



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Connelly

**Respondent:** Paul Shrubsall

**HELD AT:** Manchester

**ON:** 31 January 2018

**BEFORE:** Employment Judge Ross

## REPRESENTATION:

**Claimant:** Mr Lewis,

**Respondent:** Not in attendance

## REASONS

1. The claimant brought a claim for unfair dismissal on the basis that she was automatically unfairly dismissed for asserting a statutory right, namely her right to statutory sick pay. She also brought a claim for failure to make a payment in lieu of notice, a claim for failure to provide written particulars of employment and a claim for failure to pay accrued but untaken holiday pay on termination of employment.

2. The claimant presented a claim on 8 September 2017. The Tribunal served the claim on Mr Paul Shrubshall at the Prince Albert, Newton Street, Macclesfield, explaining a reply was not required to the unfair dismissal claim but a reply was required to the other claims by 10/10/17. No reply was received. On 9 October the Tribunal explained the claim for unfair dismissal for asserting a statutory right was proceeding and the deadline for a reply to all claims was extended to 27 October 2017. No reply was received.

3. The case was listed for a hearing on 31 January 2018 by letter of 9 October 2017 to both parties.

4. On 2 November 2018 the Tribunal informed the respondent because a response had not been received a judgment could now be issued. It explained although he was entitled to receive notice of hearing he could participate only to the extent permitted by the Judge. No reply was received.
5. The hearing took place on 31 January 2018. The respondent failed to attend.
6. I heard from the claimant. I entirely accept the claimant's evidence as set out in the claim form namely that after the claimant informed the respondent that he would have to pay her SSP, he terminated her employment. I find the real reason for her dismissal was the fact she had raised her right to receive SSP, a statutory right.
7. I turned to consider remedy.
8. Firstly the claimant is entitled to a basic award of 1 weeks pay of £120 x 1.5 because of her service and because she was aged over 41 years. I turn to the compensatory award. I must have regard to the principle in *Polkey v AE Dayton Services Ltd* and consider would have happened if the respondent had dealt fairly with claimant. I must consider whether she would have remained employed and if so, for how long.
9. The claimant was unwell and continues to be unable to work due to leg ulcers, cellulitis and varicose eczema. I find the claimant would have remained unfit to work for the respondent.
10. I find the respondent, a small business, would inevitably have had to dismiss the claimant fairly by reason of capability eventually. The claimant explained to me even now she is not well enough to work as bar staff which involves standing to serve customers and pulling pints. I find the respondent would have dismissed the claimant fairly after consulting with her and her GP. I find if he had followed a proper procedure the claimant would have been employed for a period of 6 months and then dismissed. I find the claimant would have received SSP from the respondent for that period.
11. Accordingly I have awarded the claimant an amount equivalent to her loss of SSP for that period which is  $£89.35 \times 26 \text{ weeks} = £2,323.10$ . I have deducted from that the ESA that the claimant received: £1,684.15. The difference between  $£2,323.10$  and ESA £1,684.15 = £638.95
12. In reaching the figure of £1,684.15 for Employment Support Allowance ("ESA"), I have had regard to the evidence information provided which showed the claimant received a payment of £222.15 for the period May-June 2017 and then £73.10 weekly. I have therefore calculated the ESA figure for the relevant period of loss is the payment of £222.15 plus  $£73.10 \times 20 \text{ weeks} = £1,462$  which is a total ESA of £1,684.15. I have therefore awarded the claimant the difference between the amount she would have received from the respondent by way of SSP if she had remained in employment for 26 weeks and the amount she received in Employment Support Allowance.

13. The final amount I have allowed in the compensatory award is £12.10 for the claimant's fare on public transport to the Tribunal hearing.

14. I find the respondent failed to provide written particulars of employment which is in breach of s 1 ERA 1996. I find the appropriate remedy is two weeks pay so  $2 \times £120$  so that is £240.

15. The respondent failed to make a payment of 1 week's pay in lieu of notice in breach of contract and I award 1 week's pay in the sum of £120.

16. Finally I turn to the claimant's claim for payment in lieu of accrued but untaken holiday on termination of employment. I rely on the claimant's evidence.

17. I find that in the absence of any evidence to suggest otherwise, the holiday year commenced with the start of her employment. I find her statutory holiday entitlement was 78 hours for the period 1 June 2016 when she commenced employment until the termination of employment on 29/4/2017, part way through the leave year. I find the claimant worked 16 hours a week. I find the claimant worked on two bank holidays, Christmas Day and one other bank holiday in August when she was paid. I did not hear how many hours worked on each bank holiday but I have allowed four hours on each day ( $4 \times 2 = 8$ ) and deducted that as required by the method of calculation in accordance with Regulation 14 Working Time Regulations 1998. Therefore that leaves  $78 - 8 = 70$  hours accrued but untaken holiday at the termination of employment which is  $70 \times £7.20 = £504$ . Therefore the sum due from the respondent to the claimant for holiday pay is £504.

18. The basic award is £180; the compensatory award £651.05 so the total for unfair dismissal is £831.05. The award for notice pay is £120, the award failure to provide particulars of employment is £240 and holiday pay is £504 so the total sum owed to the claimant by the respondent is £1,695.05

Employment Judge Ross

Date 20 March 2018

JUDGMENT AND REASONS SENT

23 March 2018

FOR THE TRIBUNAL OFFICE