



EMPLOYMENT TRIBUNALS

Claimant

Mr T Kiernan

v

Respondent

K2 Recruitment Limited

Heard at: Bury St Edmunds (by CVP)

On: 9 October 2020

Before: Employment Judge M Bloom

Appearances

For the Claimant: In person assisted by his wife, Mrs A Kiernan.

For the Respondent: Mr C Bennison, Counsel.

JUDGMENT

The Claimant's Claim of Unlawful Deduction of Wages i.e. outstanding holiday pay fails and is dismissed.

REASONS

1. The Claimant works for the Respondent, a recruitment agency. The Claimant is engaged by them under a contract for services which began on 25 March 2019. The Claimant requested two days holiday on 31 October 2019 and 1 November 2019. He claims he was underpaid in respect of holiday pay due to him covering those two days. The Claim is disputed by the Respondent. I heard detailed representations from the Claimant during the course of the Hearing and from his wife. I also heard from Mr Bennison. In addition, I considered the content of two witness statements one from Mrs Hegarty-Swain a Financial Controller employed by the Respondent and another statement from the Claimant's wife.
2. Much of the background was in fact agreed between the parties.

3. Regulation 16(1) of the 1998 Working Time Regulations states that holiday pay shall be calculated at the rate of a week's pay. Sections 221–224 Employment Rights Act 1996 provides a statutory definition of a week's pay. In essence this means a calculation is undertaken using the average pay of a preceding 12-week period. Weeks when no pay was received are not to be counted and if there were any such weeks then the calculation must take into account preceding weeks when remuneration was actually received. All of these principles were agreed and not disputed by the parties.
4. The hourly rate is then calculated by dividing the total remuneration for the reference period by the number of hours worked. There is no dispute that over the relevant period the Claimant received gross earnings of £4,460.76. There is no dispute that he worked 502.75 hours over that period. There is no dispute that that results in an hourly rate of £8.87 per hour.
5. For the two days 31 October and 1 November 2019 the Claimant was entitled to be paid 8 hours for each day i.e. a total of 16 hours. During the course of the Hearing the Claimant and his wife argued that 16 hours i.e. 8 hours a day was not the appropriate calculation. This had not formed part of their case before. I did not agree, and I conclude that the entitlement for paid holidays for those two days is to be calculated using a calculation of 8 hours per day. That is a normal working day as far as the Respondent is concerned. Having determined that the number of hours to be taken into account in calculating holiday pay is 16 hours and taking into account the agreed hourly rate of £8.87 results in a total gross sum due to the Claimant in the sum of £141.92. The Claimant accepted he has received that sum.
6. No other sums therefore are due to the Claimant and as a result his Claim of Unlawful Deduction of Wages (outstanding holiday pay) fails and is therefore dismissed.

Employment Judge M Bloom

Date: 20 October 2020

Sent to the parties on: 20 October 2020

S. Bhudia

For the Tribunal Office