



EMPLOYMENT TRIBUNALS

Claimant: Ms L Green

Respondent: Browns Property Services (Stoneleigh) Ltd

Heard at: London South **On: 3 August 2018**

Before: Employment Judge Fowell

Representation:

Claimant: No appearance

Respondent: Mr D Feltham, Director

JUDGMENT

The complaints of failure to pay a statutory redundancy payment, failure to pay notice and for unlawful deduction from wages are upheld.

The claimant is awarded compensation of £11,663.21

REASONS

1. By a claim form dated 27 April 2018 the claimant presented a claim for a statutory redundancy payment, notice pay, and for unpaid commission. According to the information supplied she worked for the respondent estate agency from April 1998 until 23 February 2018 when the company ceased trading. She claimed:
 - a. A statutory redundancy payment of £9,466.50;
 - b. 12 weeks' notice pay of £3,786.60; and
 - c. £480 in commission.
2. The response confirmed that the company had ceased trading and stated that her start date was 15 March 1999. She joined the company following a TUPE transfer. Details were provided of the company's finances and inability

to pay and it was accepted that the claimant was entitled to these payments, although the amounts were disputed.

3. The claimant has not provided any more details of her claims. She contacted the Tribunal before the hearing to advise that she would find the hearing too stressful and invited the Tribunal to go ahead with the hearing in her absence. Given that the entitlement to these sums was not in dispute I decided to do so, as provided by Rule 47 of the Employment Tribunal Rules of Procedure.
4. Mr Feltham provided me with a copy of the claimant's original contract of employment showing her start date of 15 March 1999 and a previous P45 consistent with this, so I accept that date.
5. Further details were also provided of her earnings, which were based on £9 per hour for 24 hours per week, or £216 gross per week. The amounts claimed in the claim form were accepted but included commission, which was fairly regular.
6. For making calculations of notice pay and statutory redundancy pay it is necessary first to establish the value of a week's pay, as defined by section 221 Employment Rights Act 1996. Where the sum does not vary with the *amount* of work done, that is simply the contractual amount. Where it does vary, an average over the previous 12 weeks is required.
7. In either case the same result applies. Commission did not reflect additional work done personally by the claimant, rather than the firm or team, and she did not work additional hours to achieve it. It is a contractual entitlement, and so should be included.
8. The alternative approach of adopting an average leads to the same result, and although I have no detailed figures to calculate an average over 12 weeks, there was no evidence to dispute the accuracy of the figures claimed.

Statutory redundancy payment

9. The calculation of the claimant's statutory redundancy payment is straightforward given that the amounts of pay and length of service are clear.
10. She had 18 years of complete service, all over the age of 41, and so is entitled to 1.5 weeks' pay per year, amounting to 27 weeks' pay. At £286.14 per week this amounts to £7,725.78

Notice pay

11. The claimant claimed 12 weeks' notice, which is the statutory maximum and accords with her length of service. This has to be calculated on the basis of net figures. Hence, 12 weeks' pay at £256.57 per week net is £3,078.80

Commission

12. The commission figure was agreed but the sum awarded should also be net of tax, which at the figures quoted by the claimant should be at 89.7% of the gross amount. Hence, £430.56 is awarded for unlawful deduction from wages.

Summary

13. The amounts awarded are therefore:

a. statutory redundancy payment	£7,725.78
b. notice pay	£3,078.80
c. commission	<u>£430.56</u>
Total	£11,235.14

14. Where an employer is insolvent, such outstanding payments can be claimed from the National Insurance Fund via the Insolvency Service.

Employment Judge Fowell
Date 03 August 2018