



EMPLOYMENT TRIBUNALS

Claimant
Mr A Corby

Respondent
v Beacon Construction & Joinery Ltd

PRELIMINARY HEARING

Heard at: Leeds **On:** 16 February 2018
Before: Employment Judge O'Neill
Appearance:
For the Claimant: Did not attend
For the Respondent: In Person

JUDGMENT

1. The claim for breach of contract succeeds in respect of the holiday pay claim and the claimant is awarded damages in the sum of £1,398.00.
2. The claimant is further awarded the sum of £202.00 by way of non payment of statutory holiday pay.
3. The claim for unlawful deduction of wages by way of failure to pay wages properly payable (i.e. SSP) succeeds and I award the claimant compensation in the sum of £178.70.
4. The counter claim succeeds to the limited extent of £1,000.00.
5. The respondent shall pay the claimant forthwith the sum of £678.70 calculated as follows:

Contractual holiday pay	£1398.00
Statutory holiday pay outstanding	£ 202.00
SSP	£ 178.70
	<u>£1678.70</u>
Less Counter claim £1,000.00	
Total	<u>£ 678.70</u>

REASONS

6. **The claims**

The claims are brought for breach of contract by way of non payment of contractual holiday pay, failure to pay statutory holiday pay and failure to pay statutory sick pay.

7. **Relevant legislation**

Employment Rights Act 1996 sections 15 & 27
Working Time Regulations 14 & 16
Employment Tribunals Act 1996 S3

Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

Employment Tribunal Extension of Jurisdiction Regulations Reg4

8. **Preliminary Matters**

The respondent has given an undertaking to withdraw the claim made in the Bradford County Court and on that basis, I have heard the counter claim.

9. The claimant did not appear but I am satisfied having looked at the Tribunal file that he had notice of the hearing.

10. **The evidence**

I heard from Mr Adrian Freeman, Director of the respondent. Ms M Wallace, Administration Manager with the respondent and Mr B Freeman, Operations Manager with the respondent.

11. The respondent produced a bundle of documents which included a copy of the contract of employment, the driver's handbook, various emails between the parties, a statement from Mr Barry Freeman with photographs of the damage to the vehicle and two estimates for repair of the vehicle.

12. **The facts**

The claimant was employed by the respondent as a joiner/multi skill operative; a contract of employment was issued dated 11 May 2016 which bears the claimant's signature. The respondents gave evidence to the effect that this was a contract which represented the claimant's terms.

13. According to the contract of employment the holiday year is the same as the calendar year, the working week is Monday to Friday, holiday pay is accrued at the rate of 2.33 days per complete calendar month.

14. Mr A Freeman agreed that during this holiday year beginning 1 January 2017 the claimant had taken no days of paid holiday.

15. The parties agree that the average week's gross pay was £500 per week as set out in the pleadings.

16. The contractual holiday pay due may be calculated as follows:

$$\frac{6 \times 2.33 \times \text{£}500}{5} = \text{£}1398$$

17. The statutory calculation would be slightly higher namely:
$$\frac{28 \times 27}{52} \text{ minus } 0 = 14.5$$

14.5 days rounded up equates to 15 days which in turn equates to 3 weeks. 3 weeks @ £500 a week = £1500.00
18. The difference between the statutory calculation and the contractual calculation is therefore £202.00.
19. Although the respondent was entitled to longer notice the respondent accepts that the contract was brought to an end by the claimant on 7 July 2017.
20. At the time the claimant was absent on sick leave following an operation on his shoulder in January 2017 which continued to render him unfit until the contract was terminated.
The contract makes no provision for sick leave apart from SSP.
21. The claimant was entitled to SSP at the rate of £89.35 per week.
The claimant asserts that at the date of termination he was owed 3 weeks SSP in the sum of $3 \times \text{£}89.35 = \text{£}267.05$.
The respondent says only 2 weeks were outstanding in the sum of £178.70.
22. The claimant was not present to give evidence. Ms Wallace, the Administration Manager confirmed that to the best of her knowledge and belief she checked that the SSP payments to which the claimant was entitled in 2017 were only two weeks short as at the date of termination. Mr A Freeman confirmed that he had also checked the figures and the wage records before instructing the solicitors to complete the response and that he is sure the claimant was only two weeks short.
23. In the circumstances in the absence of any other evidence either verbal or documentary to support the claimant's contention I accept the respondent's evidence that he is entitled to two weeks SSP in the sum of £178.70.
24. **Counter claim**
The respondent has made a timely counter claim to the effect that it is owed £1473.59 for damage caused by the claimant to a company vehicle.
25. Paragraph 23 of the contract of employment provides "we may deduct from your wages the amount of any insurance excess (due to negligent or malicious acts) fines or penalties for parking or traffic offences incurred when you are using our vehicle or other reasonable costs should a vehicle provided by us be involved in a road traffic accident or damaged in any other way while being driven by you or in your care".
26. The respondent has supported the counter claim for £1473.59 by providing two estimates for repair of the vehicle and the counter claim reflects the lower of the two estimates.

27. The claimant denies damaging the vehicle. I heard evidence from Mr Barry Freeman to the effect that he was at the respondent's yard when the accident happened and the claimant immediately came in and reported that he had collided with the gatepost. Mr Freeman and the claimant together examined the damage. Mr. Freeman took photographs of the damage shortly after the incident on a day in December 2016 and these photographs were in the bundle.
28. Mr A Freeman came to the yard shortly after the accident and by then the other men were having a joke about the claimant having hit the gatepost coming in. Mr Barry Freeman reported the accident and damage to the vehicle to Mr A Freeman.
29. I find that the vehicle was damaged as Mr Freeman described when on a day in December 2016 the claimant collided with a gatepost to the yard.
30. The vehicle was insured. Had a claim been made the excess would have been about £500 according to Mr A Freeman.
The respondent chose not to make a claim on the insurance in order to protect their premium.
31. Before the claimant lodged his complaint the respondent had taken no steps to advise the claimant as to his liability, had taken no steps to repair the vehicle or to obtain an estimate for the repair and it has continued to be use by the respondent's staff and that remains the position at the date of this hearing.
32. Given that the vehicle was insured a reasonable person reading the contract might assume that their exposure to financial risk when driving the vehicle would be limited to the insurance excess. In the circumstances and particularly given the other factors relating to the vehicle's continued use, the failure to inform the claimant of his liability before the contract terminated, the length of time between making such a claim and the incident I do not consider that £1473.59 to be a reasonable cost to impose on the claimant.
33. In the circumstances I limit the counter claim to £1000.00 being approximately the mid point between the insurance excess of £500 and the total cost of £1473.

Employment Judge O'Neill

Date: 20 February 2018