



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant:** Mr G Young

**Respondent:** Secretary of State for Business, Energy and Industrial Strategy

Heard at: London South

On: 28 February 2018

Before: Employment Judge Freer

### Representation

Claimant: Ms I Davis, Free Representation Unit

Respondent: Not attending

## REASONS

1. These are the written reasons for the Tribunal judgment sent to the parties on 05 March 2018 that the Claimant is entitled to a statutory redundancy payment in the sum of £3,640.23 and the Claimant's claim for statutory notice pay is well founded in the amount of eleven weeks of pay less sums received, giving an amount payable of £1,808.12.
2. Oral reasons were given at the hearing and these written reasons are produced at the request of the Respondent.
3. By a claim presented to the Tribunal on 13 November 2017, the Claimant claimed an entitlement to a redundancy payment, notice pay, four days of accrued annual leave and 'other payments'.
4. At this hearing the Claimant withdrew his claims for accrued annual leave and other payments and pursued only his claims of an entitlement to a redundancy payment and notice pay.
5. The Claimant attended at the hearing and gave evidence to the Tribunal both by way of a written witness statement and orally. The Claimant also produced a bundle of documents comprising 100 pages.
6. The Respondent did not attend at the hearing, submitted brief written submissions by a letter dated 27 February 2018, which amounted to reliance on

the Insolvency Practitioner failing to agree/verify the Claimant's continuity of service. No evidence was produced for consideration.

7. The Claimant was ably assisted by Ms Davis of the Free Representation Unit and helpful written and oral submissions were made on his behalf.
8. The Claimant was employed by the London and Lancashire Rubber Company Ltd ("the Company") and his employment was terminated on 29 August 2017.
9. On 20 September 2017 the Claimant made a claim to the Redundancy Payment Service for a statutory redundancy payment and notice pay. That application was rejected by the Redundancy Payment Service on 24 September 2017 on the basis that the Claimant had not been continuously employed by the Company for period of at least two years.
10. The Tribunal finds as fact that the Claimant first started working for the Company on 16 January 2006. This was an arrangement entered into under an oral contract. The Claimant worked on a full-time basis. These circumstances were confirmed by the Claimant's oral and written evidence and supporting documentation relating to salary in 2006, particularly the 2005/2006 P60. There was no evidence produced by the Respondent to rebut this contention.
11. The Claimant's employment with the Company finally ended on 29 August 2017.
12. Under section 210(5) of the Employment Rights Act 1996: "a person's employment during any period shall, *unless the contrary is shown*, be presumed to have been continuous" (the Tribunal's emphasis).
13. The Respondent has produced no evidence to show the contrary. There is a statement in the brief letter of submission that the Claimant retired on 25 September 2017 and recommenced work on 19 October 2017. Those dates in fact should be 2015. However, no evidence was produced by the Respondent or substantive submissions made (supported by any evidence of either party) to "show" the contrary to a presumption of continuous employment as argued by the Claimant.
14. On that basis alone the Claimant's claims based on continuous employment up to 29 August 2017 are successful.
15. Alternatively, the Claimant in his evidence to the Tribunal accepted that there was a period of unpaid employment between himself and the Company from 25 September 2015 to 19 October 2015.
16. The Tribunal finds as fact that the Claimant worked on a paid part-time basis for the Company from 19 October 2015. That date is retrospectively recorded as the Claimant's "Start Of Employment" in a written contract entered into between the parties on 03 April 2017. The Company entered into Creditors Voluntary Liquidation on 12 September 2017.
17. With regard to the period between 25 September 2015 and 19 October 2015, the

Tribunal finds as fact that it was agreed on 25 September 2015 between the Claimant and Mr Wheeler, Managing Director of the Company, that the Claimant would continue working on a part-time basis from 25 October 2015. The Tribunal accepts the Claimant unchallenged evidence as set out in paragraphs 6 to 8 of his witness statement, that he arranged for his retirement on 25 September 2015, but on his leaving day, because of his appreciation of the Claimant's work, Mr Wheeler offered the Claimant further work on a part-time basis (supported by the fact that is what occurred from 19 October 2015). The Claimant arranged to commence part-time work earlier than originally agreed and Mr Wheeler confirmed continuous service. That evidence was unchallenged by the Respondent and accepted as fact by the Tribunal.

18. Section 212 of the Employment Rights Act 1996 provides:

“(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—

a) incapable of work in consequence of sickness or injury,

b) absent from work on account of a temporary cessation of work, or

c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under subsection (3)(a) between any periods falling under subsection (1)”.

19. The Tribunal concludes that the Claimant was absent from work by arrangement pursuant to section 212(3)(c) of the Employment Relations Act 1996.

20. The Tribunal accepts the Claimant's submissions and finds as fact that the arrangement between the Claimant and Mr Wheeler on 25 September 2015 was such that the Claimant was regarded as continuing in the employment of the Company for the purpose that he would provide work on a part-time paid basis on 25 October 2015. That purpose, the Tribunal concludes, is sufficient to fall under the description “any purpose” and fulfil section 212(3)(c).

21. There is no requirement for the Claimant to work, or be paid, or for any agreement to be under the same contract for continuity to be preserved under section 212(3)(c).

22. The Tribunal further concludes that it was additionally agreed that the Claimant would return to paid part-time work earlier than initially agreed whereby Mr Wheeler confirmed continuous service, thereby giving additional reason why the Claimant was regarded as continuing in the employment of the Company from 25 September 2015.

23. Accordingly, the Tribunal concludes that there was an arrangement for absence from work where the Claimant was regarded as continuing in the employment of the Company for any purpose.

24. However, in any event, the primary burden is not on the Claimant to demonstrate continuity and this conclusion does not circumvent the initial onus being on the Respondent to show the contrary to a presumption of continuity, which it has failed to do.
25. Accordingly, when applying the statutory provisions, the Tribunal concludes that the Claimant had continuous service with the London and Lancashire Rubber Company Ltd between 16 January 2006 and 29 August 2017.
26. The Tribunal also accepts the dates and figures set out in the Claimant Schedule of Loss and concludes that he is entitled to a redundancy payment of £3,640.23 being the sum of  $1.5 \times 11 \times £220.62$  (the Claimant's gross weekly basic pay).
27. The Tribunal also accepts the Claimant's figures relating to notice pay and concludes that he is entitled to notice pay of £1,808.12, being 11 weeks of net weekly basic pay (£180.42) totalling £1,984.62, less an amount received from the Respondent of £176.50.

Employment Judge Freer  
Date: 14 September 2018