



EMPLOYMENT TRIBUNALS

Claimant
Mr T Rayner

Respondent
Rackstar Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON**

ON 16th August 2018

Appearances
Claimant in person
Respondent did not attend

JUDGMENT Employment Tribunals Rules of Procedure 2013 –Rule 21

- 1 The claims of unfair dismissal and discrimination because of gender reassignment are dismissed on withdrawal.
- 2.The claim of unlawful deduction of wages is well founded , I order the respondent to repay to the claimant **£840** gross of tax and National Insurance (NI).
3. The claim for compensation for untaken annual leave is well founded , I order the respondent to pay to the claimant of **£203.07** gross of tax and NI
4. The claim of breach of contract is well founded. I order the respondent to pay damages to the claimant of **£438.36**

The total payable under this judgment is **£1481.43**

REASONS

1. This claim was presented on 26 May 2018 and served on the place of business of the respondent which has since entered creditors voluntary liquidation . This claim reached the liquidators . No response had been received by the due date of 19 July .An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and , if so obliged to issue a judgment which may determine liability and remedy.Rule 26 empowers the Judge to require parties to provide further information
2. I considered the case on 30th July and had in the claim form sufficient to enable me to find the claims proved on a balance of probability except for the unfair

dismissal claim and the claim of discrimination because of gender reassignment. Section 108 of the Employment Rights Act 1996 (the Act) says an employee who has not two year's continuous employment does not have the right not to be unfairly dismissed unless the reason for dismissal is one of those listed in sub-section 3 . None of those appeared to apply. As for the discrimination claim there was nothing in the text of the claim to support it and I wondered if the claimant ticked the box in error . I required him to let the Tribunal know if he was prepared to withdraw those claims. He did withdraw the unfair dismissal in writing

3. On the other claims of wrongful dismissal, holiday pay and unpaid wages, I needed more information to determine the accuracy of the sums claimed and satisfy myself the claimant had made sufficient attempts to mitigate his loss I required him to inform the Tribunal, in writing, copied to the respondent at the liquidators address (a) whether he earned any pay from any other employment , or received any benefits , during the one week after termination and if so , how much (b) what was his weekly pay before and after deductions for tax and National Insurance (c) whether he had any paid leave, including Bank Holidays, in the time he worked for the respondent and if so how much leave

4. In reply to these questions on 3 August the claimant wrote that when he and others were dismissed on 29th March everyone was dismissed with no notice or warning, and despite being reassured all employees would be paid one week's notice, they were paid nothing. His contract says *'following successful completion of your probation period during the first four years of employment, employment can be terminated by either side by giving one months' notice in writing'*.

5. He received no benefits. He included with his email to the Tribunal four months of pay slips as evidence he received £105 per week gross pay. He had a national insurance deduction on his payslip of £3.84 but no tax deductions. This is as I would expect. Damages for breach of contract are the net pay for the longer of the statutory minimum notice in section 86 of the Act 1996 (in this case one week) and the contractual period, in this case one month. All the sums I am awarding today can be claimed against the Secretary of State under part 12 of the Act due to the respondent being insolvent On this element , the Secretary of State will only pay for the statutory notice period , not the contractual one. For the latter the losses are $£105 - £3.84 = £101.16 \times 52 = £5260.32$ divided by 12 = **£438.36**

6 From his employment starting on 28th April 2017 had taken paid leave on all bank holidays and another 10 days holiday . He gave a convoluted explanation of promises made to carry forward leave form one year to the next but it is not necessary. In the absence of a "relevant agreement" under the Working Time Regulations 1998 (WTR) the leave year starts on each anniversary of the start of employment . Good Friday and Easter Monday were 14th and 17th April 2017 before his employment started and 30th March and 2nd April 2018, after it ended. He has therefore had 10 days plus 6 bank holidays. His annual entitlement is 28 days but as he only worked for 11 months that is divided by 12 and multiplied by 11 which is 25.67 minus the 16 taken = 9.67. His daily rate of pay was £21 so his compensation is **£203.07**

7. As for the claim for unpaid wages none of the employees who were dismissed were paid at all for four weeks worked in March. The claimant was not paid for four weeks worked in February either. He speculates as to why this may be in his gender reassignment claim. I am entirely satisfied the respondent did not have lawful authority to make any deduction from his wages for the month of February and applying section 13(3) of the Act I award the claimant four weeks for that month and four for March making eight weeks arrears of pay. This happens to be the sum the Secretary of State is limited to paying under the provisions of Part 12. The arithmetic is $8 \times £105 = \mathbf{£840}$

8. In answer to my question regarding the discrimination claim the claimant says he spoke, in August 2017, to Ken Mosley, who hired him but later left, to explain he would be undergoing gender reassignment in December with a 6-8 week recovery period. Mr Mosley agreed he would treat it like any other surgery and pay company sick pay, which was the normal rate of pay. When the claimant did take sick leave the new manager halved his pay in January, which he was told was an accounting mistake and would be corrected. As said above in February 2018 he was not paid at all. He believes he was discriminated against as there are a few cases of colleagues who took up to three months leave due to a pre-existing medical condition and were paid full sick pay.

9. Although this is a Rule 21 judgment, the parties were invited to attend today to clarify any ambiguities and the claimant did. When I explained to the claimant the problems the discrimination claim involved and the slim chance of him recovering any compensation, he decided to withdraw it.

TM Garnon Employment Judge
Date signed 16th August 2018 .