



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Manea  
**Respondent:** Airspan Communications Limited  
**Heard at:** Reading                      **On:** 21 May 2019  
**Before:** Employment Judge Gumbiti-Zimuto  
**Representation:**  
**For the Claimant:** No attendance  
**For the Respondent:** No attendance

## JUDGMENT

The respondent failed to pay the claimant in lieu of entitlement to annual leave. The respondent is ordered to pay to the claimant the sum of £615.40.

### REASONS

1. Rule 47 of the Employment Tribunals rules of procedure provides that: If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
2. The claimant issued this claim on the 21 March 2018. The Tribunal sent to the parties a notice of claim and notice of hearing on the 25 April 2018. The respondent was required to present a response to the claim by 23 May 2018. In the Tribunal file there was no ET3 and so when the case came before an Employment Judge on the 25 August 2018 the claimant was written to informing him that there was insufficient information to determine whether he was entitled to a judgment and if so in what amount. The claimant wrote to the Tribunal on the 27 August 2018 providing further information.
3. A Rule 21 Judgment was sent to the parties on the 19 September 2018.
4. On 11 October 2018 the respondent wrote to the Tribunal stating that a response had been submitted on 1 May and attached copy of the email acknowledging receipt of the email. A search discovered the email and

the response which had been sent to the Tribunal on the 1 May 2018. The Rule 21 Judgment was set aside. The case was relisted for hearing today.

5. Neither party has attended the hearing
6. On a consideration of the information before me it appears that the claimant resigned his employment on the 1 February 2018. The last day of his employment was to be the 8 February 2018. The claimant attended work on the 2 February 2018 and was informed that he was not required to work his notice period and that he would be paid in lieu. The claimant thereafter did not attend work.
7. The respondent wrote to the claimant on the 5 February 2018, the relevant part of the letter read as follows:

“Notice Period

You will not be required to work your notice period of one week but will be paid in lieu.

...

Holidays

Your entitlement for the period 1<sup>st</sup> November to 8<sup>th</sup> February is 6 days plus 1 day carried forward from the previous holiday year a total of 7 days. Our records show that you have already taken 5 days holiday plus 3 days for 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> February a total of 8 days. Therefore we will deduct 1 day's holiday pay from your final salary.”

8. From the respondent's letter it is clear that the claimant was treated as having taken leave during the notice period. This was not agreed with the claimant. The Working Time Regulations 1998 at regulation 15 (2) and (3) provide that a worker's employer may require the worker to take leave to which the worker is entitled on particular days, by giving notice to the worker. The notice may relate to all or part of the leave to which a worker is entitled in a leave year; shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and shall be given to the worker before the relevant date. The respondent in this case has not given such notice.
9. I am satisfied that the claimant is therefore entitled to be paid in respect of three days annual leave not taken and has had an unlawful deduction from wages in respect of 1 day.
10. The claimant contends that the respondent has not calculated the correct number of days holiday. The claimant has not however provided the basis for me to consider whether the figure he contends is correct (11 days) should be preferred over the respondent's assertion that 7 days is the correct calculation. On the basis of the information before me 7 day appears correct.

11. The claimant is entitled to be paid the sum of £153.85 per day. The respondent is therefore ordered to pay to the claimant the sum of £615.40

\_\_\_\_\_  
Employment Judge Gumbiti-Zimuto

Date: 21 May 2019

Sent to the parties on: .....

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For the Tribunals Office

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