EMPLOYMENT TRIBUNALS

Claimant: Mr MC Stamford

Respondent: Stamford Renewables Ltd

HEARD AT: NORWICH **ON**: 24th, 25th & 26th April 2017

BEFORE: **Employment Judge Postle**

REPRESENTATION

For the Claimant: In person

For the Respondents: Ms S George (Counsel)

JUDGMENT

1. There was a genuine redundancy situation.

2. The Claimant is entitled to a redundancy payment of £5,748.

3. Failure to provide main statement of terms and conditions 2 weeks the Respondents are ordered to pay £958.

4. The Respondents are ordered to pay the sum of £60 in unpaid pension contributions.

5. The Respondents are ordered to pay the sum of £700 in unpaid expenses.

REASONS

1. In many ways this is indeed a sad case, in many ways the parties deserve each other. It started very much like, a “happy engagement, the parties married, that marriage started to have cracks in it and is now ending in what can best be described as acrimonious divorce”. At times

during the course of these proceedings it seemed like a sledgehammer to crack a nut, it is relatively straight forward claim.

2. The claims made by the Claimant are that he was unfairly dismissed, he says that any redundancy was sham and the process even if it was a genuine the redundancy process leading up to the redundancy was flawed. The attempt to dismiss the Claimant for gross misconduct is mistaken because his employment had ended by reason of redundancy in any event. There was nothing suggesting otherwise in writing or at any disciplinary meeting dismissing the Claimant for gross misconduct. The Claimant also has a claim for unpaid expenses going back to 2011, a pension claim, holiday pay claim for 6 days and a claim for failure to provide written statement of terms and conditions of employment and notice of change of terms of employment.

3. The Respondents assert the reason for the Claimant's dismissal is gross misconduct or in the alternative redundancy. The Respondents dispute the claim for the expenses certainly before September 2015 on the basis that the Claimant had agreed to forgo expenses in return for the payment of a shareholding in kind for want of a better word in the Respondent's Suffolk Company. They accept expenses are due from September/October 2015 but the quantum of those expenses remains in dispute. They also argue that any sums due should be set off against the Claimants failure to return the Company's equipment some of which remains in the possession of the Claimant.

4. In this Tribunal we have heard evidence from Mr Davies, Mr Brogan and Mr Eves. Mr Davies and Mr Brogan are the main investors in this business and are non executive directors and are unpaid. They gave their evidence through prepared Witness Statements, for the Claimant he gave evidence again through a prepared Witness Statement and we had evidence from Dr Wannop through a Skype link from Australia who was also a smaller investor in the company. We had three bundles, an expenses bundle of 36 pages and then two bundles for the main consisting of 603 pages.

5. The important aspects of this case are the facts. The Respondent Company was formed it seems in around 2007 and the plan was to find suitable sites for the erection of wind turbines. Obtaining planning permission, sell the sites hopefully to third parties who would then build and operate wind turbines for them and the Respondent would obtain substantial returns and profit from the sale of those sites with planning permission, simple as that. The main financial backers as I have said in this project were Mr Brogan and Mr Davies who it has to be said have invested substantial sums of money in this business over the years running into what appears to be several hundreds of thousands of pounds, together with Mr Davies guaranteeing the overdraft in the interim period.

6. It's also the case that during the period from the time of the company's inception until certainly 2016 there was simply no revenue generated from this Company, therefore the Company relied entirely upon the substantial good will of its investors along the way, without which the company simply would have folded. Mr Stamford was employed according to his ET1 from April 2008 as a Chief Executive Officer on a salary of certainly in the region of £70,000 probably at that date, plus a car, plus expenses. It appears that at some stage the date not particularly clear Mr Stamford personally invested cash of around £5,000. He was employed for his skills and knowledge in the field of obtaining Planning Permission for wind turbines and finding the sites for the purpose of wind turbines etc, and he was to get the project up and running. The Claimant was also paid expenses for using his home as an office base, heating and lighting of around £85 per month and expenses for phone links, internet connections, mobile phones, all the things that are necessary to run an office from your home. The Respondent provided the necessary capital equipment such as computers etc, again necessary requirement in the performance of the Claimant's role. For reasons best known to the Claimant his expenses were not claimed on a regular basis. In September 2015 I have no doubt it was agreed between the Respondent and the Claimant that his expenses claims going back many years in order to put this to bed would be set off against money that the Claimant still owed or wished to invest in respect of a shareholding in I believe it was the Respondent's subsidiary, SRL Suffolk Ltd. At that stage it would leave if they set off those expenses against the value of Mr Stamford's shareholding purchase of an approximate balance of about £6,900.

7. Now, there were its fair to say numerous problems with the 2 main sites that the Respondents had acquired, one in Suffolk, Laurel Farm and one in Scotland somewhere near Perth. Those problems involved planning appeals and litigation particularly on the Suffolk site from an individual going all the way to the Supreme Court, that clearly delayed matters and put a financial strain on its investors. Now ultimately the Suffolk site was resolved in favour of the Respondents, I think it was about May 2016 and the Scottish site which I think had failed to obtain planning permission in February or March 2016, in effect the Scottish site I think the words being used "was a disaster". In addition to this if there weren't enough problems, early 2015 the Government announced it was changing its stance on 'renewal obligation reserves', they were effectively being eliminated which ultimately reduces the value of any sites. Also around about the same time the Planning Rules for wind Turbines in England were also changing making it far more difficult to obtain planning consent.

8. As a result of the above the Respondents, particularly their main investors Brogan and Davies not surprisingly decided that there was no real reason for the business to continue after decisions were made on those 2 sites, once decisions whatever they were, were made on those sites the business would be wound up. In other words Messer's Brogan

and Davies were only going to fund for a limited period effectively to see the outcomes of the 2 sites and at that stage then call it a day. Given the fact that the financial returns on those sites whatever the outcome were now likely to be substantially reduced as against originally envisaged.

9. It is also clear given the above as early as late 2015 if not before that the Respondents were discussing, (Brogan and Davies) with the Claimant their plans and the need for the Claimant to plan for the future after the company was wound up. Particularly whether the Claimant would now or at a later stage consider becoming a self employed consultant/or part time employment with the Respondent's subsidiary companies that were set up effectively for the Suffolk site and Kellow for the Scottish site. The above was not something the Claimant wished to pursue and nor did he wish to consider any form of part-time employment. This again came up in February 2016 and that was declined by the Claimant, despite finances being very stretched, at this time there was an attempt it's true to reduce the Claimant's salary and ask him to go part-time, namely 50% in order to reduce costs given the fact that the company simply had no income stream. The Claimant did not wish to pursue that avenue. Mr Davies also had previously offered self employed work to the Claimant based on projects that he had which were separate it from the Respondents business. It is clear by early 2016 the Respondents were now hardening their view that they simply could not go on for ever financing the company where it seemed there was less and less chance of a return. They were (Brogan and Davies) in simple terms not prepared to loan money/further sums to the company. One of the main expenses of the Respondents throughout was the Claimant's salary, and no doubt running the car. Now given the fact that Brogan, Davies and Mr Eves were all unpaid but experienced in business and corporate sales they viewed whatever the outcome of the 2 sites (the decisions they were waiting for in effectively February/March and April/May) they were going to effectively call it a day and if there was sales to be had they could deal with those themselves, they had the experience without the further employment costs of the Claimant.

10. Given the above circumstances the Directors, Brogan, Davies and Eves being the major investors concluded that there was therefore no need for a paid Chief Executive Officer with the salary and expenses that went with it. The Claimant's role could easily be absorbed by the remaining unpaid Directors in their view given the fact that the company had only one paid employee the selection for redundancy was self selecting. Mr Stamford was therefore placed at risk of redundancy by letter of the 18th February at 346 that sets out the position clearly.

11. There then followed two consultation meeting, one was on the 23rd February and the outcome of that was confirmed in writing by letter of the 26th February by Mr Brogan signed in his absence by Mr Eves. In that letter at 354 it confirmed the Claimant's provisional selection for redundancy and in the absence of any alternatives available a further

meeting was planned for 4th March which ultimately took place at the Claimants request on the 14th March. It's clear at these meetings the Claimant had an opportunity to come up with any suggestions and any alternatives to avoid his redundancy. However, previous discussions around part-time and consultancy work had been declined by the Claimant and, given that the Claimant was the only employee and the major expense the decision was taken to declare the Claimant's redundancy. That was confirmed to the Claimant in writing by letter of 17th March in which he was given a 10 week notice period notwithstanding the fact that he was only entitled to an 8 week period of notice.

12. I accept previous discussions had taken place and that the reason why his notice had been extended for a 10 week period rather than the 8 week period was to allow the Claimant to take within that period his outstanding holiday of 6 days, that I am satisfied was the agreement and although the letter terminating the Claimant's employment refers to payment in lieu I'm satisfied that, that was a standard letter prepared by the Respondent's Lawyer and that paragraph was in error. The Claimant was offered an appeal against the decision, to make him redundant. The Claimant availed himself of the appeal and with the Claimant's approval that appeal was dealt with by Messer's Brogan and Davies rather than Mr Eves whom the Claimant appears to have had issues with. Ultimately the appeal was unsuccessful as there simply was no alternative, the funding of the company was to end, unpaid Directors could in effect deal with the winding down and sale of the sites, therefore to continue to employ the Claimant in the position to which he was employed there was no longer a need.

13. The Claimant had been instructed during his notice period apart from petrol that he needed to seek prior approval for expenditure, there were issues from the Directors over a trip to Scotland and the Claimant indemnifying a contractor over borehole damage. There were also disputes and arguments over the return of company property both during the notice period and thereafter. However, the Claimant's Employment Contract ended on the 27th May by reason of redundancy and prior to that date there was no termination by Mr Brogan or indeed anybody else on behalf of the company for any alleged misconduct in any disciplinary hearing meeting at which the Claimant was dismissed for gross misconduct.

THE LAW ON REDUNDANCY

14. Section 139 of the Employment Rights Act 1996 says, "that for the purpose 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 the fact that his employer has ceased or intends to cease, to carry on the business for the purposes of which the employee was employed by him and the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or

diminished or are expected to cease or diminish", that is the definition of a genuine redundancy. Redundancy is a potentially fair reason to dismiss under the Employment Rights Act under Section 98(2). The Tribunal then have to have regard in deciding whether the dismissal is fair or unfair by reason of redundancy to Section 98(4). In considering that section the Tribunal has to look and see whether the Claimant was warned about the possibility of redundancy, whether he was consulted about redundancy, and whether where it is appropriate the selection of the Claimant for redundancy is fair.

CONCLUSIONS

15. There was clearly a genuine redundancy, the requirements for the Claimant to carryout work of a particular kind had ceased and in due course the company was likely to cease and stop, and the reason for that was the investors were going to pull the plug on financing the company any further once they had sorted out the sale of sites and wound down the company. That may have taken longer than all parties envisaged, but that is a fact of life that sales of large sites take sometimes a considerable amount of time. It is clear that the Claimant had been adequately warned that this was a possibility, whether he took it onboard as a real warning is a matter for him, but the Claimant was adequately warned. The Claimant was also consulted over the redundancy but really it is difficult to see where you only have one employee who is the Chief Executive Officer on a large salary in circumstances where the Claimant has said he does not want part-time employment or consider some form of guaranteed consultancy that there were any alternatives available. So, so far as consultation was meaningful it did take place and the selection for the Claimant at the end of the day was self selecting, so I'm satisfied that there was a genuine redundancy situation and the process leading up to and including the termination by reason of redundancy was fair.

16. The suggestion by the Respondents that the Claimant was dismissed for some form of misconduct is on the facts non-sensible, you simply cannot terminate a contract for another reason after the contract of employment has come to an end which it clearly did on the 27th May and then purportedly terminate it for another reason after that date, that is simply legally impossible. The fact remains the Claimant's employment was terminated by reason of redundancy and no other reason, so in those circumstances the Claimant is entitled to a redundancy payment in the sum of £5,748.

17. Dealing with the Pension claim – I'm satisfied there was an exemption where an employee is the only employee and Director no enrolment on a pension scheme is required. After that the Claimant ceases to be a Director I think it's around about February/March 2016 the Claimant should have been enrolled and there appears to be a sum of probably 2 months contributions payable to the Claimant at most.

18. In relation to the Statement of Main Terms and Conditions or employment under the Employment Rights Act 1996 it never ceases to amaze me for 8 years this Claimant worked happily without a Contract of Employment or Main Statement of Terms and Conditions and if as the Chief Executive Officer he was so concerned by the lack of the Main Statement of Terms and Conditions during the course of his employment still being friendly with certainly Mr Davies he didn't approach him and say "I really do need to have a Statement of Main Terms and Conditions of Employment", he didn't do this until 2016. In those circumstances the discretion is 2-4 weeks but I only award 2 weeks which is subject to statutory cap and is therefore £958.

19. As for expenses I'm satisfied the expenses up until September 2015 have been settled by way of offsetting the agreement to purchase shares in the Suffolk company that is clear, but even if I was wrong in that, and those expenses had not been paid and the Respondent was in some way refusing to pay those expenses why on earth has the Claimant left it so many years to bring the claim for those expenses, clearly it would have been reasonably practicable to have brought the claim within 3 months of non payment, they are clearly out of time any event. As to the Expenses post 2015 (September), in order to do proportionality because so much time has been spent on this part of the Claimant's claim he says over 12 years he's owed £12,848 in expenses, so if you divide that by 12 that means £1070.66 per annum, if you divide that weekly that's £20.58, if you say that the reality is £20 is the sum outstanding each week times 35 weeks that brings the sum to £700 payable in expenses. In respect of the itemised payslips and notification of the change under Section 4 of the Terms and Conditions in the event those changes didn't take place so I make no award.

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Employment Judge Postle, Norwich.

Date: 2nd June 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS