



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Egidijus Medutis

v

Philip A Cheshire Limited

Heard at: Watford

On: 4 February 2019

Before: Employment Judge Bedeau

Appearances

For the Claimant: In person

For the Respondent: Did not attend but submitted written representations

JUDGMENT

The claim for accrued unpaid holiday has been proved and the respondent is ordered to pay the claimant the sum of £529.60 net.

REASONS

1. By a claim form presented to the tribunal on 12 June 2018, the claimant claimed against the respondent, 8 days accrued unpaid holiday in the sum of £400 plus £100 expenses.
2. In the response presented to the tribunal on 14 March 2018, the respondent averred that the claimant was entitled to 13 days covering the period of his employment from 27 March to 23 November 2017. In July 2017, he asked to be paid 5 days holiday but continued working without taking his leave to which the respondent agreed. He was informed that it would result in the equivalent of 10 days' leave being deducted. He took 1 day's leave in August leaving the balance of 2 days. When it offered to pay him 2 days' holiday, he refused.
3. At the preliminary hearing held on 17 July 2018, the case was listed for a final hearing for 1 hour unless settled.

The issues

4. I have to hear and determine what were the claimant's holiday entitlements during the period of his employment with the respondent? Whether he had been paid his holiday pay? What was his holiday entitlement outstanding at the date of termination of his employment?

Evidence

5. The claimant gave evidence. The respondent did not call any oral evidence but sent written representations received by the tribunal on 20 September 2018. They are very brief and they were sent by Mr Philip Cheshire, Director. He stated the following:

“Week ending 21 July he did not take 5 days holiday from work. He asked if he could be paid in lieu of taking 5 days holiday. It was explained that officially the company could not do that, but it was agreed that we will allow this but the 5 days would count as 10 days holiday. This meant he used up 10 days holiday. He took 1 day holiday on 25 August which when he left without notice meant he had 2 days holiday outstanding. We withheld these 2 days holiday as he left suddenly with no notice given.

To settle the matter through ACAS we offered to pay these 2 days/

During the case management hearing on 17 July we offered 4 days as a compromise to settle the matter.

Judge Manley during the case management hearing advised us that we did not need to attend the hearing on 4 February 2019 so we will not be attending”

6. The claimant commenced employment with the respondent on 27 March 2017, as a Factory Worker and was paid his salary at the end of each week. He told me that his basic hours were 40 hours a week over 5 days, Monday to Friday but worked in excess of those hours as overtime at the rate of time and a half.
7. He was trained on a variety of tasks in the workplace but felt that he had been underpaid by the respondent in comparison with his colleagues who were not as multi-skilled as he was.
8. On 23 November 2017, being dissatisfied with his rate of pay, he left his employment and did not return to work. He effectively resigned. On the day of his leaving he contacted Mr Cheshire's son and explained the reason for his departure from the company. He was asked about giving notice, but he responded by saying that he did not sign any documents in relation to notice. He then told me that it was agreed that he would be paid his full entitlements following his resignation. He had only worked 32 hours that week and was paid on 29 November 2017.
9. He agreed with Mr Cheshire's account that on 21 July 2017, he asked that he should be paid 5 days' holiday but would continue to work. It was never

agreed that it would amount to taking 10 days leave. He stated that Mr Cheshire had told him that at that point in time, he was entitled to be paid 6½ days holiday. Mr Cheshire explained that for each month continuous service, he acquired 2 full days' leave.

10. He had only taken 5 days out of the 6½ days on 21 July and 1 day's leave on 25 August 2017, leaving ½ day. From 21 July to 23 November 2017, he was entitled to 8 days holiday. He only asked the tribunal for 8 days accrued unpaid holiday.

Conclusion

11. In the absence of evidence to contradict the evidence given by the claimant, I accepted his evidence. He came across as a truthful and credible witness. I took into account that Mr Cheshire had explained to him that he was entitled to 2 days holiday for each continuous month service. I did not accept that he had agreed that 10 days holiday would be deducted after being paid for 5 days holiday in July 2017, while still working.
12. I calculated his average weekly earnings for the 6 weeks prior to his resignation on 23 November 2017. This came to £331 net per week, that is after deducting tax and National Insurance. He worked on average 5 days a week and this equates to £66.20 per day, multiplied by 8 days, is £529.60.
13. I, therefore, order the respondent to pay the claimant the sum of £529.60 net in respect of his accrued unpaid holiday.

Employment Judge Bedeau

Date: 21 March 2019

Sent to the parties on: 21 March 2019

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For the Tribunal Office