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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4103799/2018

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Held at Glasgow on 15 April 2019

Employment Judge: Robert Gall

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Ms E Boyce

Claimant
Represented by:-
Mr E Cameron –
Solicitor

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Alexa Geddes

Respondent
Represented by:-
Mr B Hendley –
Counsel

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL
RECONSIDERATION
BY WAY OF WRITTEN SUBMISSIONS**

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The Judgment of the Tribunal is that upon the application of the respondents intimated on 28 February 2019 the Judgment of the Tribunal dated 25 February 2019 and issued to parties on 26 February 2019 is reconsidered. Upon reconsideration, having considered the submissions of both parties, the said Judgment issued to parties on 26 February 2019 is varied to the following extent: –

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- (1) Paragraph (5) of the Judgment is varied so that the claimant is awarded £222.69 in respect of holidays accrued but untaken at date of termination of her employment. When uplifted by 25% due to the failure on the part

E.T. Z4 (WR)

of the respondents to adhere to the ACAS Code of Practice, the sum awarded to the claimant is £278.36. The figure “£753.72 is replaced by “£222.69”. The figure “£942.15” is replaced by “£ 278.36”

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- (2) In paragraph 33 of the Judgment the figures “35” and “24” are deleted and replaced respectively by the figures “40” and “21”.
- (3) In paragraph 34 of the Judgment the first sentence is deleted. In substitution for that, the following is inserted “In 2017 to date of termination of employment the claimant had accrued 8.5 days of leave.”
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- (4) In paragraph 34 of the Judgment the figures “22”, “£753.72” and “£942.15” shall be delete. In substitution for those figures, the figures “6.5”, £222.69” and “£278.36” shall be inserted.
- (5) In paragraph 121 (4) of the Judgment the figures “24”, “22”, “£753.72” and “£942.15” shall be delete. In substitution for those figures, the figures “8.5”, “6.5”, “£222.69” and “£278.36” shall be inserted.
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- (6) Save in so far as varied by this Judgment, the remaining terms of the Judgment dated 25 February 2019 and issued to parties on 26 February 2019 are confirmed.

REASONS

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- In this case Judgment was dated 25 February 2019 and issued to parties on 26 February 2019. .
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- By application dated 28 February 2019 the respondents sought reconsideration of the calculation of holiday pay and of the sum awarded in respect of holiday pay in that Judgment. They set out the alternative basis of calculation of holiday pay which they regarded as being applicable. No other part of the Judgment was subject of a reconsideration application.
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- I regarded it as appropriate not to refuse the application for reconsideration on initial consideration. I also expressed the provisional view that the point made in the application for reconsideration was valid. Parties were invited to

provide calculations in respect of any revised figure they regarded as being due and also to express a view as to whether the application could be determined without a Hearing.

4 By email of 14 March 2019 the respondents set out the calculation of holiday
5 pay which they regarded as representing the sum due to the claimant. It was confirmed for the claimant by email of 23 March 2019 that the calculation of holiday pay by the respondents was agreed. Neither party sought a Hearing in respect of the reconsideration application.

5 Having considered the application, I am of the view that the calculation set out
10 by the respondents represents the appropriate and correct calculation of holiday pay due to the claimant in respect of holidays accrued at date of her dismissal but not taken at that time. The claimant was entitled to 21 days of annual leave. At date of dismissal she had accrued 8.5 days of annual leave. She had been paid for two of those. That left 6.5 days of leave accrued but
15 untaken and unpaid for. Her daily rate of pay was £34.26. She is therefore due to be paid in respect of holiday leave accrued but untaken at date of termination of employment the sum of £222.69. That sum is uplifted by 25% due to non-compliance by the respondents with the ACAS Code of Practice. The sum awarded to the claimant therefore becomes £278.36.

20 6 The Judgment is, upon reconsideration, varied to reflect that figure work and the calculation. Save insofar as varied by this Judgment, the Judgment dated 25 February 2019 and issued to parties on 26 February 2019 is confirmed.

Employment Judge

R Gall

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Date of Judgment

16 April 2019

**Entered in register
and copied to parties**

24 April 2019

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