



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms K Kerry

**Respondent:** Regents Park Ltd

**Heard at:** Exeter                      **On:** 30 November 2018

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person

**Respondent:** Mr J Franco of Counsel, instructed by RBS Mentor

# JUDGMENT

1. The respondent made unauthorised deductions amounting to £1032.67 from the pay of the claimant.
2. The claimant is due £471.16 in respect of holiday accrued but not taken prior to the end of her employment.
3. The respondent is ordered to pay to the claimant £1,503.83.

# REASONS

1. There is no dispute about fact in this case.
2. At the end of the claimant's employment by the respondent, the respondent made deductions from the claimant's final pay. These were of £891.99 in respect of holiday pay, £140.68 in respect of what was said to be an unauthorised expense (more accurately within her financial authority but for a service which the respondent did not agree should have been contracted for), and £111.59 in respect of overpayment for sick pay, as the claimant was paid full pay for 2 days sickness, which was more than the ssp to which she was entitled. The arithmetic of the deduction is not disputed by the claimant.
3. The dates holiday was taken are agreed, and are set out in the pleadings.
4. The claimant was paid £35,000 a year. While she had to fill in timesheets, she had a 40 hour week, and was paid the same amount each month.
5. The holiday year was from 01 April. The claimant left her employment at almost the end of the holiday year, and sensibly the respondent attributed one whole year's entitlement to the claimant. That was 5.6 weeks.
6. The claimant worked a 5 day week (each of 8 hours) until 19 July 2017. Then she changed to a 4 day week, the days then being of 10 hours.
7. The respondent has used hours to work out the total number of hours taken and the total or hours due. This has led to error, as the arithmetic should have been based on weeks as the starting point.
8. The period 01 April 2017 to 19 July 2017 is 15 weeks. That is 28.8% of a year. A year's entitlement was 5.6 weeks, so in that time the claimant accrued 28.8% of her annual entitlement of 5.6 weeks. At 5 days a week, that would be 28 days in a full year. For the first part of the year the claimant accrued 8 days holiday (28.8% of 28 days). It is agreed that the claimant had taken 7 days in that period, and so she was due 1 more day. Her pay was £35,000 a year, which (divided by 52) is £673.08 a week, and (divided by 5) £134.62 daily.
9. The rest of the year is 35 weeks, which is 71.2% of the holiday year. 71.2% of 5.6 weeks is 4 weeks, almost exactly. The working week was 4 days, so for 4 weeks that is 16 days' entitlement. The claimant took 14 days in that period, so had 2 days accrued and not taken. As there are 4 days in a working week for this period, each day is worth £673.08 divided by 4, which is £168.27. Twice this is £336.54.
10. As the claimant was due holiday for both parts of the year, these can be added together, and therefore the claimant was due £471.16 holiday pay when she left. There should have been no deduction for holiday pay.
11. The claimant had contracted for employment advice in a modest sum, and it was unnecessary as the respondent paid Mentor Business Services. There is a clause in the contract permitting deductions for any fines penalties or losses caused by the claimant's conduct, carelessness, negligence, recklessness or through breach of company rules or dishonesty. Dishonesty is not asserted. It is agreed that the sum spent was within the claimant's authority as a manager. I

decide that it is not appropriate to make a deduction in respect of an amount which it was proper for her to spend, even if she was mistaken.

12. The claimant accepts that she was entitled only to statutory sick pay, and was paid in full for 2 days sickness absence. She says that she was to make up the hours. However she was salaried, not hourly paid and this is not relevant. Accordingly that was a proper deduction.
13. I find that the deductions of £891.99 and £140.68 were not authorised. These total £1,032.67. In addition there is the holiday unpaid which was £471.16. These total £1,503.83 and that is the sum which I order the respondent to pay to the claimant.
14. I order the sums gross because it will not now be possible for the respondent to run them through payroll, and it will be for the claimant to account to HMRC for tax and national insurance on the amounts.

Employment Judge

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Date 30 November 2018