



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4105087/2022 Hearing at Edinburgh on 24 November 2022 and 4  
January 2023**

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**Employment Judge: M A Macleod**

**Ionel Brateanu**

**Claimant  
In Person**

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**Travelodge Hotels Limited**

**Respondent  
Represented by  
Ms K Stein  
Advocate**

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**'e JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The Judgment of the Employment Tribunal is that the claimant's claims fail,  
and are dismissed.**

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**REASONS**

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1. The claimant presented a claim to the Employment Tribunal on 13 September 2022 in which he complained that he had been unlawfully deprived of both pay and holiday pay.
2. The respondent submitted an ET3 response form in which they resisted the claimant's claims.
3. A Hearing was listed to take place on 24 November 2022 in order to determine this case. The claimant appeared on his own behalf, and had the

benefit of an interpreter to assist him in presenting his case. The respondent was represented by Ms Stein, advocate.

4. During the course of the claimants evidence in that Hearing, it became apparent that he wished to refer to a number of documents which were not in the joint bundle presented by the respondent. He offered to show the Tribunal his mobile phone in order to bring these documents to my attention, but I declined. I was concerned that he wished to rely upon information which was not there, and given his limitations in English it seemed to me appropriate and consistent with the overriding objective to adjourn the Hearing. Ms Stein helpfully consented to this adjournment.
5. The Hearing resumed on 4 January 2023, and the claimant presented, through the joint bundle, some further documents upon which he sought to rely in the Hearing.
6. The claimant gave evidence on his own behalf. The respondent did not call any witnesses.
7. Based on the evidence led and the information provided, the Tribunal was able to make the following findings in fact.

#### Findings in Fact

8. The claimant, whose date of birth is 1 July 1980, commenced employment with the respondent as a cleaner in April or May 2021. In his evidence, he said his first day was 27 April 2021; the respondent said in their ET3 that his first day was 27 May 2021; and the claimant's ET1 asserted that it was 1 May 2021. In a letter the claimant sent to the respondent in September 2022 (33), the claimant asserted that he worked at the Travelodge Central, Waterloo Place, Edinburgh, from 27 May 2021 until 31 March 2022.
9. I accept that his start date was 27 May 2021 .
10. The claimant professed not to know when his annual leave year commenced and ended. The respondent's Annual Leave Policy (33), which the claimant said he had never seen, states (39):

*“The annual leave year runs from 1<sup>st</sup> January to 31<sup>st</sup> December each year, all colleagues should take their full entitlement for annual leave,”*

- 5 11. No witness from the respondent gave any evidence about this policy or the further details contained within it, though the claimant did not appear to dispute its terms. It went on to provide that it was not permitted for annual leave to be carried forward into the following leave year; and also that payment could not be made in lieu of annual leave not taken, except on termination of employment.
- 10 12. No contract of employment was produced to the Tribunal. The annual leave policy itself does not specify the annual leave entitlement of the claimant, though it did say that it was determined by the length of service of the individual concerned.
13. The claimant's employment with the respondent ended on 17 March 2022, and his last pay was received from the respondent on 2 April 2022.
- 15 14. The claimant wrote to the respondent in September 2022 (33) (the precise date is obscured by the poor quality of the copy produced) and stated that at the conclusion of his contract he was not paid for the holidays he was due. He maintains that he took no holidays while working for the respondent. He stated: *“My calculation is that I am due pay for 23.3 days at £64.50 per day giving a total of £1,502.85. ”*
- 20 15. The claimant had already submitted a formal grievance request on 22 June 2022 seeking payment in relation to holiday pay for 23.3 days at £64.50 a day (34).
- 25 16. The claimant also wrote to the respondent in September 2022 (35) (again, the precise date is obscured by poor quality copying):
- “I worked at the Travelodge Central, Waterloo Place, Edinburgh from 27/05/2021 to 31/03/2022. During this time I was often paid for less time than I actually worked. In Dec 2021 I worked for 210 hours but was only paid for 137. I am owed 73 hours pay @ £8.91 an hour. This is £650.43 in total.”*
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17. The respondent produced a number of payslips. The claimant said in evidence that he had never received any payslips, but was able to see on his smartphone the sums which were paid to his bank account while he was employed.
- 5 18. It is useful to set out the information contained in the payslips by reference to an example. On 25 June 2021, the claimant received payment of £780.27 net to his bank account. His payslip (68) shows that the payment covered a number of weeks prior to that date.
- 10 19. For the week beginning 27 May 2021, it is recorded that the claimant worked 3.5833 and 21.8333 “units”<sup>5</sup> (understood to mean hours), at £8.91 per unit, and was paid accordingly. For the week beginning 3 June 2021, the claimant was recorded as having worked 30.3333 units, and 10 June as having worked 28.5 units.
- 15 20. The payslip also records that he was paid 4 units in respect of bank holiday pay. What is not clear is whether that amounted to additional pay due to having worked on a bank holiday, or payment in lieu of receiving a bank holiday in time off. The absence of any witness from the respondent makes it very difficult to determine.
- 20 21. The claimant’s payslip dated 20 August 2021 (70) provides for a number of hours in each of the weeks of 15 July, 22 July, 29 July and 5 August. It also notes that the claimant was paid for 3 units of holiday at £51.54, amounting to £154.62 gross.
- 25 22. In November 2021, the claimant’s payslip (73) discloses that he was paid for 3 units in respect of holiday at £52.29 in the week of 7 October, 2 at £52.92 in the week of 14 October and 3 at £55.15 in the week of 28 October. The rate variations are unexplained by the evidence before me.
23. On 7 January 2022, the claimant’s payslip (75) shows that he was paid 5 units of holiday at £56.41 in the week of 23 December and 1 unit at £56.89 in the week of 16 December 2021.

24. In the payslip dated 4 February 2022, the claimant was paid 7.83 units in respect of bank holiday pay (76).
25. In the payslip of 4 March 2022, the claimant was paid 6.75 units in respect of bank holiday pay; and for holiday pay, 4 units at £57.33 in the week of 27 January, 4 units at £59.43 in the week of 10 February and 4 units at £59.31 in the week of 17 February (77).
26. The claimant's final payslip discloses that he was paid 4.5 units at £59.17 for holiday in the week of 24 February (78).
27. The respondent produced a document (61) which bore to show the holidays authorised for the claimant between 27 January and 2 March 2022, amounting to a total of 15.5 days. In that period he was paid for 22.5 units of holiday, together with 14.58 in respect of bank holiday pay.
28. So far as the claimant's complaint of underpayment of arrears of pay is concerned, his claim is limited to December 2021, in which he maintained he worked 210 hours but was only paid for 137.
29. The relevant payslips appear to be 7 January 2022 (75) and 4 February 2022 (76). According to those payslips, the claimant received payment as follows in respect of the corresponding hours:
- |    |               |           |   |         |
|----|---------------|-----------|---|---------|
|    | • 2 December  | - 39.2467 | - | £349.69 |
| 20 | • 2 December  | - 8       | - | £71.28  |
|    | • 9 December  | - 20.25   | - | £180.43 |
|    | • 9 December  | - 24.2999 | - | £218.29 |
|    | • 16 December | - 30.6    | - | £272.65 |
|    | • 23 December | - 4.6667  | - | £41.58  |
| 25 | • 30 December | - 8       | - | £71.28  |
|    | • 30 December | - 24.3333 | - | £216.81 |

30. The pay figures shown in the preceding paragraph are all gross figures.

31. The total number of hours worked in December 2021 by the claimant according to the payslips produced was 159.5966.
32. The claimant asserted that he had worked additional hours for which he was not paid.
- 5 33. Further documents were produced and put to the claimant in his evidence. Timesheets would be completed by staff showing their start and finish times on any given day. Some, though apparently not all, timesheets were produced (43ff). Further, there were electronic records of the hours worked by each of the cleaners, including the claimant, and a tally of the weekly hours worked in comparison with their contracted hours.
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34. For the week beginning 2 December 2021 (55), it was recorded that the claimant was contracted to work 24 hours, and that he worked 39.2 hours. That reflects part of the payment made in respect of that week on his payslip. However, he was also paid a further 8 hours for that week, which
- 15 does not seem to have been recorded on the rota sheet. No explanation is available from the respondent as to this discrepancy, and the claimant could not explain it.
35. For the week beginning 9 December 2021 (56), it was recorded that the claimant was contracted to work 24 hours, and actually worked 24.5 hours.
- 20 Again, his payslip notes that he was paid for a further 20.25 hours which did not appear on the rota sheet.
36. For the week beginning 16 December 2021 (57), the claimant was contracted to work 24 hours and actually worked 30.6. This is reflected in his payslip.
- 25 37. For the week beginning 23 December 2021, the claimant was contracted to work 24 hours and worked 4.7, it being noted that he was on holiday for most of that week. This is reflected in the payslip.
38. For the week beginning 30 December 2021, the claimant was contracted to work 24 hours and worked 24.3. His payslip shows that he was paid for

those hours, but also for a further 8 hours, which are not recorded on the rota.

39. It should be noted that a rota, which would normally only show the hours which an employee was scheduled to work, here shows both scheduled and actual hours, although the documentation is, frankly, incomplete, for which  
5 neither claimant nor respondent could give an explanation.

40. An email dated 26 January 2022 by Garylee Rushforth, Hotel Manager, seeking advice from the People Services Team (65) suggests an explanation:

10 *"I've just returned from an extensive stint of sick leave and have had two of my team that have come to my (sic) with a pay discrepancy on their last payslip (December 2021). They were set to be on holiday from 26<sup>th</sup> December until 30<sup>th</sup> December and were on Fourth as such, however they ended up working all of those days, however the manager processing payroll in my absence had processed the holidays instead of the actual shifts worked.*  
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*The team members have questioned this and asked me to resolve it for them, km unsure what we do here, can we pay them for the total of 37 hours (each) as I've worked out or does the holiday pay equivalent come into the mix - any advice would be appreciated. "*  
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41. The claimant was one of the two individuals concerned.

42. When asked to provide the actual hours, Mr Rushforth emailed again on 26 January (63) to set out the hours as follows:

- 03/12 - 1500-2300 - rec (additional missed)
- 25 • 22/12 - 1500-2300 - rec (additional missed)
- 27/12 - 1000-1 742 - HK (Holiday reversal)
- 28/12 - 1000-1545 - HK (Holiday reversal)

- . 29/12 - 1000-1440 - HK (Holiday reversal)
- 30/12 - 1000-1640 - HK (Holiday reversal)

43. In the claimants payslip of 4 March 2022, an entry "Back pay" shows that he was paid in respect of 6.75 units; and in the claimants payslip of 4 February 2022, an entry "Back pay" shows that he was paid in respect of 34.12 units. This appears to cover that period claimed by the claimant, which related to 40 hours and 17 minutes.

### Submissions

44. For the respondent, Ms Stein made a brief submission, in which she argued that the claimant's claim was time-barred, and that no proper explanation had been given for the late submission of the claim; as a result, the Tribunal lacks jurisdiction to hear the claim. If the Tribunal were minded to allow the case to proceed, however, she argued that the holiday claim should be dismissed as the evidence demonstrates that there is nothing outstanding due to the claimant. She referred to paragraphs 15 and 16 of the grounds of resistance. She pointed out that there was no right to carry forward leave, and no right to payment in lieu except on termination.

45. Finally, Ms Stein submitted that the claim in respect of unpaid wages, while much more difficult than the holiday pay claim, was still unfounded. She did accept that it was understandable that the claimant became frustrated because the paper trail is not at all clear.

46. The claimant responded by saying that he believed that the respondent did not act properly in this case, and that he believes he was deprived of payments which he was properly owed.

### Discussion and Decision

47. The two claims made by the claimant relate to holiday pay and unpaid wages.

48. It should be said that both claims suffer from the paucity of clear evidence in the case, which is unrelated to the claimant's limitations in English. It would



have been much more helpful to the Tribunal had the respondent put forward a witness to explain some aspects of the very opaque paperwork which was presented. It is understood, however, that the responsibility for this situation did not lie in the hands of Ms Stein, who acted entirely professionally and sought to assist both the Tribunal and the claimant throughout.

### *Holiday Pay*

49. The claimant's claim is that he was due 23.3 days in respect of holiday which was not paid; he went further in his evidence and asserted that he was never paid in respect of any holiday at all, and, moreover, had never taken holidays while he was working for the respondent.

50.1 was unable to find the claimant's evidence credible on this matter. When he was confronted with the payslips (which he said he had never seen), he accepted that they did make reference to holiday pay but professed ignorance of his pay having had any holiday component to it. He maintained that he had still received no pay for holidays.

51. The evidence put to him by the respondent was clear that the claimant did take holidays, for example as shown on the rotas, and was paid, according to the payslips, for those holidays. Given that the amounts attributed to his holidays were clearly not paid in respect of hours worked, which were specified separately on the payslip, I have concluded that the claimant did receive certain payments in respect of holidays over his employment with the respondent.

52. The claimant's assertion that he was due 23.3 days must relate to the full currency of his employment with the respondent. The respondent's annual leave policy states that carry forward of annual leave is not permitted, and that payment in lieu is only allowed on termination. Essentially, his right to annual leave for the year 2021 expired at the end of December 2021, and his only remaining right to pay on termination would relate to the pro rata entitlement given to him for the period between 1 January and 17 March 2022. Given that the claimant was paid in respect of 15.5 days for holiday in

that period, it is plain that he was not underpaid in respect of holidays as at the termination of his employment; in fact, he was significantly overpaid.

53. The only hesitation I have in relation to this matter is that the respondent's record-keeping, and the information presented to me, is not so dear and reliable that any certain conclusions can be reached. However, I am  
5 satisfied on the balance of probabilities that the claimant was paid in respect of outstanding holidays.

54. That he did not know that was either down to not receiving payslips or not reading them when he did. It is impossible to know which.

10 *Arrears of Pay*

55. In this case, it is even more difficult, as Ms Stein said, to establish what payments, if any, were due to the claimant.

56. There is no doubt that the recording systems used by the respondent are vulnerable to inaccuracies. For example the final week of December 2021  
15 shows, on the official records of the respondent, that the claimant was off on leave, whereas the respondent accepted, on his application, that he had in fact been working those days. The fact that that did not show up on the rota, nor in the timesheets produced, gives rise to some concern about the processes adopted by the respondent, or the practices adopted by the staff.

20 57. However, it is for the claimant to prove his loss, and in this case to prove that he was not paid for all of the hours which he worked. On the evidence available to me it appears that he was paid for all hours which he worked.

58. I do have considerable misgivings that the information presented to me by the respondent could be wholly relied upon as accurate, given the  
25 discrepancy in the recordings in December; however, by checking against the payslips, and considering the terms of the claimant's evidence, I am unable to conclude that there were hours worked by the claimant for which he was not paid, in respect of December 2021.

59. Accordingly, it is my conclusion that the claimant has failed to prove that he suffered any unlawful deductions from wages, and that his claim must fail

60. It is worth repeating, however, that had the respondent communicated more effectively with the claimant, this claim may never have been raised, since it was obvious that the claimant came before the Tribunal at least partly because he could not work out why he was being paid the amounts he was. The respondent should reflect on this case in order to ensure that in the future claimants are not left in a similar situation.

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15 **Employment Judge: M Macleod**  
**Date of Judgment: 01 February 2023**  
**Entered in register: 02 February 2023**  
**and copied to parties**

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