



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr Christopher England

**Respondent:**  
PGM Caravan  
Services Ltd

**Heard at:** Leeds (By Video Link)    **On:** 30 October 2020

**Before:** Employment Judge R S Drake

**Representation:**

**Claimant:** In Person  
**Respondent:** Ms S Holland (HR Manager)

## JUDGEMENT

1. The Claimant has established that he was entitled to unpaid wages for the 69.5 hours worked following furlough for the period 20 to 26 June 2020 and also for 13.7 days holiday pay together totalling £1,611.90, but that he should account for the sum of £1096.34 received on 31 July 2020 when his employment ended. Thus, the Claimant is entitled to and the Respondents shall pay to him the total sum of £515.56 to which extent his claim succeeds.

### REASONS

2. The Claimant attended in person. Initially today I was made aware of an application for postponement by the Respondent on the grounds that their MD had started annual leave on Monday 26 October. I ascertained that they had been put on notice of today's hearing and the means to attend it by notice dated 1 October 2020, despite which their MD took it upon himself to be absent and not make provision for someone else to present the case and give evidence on the company's behalf in his stead.
3. Ms Holland however, on my reviewing these dates and appraising myself of the extent to which the Respondent could be taken to be aware of the

hearing, and explaining I was not sympathetic to any request for postponement, wisely declined to pursue that request. Thus, I had to rely solely on the findings based on evidence from the Claimant given on affirmation and from Ms Holland similarly and a complete absence of any attested documentary evidence of any kind since the Respondents had not filed any documents nor supported it with sworn testimony. I had to base my Judgement on personal testimony from the Claimant and concessions he had to make as to what he accepted he had received on termination of his employment

### **Issues**

4. At the start of the hearing and bearing in mind the parties were not legally represented, I took time and care to articulate the issues which were whether the Claimant could show what hours he had worked but not been paid for and what holiday days he was entitled to claim for but hadn't taken.

### **Facts**

- 5 The Claimant's evidence before me consisted of his claim form and his oral testimony given on affirmation and thus as if sworn on oath. The Respondent provided no documentary evidence apart from an indistinct payslip and little or nothing else apart from the willing and well expressed arguments of Ms Holland, but she was limited in what she could tell me as she isn't a director with legal capacity to give evidence as an officer of the Respondent company.
- 6 I had no reason to conclude that the Claimant's testimony was anything other than genuine so far as he could say, and that I found that it was therefore probative to the required civil law standard. I took on board Ms Holland's well thought out presentation of questions to the Claimant and her submissions made throughout the hearing as to the correct way to interpret what he was saying.
- 7 Thus on the basis of what Ms Holland argued, I could not accept that the Claimant was entitled to claim pay for work done during furlough as well as a furlough payment, but I find that that furlough in his case had ended before he resumed work on or about 20 June 2020.
- 8 The Claimant sought to argue that a final payment made on 30 July 2020 included or comprised a final furlough payment but I find this cannot have been the case since both he and Ms Holland conceded that furlough ended for him on 20 June 2020 when he reported for work as requested by the Respondents. I find that he then did do 69.5 hours work between then and 26 June 2020 which he asserted was to be at a rate net of tax and deductions in the sum of £9 per hour. No credible and legible evidence of this not being the correct net rate was before me.

- 9 I find that on his testimony the Claimant was entitled to 13.7 days holiday accrued through 2020 but though the Respondents asserted that figure should be 11.5 days there was no evidence to support this, so the Claimant's oral testimony was acceptable on a balance of probabilities. Again, on net rates of pay the Claimant's assertion that he should be paid £72 per day is to be preferred as there was no documentary or other evidence to contradict this.
- 10 However, I found that the Claimant had to conceded that whatever he was entitled to receive for unpaid wages for the period 20 to 26 June 2020 and for holiday for the year 2020 he had to give credit for the sum he admitted he received on 30 July when his employment ended i.e. the sum of £1096.34.

### **The Law and its Application**

- 11 The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -
- "(1) An employer shall not make a deduction from wages of a worker employed by him unless –
- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract,
  - or –
  - (b) the worker has previously signified in writing her agreement or consent to the making of the deduction ..."
12. The Claimant must first establish non-payment to him of his daily wage and the quantum thereof. Throughout these proceedings it has been common ground that the Respondents paid only the sum of £1,096.34 as at termination of employment whereas what had accrued and not been paid was £1611.90 so there is a shortfall. In the absence of sufficient rebuttal evidence from the Respondent today, I am able to accept the Claimant's evidence about this aspect of his claim in full.
- 9 Therefore, the Claimant's claim well founded and that he is entitled to be paid the sum of £1,611.90 less £1,096.34 leaving a balance of £515.56 due to the Claimant for which I give him Judgement to which extent his claim succeeds.

Employment Judge R S Drake

Signed 30 October 2020

Note

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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