



EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: Mr Adam Barnes

Respondent: NWS North Limited

Heard at: Teesside **On:** 16 April 2018

Before: Employment Judge Johnson (sitting alone)

Representation:

Claimant: In person

Respondent: No attendance and no appearance

JUDGMENT ON RESPONDENT'S APPLICATION FOR RECONSIDERATION

The respondent's application for a reconsideration of the default judgment promulgated on 21 March 2018 is refused. It is not in the interests of justice for there to be a reconsideration.

JUDGMENT ON REMEDY

- 1 The respondent is ordered to pay to the claimant the sum of £468.00 in respect of wages unlawfully deducted. That is a net amount and the respondent shall be responsible for the payment of any income tax and national insurance contributions thereon.
- 2 The respondent is ordered to pay to the claimant the sum of £280.80 in respect of accrued holiday pay. That is a net amount and the respondent shall be responsible for the payment of any income tax and national insurance contributions thereon.

REASONS

- 1 This matter came before me this morning, firstly, to consider the respondent's application for a reconsideration of the default judgment on liability promulgated

on 21 March 2018 and secondly to either hear the full case on both liability and remedy if that application is granted or to hear the claimant's evidence on remedy if the reconsideration application is refused.

- 2 The claimant attended in person and gave evidence under oath. No one attended from or on behalf of the respondent. The Employment Tribunal received an e-mail from the respondent timed at 8:35am on the morning of 16 April which states as follows:-

“Good morning. Unfortunately, due to sickness our representative can't attend the tribunal today. I have attached a copy of our employee handbook stating the terms of our holidays, if its possible can you pass this on to the judge (the handbook is titled HWL Trade Frames which is our parent company). We have stated that we agree to pay Mr Barnes week in hand (which was in fact xmas holiday) but as stated in our response form he left us without notice on the 2nd January 2018 and didn't work his weeks notice period and hadn't accrued any holidays to cover that time so we dispute that part of his claim. If you need anything further from me please let me know.”

- 3 Notably, the respondent does not seek a postponement of today's hearing. They do not state who is their representative. The Tribunal has no record of a legal representative on its records. In earlier correspondence to the Tribunal, the respondents had questioned whether it was necessary for them to attend today's hearing. By letter dated 4 April 2018 the Tribunal informed the respondent that it was in their best interest to attend the hearing.
- 4 In the absence of anyone from or on behalf of the respondent, the Tribunal is not satisfied that it was in accordance with the overriding objective to postpone today's hearing.
- 5 The claim form was presented on 15 February 2018 and served upon the respondent by letter dated 16 February 2018. In that letter, the respondent was told that it must file its response by 16 March 2018. The respondent failed to file a response and a default judgment on liability was promulgated on 21 March 2018. The respondent then sent in a response form ET3 which was received by the Employment Tribunal on the afternoon of 26 March 2018. The accompanying letter reads, “Please take this e-mail as application to request a reconsideration of the employment tribunal decision in this case. Our response (attached) was posted out first class post but unfortunately not recorded so we do not have evidence of this.”
- 6 That letter does not seek an extension of time for presentation of the response form. Despite that, the Tribunal agreed to list the matter for a reconsideration hearing prior to the already listed hearing to consider the claimant's application for remedy.
- 7 The claimant's evidence to the Tribunal was that he worked for the respondent from 1 August 2017 until his employment came to an end on 15 February 2018. He confirmed that at the date of his departure he was owed one week's wages

which he calculated to be in the sum of £468.00 net. The claimant confirmed that he had accrued holiday pay during that period amounting to three days. That amounts to £280.80.

- 8 The claimant confirmed under oath that those sums are due to him. The respondent admits owing the claimant a week's pay, but denies owing him any holiday pay on the basis that the holiday year only began on 1 January and therefore he cannot have accrued any holiday pay. That overlooks the possibility of the claimant having accrued holiday pay from the previous year which had not been taken at the date of his departure. In the absence of any contrary evidence from the respondent I am satisfied that the claimant is owed a week's pay in the sum of £468.00 and three days holiday pay in the sum of £280.80.
- 9 I take into account the amount of the claim pursued by the claimant when deciding whether it is in the interest of justice for there to be a reconsideration of the default judgment. The respondents have chosen not to attend. They failed to present their response in time. The response as presented does not provide any convincing defence to the claims made by the claimant. In all those circumstances I am not satisfied that it is in the interests of justice for there to be a reconsideration of the default judgment. The respondent's application for a reconsideration is refused. I award judgment to the claimant in respect of his claim for a week's pay and holiday pay.

Employment Judge Johnson

Date 26 April 2018