



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4112766/2018**

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**Held in Glasgow on 16 November 2018**

**Employment Judge: David Hoey**

10 **Miss B Catterson**

**Claimant  
In Person**

**GM Environmentals (Scotland) Ltd**

**Respondents  
Represented by:  
Mr Millar -  
Director**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Respondent is ordered to pay the Claimant

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- 1) £80.77 in respect of a day's pay due to the Claimant
- 2) £161.54 in respect of 2 day's holiday pay due to the Claimant

These are gross sums and the relevant sums should be paid to HMRC.

**REASONS**

1. This case called as a final Hearing to determine the issues that had been  
25 raised.
2. The Claimant was in attendance. The Respondent was represented by its  
Director, Mr Millar.
- 30 3. The Tribunal noted that the Respondent had not lodged a Response Form.  
Mr Miller maintained that he had sent a response albeit he had not checked  
and had brought no evidence of what he had sent into the Tribunal. I decided  
to allow the Respondent to participate in the Hearing by cross examining the  
evidence led by the Claimant and presenting the Respondent's position.

**E.T. Z4 (WR)**

4. The Claimant explained that she believed she was due one day's pay (for her last day of work) together with 2 days' holiday.
- 5 5. The Claimant and Mr Miller gave evidence. There were no productions lodged by either party.
6. The Tribunal finds the following facts proven from the evidence led before it.
- 10 7. The Claimant was employed as a bookkeeper with the Respondent up to the end of her employment on 1 July 2018.
8. The Claimant earned £21,000 per year.
- 15 9. The parties agreed that a day's pay for the Claimant was her annual salary divided by the number of working days in the year (260 (ie 52 x 5)). A day's pay is therefore £21,000 divided by 260 which is £80.77.
10. The Claimant did attend work on 1 July 2018 and carried out her normal  
20 duties. Mr Miller was not in the office at this time (and did not know whether or not the Claimant worked that day).
11. No payment was made by the Respondent for the day's work carried out by the Claimant on 1 July 2018.
- 25 12. The Claimant was entitled to 28 days (5.6 weeks) over the holiday year (which ran from January to December). As her employment ended on 1 July, she had accrued half her annual holiday entitlement. She had taken 12 days and so she was due to be paid in lieu of 2 days holidays. The Respondent had not  
30 paid the Claimant for said holidays.
13. The Claimant asked the Respondent to pay these sums. The Respondent did not do so (for reasons unrelated to these proceedings).

**Observations on the evidence**

14. This case boiled down to whether the Claimant or Mr Miller's evidence was to be preferred. The Tribunal has preferred the evidence of the Claimant. There are a number of reasons for this.
- 5 15. Firstly, the Claimant was clear in her recollection as to what she was due. She had acted on this view at the relevant times.
16. Mr Miller was on holiday on the day in question. While he said he had spoken to others and checked an internet history, no evidence was brought to the  
10 Tribunal to substantiate this. Mr Miller was unable to say for sure that the Claimant was not telling the truth as he was not present and was unable to present any evidence to challenge what the Claimant said.
17. Mr Miller knew that the purpose of the Hearing was to consider the Claimant's  
15 entitlement to her day's pay and her holiday entitlement. The Respondent could have brought specific evidence to support its position in relation to either claim but had not done so. There was no evidence that Mr Miller had to challenge what the Claimant had said. There was no reason for her not to tell the truth.
- 20 18. The Claimant was candid in her evidence. She noted that she had probably taken fewer holidays but was prepared to restrict her position to that set out above.

### **Discussion and decision**

- 25 19. The Tribunal is satisfied that the Claimant is due a day's pay for the day she worked and was not paid. The failure to pay that sum to the Claimant amounted to an unlawful deduction from her wage contrary to section 13 of the Employment Rights Act 1996. The sum she received (nil) was less than that properly payable (since she was due to be paid one day's pay). The  
30 Respondent is therefore ordered to pay the Claimant a day's pay.
20. The Claimant is also entitled to 2 day's holiday pay. In terms of Regulation 14 of the Working Time Regulations 1998 a worker is entitled to be paid in lieu

of outstanding holidays as at the termination date. 2 days' holiday were outstanding upon the termination of her employment and the Respondent is ordered to pay these sums.

5 **Employment Judge: D Hoey**  
**Date of Judgment: 22 November 2018**  
**Entered in register : 10 December 2018**  
**and copied to parties**