



# EMPLOYMENT TRIBUNALS

**Claimant**  
Miss M. Lombardi

**Respondent**  
Staff Direct Limited

v

**Heard at:** Watford  
**Before:** Employment Judge Heal

**On:** 4 September 2018

## Appearances

**For the Claimant:** in person  
**For the Respondent:** Mr. B. Hendley, consultant

## JUDGMENT

1. The respondent was in breach of contract in that it dismissed the claimant without one week's notice.
2. I make no award for compensation for breach of contract because the claimant has entirely mitigated her loss.
3. The respondent has failed to pay the claimant for one day's accrued but untaken holiday.
4. The respondent shall therefore pay to the claimant the sum of **£52.71 net**.
5. The respondent has failed to pay the claimant 6 days' unpaid wages and has therefore made an unauthorised deduction from her wages.
6. The respondent shall therefore pay to the claimant the sum of **£316.26 net**.
7. When the proceedings began the respondent was in breach of section 1(1) of the Employment Rights Act 1996. Accordingly, the award is increased by two weeks' pay (2 x £266.25 = **£532.50**.)
8. Therefore, the total amount to be paid by the respondent to the claimant is £901.47.

## REASONS

1. Written reasons are provided at the request of both parties.
2. By a claim form presented on 18 November 2017, the claimant made complaints of unpaid holiday pay and breach of contract (lack of notice). It has emerged today that part of the holiday pay claim is for pay for leave actually taken: this is a claim for unauthorised deductions from wages.
3. I have been given three pieces of documentary evidence: the claimant's final wage slip agreed to be for September 2017, the claimant timesheet for 28 August to 29 September 2017 and a letter from the claimant to Mr. Ali Phiri dated 29 September 2017.
4. There have been no formal case management directions in this case, no witness statements have been exchanged or provided and there has been no bundle, agreed or otherwise.
5. I have heard oral evidence from the claimant, Miss Mariangela Lombardi and from Mr Ali Phiri, director.
6. This case was listed to start at 10 am this morning. At that time, the claimant and Mr Hendley for the respondent were present but Mr Phiri had not arrived. Mr Hendley told me that he had telephoned Mr Phiri at 9.30 am to be told that he was coming with another witness. Mr Phiri was coming to Watford from Luton. In those circumstances I decided to make a start with the hearing.
7. We therefore began working through the claimant's calculations and claim with her and checking to what extent Mr Hendley agreed or disagreed with her claim. Mr Phiri arrived at 10.35 am on his own.
8. I gave Mr Hendley an opportunity to take instructions after which it emerged that the respondent was disputing the notice pay and holiday pay claims.
9. This has been a somewhat untidy hearing, given the lack of prior identification of the issues, lack of witness statements and of advance exchange of documents. One significant issue (that of an underpayment in August which was included in a payment made on 29 September) emerged only during submissions. Mr Hendley had not put a point that he raised in submissions to the claimant in cross-examination, and therefore she first made a point in response in submissions that the payment actually made to her in September included an adjustment of pay for August.

### ***Issues***

10. The parties agreed that one day's holiday was accrued but untaken. Had the respondent paid the claimant for this day?
11. Did the claimant take 6 days' holiday in September for which she had been unpaid
12. Did the respondent dismiss the claimant on 29 September 2017 without one week's notice, to which she was entitled?

13. If so, what was her loss?

**Facts**

14. I have made findings of fact on the balance of probability.

15. Where there are disputes of fact between the claimant and the respondent, I prefer the claimant's evidence. I have found her to be meticulous and careful in her calculations. She volunteered to me on oath that she had immediately found alternative work at a better rate of pay than she received from the respondent. That is to her credit. I found Mr Phiri much more vague and unsure in what he told me.

16. The respondent is a limited company engaged in temporary employment agency activities and human resource provision.

17. The claimant was employed by the respondent as Head of Recruitment between 29 June and 29 September 2017. She was employed to work 35.5 hours a week at £7.50 per hour. (Although sometimes the hours fluctuated.)

18. It is not in dispute that the respondent did not at any time provide the claimant with a written statement of terms and conditions of her employment.

19. During September 2017 the respondent received notice from its landlord that the landlord required vacant possession of its premises. On or about 27 September 2017 the claimant arrived at work to find that Mr Phiri was packing up the office. He gave her vague responses to questions about what was happening and in particular what was to happen about her money and holiday. There were a number of arguments that day.

20. The claimant's final day of work was Friday 29 September and on that day the respondent paid to her a sum representing 142 hours of work.

21. I find as a fact that that included the 121.5 hours which the claimant actually worked in September but also a sum for another period. The 142 hours did not include a figure representing the six days which she had taken off work as holiday during September. The claimant's letter dated 29 September 2017 supports that finding.

22. Furthermore, whether one includes or excludes the time taken as holiday in September, the 142 hours plainly does not represent exactly the time worked in September. Some other factor must be in play. What exactly that factor is, is not made plain by the evidence before me, however the claimant's letter does, as I have said, support the finding that the 142 hours pay did not include holiday pay. The September wage slip also does not itemise any figure as holiday pay. Moreover, the handwritten note at the bottom of the wage slip says:

*'One week outstanding holiday which the other parties are looking at and will be resolved asap (14 days). Holiday dates from 5/9/17 to 12/9/17.'*

23. Mr Phiri asserts that he wrote that under 'duress': he was busy packing, there was a fracas in the office and the claimant said that she would not leave unless he wrote it. He wrote what she dictated.

24. I do not accept that this amounted to duress in the sense that Mr Phiri wrote something with which he did not agree. The claimant may have put him under pressure but that does not mean that what he wrote was not true. What he wrote is consistent with her letter of 29 September and also the wage slip. It seems to me more likely in the circumstances that the claimant was determined to secure evidence of a situation which she knew to be true.

25. So, I find on the balance of probability that the claimant has not received payment for the six days which she took off as holiday in September 2017.

26. The claimant found alternative employment immediately and started work with Pertemps on Monday 2 October 2017. She was paid £9.50 per hour for 40 hours per week, so was earning more than she earned with the respondent.

### ***Analysis***

#### *Breach of contract*

27. The respondent did not give the claimant notice of termination of her employment.

28. No written notice was given. The claimant says she found out two days before her contract ended that Mr Phiri was packing up the office. However, it is not for an employee to deduce that her contract will end. Notice means notice. The respondent has to tell the employee that the contract will end and when. For example, telling an employee that a contract might end, or that it will end if business does not improve is not enough.

29. That the claimant could have worked out that the end was coming from the circumstances seems to me irrelevant. She was entitled to notice, was not given it, and the respondent is in breach of contract.

30. However, the claimant has mitigated her loss in full. This is to her credit, but she has suffered no loss of earnings because of the respondent's breach.

#### *Unauthorised deductions from wages/holiday pay.*

31. This has been less straightforward on the facts, however I have accepted that the claimant was not paid for the 6 days in September when she did not work but was on holiday (either bank holiday or annual leave). Accordingly, the respondent has made unauthorised deductions from her wages.

#### *Failure to provide a written statement of employment particulars*

32. There has been no dispute that when the proceedings were begun the respondent was in breach of its duty to the claimant to provide her with a written statement of employment particulars pursuant to section 1(1) of the Employment Rights Act 1996.

33. I have made awards to the claimant in respect of the claims to which the proceedings relate in relation to both the claim under the Working Time Regulations

1998 (unpaid accrued holiday pay) and also for unauthorised deductions from wages, both of which are listed under Schedule 5 to the Employment Act 2002.

34. The sole question before me is whether I should increase the award by two or four weeks.

35. The respondent is a small company and not of long standing: these might be reasons why it would not have geared itself up yet to issue written statements of terms and conditions. On the other hand, it deals in HR services. If any company should know about employment rights, it is a respondent such as this. These matters were dealt with by 'Tony', the Business Development Manager who was described to me as a person of long experience in business.

36. I am told the reason why the claimant was not given a written contract was because she was on a probationary period of three months. That is no reason not to comply with section 1 of the 1996 Act.

37. There are no exceptional circumstances which make it not just and equitable to make an award. I must therefore make an award of two weeks' pay.

38. Do I consider it just and equitable to award the higher amount of 4 weeks' pay?

39. Although there are many reasons for the claimant to feel aggrieved at her treatment by the respondent, the purpose of this increase to an award is not to compensate her for her injured feelings for the manner of dismissal, or for the delay in her receiving other payments. There is no particular relevant reason to increase the award further. The respondent should have known better, given its line of work, and that makes me confident that there are no exceptional circumstances not to make an award. I do not think of itself, this point justifies making a higher award.

40. I award two week's gross pay, that is  $(35.5 \text{ hrs} \times 7.50 = 266.25) \times 2 = \text{£}532.50$

---

Employment Judge Heal

Date: ...04.09.18.....

Sent to the parties on: ....19.08.19.....

.....  
For the Tribunal Office