

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4106857/17

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Held in Glasgow on 21 February 2018

Employment Judge: F Jane Garvie

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Mr Colin Bryant

**Claimant
In Person**

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Level Consultants Ltd

**Respondent
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondent is ordered to pay to the claimant
25 the sum of £700.04 (Seven Hundred Pounds, Four Pence) as compensation for
accrued but untaken annual paid leave (holiday pay) in terms of Regulation 16 of
the Working Time Regulations 1998.

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REASONS

Background

1. In his claim, (the ET1) presented on 5 December 2017 the claimant alleges
35 that he did not receive holiday pay. He gave his dates of employment with
the respondent as 5 June 2017 to 24 September 2017 and that he was
employed as a security officer working 69 hours per week at a gross weekly
pay of £517 giving a net weekly pay of £407.

E.T. Z4 (WR)

2. The claim was notified to the respondent on 12 December 2017 directing that a response, (the ET3) must be received by 9 January 2018. No response was received. By letter dated 16 January 2018 Employment Judge Robert Gall directed that the claimant provide further information to enable the Judge to consider whether a Default Judgment should be issued. The claimant was to confirm:-

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(1) Annual holiday year – January to December or year from anniversary of start of employment.

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(2) Annual holiday entitlement, number of days including public holidays.

(3) Days taken, including public holidays, as holiday in holiday year to date of termination of employment.

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(4) Sum claimed with a breakdown of calculation.

3. The claimant replied by email of 17 January 2018 in which he appeared to indicate that he was seeking to recover 17 days' holiday entitlement and that the annual holiday year was January 2017 to December 2018.

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4. His reply was referred to Judge Gall who directed that the claimant clarify why he was due 28 days and had 17 days holiday but yet had 17 days untaken. If his figures were incorrect, he should provide a revised calculation.

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5. The claimant duly provided a revised calculation under cover of an email of 24 January 2018 in which he said his annual holiday entitlement for the year was 28 days and that he took 17 days from the 28, leaving 11 days and that he should be paid for 13 days as 4 of them were days off amounting to a total of £1,335.

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6. By letter dated 31 January 2018 Judge Gall directed that it was not possible to follow the logic or calculation provided by the claimant and he was asked to clarify his position which he did in an email of 6 February 2018.

5 7. Judge Gall then directed that, rather than proceed by way of issuing a Default Judgment, it would be appropriate to proceed to the Hearing on 21 February 2018 which had already been intimated in the Notice of Claim, and acknowledgment of Final Hearing dated 12 December 2017 directing that the Final Hearing would take place on 21 February 2018.

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The Final Hearing

8. At the start of the Final Hearing the claimant explained that he had originally worked for another company called Equinox Contracts Ltd and subsequently
15 for the present respondent. He had copies of documents being Terms and Conditions of Contract with both organisations. The Final Hearing was adjourned to enable the clerk to make copies of these and the originals were returned to the claimant.

Findings of Fact

9. The claimant gave evidence and the Tribunal found the following facts to have been established or agreed.

25 10. The claimant commenced employment in March 2016 with Equinox Contracts Ltd. He was then informed by them on 1 May 2016 that he was to become self-employed and, for the period from 1 May 2016 to 1 May 2017, he understood that he was working on a self-employed basis. He then received an offer of employment from the present respondent. He thought the start day
30 may have been 1st rather than 5th June 2017 but he accepted that 5th June 2017 was the date he had provided in the claim form.

11. He confirmed that he last worked for the respondent on 24 September 2017. He did not receive wage slips and he understood that he would be on a zero hours contract. The Terms and Conditions of Contract and Policy Procedures from the respondent does not make any reference to holidays.
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12. The claimant accepted that, during the adjournment the Judge had looked at the number of weeks of employment and that from 5 June 2017 until 25 September 2017 is a period of 16 weeks.
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13. The claimant had made contact with HMRC regarding his earnings in relation to the previous employer and also in relation to the present respondent.
14. The claimant confirmed that he works 69 hours per week, 5 days per week and that he did not take any holiday in the period from 5 June until 24
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- September 2017.
15. As indicated, that is a period of 16 weeks which amounts to 3.25 of a calendar year. Accordingly, 3.25 of 28 days amounts to 8.6 days.

20 **Deliberation & Determination**

16. The Tribunal was satisfied that the claimant did not receive any holiday pay on termination of his employment although the claimant was unclear if his employment had ever been terminated by the respondent. It was pointed out
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- the claim was for holiday pay only and there was no reference to any other complaint. The claimant accepted this was the position.
17. Since the claimant was not paid accrued holiday pay and had not taken any holidays, the calculation has to be made in terms of Regulation 14 of the
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- Working Time Regulations. In this case, the claimant has an entitlement to 8.6 days being 16 weeks or 3.25 of a calendar year. His daily rate of pay was £81.40 which multiplied by 8.6 gives a figure of £700.04. Accordingly, the

Tribunal concluded that the claimant should be awarded the sum of £700.04 in relation to the holiday pay accrued but unpaid as at 24 September 2018.

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10 **Employment Judge: F Jane Garvie**
Date of Judgment: 22 February 2018
Entered in Register: 07 March 2018
and Copied to Parties

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