



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107835/2020 (V)

Held via Cloud Video Platform (CVP) on 17 February 2021

Employment Judge Murphy (sitting alone)

Morag Murphy

**Claimant
In person**

Caledonian Installs Ltd

**Respondent
No appearance and
no representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Respondent made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the Claimant the sum of £330.77 (gross) in respect of 4.3 days' wages relating accrued untaken holiday outstanding on the termination of her employment on 13 September 2020.
2. The sum awarded in item 1 above is expressed gross of tax and national insurance. It is for the Respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

REASONS

Introduction

1. The Claimant brought a claim for unauthorised deductions from her wages following the termination of her employment on 13 September 2020. The Claimant received no payment in lieu of accrued annual leave on the termination of her employment. The Claimant made a claim for the unpaid holiday pay.

2. A Notice of this claim and hearing was sent to the Respondent on 18 December 2020. The notice specified the hearing date and time. The Respondent entered a response to the claim on 13 January 2021 indicating an intention to defend the claim. The tribunal clerk sent emails to the Respondent on 3 and 15 February 2021 to arrange a CVP test in advance of the hearing. No reply was received.
3. The Clerk telephoned the Respondent's Ms Macken on 16 February and spoke to her. With Ms Macken's agreement, she scheduled the CVP test for 14.00 on 16 February 2021. Ms Macken did not participate at the appointed time and made no further contact with the tribunal. The Clerk sent Ms Macken the necessary link and pin to participate in the hearing on 17 February 2021. Ms Macken did not join the video conference at 11 am. The beginning of the hearing was postponed until 11.10 am but Ms Macken did not join the hearing then or at all. The hearing proceeded in her absence.

Issue

4. Did the Respondent unlawfully deduct a sum from the Claimant's final wages in September 2020 wages by omitting to pay her in lieu of accrued untaken holiday under the Working Time Regulations 1998 ("WTR")?

Findings in Fact

5. The Claimant was employed by the Respondent from 21 July 2020 as an Admin and Sales Executive. She was latterly employed on a salary of £20,000 per annum. She was not provided with a written contract of employment or statement of particulars.
6. She was required to work 5 days per week from 9.30 am to 5 pm. She was occasionally asked to work overtime at the weekend at a different site location. She was due to work overtime on Saturday 5th September 2020. She approached her manager, the Respondent's Sharon McCracken, on Friday 4th September to request the keys needed to access work the following day.
7. The Claimant had taken no annual leave throughout the period of her employment.
8. Ms Macken told her that she would not be required to work the following day and indeed that she did not think the Claimant's employment with the Respondent was working

out. The Claimant was shocked and asked Ms Macken to reconsider. Ms Macken agreed to do so and undertook to telephone the Claimant on Sunday 6th September 2020 to advise of her decision.

9. On Sunday 6th September, Ms Macken phoned the Claimant and confirmed that she was terminating the Claimant's employment. She advised she was giving the Claimant one week's notice, which she did not expect the Claimant to work. There was no mention of holidays during the call.
10. The Claimant did not work from Monday 4th to Friday 11th September 2020, at the Respondent's request.
11. The Claimant received her final pay slip and P45 by post from the Respondent. It was then that the Claimant appreciated that she had received no payment in lieu of accrued untaken holidays. The Claimant emailed the Respondent on 12th September 2020 to query the position. The Respondent declined to make any further payment.

Relevant Law

12. Under Reg 14 of the Working Time Regulations 1998 ("WTR"), employees are entitled to accrued untaken holiday outstanding at the date of termination. Under Regulation 15 of WTR, an employer may require the worker to take leave on particular days by giving notice, specifying the days on which it is to be taken and twice as many days in advance of the number of days' leave being notified (R15(2), (3) and (4)).
13. There are restrictions on contracting out of the rights regarding annual leave under the Working Time Regulations (WTR 1998 R35). Any agreement is void in so far as it purports to exclude or limit the operation of the respective legislation unless specified stringent conditions are satisfied. In **Whitley and District Men's Club v Mackay** [2001] IRLR 595, the Employment Appeal Tribunal ruled that a contractual term in that case stating that no payment in lieu of outstanding leave would be made in the event of the employee's dismissal for gross misconduct was void in consequence of Regulation 35 of WTR 1998. Employers cannot contract out of the obligation to pay in lieu of accrued statutory leave on the termination of the employment, as required by R14 of WTR.

14. A failure to pay in lieu the worker's entitlement in whole or in part can be enforced by way of a claim for an unauthorised deductions from wages under section 13 of the Employment Rights Act 1996.

Discussion and Decision

15. On the facts found, notice to terminate employment was served on 6 September 2020 and expired on 13 September 2020. The Claimant did not take any annual leave throughout her employment prior to the service of notice.
16. The Respondent did not give notify the Claimant of a requirement to take annual leave during the one-week notice period which began on 6th September 2020 in accordance with the requirements of Regulation 15 of the WTR, or at all. The Respondent told the Claimant not to attend work that week but did not provide notice that any part of that period would be nominated as annual leave.
17. All leave accrued under the WTR throughout the brief period of the Claimant's employment, therefore, remained untaken when her employment terminated on 13 September 2020. She was entitled, under R 14 of WTR to be paid in lieu of that leave.
18. She was employed for a total of 7.9 weeks, during which she accrued 4.3 days' annual leave under the WTR. Her gross daily salary was £76.92. She was therefore entitled to a payment of £330.77 (gross) in respect of accrued untaken annual leave.
19. The Respondent made an unauthorised deduction of this sum from the Claimant's final pay in September 2020.

Employment Judge: Lesley Murphy
Date of Judgment: 17th February 2021
Entered in Register: 27th February 2021
Copied to parties