



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Nagy

v

Realstar Limited

Heard at: Watford

On: 28 February 2020

Before: Employment Judge McNeill QC

Appearances:

For the Claimant: In person (assisted by Mrs Ulrik, translator)

For the Respondent: Mr Romesh Bhardwaj, Director

JUDGMENT having been sent to the parties on 10th Marcy 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant in this case claims for arrears of holiday pay. A judgment was entered in his favour on liability which was sent to the parties on 11 December 2018. It was stated in that judgment that the judgment was being issued in respect of his claims for breach of contract, holiday pay and failure to provide a written statement. Remedy was to be determined on 22 January 2019. The breach of contract claim can also be formulated as a claim for unlawful deductions that was a continuing failure to pay holiday pay.
2. The claim has been made more complicated in this case by the fact that the respondent did not provide the claimant with a statement of particulars of employment as the respondent is required to do under s.1 of the Employment Rights Act. Nor, indeed, was there any written document, a letter or anything evidencing the terms and conditions under which the claimant was employed.
3. In accordance with Regulation 13(3)(b)(2) of the Working Time Regulations, in the absence of any relevant agreement in relation to the holiday year, the holiday year is treated as beginning on the date when the employment

commenced and I have taken that date here as 20 July 2015. That is the date when the claimant's employment with the respondent began. He had previously worked for the respondent between November 2013 and 1 May 2015 but any claim in relation to that period would have had to be brought within 3 months of the end of his employment and, therefore, any claim for that period is well out of time and I do not take it into account.

4. In relation to the period from 20 July 2015, I am satisfied that the claimant took the following holidays. They have been specified in detail in a letter of 6 February 2019 and confirmed in evidence by the claimant. In short, between 20 July 2015 and 19 July 2016, he took 4 weeks holiday. Between 20 July 2016 and 19 July 2017, he took 8 weeks holiday. And between 20 July 2017 and the termination of his employment on 2 or 3 March 2018, he took 4 weeks holiday. The entitlement, as the respondent now accepts, is 28 days holiday a year; That is 20 days plus 8 Bank Holiday days.
5. The claimant was paid the minimum wage and his normal working hours were 40 hours a week, although he did sometimes do overtime. The applicable National Minimum Wage was £7.20 per hour from April 2016 to March 2017, and £7.50 per hour after that. From July 2015 to April 2016 the relevant rate was £6.70 per hour.
6. Leaving aside for the moment any holiday pay paid to the claimant because the amount of payment is in issue between the parties, there is a dispute between them, I find that the claimant was entitled to the following amounts for holidays and this is subject to any deductions. From 20 July 2015 to 19 July 2016, all of his holidays were taken before April 2016 and I therefore apply the National Minimum Wage of £6.70. On that basis, for 40 hours a week x £6.70 x 4 weeks, the amount to which he was entitled, gross, was £1,072. From 20 July 2016 to 19 July 2017, although he took 8 weeks holiday, clearly he was only entitled to be paid for 28 days, so £7.20 x 8 hours a day x 28 days, I get to a figure of £1,612.80. From 20 July 2017 to 3 March 2018, he took 4 weeks holiday. 40 hours a week x £7.50 x 4, I get to a figure of £1,200. So, adding up those gross figures, that would come to £3,884.80. I will allow the parties to address me on this but the figures have got to be netted down to reflect Tax and National Insurance. Looking at the HMRC figures I have been provided with, I have taken a figure of 88%, that is netting down by 12% which broadly seems to reflect the figures from HMRC. That is pretty rough and ready as I think in the earlier years there were very little tax paid because it was presumably under the personal allowance threshold. Using a discount of 12% I get to a figure of £3,418.62.
7. The dispute between the parties is, the respondent says, that it paid the claimant everything that he was due. The claimant says that he has received, in total, for the entire period from 20 July 2015, the sum of £1,656. So, in short, this comes down to a question of whose evidence I prefer. I has not in any way helped the respondent that pay slips which are provided, although I accepted the claimant's evidence not always provided, do not show a payment in respect of holiday pay. Pay slips should be properly itemised and where holiday pay is paid, it should be specified on the pay slip. In any event,

the claimant was paid weekly and such pay slips he received were provided on a monthly basis.

8. He respondent has produced some documents which are relied on and support the respondent's case. I say the respondent, it is by the respondent's Director, Mr Bhardwaj. The respondent has produced some documents relied on in support of the contention that the claimant was actually paid his holiday pay in full. I find that those documents do not support what is alleged. For example, it is alleged by the respondent that it paid the claimant £530 on 30 December 2016. The documentation produced indicates that a BACS payment was paid on 30 December 2016 but that was in the sum of £250. A cash payment was made on 23 December, so that was 1 week earlier, in the sum of £280. That is consistent with what the claimant says which is that he was paid the sum of £530 in respect of 2 weeks pay and not in respect of 1 single week. I also accepted the claimant's evidence that other amounts of £433 and £424 relied on by the respondent, represented weekly payments which included overtime rather than weekly payments which included holiday pay.
9. In short, where there are disputes between the claimant and the respondent's Director, I have preferred the evidence of the claimant.
10. I therefore approached this claim on the basis that the net figure is £3,418.62 from which I have deducted £1,656. That takes me to a figure of £1,762.62. and that is the amount that I find due to the claimant subject to one other matter.
11. In addition, under section 38 of the Employment Act 2002, I must award 2 weeks' pay where there has been a failure to supply employment particulars and where I have upheld a claim such as this. I can award 4 weeks' pay if I considered that it is just and equitable to do so in all the circumstances. Having considered all the facts here and taking into account all the circumstances, including the fact which I accept that the claimant left his employment without giving any notice, I have limited this award to the mandatory 2 weeks' pay, which is calculated on a gross basis, and that comes to £600. So, 40 x £7.50 x 2.
12. The total award then, the amount that is due to the claimant from the respondent is £2,362.62.

Employment Judge McNeill QC

Date:24.07.2020.....

Judgment sent to the parties on

Case No: 3331927/2018

.....24.07.2020.....

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For the Tribunal office