



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Tsawar Hussain

v G F R Security Agency

Heard at: Watford

On: 17 August 2020

Before: Employment Judge Alliot

Appearances

For the Claimant: In person

For the Respondent: Mr Jay Singh (Management)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claims are dismissed.

REASONS

1. The claimant was employed by the respondent as a security guard on a zero hours contract on 3 September 2018.
2. His contract of employment provided for a holiday year from January to December and a holiday entitlement of 28 days.
3. Between 3 September and 31 December 2018, the claimant took no holiday. $28 \times 119 \div 365 = 9.13$ days holiday entitlement.
4. By a claim form presented on 15 December 2019 the claimant presented claims for holiday pay, arrears of pay and other payments. Section 8.2 of the claim form recites in full:

“I worked with them from 01-09-18 to July 19
But they didn't pay me my holiday pay of year 2018”

5. On 27 January 2020 the claimant sent an email to Watford Employment Tribunal stating that he wanted to add some more information regarding his claims. This states:

“My claim details

Holidays pay 149 hours at 8.21 per hour = £1,223.29

Outstanding wages as they paid me less than minimum wage = £595.08

One month they suspended me without any reason without any notice (20 shifts at 12 hours per shift = 240 hours) 240 hours at 8.21 per hour = £1,970.04

... Total = £3,788.41”

6. That email was not sent to the respondent.
7. The respondents filed a response on 28 January 2020. This gave the claimant's employment end as 28 March 2019 and gave the reason as serious misconduct. Unsurprisingly the response form only deals with the holiday pay claim and asserts that it is out of time.
8. Thus, it is that the matter comes before me for a final hearing. The respondent states that today is the first time it is aware of the claimant's claims in relation to unauthorised deduction of wages concerning the alleged period of suspension and in relation to a failure to pay him the National Minimum Wage in May/June/July 2019.
9. Nevertheless, I have discussed all aspects of the claimant's claim with both parties.
10. The claimant did not request any holiday in September, October or November 2018. On 3 December 2018 he was sent the rota for December and he confirmed that he would work all the (20) days in an email dated 3 December 2018. That email also requested a holidays form. The claimant stated that he wanted to take holiday in December 2018 which is somewhat incompatible with confirming that he would work most days in December 2018.
11. The contract of employment is silent on the issue of rolling over holiday pay into the next holiday year.
12. The ECJ's decision in Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. v. Shimizu: C-684/16, [2019] IRLR148 ruled that if a worker does not take all of his or her annual leave entitlement during a leave year, the leave is not lost, and can be carried forward to the following leave year. For the purposes of this case I have taken it that the claimant could carry over his leave entitlement.
13. The respondent has shown me a complaint from a customer dated November 2018 alleging that the claimant had been sleeping on duty, had left a gate open knowingly and had left the site unattended.

14. The claimant was sent the rota for April 2019. However, on 28 March 2019 the claimant spoke to Mr Singh. Mr Singh states that he said to the claimant that he was no longer working for the respondent as they had had complaints. The claimant characterised this call as merely informing him that the respondent did not have any work for him. However, the claimant did at one stage say to me that after they dismissed him he went to Acas and they advised him that the respondent could not dismiss or suspend him without any reason. In further answers to questions from myself the claimant told me that Mr Singh said to him that there was no more work for him. The claimant told me that he knew the job had finished with them. In particular, the claimant asked for his outstanding holiday to be paid and the respondent paid him his holiday due for 2019 on 10 May in the sum of £673.69. Further, the claimant told me that he tried to get another job.
15. I find that the claimant was aware that he had been dismissed from his job with the respondent. The fact that he requested his outstanding holiday pay and was paid this confirms to me that the claimant was well aware that his employment contract had come to an end.
16. On the basis that his 2018 holiday entitlement had rolled over into the 2019 holiday year, so the claimant was entitled to be paid for that holiday entitlement on the termination of his employment on 28 March 2019. As such, the primary limitation period for presenting his claim would have expired on 27 June 2019.
17. I have been shown a contract dated 5 May 2019 whereby the claimant was re-engaged by the respondent but on a contract that on the face of it described him as a self-employed individual. Whether or not he was a worker is not a matter before me.
18. I have been shown an email dated 25 July wherein the claimant was claiming his 2018 holiday entitlement. This concludes:

“So kindly sort it out asp otherwise I’ve full right to take legal action.”
19. An email from 25 April 2019 from the claimant indicates that he had been to the Citizen’s Advice Bureau.
20. Even if I were to conclude that it was not reasonably practicable for the claimant to present his claim for 2018 holiday entitlement in time, then I do not conclude that it was presented within a reasonable time thereafter. The claimant had access to advice in April 2019 and was referring to taking legal action on 25 July 2019. Three months from then would expire in October 2019 and the claimant only issued his claim on 15 December 2019.
21. Accordingly, the claimant’s claim for accrued holiday entitlement from 2018 fails and is dismissed.
22. Having found that the claimant was dismissed on 28 March 2019, there can accordingly be no claim for unauthorised deduction of wages in relation to April 2019. That claim therefore also fails.

23. The claim in relation to a shortfall of pay in May/June/July 2019 relates to a different contract with the respondent to the one that is referred to in the claim form. Further, the respondent has had no notice of this head of claim. In my judgment this claim is not before the tribunal.
24. For the above reasons the claimant's claims are dismissed.

Employment Judge Alliott

Date:4th September 2020.....

Sent to the parties on: ...17.09.2020.....

.....GDJ.....

For the Tribunal Office