



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant  
MS L SUTTON

AND

Respondent  
FLY FITNESS LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON:    14<sup>TH</sup> DECEMBER 2020

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:-      NO ATTENDANCE

FOR THE RESPONDENT:-    MR R CAMPBELL

## JUDGMENT

The Judgment of the Tribunal is that:-

1. The Claimant's claim for unpaid holiday pay is dismissed.

## Reasons

1. By a claim form presented on 19<sup>th</sup> December 2019 the claimant brought claims of unfair dismissal and unpaid holiday pay. As the claimant had less than two years' service the tribunal did not have jurisdiction to hear her claim of unfair dismissal which was dismissed on 30<sup>th</sup> January 2020.
2. The holiday pay claim was listed for hearing before EJ Salter on 15<sup>th</sup> May 2020 but was converted to a TPH due to the coronavirus restrictions. The claimant did not attend but subsequently provided an explanation for not doing so. The case was

relisted for today via CVP video link which both parties confirmed was suitable. The claimant did not attend this hearing.

3. As a consequence of the claimant not attending there is no primary evidence before me that there is any holiday pay owed. As the burden of proof lies on the claimant to produce this evidence the claim must be dismissed on that evidential ground alone. In any event the claimant's claim is very difficult to follow. Both parties agree that her employment terminated on 4<sup>th</sup> September 2019 but that the respondent agreed to pay her up until the end of the month which it did. The respondent asserts that this was explicitly on the basis that this would include any sums outstanding, which the claimant disputes. The claimant alleges that she had taken no holiday during her employment and was owed eight days pro rata. The respondent alleges that she had already in fact taken ten days and was therefore owed no pay for untaken holiday.
4. If every assumption is made in the claimant's favour, that she was owed eight days untaken holiday and there had been no explicit agreement as the respondent alleges the tribunal is left with the question of whether the claimant has been underpaid. The allegation is one of unlawful deduction from wages in the failure to pay holiday pay due and owing. As at the point of termination she was entitled (on the assumption set out above) to eight days pay in respect of untaken holiday. She was paid for the balance of September 2019 beyond the date of termination, that is eighteen working days. If this includes one week's notice that still leaves thirteen days pay. If the claimant is owed eight days pay (and she makes no other claim) she was necessarily not underpaid in the final payment whether or not the sums were specifically attributable to holiday pay or not. On that basis even had the claimant attended and had I accepted all of her evidence the claimant would on the face of it have had very significant difficulty in any event in proving the claim.

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**EMPLOYMENT JUDGE CADNEY**  
**Dated: 15th December 2020**

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