



EMPLOYMENT TRIBUNALS

Claimant

Ms E Williams

Respondent

v Children and Family Court Advisory
and Support Services

Heard at: Norwich

On: 14 June 2019

Before: Employment Judge Postle

Appearances

For the Claimant: Miss Clarke, Solicitor

For the Respondent: Mr Hutchison, Solicitor

JUDGMENT

1. The Tribunal makes declaration there has been an unlawful deduction of wages in respect of the Claimant's accrued five days untaken holiday and the Respondents are Ordered to pay the sum **£612.18**

REASONS

1. The Claimant brings a claim to the Tribunal that the Respondents have failed to pay her five days in lieu of accrued but untaken annual leave amounting to £612.18 being unlawful deduction of wages under Section 13 of the Employment Rights Act 1996. The Respondents defend the claim on the basis that the Claimant took holiday abroad whilst on sick leave and had pre-booked that holiday period.
2. In this Tribunal we have heard evidence from the Claimant, for the Respondents we have heard evidence from Ms Pennington, both giving their evidence through prepared witness statements. The Tribunal also had the benefit of a bundle of documents consisting of 134 pages. Finally, the Tribunal have had the benefit of helpful closing submissions from both Mr Hutchison, Solicitor for the Respondent and Miss Clarke, Solicitor for the Claimant.

The Facts

3. The facts of this case show the Claimant was employed as a Service Manager from 2 May 2017 until 9 September 2018. On 3 July 2018 the Claimant went on sick leave following two family bereavements. The Claimant complied with the Respondent's policy by self-certifying her absence and subsequently providing statements and fitness to work from her GP which confirmed she was unfit for work during the relevant periods.
4. Before the Claimant's sick leave, the Claimant had requested holiday leave which she was to take abroad in the period 25 July to 31 July 2018, which had been previously authorised by the Respondents. On 18 July 2018, approximately two weeks into the Claimant's sick leave, she received a call from her line manager Ms Pennington to arrange a return to work interview which was originally set for 6 August 2018. During that call the claimant also confirmed she was still going away abroad during her sick leave and although not specifically mentioned in the notes of that call, or in the letter of 19 July 2018 from Ms Pennington to the Claimant (page 47) that she had been advised to take the holiday as it would be beneficial in aiding her recovery.
5. This is clearly acknowledged by Ms Pennington in the letter to the Claimant of 19 July 2018 (page 47) in that she says,

"Thank you for your time on 16 July 2018 to provide me with an update about your health and well being. I was sorry to hear that you had been signed off work, unfit for work, for a further two weeks by your Doctor. I do hope your health is improving and that your holiday will help you feel better".

That letter does not indicate that if the Claimant was taking holiday during her sick leave that she needed to cancel the holiday booked on the Respondent's system or that the period abroad would not be reinstated as holiday as the claimant was currently on sick leave.

6. The Respondent's policy at 2.1.12 is not entirely clear when one reads it, it could be read that,

"...if sickness occurs during annual leave the normal sickness absence reporting and certification requirements must be followed with a fit note for the period of sickness absence signed by a GP. This ensures that cases of sickness during holiday periods can be recognised and appropriate leave days reinstated. Employees will not be able to self-certify in these circumstances, employees that are able are expected to request annual leave in the normal way during any period of sick leave".

Does it mean, only if it occurs a sickness on holiday leave, or does it mean if sickness occurs or covers any period which covers a booked holiday leave period? It could be read either way.

7. What is clear is the claimant was of the understanding, through what she believed was custom and practice, that for any period of leave that had been booked if one was signed off as sick, that leave would be reinstated. The first the Claimant became aware that she would not have the five days reinstated was on 20 August 2018 following her resignation.

Tribunal Conclusion

8. It is clear, had she had cancelled the leave period before taking the period abroad during her sick leave, that five days would have been reinstated. Plum v Duncan Print Group Ltd. UK EAT0071-15 is clear authority for the proposition that an employee who is absent from work on sick leave is not required to demonstrate that she or he is physically unable to take annual leave by reason of his or her medical condition.
9. The Claimant was clearly unfit for work during the relevant period of sickness absence as confirmed by the fit note from her GP. The policy at 4.2 (page 19) does not make it clear that there is a requirement of employees to cancel pre-booked annual leave if that period is covered by a sickness period.
10. In all the above circumstances, the Tribunal conclude on balance there has been an unlawful deduction of wages in the sum of £612.18. The Claimant's leave taken abroad during a period of sick absence should have been reinstated.

Employment Judge Postle

Date: ...17.07.19.....

Sent to the parties on: ..17.07.19.....

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For the Tribunal Office