



EMPLOYMENT TRIBUNALS

Claimant: Mr Huw Jones

Respondent: Graig Shipping PLC

Heard at: Cardiff **On:** 15 August 2017

Before: Employment Judge P Cadney

Representation:

Claimant: Written Submissions

Respondent: Written Submissions

PROVISIONAL RECONSIDERATION JUDGMENT

1. The Claimant has sought reconsideration of one aspect of the Judgment following the hearing on the 12 January 2017 which is the failure to deal with his claim for holiday pay. Shortly before the hearing the Respondent wrote to the Tribunal by letter dated 5 January 2017 conceding that there had been a shortfall of notice pay and pay in lieu of accrued untaken holiday. It was accepted there was a shortfall of £349.62 in respect of notice and a total of 30.33 days of accrued but untaken holiday. This resulted in a net payment of £2962.26 reflecting a gross figure of £4665.88.
2. As is set out in paragraph 1 of the Judgment, my understanding at the time was that the only remaining claim was that for unfair dismissal. The Claimant contests this and has been asked to set out in writing why he considers that the Respondents calculation is wrong. Dealing with the points he makes in his letter, he sets out a claim for a gross payment of £8823.08 which taken together with 5% pension entitlement would be £9264.23.
3. Dealing firstly with the question of pension, any pension entitlement would (or certainly should) accrue during the period of employment irrespective of whether the day was taken as holiday. Holiday pay would not ordinarily

attract a further payment representing pension accrual as that would allow double recovery. Having re-read the claimant's witness statement there is no evidence at all as to the holiday pay claim, let alone pension accrual. I would have been bound to have rejected this aspect of the claim on the basis of the evidence before me had I understood that it was still in issue at the time in any event. There is no more evidence or information before me now so equally I am bound to reject it now.

4. Of more significance is the claim for sixty two days unpaid holiday. The claimant bases this on 2 years at 31 days per year, however the right to statutory holiday pay deriving from the Working Time Regulations is a right to 20 days per year. There was and is no evidence before me of any contractual right to carry over or be paid unpaid contractual leave. Accordingly there is a maximum of forty days holiday pay owed not sixty two. As I understand the dispute the respondent has calculated the amount owed by reference to the last two leave years (10.33 days pro rata for 2016 and 20 days for 2015) but has not included any amount for 2014 (which in effect would be the balance of 9.66 days). There is no factual dispute that the claimant was off sick for the whole of 2014. In my judgment the claimant is right as a matter of law that he was entitled to unpaid holiday pay for the whole of the two year period prior to the issuing of the proceedings, and there is nothing in the regulations which allows the respondent simply to pay an amount representing the previous two leave years, which in this case is in fact amounts to approximately eighteen months unpaid accrued holiday pay.
5. The Claimant refers to a letter in the Bundle which he says is an acceptance that there was an agreed amount of £5835 in lieu of 41 days accrued which was owing from 15 March 2011. This is correct, but the letter is an offer to terminate the claimant's employment on terms which include the payment of 41 days accrued holiday. As this offer was never accepted it cannot be pursued as a contractual claim, and there is no evidence before me of any contractual right to carry over untaken holiday. The letter is at most an acceptance of unpaid holiday prior to March 2011. As such it would squarely be caught as a holiday pay claim by the Deduction from Wages (Limitation) Regulations 2014 limiting any award to unpaid holiday pay for the period of two years prior to issuing proceedings, and therefore the Tribunal would not be able to make an award in any event.
6. That leaves the question therefore of what order I should make in respect of the 9.66 days holiday pay which in my provisional view the claimant has correctly identified as owing as a matter of law. The respondent's position is that it was its understanding that it had paid all holiday pay owing prior to the hearing (although for the reasons set out above in my judgment that view was incorrect) and so there was no cross examination as to it. As the

claimant's witness statement was silent on the subject, and as the claimant did not cross examine any of the respondent's witnesses about the calculation of holiday pay there was in fact no evidence before me at the hearing which would have allowed me to make any finding in the claimant's favour. On the basis of the evidence, therefore, there is nothing to reconsider.

7. However, the claimant is a litigant in person and may not have appreciated the significance of what was included in his witness statement and/or the significance of cross examining as to issues in dispute. My provisional view is that I would be minded to reconsider and order the respondent to pay 9.66 days unpaid holiday pay. In my judgment, for the reasons set out above there is no basis for reconsidering the other aspects of the claim set out by the claimant. Having reached that provisional conclusion I should give the parties the opportunity of either seeking an oral hearing or making any further written representations.

Direction

8. The parties shall notify the tribunal in writing within 14 days:-
 - a) Whether it seeks an oral hearing or is content for the tribunal to make the order set out above, or
 - b) Whether it seeks the tribunal's consideration of any further written submissions before reaching a final conclusion, in which case the written submissions should be supplied.

Employment Judge P Cadney
Dated: 15 August 2017

ORDER SENT TO THE PARTIES ON

.....15 September 2017.....

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS