



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss K West  
**Respondent:** John Battams  
**Heard at:** East London Hearing Centre  
**On:** 25 July 2018  
**Before:** Employment Judge Brown

## Representation

**Claimant:** In Person  
**Respondent:** In Person

# JUDGMENT

The Judgment of the Tribunal is that:

1. The correct name for the Respondent is John Battams and the title of the proceedings shall be amended accordingly.
2. The Respondent failed to pay the Claimant the holiday pay which she had accrued at the termination of her employment. The Respondent shall pay the Claimant £80 for 2 days' unpaid holiday pay.
3. The Respondent was entitled to terminate a contract agreed at the end of employment because of the Claimant's repudiatory breach of that contract.
4. The Respondent shall also pay the Claimant £400, being 2 weeks' wages, for failure to provide her with employment particulars under s1 Employment Rights Act 1996, pursuant to s38 Employment Act 2002.

# REASONS

1. The Claimant brings complaints of a failure to pay holiday pay under the *Working Time Regulations 1998* and breach of contract under the *Employment Tribunals Extension of Jurisdiction Regulations 1994*.
2. The correct name of the Respondent is John Battams and the title of the proceedings shall be amended accordingly.
3. At the start of the proceedings, it was agreed between the parties that the Claimant was employed by the Respondent from 27 June 2017 until 4 April 2018; a total of 40 weeks, or 280 days. She was paid £200 gross/net pay per week.
4. During that time, the Claimant accrued 4.2 weeks holiday; 21 days.
5. The parties agreed that, in 2017 - 2018, the Claimant had taken 17 days' holiday up to and including 1 January 2018. However, during evidence, I also heard that the Claimant was dismissed after Easter 2018 and I concluded she would have taken an additional 2 days statutory holiday on Good Friday and Easter Monday. In total, the Claimant had taken 19 days' holiday before her dismissal and therefore still had 2 days accrued holiday outstanding at the termination of her employment. The Claimant had taken one day's sick leave on Tuesday 3 April 2018.
6. The parties agreed, during the hearing, that the Claimant was not given a contract of employment.
7. I evidence from both the Respondent and the Claimant. On their evidence, I decided that the Respondent approached the Claimant on 4 April 2018 and offered the Claimant 4 weeks' pay to terminate her employment. The Claimant agreed to terminate her employment on those terms. It was therefore agreed that the Respondent would pay the Claimant a total of 4 weeks pay, or £800.00. Nothing was said or agreed about the payment of accrued holiday pay.
8. The parties agreed that the Claimant was paid, throughout her employment, 1 week in advance and therefore, that the Claimant had already been paid 1 week's pay on termination of her employment, for notice pay.
9. The parties agreed that the Respondent paid the Claimant £200.00 of the £800.00 payment that had been agreed. On 6 April 2018 the Respondent asked the Claimant to sign a Change of Details Form for the Respondent's work bank account, on which the Claimant had signatory rights and internet banking access. I considered that that was a reasonable request. The Claimant was no longer employed by the Respondent and therefore was not entitled to have access to the Respondent's bank account. The Claimant replied that she would do so once she had been paid the total of £800.00. The Respondent believed that the Claimant had attempted to access his bank account on 6 April and decided not to pay the remaining £600.00, because of the attempted access to the bank account and because the Claimant had said that she would only sign the Form after she was paid the £800.00.

10. I decided, on the facts, that the parties agreed a contract on the termination of the Claimant's employment that the Claimant would be paid £800.00 to terminate her contract. There was no separate agreement with regard to holiday pay.

11. Given that the contract was made at the termination of employment, I considered that the Claimant was able to bring a claim for breach of it to the Employment Tribunal under *Reg 3 Employment Tribunals Extension of Jurisdiction Regulations 1994*, which provide as follows:

"Regulation 3

Proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages of any other sum (other than a claim for damages for a sum due in respect of personal injuries) if

- ( a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- ( b) the claim is not one to which article 5 applies; and
- ( c) the claim arises or is outstanding on the termination of the employee's employment.

12. However, I also found, on the facts, that the Claimant subsequently attempted to vary the contract, to make her signing of a Change of Details Form conditional on the payment of the £800.00. I considered that the Respondent was entitled to terminate the contract at that point, in the circumstances that the Claimant had attempted to make a fundamental variation to the contract, which I considered to be a repudiatory breach of the original contract. The Respondent relied on the repudiatory breach and refused to pay the outstanding money. .

13. Accordingly, while I considered that the ET had jurisdiction to hear the Claimant's breach of contract claim, the Claimant's contract claim nevertheless failed, because the Respondent accepted her repudiatory breach of the contract.

14. The Respondent did not pay the Claimant her accrued holiday pay on termination of the employment. She had accrued an additional 2 days' holiday beyond the 19 days that she had taken within the relevant holiday year. The Claimant was paid £200.00 per week (gross and net) and therefore she was paid £40.00 per day. Accordingly, she should have been paid £80.00 for holiday which was accrued at the termination of employment.

15. Pursuant to s38(3) Employment Act 2002, if, in the case of proceedings to which the section applies, the Employment Tribunal makes an award to the employee in respect of a claim to which the proceedings relate and, when the proceedings were begun, the employer was in breach of their duty to the employee under *Section 1(1) or Section 4(1) Employment Rights Act 1996* the Tribunal must increase the award by the minimum amount and may, if it consider just and equitable in all the circumstances, increase the award by the higher amount instead. By *s38(4)(ii) & (iii) EA 2002*, references to the minimum amount are to an amount equal to 2 weeks pay and references to the higher amount are to an amount equal to 4 weeks pay.

16. Proceedings to which *s38 EA 2002* relates include proceedings under

*Regulation 30 Working Time Regulations 1998 - see Schedule 5, Employment Act 2002.*

17. This means that, if at the time the proceedings were commenced, the employer was in breach of its duty to provide a statement of employment particulars (generally, the terms of the contract) to the employee, the Employment Tribunal must make an extra award of, either, 2 weeks pay or 4 weeks pay, to the employee, if the employee has brought a claim for holiday pay, amongst other claims. That being so, I was required to make an award either of 2 weeks pay or 4 weeks pay to the Claimant under *Section 38*.

18. I took into account the circumstances of the case. I considered that the Respondent was a sole trader and therefore was not a person who had access to significant administrative and financial resources. Therefore, his failure to provide employment particulars was less serious than it would have been in the case of a large employer with substantial resources. Therefore I ordered the Respondent to pay the minimum amount I was required to order him to pay, that was 2 weeks pay. 2 weeks' pay is £400.00.

19. I ordered the Respondent to pay the Claimant £80.00 holiday pay and £400.00 under *s38 Employment Act 2002*.

Employment Judge Brown

2 August 2018