



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103678/2022

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Held at the Edinburgh Tribunal on 13 September 2022 on the Cloud Video Platform

Employment Judge R King

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Dypsyl Dlamini

**Claimant
In Person**

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Adecco Corporate

**Respondent
Not Present
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the respondent made an unauthorised deduction from the claimant's wages and is ordered to pay him the sum of £47.09.

REASONS

Introduction

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1. The claimant claims that he is owed accrued but unpaid holiday pay due to him on the termination of his employment with the respondent. He also claims for additional financial loss caused by the respondent's failure to pay him the holiday pay due to him.

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2. Having received service of the ET1, but after the time limit for lodging its ET3, the respondent sent an e-mail to the Tribunal on 11 August 2022 denying that the claimant was due any unpaid holiday pay and providing its own calculation of the holiday pay it had paid the claimant upon termination of his employment.

3. Despite a legal officer having then invited it to consider submitting an ET3 and an application for an extension of time, it did not do so, and it was not present or represented at the hearing. The claimant was however invited to comment on the contents of the respondent's 11 August 2022 e-mail in the course of his evidence.

Relevant law

4. Regulation 14 of The Working Time regulations 1998 provides –

"14.—(1) Paragraphs (1) to (4) of this regulation apply where—

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

5. Section 13 of the Employment Rights Act 1996 provides an employee with the right not to suffer any unauthorised deduction from wages, including any payment of unpaid holiday pay. By virtue of section 23 of the Employment Rights Act 1996 an employee may make a complaint to an Employment Tribunal that he has suffered an unauthorised deduction from his wages in contravention of section 13.

6. Section 24 of the Employment Rights Act 1996 provides that –

“24. Determination of complaints.

(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,

...

(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

20 **Issues**

The Tribunal had to determine the following issues –

7. Is the claimant entitled to payment of unpaid holiday pay due to him on the termination of his employment and, if so, how much should he be awarded?
- 25 8. If he is entitled to unpaid holiday pay, is he also entitled to be paid any additional compensation to compensate him for any financial loss sustained as a result of the respondent’s failure to pay him?

Findings in fact

Having heard evidence, the Tribunal makes the following findings in fact.

30 **Background**

9. The claimant was employed by the respondent at its Bathgate premises between 1 December 2021 and 13 June 2022, although his last day in work was 9 June 2022. During his employment he worked as a warehouse associate. The number of hours worked by the claimant varied greatly over the course of his employment. At all times his rate of pay was £11.76 per hour gross and he always received his wages net weekly in arrears after deduction of tax and national insurance contributions.
10. The respondent's agreement with the claimant was that he would accrue his holidays in hours each week as a percentage of his total hours worked that week. During his employment he accrued 105.51 hours of holidays of which he had taken 70 hours paid holidays by the date of termination of his employment. He was therefore due a payment of 35.51 hours holiday pay upon termination, totalling £417.60 gross. On the termination of his employment the respondent paid him £370.51 gross for his accrued but untaken holiday.
11. The claimant was entitled to his final salary payment on 24 June 2022. He did not receive it until 8 July 2022. As a result of the respondent's late payment of his salary and underpayment of his accrued holiday pay, the claimant incurred a charge of £24 to his landlord for late payment of rent and a charge of £20 when he had inadequate funds in his bank account to meet a direct debit to Zenith Insurance.

Submissions

12. The claimant made no submission, but instead relied on the evidence he had given.

Discussion and decision

13. The Tribunal accepted the claimant's evidence that he was due a payment of £417.60 gross holiday pay upon termination of his employment and that by

virtue of having only received £370.51 he had been underpaid the sum of £47.09. The Tribunal therefore finds that his claim under section 23 of the Employment Rights Act 1996 is well founded and that the respondent should pay him the amount of the underpayment.

5 14. This should be paid to the claimant gross and he should account to HMRC as appropriate in respect of any deductions properly due.

15. The Tribunal did not accept that the respondent's failure to pay the claimant the accrued holiday pay due and owing to him had resulted in the additional loss he sustained, which was on balance due to the late payment of his final
10 salary and therefore not attributable to the matter complained of in these proceedings.

Employment Judge: Robert King

Date of Judgment: 29 September 2022

15 Entered in register: 05 October 2022
and copied to parties