



EMPLOYMENT TRIBUNALS

Claimant: Mr P Mishlakov

Respondent: Merriveen Limited

Heard at: Bury St Edmunds

On: 1 August 2018

Before: Employment Judge Laidler (sitting alone)

Appearances

For the claimant:

In person.

Assisted by an Interpreter:

Violeta Mondashka – Language: Bulgarian.

For the respondent:

Mr P Buck, Director.

JUDGMENT

The decision is reserved pending compliance with the Orders set out below.

REASONS

1. This matter was last before the Tribunal on 5 April 2018 when leave was given to the respondent to file and serve a response and the default judgment set aside. An order was made that by 12 April 2018 the claimant was to file and serve detailed calculations showing how the amount of holiday pay and sick pay claimed had been calculated. The claimant did not do that.
2. The claimant attended this hearing without his representative, who is no longer instructed and explained that his representative sent him all of the papers, but they were not received until 18 June 2018 by which time the claimant was on holiday. His post box is behind a railway track and he had not checked it before leaving on holiday. He only checked it on his return on 16 July 2018 and found the summary from the last occasion. That does not explain why, the date for compliance having been agreed at that hearing the order had not been complied with.
3. The Tribunal started to hear the evidence of the claimant. He then sought to rely upon an email which had not been disclosed and which purports to be from

Mr Buck on 15 August 2017 stating "I had to stop £250 off to get your fairing re-sprayed". A copy was provided to the Tribunal and Mr Buck. Mr Buck then produced some payslips of the claimant's. The claimant denies receiving these. That for the week commencing 31 July 2017 dated 11 August 2017 shows a nett payment to the claimant of £306.00. It is in relation to that payslip that he asserts £250 was deducted.

4. Mr Buck was not in a position to clarify how the amounts paid to the claimant were calculated. He would need to speak to his payroll department.
5. The Judge was concerned that the parties have already attended the Tribunal on a previous occasion and to adjourn the matter for the parties to prepare further would only result in further costs, not only to the parties but the Tribunal service by conducting another hearing. All the evidence had been heard, save for clarification about the email and how that payment was calculated. It was therefore determined that the most proportionate way and in accordance with the overriding objective was for Mr Buck to be given time to check whether he ever sent that email and how the claimant's payslip was calculated.
6. Mr Buck explained he had already spent a lot of money in defending this claim as he had to obtain the assistance of Driver Base to check all of his records. He makes an application for preparation time on the basis he has always maintained that the claimant's claim is vexatious and without merit.
7. To avoid the necessity of the parties to return the Judge heard the application and gave the claimant an opportunity to give evidence as to his means as the Tribunal may take account of his ability to pay. Orders are made as set out below regarding further particularisation and for the claimant to provide further details of his outgoings.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Further information

By **15 August 2018** the respondent to write to the Tribunal and the claimant with further information concerning the following:-

- 1.1 The email purporting to be from Mr Buck of 15 August 2017 to the claimant.
 - 1.2 A full breakdown of the amounts paid to the claimant in the payslip dated 11 August 2017 showing how these have been calculated.
2. The claimant will have the opportunity to comment upon the above submissions, providing his comments to be received in writing by the Employment Tribunal and the respondent by no later than **29 August 2018**.

3. The claimant is also to provide to the Tribunal and the respondent by **29 August 2018** further information with regards to his outgoings if he wishes the Tribunal to take those into account should it decide its discretion to award a preparation time order is exercised.

4. Other matters

4.1 The above orders were made and explained to the parties at the hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

4.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

4.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

4.4 **Public access to employment tribunal decisions**
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

4.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

4.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Laidler

14 August 2018

Sent to the parties on:

.....20 August 2018.....

For the Tribunal:

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