



# EMPLOYMENT TRIBUNALS

**Claimant** Mr R Gawlowski

**Respondent:** Al-Murad DIY Limited

**HELD AT:** Leeds **ON:** 17 December 2019

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Interpreter:** Mrs M Sarvjahani

**Respondent:** Did not appear and was not represented

## JUDGMENT

1. The Judgment of the Tribunal is that the Claimant's claim for overtime is dismissed on withdrawal by the Claimant.
2. The Claimant was entitled to holiday pay in the sum of £381.79 and the Respondent is ordered to pay the Claimant accordingly.

## REASONS

### Introduction

1. Mr Gawlowski was employed by Al-Murad DIY Limited as a warehouse operative from 28 October 2012 until the termination of his employment on 16 July 2019. The Claimant claims overtime payment and holiday pay.

### Issues

2. The issues in this case relate to whether or not the Claimant is entitled to overtime and whether or not the Claimant is entitled to holiday pay.

### **Matters relating to the hearing**

3. Before the hearing, although it was clear that the Respondent would not be represented, and that the Respondent was not intending to call witnesses, it was not clear that the Respondent would not be present. Further, the Respondent had submitted a bundle. The clerk, on the instruction of the Judge, telephoned the Respondent's former solicitor, who confirmed that there would be no attendance by the Respondent and the solicitor also confirmed his awareness as to the probative value of the bundle, since there was no one to prove it by oral evidence.

### **Facts**

4. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):
5. In relation to the claim for overtime, although the Claimant had not signed his contract of employment, he did accept that it was not necessary for him so to do. Nevertheless there was nothing in the contract relating to entitlement to overtime.
6. The Claimant worked Tuesday to Friday 9 and a half hours per day and 8 and a half hours on Saturday, making a total, after breaks, of 36 and half hours. He explained that when asked to come in on a Sunday or a Monday he was paid overtime.
7. The Claimant claimed that he was owed 14 hours overtime but he was unable to substantiate the period to which the outstanding overtime related.
8. So far as holiday pay is concerned the Claimant accepted the following terms in his contract:
  - 28 days holiday per annum.
  - Including statutory days.
  - Holiday year 1 April to the following 31 March.
  - Ability to carry five days forward.
  - Calculation on the basis of 1/260<sup>th</sup> per annum for holiday days.
9. The Claimant claimed a five day carry forward for the year 1 April 2018 to 31 March 2019 but was unable to explain his entitlement.
10. The position was different for the period 1 April 2019 to 16 July 2019, during which period he took one day's holiday to attend holy communion for his daughter.
11. The period between 1 April 2019 and 16 July 2019 is 3 and a half months and that means that had the Claimant not taken a day's holiday he would have been entitled to 10 days holiday during that period. But bearing in mind that he did take one day he was, under the terms of the contract, entitled to nine days.
12. His annual net pay amounted to £17,524 and, divided by 260, the holiday rate is £67.40 per day's holiday. If one multiplies this by nine the amount of holiday pay within the calculation of the Claimant's contract amounts to £606.60, but the Claimant very honestly informed the Tribunal that he had received in his termination holiday payment £224.81, so that the net amount of holiday pay is £381.79.

**Determination of the issues**

13.(After listening to the factual and legal submissions made by and on behalf of respective parties) (where applicable) the Tribunal finds that the Claimant was unable to prove entitlement to overtime. However during the hearing and before the Tribunal reached that conclusion the Tribunal allowed the Claimant 15 minutes to consider the matter and consult with his wife who was present during the hearing.

14.Following the time allowed to the Claimant he withdrew his claim for overtime, which is hereby dismissed.

15.So far as the right to holiday pay is concerned the calculations are set out as facts and the Claimant is entitled to holiday pay in the sum of £381.79 and the Respondent is ordered to pay the Claimant that sum.

Employment Judge Shulman  
Date 20 December 2019