



EMPLOYMENT TRIBUNALS

Claimant: Miss K Isam

Respondent: R & D Supermarket Limited

HELD AT: Nottingham **ON:** 3 January 2020

EMPLOYMENT JUDGE Batten (sitting alone)

Representation

For the Claimant: In person

For the Respondent: No attendance

JUDGMENT

The judgment of the tribunal is that the respondent shall pay to the claimant the total sum of **£665.01** comprising:

1. notice pay in the gross sum of £131.36;
2. holiday pay due at the termination of the claimant's employment in the gross sum of £270.93; and
3. compensation of 2 weeks' pay in the sum of £262.72 for the respondent's breach of its duty to provide the claimant with a written statement of employment particulars.

REASONS

1. The claimant submitted a claim to the Employment Tribunal on 23 August 2019, claiming that she had not been paid a week's notice pay due to her when she resigned her employment on 22 June 2019 with notice and that

holiday pay was outstanding and owing to her by the respondent in respect of accrued untaken holiday entitlement when her employment ended. On 27 September 2019 the respondent submitted a response to the claim in which it admitted that 1 week's notice pay and some holiday pay was owed to the claimant but the respondent disputed the claimant's calculations. The case was listed for a hearing.

Evidence

2. The claimant presented a copy of text messages between herself and the respondent concerning the money owed to her. In those text messages the respondent's director confirms that he had not provided the claimant with any written particulars of employment.
3. The claimant gave evidence by a witness statement that she worked for the respondent from 15 September 2017 until she resigned on 22 June 2019. She was contracted to work for 16 hours per week at the applicable national minimum wage rate of pay, currently £8.21 per hour. The claimant took 36 hours of holiday during the period from 15 September 2018 until her employment with the respondent ended. The claimant resigned on 22 June 2019 expecting to work a week's notice but the respondent told her to finish immediately.

Conclusions

4. The claimant claims 1 week's notice pay as set out in the ET1 section 8.2. The Employment Rights Act 1996 section 86 provides for a minimum of a week's notice to be given and the claimant did so. The claimant was available to work her notice and wished to do so. She did not waive that right nor did she agree to shorten her notice period in any way. At a rate of £8.21 per hour for 16 hours per week, the claimant is therefore owed **£131.36** gross wages in lieu of notice.
5. The claimant was never given written particulars nor a contract of employment setting out her holiday entitlement or the calculation basis for holidays and holiday pay. Accordingly, pursuant to the provisions of the Working Time Regulations 1998, Regulation 13(3)(b)(ii) the leave year begins on the anniversary of the date on which the claimant's employment began, 15 September.
6. Pursuant to Regulation 14 of the Working Time Regulations 1998, the claimant had accrued 69 hours of holiday entitlement at the date of termination of her employment. The claimant had taken 36 hours of holiday in the leave year and is therefore entitled to payment for accrued untaken holiday entitlement of 33 hours' pay which equates to **£270.93** gross holiday pay.

7. In the respondent's director's texts to the claimant, he admits "you have no contract" and uses that situation to seek to deny the claimant her legal entitlements. Section 38 of the Employment Act 2002 provides that, upon a successful claim for compensation for unpaid holiday pay under the Working Time Regulations 1998 and other matters, the Tribunal must make an award of compensation to an employee where it is evident that the employer was in breach of its duty to provide written particulars of employment under section 1 of the Employment Rights Act 1996. This is just such a case and accordingly I make an award of 2 weeks' pay, which is **£262.72**, to be paid by the respondent to the claimant for the respondent's default.

8. The claimant is therefore awarded compensation totalling £665.01.

Employment Judge Batten
3 January 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE