



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107429/2019**

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**Held in Glasgow on 4 September 2019**

**Employment Judge R Gall**

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**Mr R Hendrie**

**Claimant**

**Guy & Beard Ltd**

**Respondent**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The respondents are ordered to pay to the claimant

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(1) The sum of £675 in respect of holidays accrued but untaken at time of termination of employment of the claimant.

(2) The sum of £900, being 2 weeks' pay, the sum awarded due to the failure by the respondents to give to the claimant a statement of employment particulars, this sum awarded in terms of Section 38 of the Employment Act 2002.

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As stated at the hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The following sets out what was said, after adjournment, at conclusion of the hearing. It is provided for the convenience of parties.

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**E.T. Z4 (WR)**

**REASONS**

1. This case was heard at Glasgow on 4 September 2019. The claimant appeared on his own behalf. Ms Bulloch appeared for the respondents. She is the finance manager with them.
- 5 2. I heard evidence from the claimant and also from Ms Bulloch. The claimant produced a bundle of documents. The respondents produced one document, being their calculation of the sum which they regarded as being due to the claimant. The contents of the claimant's bundle comprised texts and payslips together with some emails. The documents were not challenged and indeed  
10 were accepted as accurate insofar as they comprised the payslips.
3. The claim made was for holiday pay. The claimant worked for the respondents between 3 December 2018 and 2 June 2019. He initially worked as a barber being paid £10 per hour. After 1 April 2019 he was manager with the respondents and was paid at £12 per hour.
- 15 4. There was no written contract of employment between the claimant and the respondents. He was not issued by them with any statement of main terms and conditions of employment. The claimant did receive a folder from the respondents. The respondents did not however explain the contents of that folder nor did they say to the claimant that it contained a contract applicable  
20 to his employment with them. If the folder did contain a contract, it was not a document seen or signed by the claimant.
5. The holiday entitlement of the claimant was 5.6 weeks per annum. This was confirmed by the respondents in correspondence with him.
- 25 6. In terms of the Working Time Regulations 1998, specifically Regulation 13, if it is not stated to the contrary in a relevant agreement, then the holiday year for an employee runs from date of commencement of work by that employee until a year later. The holiday year then renews on the anniversary of commencement of employment of that employee. A relevant agreement requires to be a signed document.

7. In the case of the claimant, there being no relevant agreement, his holiday year commenced on 3 December 2018 and ran until 2 December 2019. In relation to the period involved there is therefore no question which arises of any failure to use holiday or holiday not been carried over.
- 5 8. The entitlement of the claimant was to 28 days holiday during the year. Holiday accrued at the rate of 2.33 days per month. The claimant was employed for 6 months. He has entitlement to 14 days annual leave. During the period of his employment he took 6.5 days of leave. The balance of 7.5 days of leave accrued but was untaken by the claimant at date of termination  
10 of his employment.
9. The claimant worked a nine-hour day. 7.5 days therefore resulted in accrued but untaken leave of 67.5 hours. The claimant sought payment, fairly, at the rate of pay applicable when he was a barber, namely £10 per hour. The sum  
15 due to him in this regard is therefore £675. Judgment for that amount is granted and the respondents are ordered to pay that sum to him.
10. In considering the evidence before me, I had regard to the claimant's evidence and productions, together with the evidence of Ms Bulloch and the respondents' production. Ms Bulloch was unable to say anything in relation to the contract and holiday arrangements from her own knowledge. She did not  
20 produce any document purporting to be the alleged contract. She was not able to give any evidence as to any discussion with the claimant as to holidays. Essentially, and as she said, she was informing the Tribunal of what the director had told her.
11. The respondents' view was that the claimant was due to be paid in respect of  
25 45.75 hours. They said that 28.5 hours of that related to the previous holiday year and was not something in respect of which payment was due. That was on the basis of what they said was in the contract between the claimant and the respondents. That contract was not however produced, as mentioned, and was not said on the evidence to be a signed document. For the reasons  
30 identified above the holiday year therefore ran from date of commencement of employment until one year later.

12. The respondents based the hours which they said the claimant had worked on what they said was the average amount of hours over the last 12 weeks of his employment. Looking at the calculation however of that, which was said by them to result in 45 hours per week, the figure work in fact involved an average amount of hours of 46.7.
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13. Much of the evidence of the claimant was accepted with there being no real challenge to it. I accepted the claimant's evidence on all matters where there was any challenge to it or contradictory evidence put forward. I regarded the claimant's evidence as credible. In relation to the contractual position, he was supported by comments made the document at page 53, an email from the respondents of 6 May 2019. That email referred to a contract of employment in terms which made it clear that no such contract had yet been issued. Even therefore if the holiday year was stated in the contract as the respondents alleged it to have been, it was clear on the evidence of the respondents' own email that such a contract was not in place.
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14. In addition, the claimant had not been permitted to take holidays despite asking. Carry over was therefore be likely to be applicable.
15. Turning to the question of failure to issue a statement of employment particulars, I was satisfied that no such statement had been issued. In terms of Section 38 of the Employment Act 2002 the Tribunal "shall" award an amount unless it is satisfied that exceptional circumstances exist meaning that applying that duty is inequitable. The amount is to be 2 weeks' pay unless the Tribunal was persuaded that it is just and equitable to award 4 weeks' pay.
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16. On the evidence, there was no exceptional reason why an award would not be made. My view was that the minimum amount of 2 weeks' pay would appropriately be awarded. 2 weeks' pay on the basis of 9 hours per day over a ten-day period at £10 per hour amounts to £900. Judgment for that amount is issued. The respondents are ordered to pay £900 to the claimant in respect of the failure to issue a statement of employment particulars to him.

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**Mr R Gall**  
**Employment Judge**

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**05 September 2019**  
**Dated**

**Date sent to parties**

**05 September 2019**