



# EMPLOYMENT TRIBUNALS

## at a hearing

**Claimant:** Mr A Burzynski  
**Respondent:** Amara Care Ltd  
**Heard at:** Lincoln  
**On:** Thursday 30 August 2018  
**Before:** Employment Judge Hutchinson (sitting alone)

### Representation

**Claimant:** In person  
**Assisted by:** Ms Ciepiaszuk, interpreter  
**Respondent:** Mr K Wilson of Counsel

## JUDGMENT

The Employment Judge reserved judgment

## REASONS

### Background and issues

1. The Claimant presented his claim to the tribunal on 17 October 2017. He remains employed by the Respondent as a support worker and has been continuously employed since 19 March 2014. He has two claims before the tribunal;
  - 1.1 Non-payment of wages in respect of him undertaking sleep ins for the Respondent between 19 March 2014 and 31 December 2017.
  - 1.2 Non-payment of holiday pay for the same period.
2. At a hearing I conducted on 23 May 2018, I heard evidence from the Claimant and from the Respondent's witness, Amanda Brock.

3. At the hearing, we agreed that this case would be affected by the decision in the case of **Royal Mencap Society -v- Tomlinson-Blake**. As the case had already been heard by the Court of Appeal and we were simply awaiting judgment to be handed down, it was agreed between the parties and myself that I should delay hearing submissions until after the conclusion of that hearing as it would no doubt give authority and guidance.

4. I was concerned at the time that the Claimant was not represented. It can be seen in the note that I sent to the parties of 12 June 2018 that I encouraged him to obtain legal representation for the next hearing.

5. The hearing was adjourned to today for me to hear those submissions and make my decision.

### **The hearing today**

6. Mr Wilson, Counsel for the Respondent, had prepared written submissions for me and I had been handed a bundle of authorities. That included the Court of Appeal decision in the case of **Royal Mencap Society & others -v- Claire Tomlinson-Blake & others [2018] EWCA Civ 1641** which was handed down on 13 July 2018. The Claimant was unrepresented again.

7. I commenced the hearing but then adjourned for about 40 minutes (which I extended to almost an hour) to allow the Claimant to read the Respondent's submissions.

8. Upon return, Mrs Burzynski, who was speaking for her husband said that they had received the submissions from Mr Wilson too late and they would like to discuss the arguments set out in Mr Wilson's submissions with a solicitor. She felt that Mr Burzynski still had a good case and that the circumstances were different from those referred to in the **Mencap** case. The Claimant wanted to adjourn to another date.

9. I explained that I was reluctant to agree to any postponement. I had heard all the evidence in the case on 23 May 2018 and this hearing had been specifically set up so that I could hear their submissions and conclude the case. I had already given the Claimant an opportunity to obtain legal advice and indeed had encouraged him to do so. Mr Wilson for the Respondent also objected to the application. He pointed out;

9.1 that the **Mencap** case had always been a potentially decisive authority;

9.2 I had cited the case when I set the additional hearing so the Claimant was aware of it;

9.3 I had urged the Claimant to take legal advice;

9.4 if the Claimant wanted to say that his case was different from the **Mencap** case, he did not need a postponement to make this point;

9.5 if there was an adjournment, there would be an unnecessary delay to the proceedings;

9.6 I should have in mind the overriding objective and should deal with the case based on what was before me.

10. Mrs Burzynski said that there had been a change in their personal circumstances now and that they could now afford legal advice. I was reluctant

to accept this because if there had been an improvement in their financial circumstances, I could not understand why they had not taken some steps to obtain legal advice now.

11. I pointed out to the Claimant that as I had said at the previous hearing the **Mencap** case was likely to be decisive. On the face of it, Mr Burzynski's case falls on "all fours" with that case.

12. Ultimately though, I agreed that the Claimant could have more time and I would reserve my judgment to enable the Claimant to let me have written submissions about the case. I have made orders in respect of those and have given the Respondent an opportunity to reply if they wish to do so. There will not be any further hearing unless I deem it appropriate to do so.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

1. The Claimant is ordered to serve on the tribunal and the Respondent written submissions and legal argument in respect of his claims of non-payment of wages and non-payment of holiday pay by **27 September 2018**.

2. The Respondent may file a Response and comments to that by **4 October 2018**.

3. I will then deal with the case by way of a reserved judgment and send my decision and written reasons to the parties as soon as possible.

### **Notes**

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an "unless order") providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The

attention of the parties is drawn to the Presidential Guidance on 'General Case Management':

<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

(v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so*". If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

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Employment Judge Hutchinson

Date 31 August 2018

JUDGMENT AND ORDER SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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