



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Grzywna  
**Respondent:** Qasim International Ltd  
**Heard at:** Sheffield **On:** 20 March 2018  
**Before:** Employment Judge Little

## Representation

**Claimant:** In person  
**Respondent:** Mr Qasim, director (with his wife Mrs K Zulfaqar)

# RESERVED JUDGMENT

My Judgment is that:-

1. Time is extended for the response so that the response which was received on 9 March 2018 stands as the response to this claim.
2. The claimant was dismissed by the respondent without notice but in circumstances where he was entitled to notice.
3. The claimant is awarded damages of £ 344.89 representing one weeks' net pay for this wrongful dismissal. (Weeks pay calculated by taking an average over the last 8 weeks).
4. The complaint of unauthorised deduction from wages in respect of week 30 fails.
5. The complaint in respect of holiday pay fails.

# REASONS

## 1. Time allocation and claimant's late arrival

This hearing had been allocated one hour. At 10 o'clock there was no sign of the claimant. I waited until 10.15 and there was still no sign of the

claimant so I began the hearing and was dealing firstly with the implicit application by the respondent to extend time for it's response. The claimant entered the Tribunal hearing room at 10.36 having travelled from Barnsley, a journey which apparently had taken him two hours. The hearing began again and I explained to the claimant that I was considering the issue of the late response.

No case management orders had been made and today I have had to consider various documents:-

- A complete set of pay slips for the period of the claimant's employment – at least complete as far as the respondent says as they provided them to me.
- A schedule prepared by the respondent.
- A P60 document (which the claimant says he never received).
- Various pay slips from the claimant which he thought differed from those given to me by the respondent including some pay slips which seemed to relate to an entirely different employee (Michael Rimmer).

I have also inspected the claimant's mobile telephone which contains various texts which are highly material to the matters under consideration.

As I had a full list with a telephone hearing commencing at 11.30 it was necessary to conclude this hearing at 11.25am and reserve my Judgment.

## **2. The complaints**

In a claim form presented on 17 January 2018 Mr Grzywna brought the following complaints:-

- Wrongful dismissal (notice pay).
- Unauthorised deduction from wages.
- Holiday pay.

In section 8 of the ET1 claim form the claimant had also ticked the box in respect of a redundancy payment. However it seemed fairly clear from the narrative that the claimant was not contending that he had been dismissed by reason of redundancy. Even if he had, he would not have been entitled to a statutory redundancy payment because he was only employed for five months.

In fact the claimant had not ticked the box in part 8 in respect of arrears of pay although it was clear from the explanation I was given this morning by the claimant that he was claiming for wages (40 hours) in a week when he says he was not provided with work and so in effect was laid off and is in addition claiming 40 hours holiday, that is to say payment in lieu of holidays accrued but untaken as of the date the employment ended.

## **3. The respondent's late response**

The claim was sent to the respondent by the Tribunal on 23 January 2018 and the respondent was notified that it had to present it's response no later than 20 February 2018. In fact it did not present it's response until 9 March 2018. In those circumstances I have had to consider whether the

respondent should be permitted to participate in these proceedings and whether under Rule 20 of the Employment Tribunals Rules of Procedure time should be extended for the presentation of the response.

I have dealt with this issue by ascertaining from the respondent the reason the response was late. I am told that Mrs Zulfaqar gave birth approximately seven weeks ago and it was not an easy birth. She would normally deal with administrative matters for what has been described to me as a small business. I considered that this was a reasonable explanation.

The next issue I considered was whether the draft response disclosed a reasonably arguable defence. Although, as will be explained below, it fails to refer to the precise circumstances in which the employment came to an end, I consider that this test was met. I have taken the approach that as I had the parties before me in respect of this dispute it was in the interests of justice to resolve it.

**4. Is the claimant owed wages for week 30?**

The claimant was employed by the respondent as a van driver. That employment commenced in May 2017, probably on 15 May. The claimant was not issued with any contract of employment or letter of appointment. He tells me that on or about 22 July 2017 he was asked to surrender the keys to the works van and on enquiry was told that there was no work for him in the following week. The respondent appears to dispute this account. However the claimant contends that the nature of his employment was that he would be paid whether or not he worked. I find this not to be likely. He was not in a salaried position and was paid an hourly rate. In those circumstances I conclude that when no work was provided to him – which was the case in week 30 – he was not entitled to payment. Accordingly I find that this complaint fails.

**5. The holiday pay claim**

The claimant contends that in the employment, which was just over five months duration, he took no holidays. The respondent may be contending that his non attendance in week 30 was a holiday. I do not agree with that. In the schedule which the respondent has prepared it is suggested that the claimant was paid for 10 hours holiday in both weeks 8 and 9, a further 10 hours in week 13, 20 hours in week 24, 40 hours in week 26 and a further 9 hours in week 31. The respondent therefore contends on this basis that the claimant was paid for 99 hours holiday – that is to say holidays actually taken and paid for at the time. It might be that for week 31 (9 hours holiday) -the last week the claimant worked - that that was a payment in lieu of accrued but untaken holidays. In any event on this basis the respondent contends that it paid £1033 in holiday pay to the claimant during the course of his employment. However no payment of holiday pay is reflected in any of the pay slips and the respondent accepts that to be the case. I take the view that normally holiday pay would be set out in pay slips, not least because it is subject to tax and national insurance deduction. The respondent suggests that it was paid in a different way and presumably without any documentation. They say that all pay including holiday pay went directly into the claimant's bank account and there were no payments in cash. In these circumstances I have ordered the claimant to provide a

complete set of his bank statements for the whole five months of his employment.

Having now considered the statements which the claimant has provided, these show that the total of payments received from the respondent during the employment amounts to £7756.75.

The payslips provided by the respondent show total payments to the claimant during the employment as £7095.56.

Accordingly, the claimant received the sum of £661.19 which is not accounted for in the payslips.

I calculate that the claimant would have accrued 11.5 days holiday entitlement during the employment – and he says he took no holidays. The value of those 11.5 days (again using the 8 week average to calculate a daily rate) is £565.22.

It follows that the claimant has received somewhat more than his entitlement and so no further award is due.

The respondent can hardly complain if it chooses to adopt an unorthodox and questionable method of paying holiday pay.

#### **6. How did the employment end?**

In his claim form (which sets matters out fairly briefly) the claimant refers to an occasion when the respondent asked him to do a delivery in Glasgow. Although on the claimant's dates that would have been on the morning of 20 October 2017, on the basis of the texts which obviously were being sent on the day in question it must have been 26 October 2017. The claimant says in his claim form that he was being asked to travel to Glasgow (from Batley West Yorkshire) without being provided with a Sat Nav device. When the claimant complained about this he says that he was told to go home. Effectively the claimant is saying that he was dismissed.

The account given by the respondent in its response does not refer to the instruction to go to Glasgow at all. No dates are set out in the narrative in Box 6.1, but what is said there suggests that at some point the respondent realised from the tracker device that was fitted to the claimant's van that he was picking up packages for his family during work time and that he was reprimanded for this and "he then never showed up after that time."

However when today I was discussing further with the respondent the nature of its defence it agreed that there had been an instruction given for the claimant to travel to Glasgow which they believed he had unreasonably refused and then the claimant left, in other words resigned.

Although as I have noted nothing is said in the response about this, Mr Qasim told me that the claimant had been to Glasgow five times before and knew where he was going and in any event had his own phone on which he could use Google maps. Mr Qasim also related to me something further which is completely absent from the written response, namely that on the morning in question there had been a dispute about where the claimant parked his car. The respondent says the claimant wanted to park his car on the driveway of Mr Qasim's house whereas Mr Qasim was concerned that his neighbours would complain about that and that the claimant should park in the factory car park where there was adequate room. Whatever the rights

and wrongs of this it seems irrelevant to what I am considering as it is not suggested that the claimant left because of this issue nor is the claimant suggesting he was dismissed because of it.

There is therefore a significant conflict in the evidence. The claimant says he was dismissed, the respondent says he left of his own accord.

In order to assist me in resolving who on the balance of probabilities was telling the truth I noted that the claimant referred to texts which he had sent to the respondent at the material time. That is on the morning of 26 October. The claimant allowed me to inspect his phone and I read and noted the following responses which had been made by the respondent in answer to the claimant's concern about driving to Glasgow without sat nav.

*"If you can't drive without then go home."*

*"Do your job or go home."*

*"Go home."*

*"Don't text."*

*"We have our reasons for not keeping you on ..."*

In the light of these texts I am satisfied on the balance of probability that the claimant was dismissed on 26 October 2017. As he was not given notice or a payment in lieu of notice I find that that dismissal was wrongful and the claimant is entitled to damages which reflect the notice that he should have received. That would be one weeks' net pay.

**Employment Judge Little**

Date 4<sup>th</sup> April 2018