



EMPLOYMENT TRIBUNALS

Claimants:

**Mr S Nowicki
Miss A Easby**

Respondent:

Daves Aquarium Ltd

HEARD AT: Leeds By CVP ON: 3 October 2024

BEFORE: Employment Judge JM Wade

REPRESENTATION:

Claimants: In person

Respondent: No attendance

JUDGMENT

1 Mr Nowicki's claims succeed and the respondent shall pay the following sums:

- i. **£7033.50** Statutory redundancy payment
- ii. **£3126.00** Notice pay
- iii. Subtotal: **10,159.50**
- iv. **£4917.82** Damages in respect of a failure to make employer pension contributions
- v. Total **£15077.32**

2 Miss Easby's claims succeed and the respondent shall pay the following sums:

- a. Statutory redundancy pay **£1098**
- b. Holiday pay **£549**
- c. Total **£1647.**

REASONS

1. These files came before me today at a final hearing in circumstances where there is no response to either of the claims from the named respondents.
2. The named respondents are: Mr Peter Hemmingway (named in both claims), Daves Aquarium Limited and Aquatic Kingdom Limited (Mr Nowicki also named these two company respondents).
3. Both claims relate to the closure of a Leeds shop Pet and Aquatic World, 206 Armley Road Leeds in late January. Notice pay/holiday pay and redundancy ought to have been paid on or around closure 21 January 2024, or at the latest by the end 21 February 2024. Both claims have been presented in time, bearing in mind ACAS conciliation dates and the relevant limitation periods.
4. Both claims have been posted to the registered office address of the companies, beginning 225 Folds Road Bolton, which was also identified as the address of Mr Hemmingway in Miss Easby's claim. No post has been returned.
5. The companies house documents describe both companies as active, but on Mr Nowicki's file he provided a copy of an application form for redundancy which asked the applicant for the name and address of the store at which they worked, on headed paper of Daves Aquarium Limited, and identifying the last day work and wages and so on.
6. In these circumstances it is in the interests of justice pursuant to Rule 34 to identify the correct respondent employer to these claims as above (confirmed in a separate order). I am also content pursuant to Rule 91 that the claims have come to the attention of the respondent company and there has been an opportunity to defend them.
7. There is also on Mr Nowicki's file an application for amendment, in effect, to add to his claim a claim for damages for non payment of employer contributions throughout the years of his employment since the obligation to make such contributions to the Nest scheme arose. That is a claim which, in the ordinary course of events, if not pursued here could be pursued in the county court. He and his advisers at the CAB have worked hard to provide a statement and calculations and documentation covering all these events.
8. The principles to be applied in deciding whether to allow an amendment are well-established: see in particular *Selkent Bus Company Ltd v More* [1996] ICR 836 and *Cocking v Sandhurst (Stationers) Ltd* [1974] ICR 650. The discretion to amend must be exercised judicially and taking into account all the relevant circumstances. The Tribunal should consider the nature of the amendment: does it simply add detail to existing allegations, does it apply a new label to facts already pleaded, or does it make entirely new factual allegations that change the basis of the existing claim? If the amendment seeks to add a new complaint or cause of action, the Tribunal should have regard to any applicable time limit for bringing such a claim.

However, that is just one factor in deciding whether to allow the amendment; it is not by itself determinative. The Tribunal must also consider the timing and manner of the application, including the length of and reasons for any delay in making the application. Having considered the relevant facts and circumstances, fundamentally the Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The apparent prospects of success may be relevant to that balancing exercise.

9. Applying the principles above I permit the amendment (confirmed in a separate order). The balance of prejudice lies with Mr Nowicki. He has, on his case, suffered the non payment of pension contributions over many years. If I do not permit the amendment he will have to go to the expense of a county court claim. The respondent has had a full opportunity to participate in these proceedings, and could have attended today's public preliminary hearing in order to apply for an extension of time to present its defence and/or to oppose the amendment. Notices have been posted to the respondents in the ordinary way. The impression given by the file, and confirmed by the attendance today of the two claimants, is of an employing company which although it has continued to trade post pandemic until January of this year, has not fulfilled its obligations to provide payslips or otherwise keep up with his obligations to its staff, and on closure, that continued.
10. Having addressed necessary case management in separate orders and in discussion with the claimants, I then come to the disposal of the claims. There have been no response forms with grounds of resistance filed and it appears very unlikely there are any arguable defences. It is now October and the claimant's employment ended in January. The Tribunal (as a result of the failure to provide response forms) has no better contact details for the respondent than the postal address which is confirmed on companies house. In these circumstances it is very much in the interests of justice to give final Judgment such that the claimants may be in a position to enforce those Judgments. I have explained that the road to enforcement in such circumstances can be long, but it is to be hoped that will not be longer that necessary.

JM Wade
Employment Judge JM Wade
3 October 2024

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