



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Sonani

**Respondent:** Colonnade (Operations) Ltd

**Heard at:** London Central Employment Tribunal

**On:** 16 March 2020

**Before:** Employment Judge Quill (sitting alone)

**Appearances**

For the claimant: Not present and Not represented

For the respondent: Not present and Not represented (debarred)

## RESERVED JUDGMENT ON REMEDY

- (1) The gross sums due to the Claimant from the Respondent are
  - (i) £728.76 in respect of unpaid salary plus
  - (ii) £358.08 in respect of entitlement to pay in lieu of holiday
- (2) The Respondent is ordered to pay those sums to the Claimant making no deductions other than appropriate PAYE deductions (if any).

## REASONS

### Introduction

1. No response was filed, within the time limit or at all. A judgment on liability, pursuant to Rule 21, was issued by Employment Judge Glennie, and dated 13 March 2020.
2. The hearing for 16 March 2020 was intended to deal with assessment of remedy. The Claimant did not attend. On being telephoned by the clerk, he informed the clerk that he had not realised that his attendance would be required. There was

no attendance by the Respondent, and no request that it be permitted to participate in the hearing to any extent.

3. I decided to proceed with the hearing in the absence of the parties and to make a decision on remedy based on the information and documents in the tribunal file.

### **The Claims**

4. The claimant was granted judgment on his claim that there had been unauthorised deduction from his wages, contrary to section 13 of the Employment Rights Act 1996.
5. As per the claim form, there were two elements to the claim. One was in respect of unpaid salary for a period of work. The other was for a payment in lieu of holiday.

### **The Issues**

6. What wages were properly payable to the Claimant for the period 1 December 2018 to 7 December 2018?
7. Were there any authorised deductions for that period?
8. What was paid to him by way of wages?
9. What was the Claimant's entitlement to a payment in accordance with Regulation of the Working Time Regulations 1998?

### **The Evidence**

10. The tribunal file contained the claim form, correspondence from the Claimant, a document which the Claimant said (in an email) was his contract of employment, a cheque which the Claimant said had not been honoured.

### **The Litigation**

11. ACAS early conciliation occurred, albeit in the name of a different potential respondent. The claim was accepted. There was no response from that respondent. Following correspondence, the Claimant was given permission to amend the name of the Respondent to Colonnade (Operations) Ltd. The claim form was served on that respondent. There was no response. As mentioned above, a liability judgment was issued.

### **The findings of fact**

12. The Claimant was employed by the Respondent from 6 November 2018 to 7 December 2018. His employment terminated because the Claimant resigned on 7 December 2018 with immediate effect.
13. The Claimant had a contract of employment which stated that his annual salary was £38000 per year (gross) payable in arrears on the last day of the month. He received the correct amount of salary for November.

14. The contract stated that no notice was required if either party wished to terminate the contract within the first four weeks. After the first four weeks, the Claimant was required to give one week's notice. By 7 December 2018, more than four weeks had elapsed.
15. The contract stated that the Claimant was entitled to 20 days paid holiday per year, in addition to bank holidays. It stated that if he left part way through a year then his holiday entitlement would be calculated at the rate of 1/52 for each completed week. He did not take any leave.
16. Clause 7.10 of the contract asserted that the Claimant would not be entitled to a payment in lieu of accrued holiday "over and above the statutory minimum" entitlement in certain circumstances, including if he resigned without (full) notice.

## The Law

17. Part II of the Employment Rights Act 1996 ("ERA") deals with protection of wages. S13 gives employees (and workers) the right not to suffer unauthorised deductions. S27 gives the meaning of "wages". There is a non-exhaustive list of what is included within the definition. The definition does not include any of the following: (i) loss of earnings from another employer while pursuing a claim against the Respondent; (ii) travel expenses while pursuing a claim against the Respondent; (iii) compensation for stress or inconvenience while claim against the Respondent.
18. The Working Time Regulations 1998 ("WTR") give workers the right to a minimum period of paid time off. Regulation 14 specifies the entitlement to (and, in conjunction with Regulation 16, the calculation for) a payment in lieu of holiday that had accrued but not been taken in the partial leave year up to the termination of employment. As per Revenue and Customs Comrs v Stringer [2009] I.C.R. 985, a claim for a payment to which a claimant is entitled by virtue of can instead/alternatively be brought under Part II of ERA.
19. Regulation 14(3) sets out a default formula to be used "where there are no provisions of a relevant agreement which apply". In Witley & District Mens Club v Mackay [2001] IRLR 595, the Employment Appeal Tribunal made clear that a "relevant agreement" cannot specify a payment of zero in lieu of holiday. By virtue of Regulation 35(1)(a), a contract is void in so far it seeks to avoid the obligations under the Regulations.
20. The formula is **(A × B) – C**

where—

**A** is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

**B** is the proportion of the worker's leave year which expired before the termination date, and

**C** is the period of leave taken by the worker between the start of the leave year and the termination date.

## Analysis and Conclusions

21. The Claimant is entitled to payment for the period 1 December 2018 to 7 December 2018 (inclusive). He worked that 7 day period and was not paid for it. The sum to which he is entitled is the appropriate proportion of £38,000 per year. That is £38,000 divided by 365 (to give a daily rate) and multiplied by 7 (the number of days in the period. This equates to £728.76 gross.
22. The Claimant resigned without notice and therefore, as per clause 7.10 of the contract, his holiday entitlement is no more than the statutory minimum as provided by WTR.
23. In the formula, he has taken no leave and so **C** = 0. **A** = 5.6 weeks. There are 32 days between 6 November 2018 to 7 December 2018. Therefore **B** = 32/365.
24. Thus the amount of accrued leave for which the Claimant was entitled to a payment in lieu was  $5.6 \times 32/365$  weeks = 0.49 weeks.
25. The Claimant's weekly pay was £38000/52 = £730.77.
26. Thus the entitlement to a payment in lieu of holiday was  $0.49 \times £730.77 = £358.08$ .
27. Thus the aggregate gross sum which was unlawfully deducted from the Claimant's wages was £728.76 + £358.08 = £1086.84 gross.
28. He is not entitled to an award in respect of loss of earnings from new employer, travel expenses, or for stress and inconvenience.

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**Employment Judge Quill**

23.03.2020

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Date

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.26/03/2020

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FOR EMPLOYMENT TRIBUNALS