



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 3312962/2022

Held in Glasgow on 3 May 2023

Employment Judge L Wiseman

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Ms D Wilson

**Claimant
In Person**

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JD Wetherspoons Plc

**Respondent
Represented by:
Ms R King –
Senior Personnel
Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decided to dismiss the claim.

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REASONS

1. The claimant presented a claim to the Employment Tribunal on the 31 October 2022 alleging she had been unfairly dismissed and was due to be paid holiday pay, redundancy pay and a payment in respect of shares.
2. The respondent entered a response admitting the claimant had been dismissed for reasons of gross misconduct but denying the dismissal was unfair. The respondent confirmed all payments due to the claimant had been paid.
3. A case management preliminary hearing took place on the 22 February 2022 at which the claimant confirmed she no longer wished to proceed with the unfair dismissal claim, and so this claim was dismissed. The claim in respect of a redundancy payment was also dismissed. The claimant was ordered to provide information to the respondent regarding her claim for holiday pay. The

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claimant provided information on the 14 March, in which she stated she was claiming 19.5 days holiday pay and payment for shares.

4. I heard evidence from the claimant and Ms King and I was referred to some documents produced by Ms King. I, on the basis of the evidence before me,
5 made the following material findings of fact.

Findings of fact

5. The claimant commenced employment for the respondent in August 2010 as a Cleaner. She subsequently took on waitressing duties.
6. The claimant worked 34 hours per week and took home a net pay of £367.
- 10 7. The respondent's holiday year runs from April to March. The claimant asked her Shift Leader, in June 2022, how many holidays she had, and was told she had 19.5 days. The claimant believed she had been awarded an additional 10 days annual leave because of the length of her service (loyalty).
8. The claimant was dismissed with immediate effect on the 18 July 2022.
- 15 9. The respondent's policy entitled Leaving the Company (page 59) provides that "*no payment will be made in lieu of any outstanding loyalty reward*". This means the claimant would not, as a consequence of the dismissal receive payment in lieu of the additional holidays awarded for loyalty/long service.
10. The claimant was paid wages of £279.75 on the 22 July.
- 20 11. The claimant queried this payment and also payment in respect of holidays. A further payment was made to the claimant of £108.85 on the 5 August; and the sum of £4.05 was paid to the claimant on the 12 August.
12. Ms King confirmed the payment of £108.85 had been made in respect of 2 days holiday which had accrued and been outstanding as at the termination
25 of employment. Ms King referred to the document at page 56 which explained the claimant had worked 68 shifts and accrued 8.5 days entitlement. The claimant had carried forward 1.5 days holiday, to give a total of 10 days. The claimant had used 8 days holiday and the respondent had, on the basis of this

information, paid 2 days holiday pay. (Ms King, at the request of the Employment Judge, obtained a print-out showing the dates of the holidays taken by the claimant).

5 13. The claimant does not use email at home. Her only access to email was through work. The respondent continued to email the claimant following her dismissal, but the claimant did not receive these emails.

10 14. The claimant had paid £5 per week towards the purchase of company shares. The document at page 53 showed the number of shares purchased by the claimant in the period March 2019 to August 2022. The document also showed the number of shares awarded twice per year under the terms of the Share Incentive Plan. The claimant sought payment in return for all of these shares.

15. The respondent's Share Incentive Plan was administered by EquatePlus.

Notes on the evidence

15 16. The claimant relied on what she had been told by her Shift Leader, that she had 19.5 days holiday and she wished to have payment for this holiday. The claimant was adamant that she had not taken any holidays in the period April 2022 until the date of dismissal. The claimant was not aware of the policy stating that no payment in lieu would be made for any loyalty holidays
20 outstanding as at the termination of employment. The claimant asserted the managers where she worked noted people as being on holiday even when they were not.

Discussion and decision

25 17. The claim in respect of the shares which the claimant has purchased/been awarded is dismissed. The terms of the Share Incentive Plan (page 63) provide that the share incentive plan allows the respondent to award shares to employees free of charge. The shares (normally awarded twice a year) are held in trust for a minimum of three years and then passed to the employee. If an employee leaves the company during the three-year period, s/he will lose
30 the shares.

18. The document at page 53 noted the claimant had accumulated some shares via the share incentive plan and through buying them. The only share incentive plan shares awarded to the claimant and retained by her following dismissal were those allocated on the 25 March 2019 (31 shares). The shares purchased by her (24 shares) were also retained by the claimant following dismissal. The claimant therefore has a total shareholding of 55 shares.
19. The claimant has not had any contact from the company administering the shares for the respondent because she does not receive emails. I invited Ms King to make contact with the company to advise them to write to Ms Wilson regarding the shares. It will then be for Ms Wilson to make a decision whether she wishes to keep the shares or sell them.
20. The claim brought against the respondent for payment in respect of the shares is not competent insofar as it is not for the respondent to make payment to the claimant for the shares she holds. The shares belong to the claimant and it is for her to decide if she wishes to sell them. This was explained to the claimant and I was satisfied Ms King will make the necessary contact with the company administering the scheme to ensure they make contact with the claimant by way of written communication.
21. I next considered the claim in respect of holiday pay. I understood the claimant wished payment in respect of 19.5 days holiday which she believed she had accrued and was entitled to as at the termination of her employment. The fact the claimant was relying on 10 days loyalty leave was mentioned for the first time at this hearing: it was the first time Ms King had an understanding of how the figure of 19.5 days had been arrived at.
22. The claimant very honestly admitted she had not known that loyalty leave would be lost if there was a dismissal. I accepted, based on the evidence of Ms King and the Policy produced at page 59, that no payment would be made in lieu of outstanding loyalty reward if the employee left the company (this includes dismissal). The claim in respect of outstanding holiday pay was accordingly reduced to 9.5 days.

23. There was a direct conflict between the evidence of the claimant and Ms King (and the documentation produced by Ms King). Ms King referred to page 56 where a colleague, having obtained information from the site where the claimant worked, confirmed the claimant had worked 68 shifts and was entitled to 8.5 days holiday, to which 1.5 days had to be added because it had been carried forward. This gave an entitlement of 10 days. The claimant had taken 8 days holiday, and the outstanding 2 days holiday had been paid on the 5 August (page 52).
24. The claimant was adamant she had not taken any holidays in the period between April and the date of dismissal. I asked Ms King to obtain confirmation of the dates of the holidays which the respondent believed the claimant had taken. This was duly done, but the claimant continued to deny having taken any holidays in this period. The claimant suggested the management at the place where she worked often noted employees as being on holiday when they were not.
25. I explained to the claimant that as she was bringing the claim, it is for her to demonstrate that annual leave which was accrued but untaken as at the termination of employment had still to be paid. I accepted the claimant was telling me what she honestly believed. However, equally, I had no basis for not believing what Ms King told me, or for doubting the truthfulness of the documents produced. I concluded, in the circumstances, that the claimant has been unable to show that payment for annual leave accrued but untaken as at the termination of employment remains outstanding. I therefore decided to dismiss this claim.

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Employment Judge: L Wiseman
Date of Judgment: 03 May 2023
Entered in register: 04 May 2023
and copied to parties

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