



EMPLOYMENT TRIBUNALS

Between:

Mr S Sowersby

Claimant

and We Are Your IT Ltd

Respondent

Heard at:

Hull

on: 24 July 2020

Before: Employment Judge Cox

Representation:

Claimant: In person

Respondent: Mr Granville-Fall, Managing Director

REASONS

1. The Claimant worked for the Respondent company as an engineer. He presented a claim to the Tribunal claiming holiday pay, arrears of pay and “other payments”.
2. At the beginning of the Hearing, the Claimant confirmed that he was now pursuing only a claim for holiday pay and compensation for the Respondent’s failure to provide him with a written statement of his employment particulars.
3. In discussion with the parties, the Employment Judge identified that the factual issues in dispute were as follows:
 - 3.1 Were the Claimant’s days of absence from work on 7 to 11 October and 28 October to 1 November 2019 inclusive taken as time off in lieu for overtime the Claimant had worked or were they taken as holiday?
 - 3.2 Did the Respondent provide the Claimant with a written statement of his main terms and conditions of employment meeting the requirements of Section 1 of the Employment Rights Act 1996?
4. At the Hearing, the Tribunal heard oral evidence from the Claimant and from Mr Granville-Fall, the Respondent’s Managing Director. On the basis of that

evidence and various documents to which the parties referred it, the Tribunal made the following findings.

Holiday pay

5. The Claimant accepted that he had initially booked 7 to 11 October 2019 as holiday. He said that after complaining to the Respondent about the fact he was accumulating a substantial amount of overtime for which he was entitled to time off in lieu, his line manager Mr Rounding told him that Mr Granville-Fall had agreed he could take these dates as time off in lieu instead of holiday. Sometime on 25 October Mr Rounding told him that he could take 28 October to 1 November as time off in lieu too.
6. The documentation was equivocal. The Claimant's pay slips for October and November 2019 did not mention holiday pay but both weeks were entered into the electronic office diary as holiday for the Claimant.
7. The Tribunal therefore considered the parties' evidence on the background. In their evidence, the Claimant and Mr Granville-Fall both accepted that they had had a telephone conversation on 19 or 20 September 2019 during which they discussed the Claimant's complaint to Mr Rounding that he was accumulating a substantial amount of time off in lieu that he had not had an opportunity to take and he would not do any more overtime until this was sorted out. The Tribunal accepted Mr Granville-Fall's evidence, which was clear and credible, that during the call he challenged the Claimant about why he was only now complaining about having accumulated 170 hours of overtime when he had been building it up for the past 11 months of his employment with the company. Mr Granville-Fall made clear to the Claimant that any time off in lieu that he took had to be based on a completed time off in lieu form and authorised by Mr Rounding. In contrast, the Claimant's evidence during the Hearing on who said what and when was on several occasions unclear and subject to change. The Tribunal also accepted Mr Granville-Fall's evidence that he had later had stern words with Mr Rounding about the need to follow the correct process when an employee wanted time off in lieu. That made it unlikely that Mr Rounding would have told the Claimant that Mr Granville-Fall had authorised him to take time off in lieu on 7 to 11 October without a form being completed, or that Mr Rounding would have told the Claimant to take 28 October to 1 November as time off in lieu without completing the necessary paperwork.
8. The Tribunal also noted that the Claimant had made no mention of these two weeks having been authorised as time off in lieu either in his claim form or at the first Hearing at which the claim was discussed on 5 June 2020. At that stage, the Claimant was claiming for payment for 110 hours' accrued time off in lieu and 3 days' holiday pay. At the Hearing on 5 June the Employment

Judge explained that he would need to establish that he had the legal right to be paid for overtime he had worked but for which he had not taken time off in lieu by the time he left the company. At that point, the Claimant re-cast his claim as a claim for accrued holiday pay rather than payment for accrued time off in lieu. The Claimant said at the July Hearing that he was confused about the distinction between holiday pay and time off in lieu and was able to classify his claim correctly only after he had had legal advice. The Tribunal did not accept that the Claimant had had difficulty with that distinction, which he made clearly in his claim form.

9. The Tribunal concluded that it was more likely than not that the Claimant had not been authorised to take the two disputed weeks as time off in lieu but had in fact taken them as holiday. Based on that finding and the other holiday dates that the parties agreed, the Tribunal calculated that the Claimant had taken 4.4 weeks of his 4.95 weeks' total entitlement to the date of termination of his employment. He was therefore due the balance of .55 weeks at his week's pay of £576.92, amounting to £317.30. The Tribunal awarded him that sum.

Written particulars of employment

10. The Claimant said in evidence that he was never provided with a written statement of his employment terms. The company produced an offer letter and a document headed "Terms and conditions of employment" that bore a signature that the Claimant accepted was "like his". He said that his signature must have been forged. The Tribunal preferred Mr Granville-Fall's evidence on the issue, which was detailed and credible. He said he gave the Claimant these documents when they met at the Dunes Hotel on 7 November 2018, at the beginning of the Claimant's employment. Although the Respondent operates a paperless office, when Mr Granville-Fall learnt of the Claimant's allegation that no details had been provided he searched the PDFs of documents scanned onto the company's computer system in November 2018 and found the document.
11. The documentation given to the Claimant met the requirements of Section 1 of the Employment Rights Act 1996. The Tribunal concluded that there was no basis for an award of additional compensation under Section 38 of the Employment Act 2002.

Employment Judge Cox

Date: 25 August 2020