



THE EMPLOYMENT TRIBUNALS

Claimant: Miss S Sterling

Respondent: Kelly Park Limited

Heard at: North Shields Hearing Centre **On:** Wednesday 29th May 2019

Before: Employment Judge Speker OBE DL

Representation:

Claimant: In Person

Respondent: Mr Paul Sanders, Director

JUDGMENT

This claim for outstanding holiday pay is dismissed.

REASONS

1. The claimant was employed by the respondent as a home carer. During her employment she commenced maternity leave but did not return to her employment because of child-care difficulties. She claimed entitlement to outstanding holiday pay.
2. The claimant issued an application to the tribunal on 22nd March 2019 claiming such outstanding holiday pay but without setting out a calculation.
3. Mr Sanders, director of the respondent company, produced documentary evidence with regard to the claimant's employment including her payslip records and in particular her final payslip dated 22nd March 2019. That showed that the claimant was considered to be entitled to holiday pay of £741.90 from which deductions for tax, national insurance and pension had been made leaving a net sum of £575.75 which had been transferred to the claimant's bank account by BACS. That payment had been made following the issue of the proceedings. The respondent's position was that the claimant's entitlement has been met.

4. The claimant suggested that the sum paid was incorrect and was based upon too low a figure for a day's pay. The evidence from the respondent was that over the thirteen weeks prior to maternity leave, the claimant averaged working 3.94 hours per day and was paid an average of £9.18 per hour amounting to £36.17 per day. According to the respondent's records the claimant's entitlement to annual leave for 2018 was twenty-two days of which she had taken three days leaving an amount outstanding of nineteen days. Her annual leave entitlement accrued for 2019 was 1.5 days. This made total annual leave accrued of 20.5 days. This was multiplied by the figure of £36.17 per day producing the figure of £741.90 gross leaving the sum of £575.75 to be paid net to the claimant. Mr Sanders said that these figures were based upon their Sage payroll system.
5. The claimant submitted that the figures were not correct and that her average hours worked exceeded those suggested by Mr Sanders. However she conceded that she had no evidence upon which to base such submission. She also accepted that she could have made application direct to the respondent or through the Tribunal for an order that the respondent produce other documentation which may have supported her claim for a higher average day's pay.
6. Without any such evidence and on the basis of the material provided by the respondent, I find that the claimant has been paid her full entitlement with regard to annual leave accrued and there was no basis for making any further order for payment. Accordingly this claim is dismissed.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 7 June 2019**

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