



EMPLOYMENT TRIBUNALS

Claimant: Ms Georgia Snowden

Respondent: Ms Wendy Smith (trading as “The Red Lion”)

Heard at: Cardiff **On:** 17 April 2019

Before: Regional Employment Judge B J Clarke (sitting alone)

Representation:
Claimant: In person
Respondent: In person

JUDGMENT

The tribunal dismisses the claimant’s complaint that, in breach of Regulation 14(2) of the Working Time Regulations 1998, the respondent failed to pay her the correct sum in lieu of the holiday that she had accrued but not taken by the date on which her employment terminated.

REASONS

1. By an ET1 claim form presented to the employment tribunal on 6 February 2019 (following a period of Acas early conciliation lasting from 3 January to 3 February 2019), the claimant contended that she was owed holiday pay. The respondent accepted that her accountants had made an underpayment error, but she said that this error was later rectified. The effect, according to the respondent, was that all money owing to the claimant had been paid by the time the ET3 response form was sent to the tribunal.
2. The claimant also sought compensation for “inconvenience” and “violation of privacy”. I explained to her that the tribunal had no jurisdiction to consider those complaints and that our focus at the hearing today needed to be on her holiday pay claim.

3. The following points were all agreed:
 - 3.1 The claimant worked for the respondent from 8 August 2018 to 19 November 2018;
 - 3.2 As at the date her employment terminated, she worked a 40-hour, five-day week, and received a gross annual salary of £17,500;
 - 3.3 Her annual leave entitlement was based on the statutory minimum of 28 days;
 - 3.4 Otherwise there was no relevant agreement setting out how holiday pay would be calculated;
 - 3.5 She took no holiday leave during her employment; and
 - 3.6 She received a payment in lieu of annual leave of £355.77 on 30 November 2018 and an additional payment of £206.35 on 15 February 2019, totaling £562.12.
4. My calculation was based on the following analysis:
 - 4.1 The claimant's daily pay was £67.31 ($\text{£}17,500 / 52 / 5$);
 - 4.2 Her period of employment was 104 calendar days, representing 28.5% of the calendar year ($104/365 = 0.285$);
 - 4.3 Applying the formula at Regulation 14(3)(b) WTR, described as " $(A \times B) - C$ ", the claimant's holiday entitlement was $(28 \times 0.285) - 0$, which means that she had accrued 7.98 days of statutory leave by the time her employment ended. I have rounded that up to 8; and
 - 4.4 The holiday pay to which the claimant was entitled was therefore $8 \times \text{£}67.31$, which is **£538.48**.
5. As the claimant received **£562.12**, nothing else is owing. Her claim must fail.
6. I was puzzled by this apparent overpayment of holiday pay and so I checked the figures produced by the respondent's accountants. Their calculation was based on $7.9 \times \text{£}71.1538$. The accrued holiday of 7.9 days was *almost* the same as my own calculation, but the daily pay figure appears to have been derived from an assumed annual salary of £18,500, which (if true) overstated the claimant's gross annual salary pay by £1,000.

Regional Employment Judge B J Clarke
Dated: 17 April 2019

JUDGMENT SENT TO THE PARTIES ON

23 April 2019

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS