



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Durojaiye

**Respondent:** Source247 Recruitment Limited

## JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The Respondent is ordered to pay the Claimant £937.37 in compensation for accrued but untaken paid holiday.

## REASONS

1. The Claimant brings a claim for accrued but untaken paid holiday outstanding on the termination of his employment. The Respondent has not entered a response.
2. At a Preliminary Hearing today I allowed the claim to be presented out of time (see the Preliminary Hearing Judgment).
3. In those circumstances Rule 21 of the Employment Tribunal Rules of Procedure 2013 allows me to consider whether on the ‘available material (which may include further information which the parties are required to provide)’ a determination can properly be made of the claim.

4. I obtained further information from the Claimant today and I can therefore make a determination of the claim on the material before me. According to Rule 21(2) I therefore issue this judgment.

### **Findings of Fact**

5. Having read the claim form and heard the oral evidence of the Claimant, I make the following findings of fact:
6. The Claimant's holiday year started on 20 April 2018, the start date of his employment.
7. The Claimant did not take any paid holiday during his employment.
8. The Claimant employment ended on 14 September 2018. His period of employment was therefore 21 weeks and 1 day i.e. 21.14 weeks.
9. The Claimant was engaged by the Respondent and then worked as a truck driver for the Respondent's clients. He told me he worked a regular 45 hour a week when he was sent to work at Bywaters but when this job ended, and before it, he worked fewer hours. I find that he did not have a contract for regular hours but that he worked 5 days per week. I must therefore average out his pay over 12 weeks in order to find his net weeks' pay for the purposes of the holiday pay calculation.
10. The Claimant's weekly net pay was £411.74 – the average of the 12 payslips that the Claimant has provided.

**Application of facts to law**

11. The compensation for accrued but untaken holiday on termination is calculated according to Regulation 14 of the Working Time Regulations 1996 by the formula  $(A \times B - C) \times \text{net week's pay}$ . Where A is the annual entitlement (28 working days or 5.6 weeks) and B is the proportion of the leave year which expired before termination and C is the amount of leave already taken. In this case that equals:
12. The calculation in this claim, is therefore  $5.6 \times 21.14/52 \times 411.74 = \text{£}937.37$ .
13. The compensation owing to the Claimant for leave untaken but accrued at the termination of his employment with the Respondent is £937.37 and I give judgment under Rule 21 for this sum.

Employment Judge **Moor**

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Date: 21 June 2019