants were employed as roofers by the late Michael Readett, a sole trader who traded under the name "Lakes Roofing". The business was a long-established family business. It was started by Mr Readett's father in 1958. Mr Sawyer was employed from 14 November 2006, and Mr Paxton was employed from the summer of 1997. He could not recall his exact start date, but he said it was before 25 August 1997.

2. Michael Readett was diagnosed with cancer in early 2020. He was very ill in August 2020. Sean Readett, his brother, says Michael asked him to visit the yard on 19 August 2020 as the latter was worried about the business. There was an argument between Sean and one of the workers (not either of the Claimants). All the workers, including the Claimants, walked off site.
3. Some of the text messages between Mr Paxton and Mr S Readett have been disclosed. Mr S Readett tells Mr Paxton by text on 19 August 2020 that Michael is very ill and has been taken back into hospital.
4. On 20 August 2020, Mr S Readett asks Mr Paxton if he will finish off the jobs they are working on. Mr Paxton says *"I see what the lads will do. But it will be next week as Chris has gone fishing and I'm having a few days to myself 2"*. Mr S Readett replies *"No worries. Just trying to look out for my brother. Been in hospital all night"*. Mr Paxton responds *"Sorry to hear this...Do not sound good. Will phone the lads let them know just to get the last 2 jobs finished"*. Mr S Readett says *"It would be a great help to settle his mind. He needs peace"*. Mr Paxton replies *"I know all I can do is ask them but they will finish them off I'm sure"*. He later adds *"Yes next week the lads said me Chris will do the valley. Me Paul and Chris will do the flat roofs and the ridge in. Then that's it. Me and Chris want our holiday pay as well up to date thank that's fair. Then everyone is leaving on good terms"*. Mr S Readett replies *"Thanks"*.
5. The claimants finish the outstanding jobs on 25-27 August 2020.
6. Mr Readett asks Mr Paxton by text to telephone him on 31 August 2020 as he has something to put to him. On 1 September 2020, Mr Readett texts Mr Paxton and says *"Any chance of giving me a hand to keep Michael's good name. I've got three months of work to get through then I'm closing the gates....Please help"*. Mr Paxton replies *"Michael will always have a great name Sean. I been with him for the past 23 years but that's it for me. I'm starting life. And that the way I feel"*.

7. Mr S Readett texts Mr Sawyer on 19 August 2020 and he says *“Just had a word with Jeff and he said its best to fold the company. He also says your of the same mindset. Please answer the phone and let me know either way. Obviously I’d rather you worked Michael’s work off as a matter of friendship and respect for him but Jeffs adamant about it”*. Mr Sawyer replies *“I’m same as Jeff yeah, I’ve wanted out of roofing for a long time and that time has come sorry Shaun”*.
8. The Claimants said at the hearing that their texts were sent in haste. Mr S Readett says he offered to pass the business over the Claimants after his brother died. He did not want the business to end as it had been running since 1958 and had been established by his father. Mr S Readett wanted to keep the name of the business going. The Claimants denied such conversations took place.
9. Mr Sawyer said at the hearing that he did not want to work for Mr S Readett. He did not agree with Mr S Readett coming to the yard on 19 August 2020 and being the boss. Mr Sawyer said that Mr Paxton negotiated with Mr S Readett for Mr Sawyer. Mr Paxton told the Tribunal that he thought Mr Readett could not just walk into the business after Michael died.
10. It is the Respondent’s case that the final salary payment made to the claimants included a sum for outstanding holiday pay. The claimants were not made redundant. Mr Sean Readett said he wanted them to continue working for the business but both Claimants were not willing to do so. The Claimants made it clear that they wanted to leave the business.
11. A preliminary hearing took place on 16 February 2022 at which EJ Slater narrowed down the issues in the claims. Firstly, whether there is outstanding holiday pay due to the Claimants, and secondly whether they are entitled to a statutory redundancy payment. The Claimants withdrew their claims for unfair dismissal and notice pay.

Issues

Case Nos: 2417546/2020 and 2417581/2020

12. Did the respondent fail to pay the Claimants for annual leave the Claimants had accrued but not taken when their employment ended

13. Should there be an order for payment to the Claimants of statutory redundancy pay by the Respondent.

Procedure, documents and evidence heard

14. The hearing was conducted via video. There were no technical issues during the hearing.

15. The Claimants and Mr Readett gave evidence in person. All three had submitted witness statements.

16. At the outset of the hearing, the Tribunal attempted to establish whether there was an agreed bundle of documents. Both parties had sent in documents, but these had not been put into an agreed bundle. The Claimants and the Respondent confirmed that they had seen each other's documents. The parties had not agreed a joint bundle.

The law

17. Having established the above facts, I now apply the law.

18. Regulations 14 and 16 (1) and (5) of the Working Time Regulations provides as follows:

14 Compensation related to entitlement to leave (1) This regulation applies where – (a) a worker's employment is terminated during the course of his leave year, and (b) on the date on which the termination takes effect ("the termination date") the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired. (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

Case Nos: 2417546/2020 and 2417581/2020

16 Payment in respect of periods of leave (1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13[and regulation 13A]1, at the rate of a week's pay in respect of each week of leave.

..... (5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

19. A person whose employment terminates on ground of redundancy is entitled to a statutory redundancy payment by virtue of section 135 of the Employment Rights Act:

135 The right.

(1) An employer shall pay a redundancy payment to any employee of his if the employee—

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

20. Redundancy is defined in section 139 of the Employment Rights Act 1996:

139 Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the 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.

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(3) For the purposes of subsection (1) the activities carried on by a [F1]local authority] with respect to the schools maintained by it, and the activities carried on by the [F2]governing bodies] of those schools, shall be treated as one business (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(4) Where—

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

21. I have to decide if the Claimants were dismissed, and if so, was it by reason of redundancy such that they are entitled to receive a statutory redundancy payment.

Holiday pay

22. Both Claimants agreed at the hearing that they were happy that they had been paid any outstanding holiday pay they were owed in their last payment from the respondent on 28 August 2020. They did not receive the pay slips at the time of the payment, so they did not know what they had been paid. The pay slips have now been produced for the week ending 28 August 2020. The Claimants were paid their outstanding three days work for 25-27 August 2020, and any accrued but untaken holiday pay. The Claimants withdrew this part of the claim as all parties agreed that holiday pay had been correctly paid. The Claimants had mistakenly thought that they were entitled to be paid a full year's holiday entitlement when they had worked part of an annual leave year. The Claimants agreed that as they had only worked eight months of the leave year, they had accrued eight months

Case Nos: 2417546/2020 and 2417581/2020

annual leave entitlement. The Claimants said at the hearing that they accepted they had been paid the annual leave that they had accrued but not taken. The Claimants withdrew this part of their claim at the hearing.

Statutory redundancy payment

23. If an employee is dismissed by reason of redundancy, they may be entitled to be paid a statutory redundancy sum.

24. The claimants say in the ET1 that Michael died on 25 August 2020. The following day Mr S Readett stated that he is making the business insolvent and finished them with no notice pay or redundancy payment. The Claimants add that Mr S Readett said they would not get anything from him or the business.

25. I have considered the texts before me between the parties and the oral evidence given at the hearing today. I find on balance that the Claimants resigned from their employment with the Respondent. I find that they were not dismissed by the Respondent by reason of redundancy. On 20 August 2020, Mr S Readett is asking Mr Paxton about finishing outstanding jobs. Mr Paxton says on 20 August in a text that he just intends to finish to last two jobs, *“then that’s it. Me and Chris want our holiday pay as well up to date think that’s fair. Then everyone is leaving on good terms”*. I find that Mr Paxton was resigning from the business. I do not accept that this was sent in haste and he this was not his intention. He did not send any further written communication saying he wished to continue working for the Respondent long term. Mr Paxton’s texts show that he was happy to finish off the remaining work which would take a few days and then his intention was to leave the respondent.

26. Mr Readett tells Mr Paxton in a text on 31 August 2020 that he has something to put to him. The next day Mr Readett messages Mr Paxton to ask him to keep Michael’s good name. He had three months of work to offer him. Mr Paxton does not want to accept the offer of work and replies *“that’s it for me”*. Mr Readett replies to say that Mr Paxton should contact him if he needs any help with his work.

27. The text communication persuades me that Mr Paxton intended to resign from the Respondent. I do not accept that he was told by Mr Readett that he was being laid off. I found Mr Readett to be a credible witness. He gave evidence in a straightforward and consistent manner. I accept that Mr Readett wanted Mr Paxton to continue working for the business, but that Mr Paxton had taken the decision to leave, and that he made this decision on 20 August 2020. He wanted his outstanding holiday pay and wages, and did not want to continue working for the respondent. There is no suggestion that Mr Readett is laying anyone off as the claimants suggest in the ET1. I find that Mr Paxton was not dismissed by reason of redundancy, but that he resigned on 20 August 2020. As such, he has no entitlement to a statutory redundancy payment.

28. I have considered whether Mr Sawyer was made redundant from the Respondent. On 19 August 2020, Mr Readett texts Mr Sawyer to say that Mr Paxton has said the business should be folded. Mr Readett asks Mr Sawyer if he agrees "*either way*". Mr Sawyer replies to say he is the same as Jeff and he wants out and has done for a long time. Mr Sawyer told me today that he did not want to work for Mr S Readett. He did not want him as his boss.

29. I find on balance on the evidence before me that Mr Sawyer resigned from the Respondent on 19 August 2020. The text from Mr Readett that same day suggest he was open to keeping the Claimants working in the business and wanted to check that Mr Sawyer definitely wanted to finish. Mr Sawyer confirmed that he wanted out. As such I find that Mr Sawyer resigned from the Respondent, and he was not dismissed by reason of redundancy.

30. I find that Mr Readett wanted the Claimants to continue working for the business but that they resigned. Mr Sawyer resigned on 19 August 2020. Mr Paxton resigned on 20 August 2020. Both Claimants resigned before Mr M Readett's death on 25 August 2020. Neither were dismissed by reason of redundancy.

Case Nos: 2417546/2020 and 2417581/2020

31. Given that I have found that both Claimants resigned from the Respondent, they were not dismissed by the Respondent by reason of redundancy. The Claimants are not entitled to be paid a statutory redundancy payment from the Respondent. They were not dismissed by reason of redundancy. This part of the claim is dismissed.

Employment Judge **R. Lloyd**
15 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
21 November 2022

FOR EMPLOYMENT TRIBUNALS