



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MARTIN

**BETWEEN:** Ms Charlotte Nichols Claimant  
and  
Multi Service Solutions Ltd t/a Portnalls Respondent

**ON:** 09 February 2018

**APPEARANCES:**

For the Claimant: In person  
For the Respondent: Mr J Bird - Director

## **JUDGMENT**

The decision of the Tribunal is that the Claimant's claim for unpaid holiday pay accruing on the termination of her employment succeeds and **the Respondent shall pay to the Claimant £666.12** representing seven days pay.

## **REASONS**

1. Oral reasons were given at the hearing. The Respondent asked for written reasons.
2. This was a claim brought by the Claimant for seven days holiday pay which had accrued during her employment with the Respondent. The Claimant was employed from 4 January 2017 until 7 July 2017 when she resigned a couple of days before her probationary period ended. There was a written contract of employment which I had before me. This contract provides for 20 days holiday plus bank holidays per holiday year which runs from 1 January to 31 December 2017. It stipulates that *"no holiday entitlement may be used during the probationary period unless already booked prior to the offer of employment....."*.

3. The contract also provides that *“If you leave the Company’s service after giving the agreed period of notice there will be an entitlement to accrued holiday pay to any holiday entitlement not taken at the termination of the employment. ....”*.
4. The Working Time Regulations 1998 regulation 13 sets out the annual leave entitlement to holiday pay, detailing how a holiday year is calculated. The entitlement to accrue annual leave starts on day one. It is permissible for an employer to have a contractual term which does not allow the holiday to be taken in the probationary period, but this does not stop holiday accruing. (Regulation 15).
5. The reason that the Respondent did not pay the Claimant accrued holiday pay is because it was said that the Respondent had an oral agreement with the Claimant that if she left before the end of the holiday period she would not receive holiday pay. The Claimant disputed there was such an agreement and said the only agreement was that she could not take her holiday entitlement during her probationary period.
6. It was explained to the Respondent that the Working Time Regulations 1998 take precedence over any contractual term, even if there had been an agreement between the Claimant and the Respondent that she would lose holiday pay if she left in her probationary period. The provisions of the Working Time Regulations are incorporated into all contracts of employment and can not be contracted out of.
7. In any event I do not accept there was any such agreement. If there was it is highly unlikely that the Claimant would have resigned just a few days before the end of her probationary period. She would have waited so that she would be paid.
8. The Respondent’s name in the proceedings is changed to Multi Service Solutions Ltd t/a Portnalls.
9. In all the circumstances the Claimant’s claim succeeds. The Claimant said she was owed seven days pay, this was not disputed by the Respondent. The Respondent shall therefore pay to the Claimant £666.12.

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Employment Judge Martin  
Date: 09 February 2018