



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Young
Respondent: Hardwick Dene Limited
Heard at: Cambridge Hearing Centre
On: 6 December 2018
Before: Employment Judge Foxwell

Representation

Claimant: In person
Respondent: Mr P Sohal (Director)

JUDGMENT

The Respondent has failed to pay the Claimant's full holiday entitlement and is ordered to pay the Claimant the sum of **£118.35** gross.

REASONS

1. This is a claim for an alleged underpayment of accrued holiday pay upon the Claimant's employment with the Respondent ending on 7 March 2018. The Respondent accepts that there was an underpayment which it calculates at £156.50. It tendered this amount in satisfaction of this claim in its Response. While the Claimant did not accept that this was sufficient to satisfy her entitlement, the Respondent nevertheless paid her this sum in July 2018. The issue before me, therefore, has not been whether there was an underpayment but the amount of such underpayment.

2. One of the difficulties I faced in dealing with the claim is that the Claimant had not quantified how much she was claiming, although she put it at about £400. The Claimant's explanation for this was that she had not been given sufficient disclosure by the Respondent. I was not convinced by this as the disclosure requested related to pay information for holiday years earlier than the one current at the time when her employment ended. The Respondent's holiday year runs from April to March.

3. I gave the Claimant a chance to quantify her claim today but she remained unable to do so. I therefore received evidence from both parties and made the following findings based on this.

4. The Respondent operates two 7 hour and one 10 hour shift each day. The Claimant usually worked the shorter shifts but sometimes did overtime or the longer shifts. I found, therefore, that the hours she worked varied from month to month depending on the combination of shifts and the amount of overtime she worked. Her rate of pay was £7.50 per hour (the applicable National Minimum Wage).

5. The Respondent's standard working week is 35 hours. This is equivalent to 1,820 hours per annum including annual leave. The Respondent gives full-time employees the statutory minimum number of holidays each year, 28. Part-time workers have a *pro rata* entitlement.

6. I calculated that the Claimant worked 93.6% of full time hours. This calculation was based on the hours recorded as worked or leave taken on her payslips from April to November 2017 (8 months). I ignored the pay slips for December 2017 to March 2018 as the Claimant was on sick leave for most of this period. The pay slips I considered showed that the Claimant had worked or been on leave for 1135.5 hours in these eight months compared with 1213.33 hours that a full-time worker would have completed in the same period.

7. I had estimated the proportion of full-time hours worked at 90% in the hearing and, on that basis calculated a pro rata leave entitlement of 25.2 days or 176.4 hours. Having had the opportunity to revisit the calculation, I have found that this was too generous to the Respondent. A more accurate calculation is 93.6% of 28, which is 26.2 days or 183.4 hours.

8. I accepted the Respondent's evidence that it had paid the Claimant for 167.62 hours holiday in the current leave year. This included 20.88 hours paid after the commencement of these proceedings (£156.60). This leaves a shortfall of 15.78 hours at £7.50 per hour which comes to £118.35 (not £65.85 as announced in the hearing). I give judgment for that amount.

Employment Judge Foxwell

6 December 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE