



EMPLOYMENT TRIBUNALS

Claimant: Mr A Coughlan

Respondent: Walls Truck Services Ltd

Heard at: Cardiff **On:** 29 June 2017

Before: Employment Judge P Cadney
Members

Representation:

Claimant: In person

Respondent: No attendance

JUDGMENT

The judgment of the tribunal is that :-

The case is adjourned to a date to be fixed.

REASONS

1. The case comes before the Tribunal for Final Hearing this morning of the Claimant's claims for unpaid holiday pay and unpaid sick pay. The Respondent did not attend as it had not appreciated that the original notice of hearing sent out with the ET1 had contained today's date as the hearing date and had not received any further notification. The Tribunal therefore had to decide whether to adjourn on the Respondents oral application on the telephone or to continue with the hearing. The Tribunal came to the conclusion that the error was a genuine error on the part of the Respondent, that they were intending to defend the claim and that in the circumstances the case should be adjourned. However, the Claimant has been advised that he may wish to make a claim for any lost expenses or preparation time in respect of today's hearing. If he does, that will be determined at the conclusion of the next hearing.

2. The Claimant has brought two claims, one is for holiday pay and the other is for sick pay. I have heard no evidence and so the remarks below are intended solely to assist the parties.
3. The claim for holiday pay is a claim for 22.8 days unpaid holiday pay. The 2.8 days as I understand it are based upon the holiday year 2016/17 when the Claimant believes he has been underpaid by 2.8 days that should simply be a question of calculation. The Claimant has also claimed 20 days untaken holiday for 2015/16. The Tribunal will need to consider the following principles in determining that claim. Under the Working Time Regulations which provides the statutory holiday pay there is no capacity to carry over unused holiday (save in relation to periods of sickness which does not appear to apply in this case). It is not suggested by the Claimant that he was sick in 2015/16 merely that he was not aware of his holiday entitlement until it was too late to exercise it. The Claimant claims that he was orally informed that he would be allowed to carry them forward to the following year. That is clearly a question of fact. It follows that the Tribunal will need to determine whether there had been an agreement with the Claimant that he be allowed to carry that holiday forward and/or the contractual effect (if any) of that agreement and/or the contractual effect that if it remained untaken on termination.
4. As far as statutory sick pay is concerned there is a dispute of fact as to whether the Claimant notified his employer and thus was entitled to be paid it. The Claimant has claimed 15.3 weeks statutory sick pay although it appears to me that given that there is a dispute as to whether he was dismissed on the 28 October or 11 November that actually the maximum period would be either 4 or 6 weeks depending upon the resolution of that dispute. I hope this assists the parties in preparation for the next hearing.

Employment Judge P Cadney

Dated: 29 June 2017

JUDGMENT SENT TO THE PARTIES ON

10 July 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS