



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Moulton

**Respondent:** (1) MEPA College  
(2) MEPA Academy Ltd

**Heard at:** London South

**on:** 28<sup>th</sup> June 2024

**Before:** Employment Judge MJ Reed

## **Representation**

Claimant: Emily Skinner, Counsel

Respondent: Mandy Ellen Cook, Principal

# RESERVED JUDGMENT

1. The complain of breach of contract in relation to notice pay is well-founded.
2. The 2<sup>nd</sup> respondent shall pay the claimant £240 as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.
3. The complaint in respect of holiday pay is well-founded. The 2<sup>nd</sup> respondent failed to pay the claimant in accordance with the Working Time Regulations 1998.
4. The 2<sup>nd</sup> respondent shall pay the claimant £723.98. The claimant is responsible for paying any tax or National Insurance.
5. The claims against the 1<sup>st</sup> Respondent are dismissed. The correct legal identity of the claimant's employer was MEPA Academy Ltd.

# REASONS

### **Claims and issues**

1. Mr Moulton brought claims for holiday pay and for wrongful dismissal. There was no dispute between the parties that Mr Moulton was not paid holiday pay and, when dismissed, was not given any notice or paid any sum in relation to such notice. The crucial dispute between the parties was whether Mr Moulton was entitled to receive such payments / notice, which depended on his employment status. Mr Mouton argued that he was an employee and a worker, while the College argued that he was a self-employed individual who did not fall within either category.

### **Procedure, documents and evidence heard**

2. I heard evidence from Mr Moulton on his own behalf and from Mandy Ellen Cook, the College Principal and Emma Finch on behalf of the respondents.
3. There was a tribunal bundle agreed between the parties, running to page 438. References to page numbers within this decision are references to that bundle unless indicated otherwise).
4. Both parties made submissions and their arguments are addressed as they arise in these reasons.
5. This judgment has been significantly delayed and I apologise to the parties for this. Unfortunately, I experienced a family bereavement following the hearing. This, combined with other work, has led to the delay.

### **Findings of fact**

6. I considered the oral evidence and the documentary evidence to which I was referred. All findings of fact were made on the civil standard of proof. That means that they were reached on the basis that they are more likely to be true than not.
7. These written reasons are not intended to address every point of evidence or resolve every factual dispute between the parties. I have made the factual findings necessary to resolve the legal disputes before me. Where findings have not been made or are made in less detail than the evidence presented, that reflects the extent to which those areas were relevant to the issue and the conclusions reached.

### *Background*

8. MEPA College is a training organization, offering courses in dance, music and the performing arts. The students are aged between 16 and 21, on a three-year course. The College's academic year begins in September.

9. It is not in dispute that Mr Moulton began working at the MEPA college in January 2022 as a Singing / Musical Theatre Teacher. When he began this work, it was on the basis of one-half day of teaching per week in September 2022. This later increased to one day per week.

*Start of engagement*

10. The parties agreed that Mr Moulton was recruited through an interview / meeting with Ms Finch conducted via Zoom.
11. Ms Finch evidence to the Tribunal was that in the course of that meeting it was expressly agreed that Mr Moulton was to be engaged on a freelance / self-employed basis.
12. Mr Moulton's evidence was that the issue of him being freelance / self-employed was not discussed.
13. On balance I accept Ms Finch's evidence that something of this nature was said. It was not a detailed or specific conversation. As she said, in response to a question about what was said, it was likely to have formed part of a general conversation about how the college operated and something mentioned in passing. I find that, in the course of this conversation, Ms Finch referred to teachers working on a freelance basis, which was part of her understanding of how the college operated.
14. Following the meeting with Ms Finch Mr Moulton received a number of documents:
- a. Staff contract, p30-31
  - b. Confidentiality agreement, p32
  - c. Job description / person specification, p35
15. Mr Moulton did not sign the staff contract at this time. He did later sign a revised job description / person specification document on 30<sup>th</sup> August 2022, p391A-C.
16. The following elements in these documents are relevant to these proceedings:
- a. The staff contract included restrictive covenants that would prevent Mr Moulton from being employed by any competitor of the College within one year of him leaving the College.
  - b. The contract also required Mr Moulton to maintain confidentiality over confidential or sensitive information. These duties were elaborated upon in the confidentiality agreement.
  - c. The job descriptions set out a number of expectations of the Singing / Musical Theatre Teacher, including that they arrive 15 minutes before the start of their class, did not complete printing of handouts during class time, produce details lesson plans at the beginning of half term and attend staff meetings.

*Staff handbook*

17. MEPA College's staff handbook was produced to the Tribunal, p74-256. This contains a wide range of policies and much of the content is not relevant to these proceedings. The relevant points are as follows:

- a. *Communication is key*, p89: Staff were expected to attend department meetings during the term, at the beginning of the term, during half term and at the end of term. They were instructed that if they were unable to attend the scheduled meetings, they should contact the College to rearrange. They were also expected to attend a staff development day, which would include training on topics such as fire safety, health and safety and safeguarding. Staff were expected to aim reply to emails from the College within 24 hours.
- b. *Maintaining standards and quality assurance*, p102: This document summarised the College's approach to maintaining academic standards and ensuring the quality of the teaching provided to the students. It explained that the structure of the course would be detailed by the College. Teachers would be, on occasion, observed by Senior Management in order to maintain the quality of teaching and teachers would be appraised yearly.
- c. *Social media policy*, p90: This forbade teachers posting any negative content about the College. Posting such content was said to lead to instant dismissal.
- d. *Disciplinary policy*, p144: This sets out how the College would deal with misconduct. It refers to those working for the College as employees. The process described is similar to that commonly in place within an employment context, although it is by no means a detailed or particularly specific policy.
- e. *Lesson plan template*, p84: This provides a template for lesson plans and some brief guidance. It emphasises that a lesson plan must be provided for each lesson and that teachers would not be permitted to teach a lesson without a plan.
- f. *Who to contact*, p130: This sets out contact details for the College. It emphasises that the College must be informed if a staff member will be absent and that planned absences must be discussed in advance.

18. It was suggested to Ms Cook that the handbook made a number of references to employees. She agreed that it did but denied that this was intended to suggest that Mr Moulton was an employee. I accepted that such references did not reflect any considered view that the College's staff were employees.

#### *Pay / Tax*

19. At all relevant times Mr Moulton was registered as a self-employed sole trader. Payments made to him by MEPA College were made gross of tax. Mr Moulton was responsible for making appropriate payments for income tax and national insurance.

20. Mr Moulton submitted invoices for his work monthly, which were then paid by MEPA College. And her evidence, Miss Cook agreed that this was something that the College required. They regarded all their teacher as self-employed and required them to submit invoices.
21. Mr Moulton accepted in his evidence that he never asked to be placed on payroll.

*Circumstances of work*

22. There is no dispute that Mr Moulton had regular hours, set at the beginning of each term. Until the week beginning 5<sup>th</sup> September 2022, during periods he was teaching Mr Moulton took three classes a week, over half a day, and was paid £120. From 5<sup>th</sup> September, he took six classes a week, over one day, and was paid £240.
23. The College operated under a conventional three term academic calendar, with each term broken by a half-term break. Mr Moulton did not work and was not paid outside term time.
24. There was no dispute between the parties that, on a number of occasions, Mr Moulton did not teach his regularly scheduled lessons and was not paid. On 7<sup>th</sup> February 2022 he was absent due to having Covid. Mr Moulton did not submit an invoice for this day and, in his email to Ms Finch at the time wrote 'obviously doesn't include when I had covid', p369. On 13<sup>th</sup> June 2022 Mr Moulton was working on a show elsewhere. Again, he did not submit an invoice and at no stage suggested that he was entitled to be paid for this day.
25. On 3<sup>rd</sup> October 2022 Mr Moulton left after one lesson, because he was feeling unwell. Mr Moulton was not paid for the remaining lessons.

*Off timetable periods*

26. In addition to the out of term periods, including half-terms, there were periods in the year when the college was 'Off timetable'. Essentially, these were period during which the students were in the process of preparing for or performing a production as part of their training. During these periods normal classes were not underway. Mr Moulton was not involved in these productions. He would not be required to teach his normal classes and was not paid.
27. One of these breaks occurred at the end of the lent term in April 2022. The school was 'off-timetable' for six weeks, beginning on the 19<sup>th</sup> April 2022. There was then a week's half-term beginning on 30<sup>th</sup> May 2022. Mr Moulton's normal work recommenced from 6<sup>th</sup> June 2022, see page 373-374.
28. During this time Mr Moulton asked if he could over 1 to 1 lesson to some students. The College agreed and helped him to facilitate this. The College contacted the students and provided Mr Moulton with a schedule of lessons they had arranged. Mr Moulton, however, invoiced the students directly. In relation to one of the students, the fee due to Mr. Moulton was not paid at a

timely manner. Ultimately, Mr Moulton was paid by the college who then sought to recover the fee from the student.

29. There was another 'off timetable' period in November - December 2022. The week commencing 7<sup>th</sup> November 2022 was off timetable for a Parent's Showcase. There was then a further off timetable period for three weeks, beginning from the week commencing 28<sup>th</sup> November 2022. This was for the College's Christmas pantomime, see page 392.

*Evidence in relation to notice period*

30. The job description provided to Mr. Moulton includes an agreement that he would give one term's notice if he wished to end the contract, page 35. It was suggested to Miss Cook that this reflected the industry standard for similar organisations. Miss Cook accepted that the college wished to have this source of notice because it assisted them to have continuity of staff and this was better for the students. She went on however, to say, that the college differ from an academic organisation because many of its staff were performance who had a more itinerant working life. This meant that it was not uncommon for them to leave in order to appear in a production and then return once the production was over. She suggested that this meant that the clause would not necessarily be enforced because the college needed to be flexible and pragmatic.
31. It was suggested to Miss Cook that, since the college asked for one term's notice, it was reasonable for them to provide the same notice. She disagreed. She said this was not contained in the written documentation and the nature of the college timetable would not always allow for such notice.
32. Mr Moulton's evidence in relation to the notice period was that he expected it to be 'reciprocal', meaning that he would be provided with the same notice that he was required to give the College.

*Dismissal*

33. On the 5th January 2023 Mr Moulton became aware that he had been removed from the MEPA College WhatsApp group. He sent a message to Ms Finch to ask why, and to request the syllabus for the coming term.
34. Ms Finch sent an email to Mr Moulton the same day, page 415. It read as follows:

Dear Daniel,

I just received your message; you should have received an email before Christmas.

Unfortunately, due to a change in timetable and a tighter budget we are unable to have you back this term. I am sorry for any inconvenience; an email was sent before we broke up. Did you not receive it?

Kind Regards

Emma

35. Mr Moulton replied so say that he had not received the email and asked Ms Finch to forward it, which Ms Finch This caused Ms Finch to forward an email she had apparently sent to Mr Moulton on 19<sup>th</sup> December 2022, page 414. This read as follows:

Dear Daniel

I hope this email finds you well, Mandy and I have been looking at next term and unfortunately, we have no choice but to adjust the timetable – this is due to due several factors – to keep in line with CDMT / Trinity, as well as changes to the budget (to name a few). It is with regret that you will not be needed for term two. I apologise for any inconvenience this has caused and thank you for your work with MEPA so far.

Kind Regards

MEPA Management

36. I accept Mr Moulton's evidence that he did not receive this email until it was forwarded to him on 5<sup>th</sup> January 2023.

### Relevant law

37. The law relating to employment status, both as an employee and as a worker, is central to this case. This is because the claims that Mr Moulton brings are contingent on that status. The Tribunal only has jurisdiction to determine a breach of contract claim (of which Mr Moulton's claim for notice pay is one instance) where there is a contract of employment, see section 3 Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

38. Similarly, Mr Moulton's claim for statutory holiday pay can only succeed if he is a worker, since only workers have a statutory entitlement to paid annual leave and associated payments, see Working Time Regulations 1998.

### *Employment Status*

39. Employment status has been considered numerous times in the courts, including at the appellate level, from which the legal principles summarised below have emerged. It is, however, a fact sensitive question, which is not easily reducible to a simple set of rules. Rather it requires consideration of all the relevant circumstances, in order to weigh the relevant factors as a whole.

40. The starting point in that analysis is the approach set out in *Ready Mixed Concrete (Southeast) Ltd v Minister of Pensions and National Insurance* [1968] QB 497. In summary:

- a. An employee agrees that, in consideration for a wage or other remuneration, he will provide his own work and skill to perform service for his employer.
- b. An employee agrees, expressly or impliedly that in the performance of that service he will be subject to the employer's control to a sufficient degree to indicate an employment relationship.
- c. The other provisions of the contract are consistent with an employment relationship.

41. The modern approach to employment status is often described as 'the multiple test', because it involves considering the myriad factors that may be relevant to whether a particular contract is one of service or not.

42. These factors include:

- d. *Mutuality of obligation*: In general, employers are required to provide a particular level of work and employees are obliged to perform that work. Where there is no obligation to offer work or to accept it if offered, a contract is unlikely to be one of employment, see *Carmichael v National Power plc* [1999] ICR 1226.
- e. *Control*: An employer has control over their employee. They can give orders and expect them to be carried out. This contrasts with an independent contractor, who is engaged to provide a particular result or service but has discretion over how that end is to be achieved.  
  
What is most significant, however, is not whether there are actual day-to-day instructions being given, but where the ultimate right of control resides, see *White v Troutbeck SA* [2013] IRLR 949. This reflects the fact that many employees, by reason of their circumstances or expertise, are given considerable practical autonomy. What is most relevant to the control element of the test is whether the engager has a contractual right to control, whether they choose to exercise it or not.
- f. *Organisational integration*: The more an individual is integrated into an organisation, the more likely they are to be an employee.
- g. *Economic reality*: This, fundamentally, requires considering whether an individual is operating their own business, rather than being employed by someone else.

43. Ms Skinner, on behalf of Mr Moulton, referred me *Wilson v Circular Distributors Ltd* [2006] IRLR 38. This is a case dealing, in particular, with mutuality of obligation where there are periods of time where no work is available. It establishes that mutuality of obligation may be satisfied where there are such periods, even if an employee is not paid during these times. *Wilson* establishes that, for there to be an absence of the minimum obligation there must be both an absence of an obligation on the employer to provide work and an absence of obligation on the part of the employee to accept it when it is offered.



44. It is also useful to bear in mind the guidance of then Mr Justice Mummery endorsed by the Court of Appeal in *Hall (Inspector of Taxes v Lorimer)* [1994] ICR 218. He points out that the multiple tests is not a mechanical exercise of running through a checklist, but rather an attempt to arrive at an overall picture from the accumulation of detail. This requires stepping back to consider the picture as a whole. It requires evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not every factor is of equal weight and the importance of a particular factor may vary from one situation to another.
45. How the parties view or label their relationship is a relevant, but not conclusive factor for consideration, see *Quashie v Stringfellow Restaurants Ltd* [2013] IRLR 99. What is important is the contractual relationship between the parties, not how they perceived or labelled it. Similarly, how an individual or engager has represented the tax status of the arrangement to HMRC is relevant, but not conclusive, see *Richards v Waterfield Homes Ltd* [2023] IRLR 145.

#### *Worker status*

46. Worker is defined by regulation 2 Working Time Regulations 1998 as:

an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

#### *Right to notice period*

47. There is no dispute between the parties that, if Mr Moulton was an employee, he would be entitled to the statutory notice period laid down by the Employment Rights Act 1996. In his case, it is agreed that this would be one week.
48. Mr Moulton, however, also relies on the common law principle that an employee is entitled to a reasonable period of notice. It is trite law that, if an employment contract does not contain an express notice period, there will be an implied term that the employee will be provided with reasonable notice of any dismissal.
49. Some guidance has been provided by the Employment Appeal Tribunal in assessing reasonable notice in *Clark v Fahrenheit 451 (Communications) Ltd* [2000] EAT/591/99. An employee's seniority and status within the organization are relevant factors, as is their length of service. *Clark* makes clear that the Tribunal should not have regard to circumstances pertaining only at the moment of dismissal, such as the present financial position of the employer. This is because a contractual notice term will not ordinarily alter in such a way.
50. I do not, however, take the factors mentioned in *Clark* as being a comprehensive list or necessarily more important than other considerations. It

seems to me that the question of reasonable notice is fundamentally something that will depend on the circumstances of an individual employment relationship. In certain cases, it will be important to have regard to the prevailing practice within a sector or industry as part of the assessment.

51. I also concluded that it is relevant to have some regard to the statutory notice period in assessing what would amount to reasonable notice. It is not decisive, but it would be strange if the statutory notice period was routinely considered to be unreasonable.

#### *Holiday pay*

52. As noted above, the primary dispute between the parties in relation to holiday pay relates to Mr Moulton's employment status. There is no dispute between the parties that, if Mr Moulton was a worker, he was therefore entitled to statutory holiday pay. It is therefore possible to deal with the other law relating to statutory holiday pay quite briefly.

53. The statutory holiday pay regime is contained in the Working Time Regulations 1998. All workers are entitled to 5.6 weeks of annual leave, pursuant to regulations 13 and 13A. In *Harper Trust v Brazel* [2022] UKSC 21 the Supreme Court confirmed that this applies equally to workers who work for only part of the year (such as teachers). This can produce counter-intuitive results since, if a worker works during only part of the year, 5.6 weeks annual leave is likely representing a much larger proportion of their working year than it would for an employee working throughout the year.

54. Pay during annual leave is dealt with in regulation 16. Regulation 14 sets out compensation in relation to annual leave when a worker's employment is terminated during the course of his leave year. Broadly, it provides for a payment for the annual leave reflecting the proportion of the leave that has elapsed when termination occurred, less any leave taken.

#### **Conclusions**

55. Applying the relevant law to the findings of fact, the Tribunal reached the following conclusions.

#### *Correct Respondent*

56. The claim has been brought against two named parties: 'MEPA College' and 'MEPA Academy Limited'. I am satisfied that the correct legal respondent is MEPA Academy Limited, which is the corporate identity of the College.

#### *Employment Status*

57. I first considered whether there was the irreducible minimum of obligation to provide and accept work, often referred to as mutuality of obligation. I concluded that there was. Mr Moulton was agreed to work set hours and was

paid to do so. He was required to attend as agreed and there was no question of sending a substitute. The college could not, in practical terms, have operated if Mr Moulton had been able to choose whether to attend work.

58. I do not consider that this mutuality of obligation was undermined by those periods when the College was off timetable and therefore Mr Moulton did not teach classes. Fundamentally, these periods were no different to other temporary cessations of work, such as holidays, where there remained an agreement that work would resume on an established future date.
59. I do not, however, consider that the one-to-one lessons taught by Mr Moulton part of this contract. Rather, they were separate agreements entered into between him and the students. Although the College was instrumental in arranging these, there was no agreement between Mr Moulton and the College either that he would carry out this work, or that the college would pay him for it. I accept Ms Cook's evidence that when the College paid for one student, this was for pragmatic reasons. The student had initially agreed to pay Mr Moulton but have not done so. Ms Finch described them as having been bad with money. They were on a scholarship and the college wished to support them. They also wished to support Mr Moulton. I am satisfied that their payment in respect of this student was, in these circumstances, a voluntary act by the College, rather than an indication of any contractual entitlement for Mr Moulton to be paid in this way for these lessons. It did not suggest that the College had entered into any legally binding agreement either with Mr Moulton or the student.
60. I also concluded that the College had a significant degree of control over Mr Moulton's work. Mr Moulton was required to teach the College's syllabus; he was required to submit lesson plans, which were reviewed by the College. His performance was monitored by the College. He had no choice about the hours he worked or the students he taught. He was required to follow the College's policies on a wide range of subjects connected with his work. Mr Moulton was not subjected to detailed instruction as to his teaching on a day-to-day basis. But I did not regard this as undermining the contractual control available to the College. Rather it reflected the practical reality that a teacher in Mr Moulton's position was expected to work responsibly without constant supervision or instruction.
61. I then went on to consider other factors which might be either consistent or inconsistent with employment status.
62. I considered that the fact that there were periods separate from holidays when Mr Moulton was not required to teach and not paid was a factor that pointed away from employment status. This was not because mutuality of obligation was absent during these times, for the reasons set out above. Nonetheless, it indicated a more casual arrangement that was less likely to amount to an employment relationship. This was a relatively minor factor, however, because the off-timetable periods were clearly established at the beginning of the academic year and it was agreed that Mr Moulton would resume work after they concluded. In addition, Mr Moulton maintained an ongoing relationship with the College during these times as can be seen through the provision of one-to-one lessons facilitated by the college.

63. Another factor against employment status was the tax arrangements. Mr. Moulton was registered as self-employed, invoiced the college and paid his own tax. All of this was a significant factor more consistent with him being self-employed. I brought in mind, however, that these arrangements were a requirement established by the college. This was not a case in which Mr Moulton had either made an active choice to be treated our self-employed rather than employed; or a case involving any deliberate fraud on the revenue.
64. Similarly, I am satisfied that during the engagement the relationship was characterised by the College as a freelance / self-employed one. And this was not challenged by Mr Moulton at the time. This is a factor against employment status. Although there are passing references in the staff handbook to employees, I find that these represent infelicitous drafting (most likely the product of carrying over standard templates for such documents without sufficiently careful thought) rather than any considered view as to the employment status of the individuals concerned. This factor, however, is a less powerful indicator than it might otherwise be. As in relation to the tax position, this was not a situation in which Mr Moulton was making an active choice between two options.
65. Mr Moulton was closely integrated into the college's operations. The most significant factor in this regard is simply that he was teaching the students which was the core function of the organisation. But he was also involved in meetings with the College, separate to his direct teaching duties and was provided with a college email.
66. Stepping back from these individual factors to consider the situation as a whole I am satisfied that the relationship between Mr Moulton and the college was one of employment. Many of the most significant factors point strongly towards an employment relationship. In particular there is clear mutuality of obligation and a strong level of control over an individual closely integrated into the organisation. The most significant factors against employment status, the way the relationship was characterised at the time and the tax arrangements were matters determined by the College rather than Mr Moulton. It was based on their assessment of the correct legal position. I accept that it was an honest assessment but it is not a factor that is determinative, especially where Mr Moulton did not have an opportunity to make any sort of active choice in the matter. In this case, those factors were outweighed by other considerations pointing to employment status.

#### *Worker Status*

67. It follows from the conclusion that Mr Moulton was an employee that he was also a worker.

#### *Reasonable period of notice*

68. Considering all the circumstances of this case I find that a reasonable period of notice for Mr Moulton was one week. I reject his argument that the implied term provided any greater notice than the statutory provisions within the Employment Rights Act.

69. In reaching this conclusion I have had to regard to the following factors. Mr Bolton was a junior employee within the College with less than one year's service. I also have some regard to the statutory period of notice, which in the absence of other factors, seems to me to establish a baseline expectation for what is reasonable in most circumstances.
70. Although it was suggested to the College's witnesses that it was normal in similar organisations to provide employees with a minimum of a terms notice they did not agree. No other evidence was produced to this effect. In his statement, Mr. Moulton does not refer to any such custom. Instead, he suggests that his understanding that he should receive at least one terms notice was based on his expectation that notice should be reciprocal – in that he should be provided with the same notice that he would have to provide to the College.
71. I do not accept that, where there is an agreed period of notice that an employee must provide it therefore follows axiomatically that the employer must provide the same notice. Rather, it seems to me that this is a relevant factor that should be considered along with others. In this case it does not outweigh the factors set out above.

*Conclusions on wrongful dismissal*

72. It follows from the conclusions above that Mr Moulton was entitled to one week's statutory notice. He was not provided with such notice, having been summarily dismissed by Ms Finch on 5<sup>th</sup> January 2023 when she informed him that the College did not wish him to return to work.
73. Compensation for Mr Moulton's wrongful dismissal is therefore based on his loss of wages during that notice period, taking into account the provisions of Part IX of the Employment Rights Act 1996. In Mr Moulton's case this is £240.
74. Mr Moulton's schedule of loss seeks to give credit sums received during the notice period and I have considered whether these should be offset against the above loss. My understanding of the evidence / submissions, however, is that while such sums may have been received in January 2023, they would relate to work done by Mr Moulton in December 2023 and therefore are unrelated to any period of notice or compensation for lack of notice. They are not therefore offset against the award for wrongful dismissal.

*Conclusions on holiday pay*

75. Mr Moulton was entitled to 5.6 weeks annual leave. His leave year began on 17<sup>th</sup> January 2022 when his employment began. His employment ended on 5<sup>th</sup> January 2023. He took no paid annual leave during this time.
76. The calculation in respect of the period of leave is therefore: 5.6 weeks multiplied by 354/365 days. This is 5.43 weeks.
77. The average weekly wage calculated in Mr Moulton's schedule of loss is £73.65 per week. I do not, however, accept that this is accurate. It seems to me that it must have been calculated without regard to section 224(3) Employment Rights

Act 1996, which requires that any calculation should take no account of a week in which no remuneration was payable. In Mr Moulton's case this makes a significant difference, because the combination of the academic holidays and the off-timetable periods mean that there were many such weeks.

78. I have therefore calculated Mr Moulton's weekly wage using the figures for remuneration supplied by the respondent (pages 360, 373-374 and 392-393), which were not disputed by Mr Moulton. This produces a weekly wage of £133.33.

79. The compensation related to entitlement to leave is therefore 5.43 weeks multiplied by £133.33, which is £723.98.

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Employment Judge **Reed**

27<sup>th</sup> October 2024

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Date

RESERVED JUDGMENT & REASONS SENT TO THE  
PARTIES ON

30<sup>th</sup> October 2024

FOR EMPLOYMENT TRIBUNALS

P Wing

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