



Case Number: 3307389/2018

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss A Wilkinson

Respondent

The Cake Shop (Woodbridge)
Ltd

and

Held at Bury St Edmunds on

Representation

Claimant:

In Person

Respondent:

Ms E Elvin, Consultant

Employment Judge Kurrein

JUDGMENT

- 1 The Respondent has made unauthorised deductions from the Claimant's pay and is ordered to compensate her by payment without deduction of the sum of £164.21.

REASONS

- 1 On 23 May 2018 the claimant presented a claim to the tribunal alleging a failure to pay holiday pay. On 4 December 2018 the respondent presented a response which contested that claim.
- 2 I have heard the evidence of the claimant, and that of a former colleague, Ms Cullum, on her behalf. I have heard the evidence of the respondent's managing director, Mr Wright, on the respondent's behalf. I have read the documents to which I was referred and heard the parties submissions. I make the following findings of fact.
- 3 The claimant was born on 16 July 1991 and started her employment with the respondent as a barista on 22 September 2014. At that time the respondent operated a bakery and a café. It has since expanded and operates from four sets of premises. It employs about 25 people in all.
- 4 The claimant was not provided with a statement of terms and conditions of employment. She was handed a purported contract of employment in 2017, which described her as a "shop assistant" in its first paragraph, and she immediately handed it back.
- 5 In those circumstances I find that the terms set out in that document were not express terms of the claimant's contract of employment. The inevitable

consequence is that the claimants holiday year runs from the anniversary of the commencement of her employment each year.

- 6 The claimant was successful in her role and in September 2017 was promoted to the newly created role of head of coffee. She ran her department single-handed: buying coffee, roasting the beans, packing the product, dealing with social media and running the website. She was on a salary of £20,000 per annum then and at termination.
- 7 The claimant accepted that there were no inhibitions preventing her from taking holiday. Her only reluctance stemmed from her being the sole employee in her role: she believed no one could substitute for her. That was not correct. Mr Wright was used to standing in for her and could have done so.
- 8 It is the claimants case that she did not take paid holiday throughout the period of her employment save for a total of 75.2 hours in 2016. For the period starting on 23 May 2016 to her effective date of termination, following her amicable resignation, on 5 January 2018, she claims to be entitled to a total of 318.8 hours pay for accrued but untaken holiday.
- 9 In the course of the hearing, however, it became clear that the claimant had at the very least taken the 3 bank holidays at Christmas and New Year in 2016, 2017 and 2018.
- 10 I also find as a fact that the claimant took three days holiday on 18, 19 and 20 September 2017 (evidenced by her email of the last date) and a further three days holiday in late October 2017 (evidenced by her email of 27th of October 2017). In her submissions to me the Claimant sought to characterise these days off as being "TOIL" agreed by the former general manager, but that was not in evidence and the respondent had no opportunity to challenge it.
- 11 I did not except Mr Wright's evidence to the effect that the claimant took other holiday either on bank holidays or at other time. His evidence on this issue was vague. It was clear to me he had no direct recollection of any such events. It was, to say the least, unfortunate that the respondent did not keep any records of holiday taken or outstanding.
- 12 In the above circumstances I find as a fact that in the leave year during which the claimants employment ended, for the period from 22 September 2017 to 5 January 2018, she was entitled to a total of 65 hours four minutes holiday pay. She had in fact taken three days in October 2017, 2 days at Christmas 2017 and New Year's Day in 2018, totalling, six days and was paid in full for each of those periods.
- 13 She should therefore have been paid for 2 days 1 hour 4 minutes accrued but untaken holiday on termination, equal to 17.07 hours, at a rate of £9.62 per hour. That is a total of £164.21 gross. I award that sum in full, as the Claimant was entitled to a tax rebate on the date of termination.
- 14 I do not accept that the claimant is entitled to go back beyond the start of the last leave year and claim for earlier leave years. There was nothing to stop her taking holiday in those years and, in any event she never requested or took

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holiday and she was paid her full salary for every period throughout her employment.

Employment Judge Kurrein

24 June 2019

Sent to the parties and
entered in the Register on : :

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For the Tribunal