



EMPLOYMENT TRIBUNALS

Claimant: Mr M Keeling-Wheat

Respondent: Scalemode Limited

Heard at: Birmingham Employment Tribunal via CVP

On: 05 August 2020

Before: Employment Judge Mark Butler

Representation

Claimant: Ms K Walshe (Lay representative)

Respondent: No appearance

JUDGMENT ON REMEDY

1. This case was listed for a remedy hearing to take place today, by employment Judge Gaskell, following a Preliminary Hearing on 10 June 2020.
2. Despite this case having been listed for a remedy hearing, I have not seen a Rule 21 judgment having been entered by Employment Judge Gaskell.
3. For the avoidance of doubt and should no other liability judgment have been issued as yet, default judgment is entered in favour of the claimant pursuant to Rule 21 of the Employment Tribunal Rules 2013 in relation to all of the claims being brought, with exception to reimbursement of £150 for an outstanding fine.
4. The claimant is entitled to a remedy for her successful complaints relating to unpaid wages, holiday pay entitlement and to notice pay. His claim for reimbursement of £150 for a fine is dismissed.
5. This hearing considered and determined remedy in this case.

Unpaid Wages

6. The claimant worked on average 70.8 hours per week, calculated using a

12-week reference period. The claimant was paid at the National Living Wage Rate. He received pay for 45 hours per week. There is an outstanding claim relating to 25.8 hours per week at the National Living Wage rate for the duration of his employment. For this part of the claim, he is awarded:

25.8 hours x 29 weeks x £7.83 (NLW rate April 2018-Mar 2019)

+

25.8 hours x 13 weeks x £8.21 (NLW rate April 2019-Mar 2020)

TOTAL = £8,612.04

Unpaid Holiday Pay

7. The claimant had taken 14 days holiday during his employment, which equates to 2.8 weeks of his annual entitlement. Holiday pay was paid at a rate equivalent to pay for 45 hours per week, whereas this should have been calculated using his average weekly hours of 70.8 hours per week. Further, there was outstanding accrued holiday of 1.7 weeks. For this part of his claim, he is awarded:

2.8 weeks holiday pay x 25.8 (which is the hours not taken into account in calculating holiday pay) x £7.83 (the NLW rate at time of leave)

+

1.7 weeks (the accrued holiday leave outstanding on employment ending) x 70.8 (average weekly working hours) x £8.21 (NLW rate at time employment ended)

TOTAL = £1,553.80

Notice Pay

8. The claimant was entitled to one weeks' notice pay, calculated using 70.8 hours (the average hours worked per week) and £8.21, the NLW at point of employment ending. The claimant is therefore entitled to £581.27 (70.8 x 8.21) for this part of his claim.

Conclusion

9. The claimant is awarded a total of £10,747.11. This is a gross figure. The claimant will need to account for tax and national insurance on receipt of payment if these are not deducted from source by the respondent.
10. The claimant did not receive any unemployment benefits whilst not working. Therefore, recoupment is not applicable.

Signed by: Employment Judge Mark Butler

Signed on: 05 August 2020

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.