



EMPLOYMENT TRIBUNALS

Claimant: Raymond Holt

Respondent: John Gibson Hire & Sales Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The judgment of the Tribunal is that:

1. The complaint in respect of unfair dismissal is well founded and succeeds. The Basic Award of £4,725 is reduced to zero in accordance with section 122(4)(a) Employment Rights Act 1996
2. The claim for payment of a redundancy payment is well founded and succeeds. The Respondent is ordered to pay to the Claimant a statutory redundancy payment in the sum of **£4,725**.
3. The complaint in respect of unauthorised deduction of wages is well founded and succeeds. The Respondent is ordered to pay to the Claimant the sum of **£6,018.53**.
4. The Complaint in respect of accrued but untaken holiday pay under Regulation 30 Working Time Regulations is well founded and succeeds. The Respondent is ordered to pay to the Claimant the sum of **£1,086.40**
5. The total amount to be paid to the Claimant is **£11,829.93**.

REASONS

6. On 09 May 2020, the Claimant presented a Claim Form to the Tribunal in which he brought complaints of unfair dismissal, unlawful deduction of wages and payment in respect of outstanding holiday pay on termination of employment.
7. The proceedings were served on the Respondent at its Registered Office with a response date of 13 July 2020. However, no response was returned. Therefore, in accordance with rule 21 of the Tribunal Rules of Procedure an Employment Judge must decide whether on the available material a determination can properly be made

of the claim or part of it, and to the extent that a determination can be made, the Employment Judge must issue a judgment.

8. The Claimant had set out the particulars of his claim with sufficient clarity in his Claim Form and in an email dated 31 July 2020, in response to the Tribunal's letter of 17 July 2020, he provided further information in respect of his losses. He also sought permission to amend his claim form to claim a redundancy payment. I permitted the amendment on the basis that it arose out of the same facts and there was no prejudice to the Respondent. It was simply a matter of labelling the reason for the Claimant's alleged constructive unfair dismissal.
9. I am satisfied that the Claimant's employment was terminated by reason of redundancy without notice and without payment of outstanding holidays. I am also satisfied that the Respondent failed to pay the Claimant accrued but untaken holidays. Therefore, it was appropriate for a judgment to be issued to that effect.

Facts

10. The Claimant was employed by the Respondent from 05 November 2013 until 17 March 2020 when he resigned without notice in circumstances in which he was entitled to do so by reason of the Respondent's conduct. The Respondent failed to pay the Claimant his wages for the months of (1) January, (2) February (due on the 25th of each month) and (3) the period from then up to 17 March 2020. This amounted to a fundamental breach of contract. The gross amounts were £2,360.21, £2,360.21 and £1,298.11 respectively. The Claimant accepted the breach and terminated the contract of employment. He was entitled to do so.
11. The Respondent has since ceased operations and from the information provided by the Claimant I find on the balance of probabilities that the reason it failed to pay the Claimant his wages was that it was struggling to maintain operations. By the time the Claimant terminated his contract, the Respondent intended to cease to carry on the business for the purposes of which the Claimant was employed and in any event that its expectation for employees to carry out work of a particular kind had diminished. To that extent I conclude that the Claimant's constructive dismissal was mainly attributable to the fact that the respondent intended to cease to carry on the business for the purposes of which the Claimant was employed and that the requirements of the Respondent for employees to carry out for which the Claimant was employed had diminished. Therefore, the reason for dismissal was redundancy.
12. The dismissal was unfair. The Respondent carried out no process, nor did it warn the Claimant in advance. It failed to respond to his requests for payment and failed to engage with him at all in respect to the payment of wages or the potential for redundancy.
13. By the date of dismissal, the Claimant had accrued 10 days untaken holiday which amounted to a gross equivalent sum of £1086.40. The Respondent failed to pay this sum to the Claimant.

Remedy - unfair dismissal/redundancy pay

14. By the date of dismissal, the Claimant had been continuously employed for 6 complete years and was 56 years old. All complete years were years when he was aged 41 or over. His gross weekly pay was £543.20. The gross weekly pay is capped at £525 for the purposes of calculating a basic award and a statutory award. The total amount of redundancy pay is **£4,745.83**. No claim for a compensatory award is made. The amount of the basic award for unfair dismissal is reduced to zero in light of the award of a redundancy payment.

Remedy – unlawful deduction of wages

15. The total amount of gross pay deducted from the Claimant's wages was £6,018.53 and this amount is due to the Claimant.

Remedy – outstanding holiday pay

16. The daily rate of pay was £108.64. The total for 10 days is £1,086.40

Employment Judge Sweeney

10 August 2020