



**Case No: 2205019/2018**

## **EMPLOYMENT TRIBUNALS**

**Claimant** **Mr A Laughton**

**v**

**Respondent** **Prescription Limited**

**Heard at:** **London Central Employment Tribunal**

**On:** **4 October 2018**

**Before:** **Employment Judge Palca**

### **Appearances**

**For the Claimant:** **In person**

**For the Respondent:** **did not appear and was not represented**

## **JUDGMENT**

The respondent is ordered to pay the claimant forthwith the sum of £2,437.31, made up as follows:

	£
Unpaid salary:	1,068.49
Unpaid incurred expenses	939.50
Unpaid gross bonus	256.25
Untaken holiday entitlement	173.07

The tribunal declares that the respondent is in breach of s 8 of the Employment Rights Act 1996 in failing to provide the claimant with all appropriate itemized pay statements

There shall be no order as to costs.

# REASONS

## Parties

1. The claimant worked for the respondent as a producer from 1 September 2016 until he was made redundant on 13 March 2018.
2. On 15 June 2018 the claimant began a claim against the respondent for notice pay, holiday pay, arrears of pay and expenses. No response was submitted by the respondent.
3. The claimant gave evidence on oath to the tribunal and produced a bundle of documents.

## Facts

4. The tribunal decided that the material facts are as follows:
5. The claimant began his employment for the respondent on 1 September 2016. His contract of employment was also entered into that day. By the time of his departure from the respondent, his annual salary was £30,000.
6. On 13 February 2018 Mr Ivor Kayne, the claimant's manager, told the claimant that he would be made redundant. The claimant's notice period was one month. The redundancy therefore took effect on 12 March 2018.
7. At his redundancy, the claimant was owed:
  - a. *unpaid salary*. The claimant was not paid for the period from 28 February 2018 to 12 March 2018 – 13 days. His daily rate of pay was £30,000/365, or £82.19. £
  - b. *untaken holiday entitlement*. By his written contract of employment, during each holiday year starting 1 November, the claimant was entitled to 20 days general holiday and 2 "Inspire" days per year. In addition, when the claimant was promoted on 1 March 2017 the respondent agreed that he should be given one day's holiday per month for self-development. The claimant's last day at work was Wednesday 7 March 2018. He took the following 3 days off representing the untaken inspire/self-development days. On 22 February 2018, the parties had agreed that the claimant had not taken 1.5 days of his basic 20 day holiday entitlement. The appropriate daily rate for this holiday is £30,000/260.
  - c. *unpaid agreed bonus*. The claimant had been awarded a net bonus of £500. Of this sum, only £295 had been paid, leaving £205 outstanding. This amount, grossed up to accommodate a 20% tax rate, equates to a gross payment of £256.25.
  - d. *unpaid expenses*. While there was no express contractual right for the claimant to be reimbursed expenses, it is custom and practice in the industry for producers' expenses to be reimbursed, and as a matter of

practice, the respondent had in fact habitually reimbursed the claimant's expenses up to November 2017. Since then, the claimant has incurred a total of £939.50 expenses.

8. These sums have not been paid.

### **Law**

9. S 23 Employment Rights Act 1996 (ERA) entitles employees to bring claims to a tribunal for unlawful deductions from wages. Wages is defined by s27 ERA to include salary, bonus and holiday pay. S 13 ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has agreed in writing to the deduction.
10. Reg 14 of the Working Time Regulations 1998 (WTR) provides that where a worker has not taken all the leave to which he was entitled in the year when his employment terminates, he shall be paid in lieu of the untaken leave, calculated by multiplying the annual leave period to which he was entitled by the proportion of the holiday year that had expired when the employment terminated, less any leave actually taken.
11. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that employees whose employment has been terminated can bring claims in the employment tribunal for various claims for breaches of contract. This would include contractual claims for unpaid expenses.

### **Conclusion**

12. The respondent is in breach of s 13 ERA by (a) not paying the claimant his wages due for the period 28 February – 12 March 2018, which equates to 13 days at £82.19, or £1,068.49; and (b) not paying the balance of the claimant's agreed bonus, of £256.25. This is an unauthorized deduction from the claimant's wages, and the respondent is ordered to pay both sums to the claimant forthwith.
13. Reg 14 WTR entitles an employee to be paid for holiday entitlement for the final year of his employment which has not been taken. This amounted to 1.5 days, calculated at the rate of £115.38. The respondent is therefore ordered to pay the claimant £173.07 in lieu of untaken holiday entitlement.
14. The tribunal found that it was a term of the claimant's contract of employment, implied by custom and practice and industry norms, that he should be reimbursed the expenses incurred by him on the company's behalf. These amounted to £939.50. The respondent is therefore ordered to pay the claimant the sum of £939.50 representing damages for its breach of its contractual obligation to reimburse the claimant's expenses.

## Other issues

15. **Itemised pay statements.** The tribunal has not received all the itemized pay statements, P60s or his P45 that should have been given to him. Pursuant to s 12 ERA, the tribunal declares that the respondent is in breach of the provisions of s8 ERA in failing to give these pay statement to the claimant.
16. **Additional notice pay** At the conclusion of the hearing, the claimant sought an additional month's pay in lieu of notice, on the basis that he had not been given written notice. This claim was not in his ET1, and the tribunal therefore did not have jurisdiction to hear it. In any event, the claimant was given oral notice of the termination of his employment, and accepted that this would mean that his employment would end on 12 March 2018. He therefore impliedly agreed to vary the clause in his contract of employment that called for notice to be in writing.
17. **Additional claims.** By his ET1 the claimant also sought the production by the respondent of various documents and a reference, which the tribunal does not have power to award. No order is made in respect to these claims.
18. **Costs** At the conclusion of the hearing, the claimant sought to recover legal costs of £2,850 and photocopying disbursements of £320, plus compensation for 16.5 days' he had spent trying to resolve these claims with the respondent. Costs awards are rare in the employment tribunal. By paragraph 76 of The Employment Tribunal Rules of Procedure, a tribunal may make a costs or preparation time order where it considers that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings have been conducted; its response has no reasonable prospect of success; a hearing has been postponed or adjourned at the party's request; or where a party has been in breach of any order or practice direction. In the present case, the respondent has taken no part at all in the proceedings. Therefore, none of the circumstances apply in which the tribunal may make a costs order. In addition, the tribunal has no power to compensate the claimant, in relation to the claims he has made, for the time he has incurred in seeking to negotiate a resolution of his issues with his employer. The tribunal therefore does not exercise its discretion to award costs.

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**Employment Judge Palca**

**Date 4 October 2018**

Judgment sent to the parties on:

5 October 2018

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For the Tribunal Office