



EMPLOYMENT TRIBUNALS

Claimants: Miss D Cann and 5 Others

Respondent: Gingers Childcare Limited

Heard at: Leicester **On:** Tuesday 17 July 2018

Before: Employment Judge P Britton (sitting alone)

Representatives

Claimants: All Claimants attended apart from Natasha Walsh who was on holiday and were represented by Deborah Cann

Respondent: Mr P Harris-Jones, Director
Ms S Walkerdrive, sister of the previously named Respondent Kerry Harris-Jones

JUDGMENT

1. The claim is dismissed against Kerry Harris-Jones as the Respondent her not having been at law the employer.
2. Substituted is Gingers Childcare Limited it having been at law the employer.
3. The latter not defending these proceedings consents to the judgments as hereinafter now set out.
4. The claims where applicable of unfair dismissal are dismissal upon withdrawal this being a redundancy situation.
5. A copy of this judgment is to be sent to the Secretary of State at the Insolvency Fund as s166 of the Employment Rights Act 1996 applies to the redundancy payments hereinafter awarded.

Deborah Cann

1. The claim for notice pay succeeds. The Respondent will pay the Claimant damages of **£2287.78 gross**. This is calculated as length of service 10 years x gross weekly pay of £228.78.
2. The claim for a statutory redundancy payment succeeds the Respondent will pay the Claimant **£3,431.70**. The calculation is as follows:-

2.1 Date of birth 8 November 1960. Completed years of service 10. Gross weekly wage £228.78. Therefore redundancy payment equals £3,431.70.

3. The claim for outstanding holiday pay succeeds. The Respondent is ordered to pay the Claimant **£1,190.00** gross.

4. Finally the claim for unlawful deduction from wages (non payment) succeeds and the Respondent will pay the Claimant compensation of **£900.00** gross.

Daisy Flanagan

1. The claim for unfair dismissal/redundancy pay is dismissed for lack of qualifying service.

2. The claim for notice pay succeeds. The Respondent will pay the Claimant damages of **£506.26** gross. The calculation is as follows: Contractual notice entitlement 4 weeks x weekly wage £126.57gross = £506.26.

3. The claim for non payment of outstanding holiday pay succeeds. The Respondent will pay the Claimant compensation of **£500.50** gross.

4. The claim for unlawful deduction (non payment) of wages succeeds. The Respondent will pay the Claimant compensation of **£367.00** gross.

Deborah Bray

1. The claim for unfair dismissal/a redundancy payment is dismissed for lack of qualifying service.

2. The claim for notice pay succeeds. The Respondent will pay the Claimant damages of **£1,130.75** gross. The calculation is as follows: Contractual notice entitlement 4 weeks x weekly wage £282.68 gross = £1,130.75.

3. The claim for non payment of outstanding holiday pay succeeds. The Respondent will pay the Claimant compensation of **£1,293.75** gross.

4. The claim for unlawful deduction (non payment) of wages succeeds. The Respondent will pay the Claimant compensation of **£915.00** gross.

Elisha Wright

1. The claim for a statutory redundancy payment succeeds. The Respondent will pay the Claimant **£377.45**. The calculation is as follows:-

1.1 Date of birth 15 October 1996. Completed years of service 3. Gross weekly wage is £251.63 Therefore redundancy entitlement = £377.45.

2. The claim for contractual notice pay succeeds. The Respondent will pay the Claimant damages of **£1,006.52** gross. The calculation is as follows: Contractual notice entitlement = 4 weeks x weekly wage £251.63 = £1,006.52.

3. The claim for non payment of outstanding holiday pay succeeds. The Respondent will pay the Claimant compensation of **£838.95** gross.

4. The claim for unlawful deduction (non payment) of wages succeeds. The Respondent will pay the Claimant compensation of **£740.25** gross.

Natasha Walsh

1. The claim for a statutory redundancy payment succeeds. The Respondent will pay the Claimant **£778.89**. The calculation is as follows:-

1.1 Date of birth 15 September 1981. Completed years of service 3. Gross weekly wage £259.63. Therefore the redundancy entitlement is £778.89.

2. The claim for notice pay succeeds the respondent will pay the Claimant damages of **£1,038.52**. The calculation is as follows: Contractual notice entitlement = 4 weeks x £259.63 weekly wage gross = £1,038.52.

3. The claim for non payment of outstanding holiday pay succeeds. The Respondent will pay the Claimant **£1,237.50** gross.

4. The claim for unlawful deduction from wages (non payment) succeeds. The Respondent will pay the Claimant compensation of **£922.50**.

Bianca Baugh

1. The claim for a statutory redundancy payment succeeds. The Respondent will pay the Claimant **£2,302.39**. The calculation is as follows:-

1.1 Date of birth 7 May 1987. Completed years of service 9. Gross weekly wage £270.87. Therefore the redundancy entitlement is £2,302.39.

2. The claim for notice pay succeeds. The Respondent will pay the Claimant damages of **£2,437.83** gross. The calculation is as follows: 9 x £270.87 equals £2,437.83.

3. The claim for non payment of outstanding holiday pay succeeds. The Respondent will pay the Claimant compensation of **£1,160.25** gross.

4. The Claimant for unlawful deduction from wages (non payment) succeeds. The Respondent will pay the Claimant compensation of **£981.57** gross.

REASONS

Introduction

1. The claim (ET1) was presented to the Tribunal on 16 January 2018. All the Claimants worked in various capacities for what was said to be Kerry Harris-Jones but at Gingers Childcare for which an address was given. In each case the scenario set out was that towards the end of their employment the Claimant ceased to get paid. They began to make enquiries only to find out that

the business was shut; hence the claims to Tribunal. Included was a claim for unfair dismissal but given those facts which are not in dispute it is clear that this was actually a redundancy in respect of which all the Claimants now agree. Two of them do not have the requisite 2 years qualifying service in any event to bring claims whether it be redundancy or unfair dismissal and have accepted that before me today.

2. So the claim was registered against Kerry Harris-Jones with it being listed for hearing today and a deadline for the filing of the response (ET3) was 19 March 2018. Subsequent to the service of the response the Claimants all supplied comprehensive details in terms of their pay and what they were owed.

3. On 26 April 2018, so out of time in terms of a response date by just over a month, a response came in which it was stated that the Respondent was actually Gingers Childcare Limited. What was set out in that response was why it was the employer and a reason given for the late filing of a response namely that the Claimant is extremely unwell, and that in fact Mr Harris-Jones the husband, together with her sister Mrs Walkerdrive would attend today to explain the position. What seemed to me to be self-evident is that subject to determining the correct Respondent, the financial claims were not contested. So what was listed today as a Preliminary Hearing was in effect to determine whether the Respondent was Kerry Harris-Jones or Gingers Childcare Limited and if so the latter should be substituted as the correct Respondent. I should make it clear that time for filing the response is extended given the reason for the late filing.

4. When I read the file this morning it was self-evident to me that the Respondent was in fact Gingers Childcare Limited by virtue of the payslips the Claimants themselves had sent in and which all showed it to be the employer in terms of pay. I understood that in particular Deborah Cann was a bit uneasy about that because of course they worked day to day with Kerry. But I explained that this scenario is frequently the case and it doesn't however pierce the corporate veil so to speak unless there was some dishonesty/sham going on here which is not said to be the case. I then was shown the contract of employment for Deborah and it was in fact with Gingers Childcare Limited. I understand the other Claimants, or at least some of them received similar contracts. The Claimants discussed this matter between themselves and accepted it was the correct employer and therefore I substituted Gingers Childcare Limited for Mrs Harris-Jones and who is therefore dismissed from the proceedings. Gingers Childcare Limited via Peter Harris-Jones as co-director with Kerry then made plain that it accepts liability for the sums claimed.

5. However the company has closed. It has no premises which were in fact rented from Leicester City Council and have been surrendered. It is heavily in debt and has no assets whatsoever. As to whether it will now go into a formal insolvency situation as per the definition at s166 and also s184 of the Employment Rights Act 1996 (the ERA) is questionable as there are no funds to place it into such as liquidation. It will probably now dwell in limbo land so to speak until it is struck off for failing to file a company return. The alternative will have to be that a creditor and it could be one of these Claimants will in due course take steps to place it in formal insolvency. But this costs money and the Claimants will doubtless seek advice from such as the CAB. But the point then being that if the Claimants did that and the cupboard was bare so to speak, they could then make application to the Secretary of State for payment of their statutory entitlement to such as notice pay from the Insolvency Fund pursuant to s184 of the ERA. But in terms of evaluating the cost benefits in terms of placing

the respondent into formal insolvency they should be aware that the contractual notice entitlements as per the contract of employment which I have awarded for some of the Claimants are more advantageous than the statutory framework, so that pursuant to s184 where this is the case the relevant Claimant will only get the lower statutory payment. But consequent upon this judgment those Claimants to whom I have awarded a statutory redundancy payment can now make application to the Secretary of State pursuant to s166 of the ERA as the fact that the Respondent is not currently insolvent as defined does not affect their right to make a claim pursuant to s166: hence why I have directed a copy of this Judgment be sent to the Secretary of State.

Employment Judge P Britton

Date: 19 July 2018.

JUDGMENT SENT TO THE PARTIES ON

21 July 2018

FOR THE TRIBUNAL OFFICE