



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr Stephen Ramage

Secretary of State for Business,
Energy and Industrial Strategy

Held at: Watford

On: 13 March 2017

Before: Employment Judge Southam

Appearances:

Claimant: In Person

Respondent: Not present or represented

JUDGMENT

The claimant's claim is dismissed.

REASONS

1. This claim was presented to the tribunal on 9 December, 2016. The claimant presented it after he entered into early conciliation with ACAS the same day. The ACAS certificate of early conciliation was also issued on 9 December, 2016, by email.
2. In the claim, the claimant referred to the company which had employed him as a director, Stopsley Village Cars Ltd, of whom he had acted as such from 1 April, 2011 until 30 September, 2016. He said that the company ceased trading that day but did not have the funds to appoint a liquidator. He made a claim for redundancy and other payments. The claim was initially rejected by the Secretary of State on the ground that no liquidator had been appointed, and the claimant said that although he was owed money by the company, he did not have the funds to commence winding up proceedings himself and no other creditor was willing to take proceedings.

3. Initially, after the service of the proceedings upon them, the respondent denied all liability. Subsequently, the respondent agreed to pay the claimant a redundancy payment. They continued to refuse to make payments in respect of unpaid wages, notice pay and holiday pay, all as claimed by the claimant.
4. Provision for payment of such payments by the Secretary of State is made, in relation to redundancy payments by sections 166-170 Employment Rights Act 1996. There are two alternative conditions for payment of a redundancy payment by the Secretary of State. The first is that the employee has taken all reasonable steps, other than legal proceedings, (which do not include proceedings before an employment tribunal) to recover the redundancy payment from the employer, and the employer has refused or failed to pay the redundancy payment or has failed to pay the whole amount due. In the alternative, payment can be made if the employer is insolvent. That term, "insolvent" is defined by section 166(5).
5. By contrast, the liability of the Secretary of State in respect of other payments appears in sections 182-190 of the same Act. Liability for these payments rests with the Secretary of State only if the employee's employer has become insolvent, the employment has been terminated and, on the appropriate date, the employee was entitled to be paid any of the payments specified in section 184.
6. Where, as in this case, the employer was a company, the employer will be regarded as having become insolvent if, but only if subsection 3 is satisfied. That subsection is satisfied in the case of an employer which is a company, if a winding up order has been made, or a resolution for voluntary winding up has been passed, with respect to the company, or if the company is in administration purposes of the Insolvency Act 1986, or if a receiver or manager of the company's undertaking has been duly appointed or possession has been taken by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act
7. The claimant attended today to present his claim. He had received his redundancy payment. In answer to my questions as to the status of the company with reference to the various conditions set out in section 183, the claimant's answer was in all cases, negative. None of the circumstances set out in that section applied. It was therefore impossible for me to hold that the company had become insolvent within the meaning of section 183. It followed that there was no liability upon the Secretary of State to make any of the amounts of unpaid wages, notice pay or holiday pay claimed by the claimant in these proceedings. For those reasons, the claim had to be dismissed today.

Employment Judge Southam

Date: 14/03/2017

JUDGMENT SENT TO THE PARTIES ON:

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FOR THE TRIBUNAL OFFICE