



EMPLOYMENT TRIBUNALS

Claimant: Mr P Davies

Respondent: D Wardle Plant Limited

Heard at: Manchester

On:

11 April 2018

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: In person

Respondent: Written representations

JUDGMENT

The judgment of the Tribunal is that the respondent is ordered to pay the claimant the sum of £42.85 net.

REASONS

1. By his claim form presented on 31 January 2018, the claimant claimed non-payment or underpayment of holiday pay. At part 8.2 he stated: “only got paid 39 hours for a week off when we average do 60 or more” and at 9.2: “my proper holiday pay entitlement”.

2. The respondent presented a response on 9 March 2018 setting out that it had paid holiday pay for all employees based upon normal remuneration from January 2018 not limited by a set number of hours worked, notwithstanding that the claimant’s contract of employment provided for holiday pay based only on his basic 39 hours. The respondent expressly relied upon the authority of **Fulton & Another v Bear Scotland Limited UKEATS/0010/16/JW** in which the Employment Appeal Tribunal confirmed an earlier decision determining that a gap of more than three months between non-payment or underpayment of wages including holiday pay broke a series of deductions for the purposes of bringing an unlawful deduction of wages claim. It relied upon the fact that there were more than three months between his 20th day of day taken in 2017 on 11 September and his 21st day taken on 27 December 2017, and that the holiday pay based on full remuneration only applied to the first four weeks in a holiday year.

3. The respondent did not attend the hearing but had provided written submissions dated 4 April 2018 to both the Tribunal and the claimant, which expanded upon its response. The claimant attended in person and gave brief evidence on his own behalf.

4. The respondent's written submissions slightly revised the content of the response but showed that the claimant had taken 29 days' holiday within the leave year 9 January 2017 to 8 January 2018, and day 19 was 11 September 2017 before a gap of over three months ahead of the Bank Holidays on Christmas Day and Boxing Day 2017 and then New Year's Day, which the claimant took together with the works shutdown from 27 December to 5 January. Accordingly the claimant took his full 29 days statutory and contractual leave, and having regard to the authorities on regulation 13 holiday leave would have been entitled to higher holiday pay for the first 19 days up to 11 September, and day 20, 25 December 2017. However, thereafter the distinction is drawn in the **Bear Scotland** case between the first four weeks under regulation 13 and the additional leave under regulation 13A which still applies the old week's pay provisions by virtue of regulation 16 which follow sections 221-224 of the Employment Rights Act 1996.

5. Notwithstanding being permitted to give evidence and point to any errors in calculations of pay or legal approach, the claimant was unable to establish a shortfall in payment of holiday pay by the respondent beyond the single day's pay acknowledged by the respondent, leaving a shortfall of £64.19 gross, £42.85 net. Applying the principles in **Bear Scotland** EAT case, he was caught by the greater than 3-month gap between the last leave date, 11 September 2017, and the next leave date on Christmas Day such that he was not able to claim the earlier shortfalls as part of a series of deductions.

6. In those circumstances, he has only proved his claim to the limited extent conceded by the respondent. The Tribunal orders the respondent to pay the claimant the sum of £42.85 net in respect of non-payment or underpayment of holiday .

Regional Employment Judge Parkin

Date 16 April 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
25 April 2018

FOR THE TRIBUNAL OFFICE

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2403387/2018

Name of case: Mr P Davies v D Wardle Plant Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 25 April 2018

"the calculation day" is: 26 April 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office