



EMPLOYMENT TRIBUNALS

Claimant: Mr M Zubair

Respondent: Concentrix CVG Intelligent Contact Limited

HELD AT: Liverpool (by CVP) **ON:** 23rd November 2020

BEFORE: Employment Judge Peck
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms J Bradshaw, HR Business Partner

JUDGMENT having been sent to the parties on 19 December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issues and Claims

1. By an ET1 form received by the Tribunal on 25th February 2020, the claimant brought claims against the respondent for unfair dismissal, notice pay, holiday pay and arrears of pay. The claimant had been initially dismissed by the respondent on 17th June 2019, following a period of ill-health absence, but on 16th September 2019 this decision was overturned and he was reinstated and returned to work. He was subsequently dismissed by the respondent on 29th November 2019, by reason of redundancy.

2. The respondent submitted its response to the claimant's claims and a preliminary hearing (case management) took place by telephone on 25th June 2020, at which the claims and issues were identified. These were considered and discussed at the outset of the final hearing.

3. The first issue to be determined concerned the payment that the claimant received from the respondent for the period between his initial dismissal and his

reinstatement (17th June 2019 to 16th September 2019). The claimant asserted that he should have been paid his full salary for this period and that this is what he had been told would be the case. The respondent paid him only statutory sick pay (SSP) for this period.

4. In its response and at the preliminary hearing, the respondent asserted that the claimant was not fit for work during this period and that no pay was owing. The claimant denied that he was unfit for work during this period.

5. However, at the outset of the final hearing and in its witness evidence, the respondent indicated that it was no longer asserting that the claimant was unfit during this period. The respondent accepted that the claimant was therefore entitled to receive full pay for 12 weeks. The respondent made a payment in respect of the shortfall on 9th November 2020 in the amount of £380.58 net. The claimant's position at the final hearing was that he did not believe that this fully covered the shortfall in payment, his assertion being that the total amount owing for this period would be in the region of £2,400.00 (£200 gross per week). The issue to be determined was therefore:

- a. What was the amount of wages properly payable to the claimant for the period 17th June 2019 to 16th September 2019?
- b. How much was actually paid to the claimant?
- c. Did the respondent make an unlawful deduction from the claimant's wages and if so, how much was deducted?

6. The next issue related the claimant's alleged entitlement to be paid for 2 weeks' work in October 2019, to be paid on 8th November 2019. The claimant asserted that he received pay for only 1 hour's work, when he believed he was due to be paid for 48 hours' work (2 weeks).

- a. What was the amount of wages properly payable to the claimant for work undertaken in October 2019 (payable on 8th November 2019)?
- b. How much was actually paid to the claimant?
- c. Did the respondent make an unlawful deduction from the claimant's wages and if so, how much was deducted?

7. The final issue to be determined was whether, when the claimant's employment terminated on 29th November 2019, he was paid all that he was entitled to in respect of accrued but untaken annual leave. The claimant asserted that he was entitled to pay in lieu of approximately 180 hours' holiday but was only paid for 30 hours. At the preliminary hearing, the respondent acknowledged that the claimant had not yet been paid all that he was due for accrued but untaken leave and, at that time, it believed the correct figure equated to 8.99 hours. On 6th November 2020, the respondent made a payment to the claimant in lieu of 14.27 hours' holiday. At the final hearing, the respondent's position was therefore that there was no payment owing to the claimant in respect of accrued but untaken holiday on termination.

- a. When the claimant's employment terminated on 27th November 2019, was he paid all that he was entitled to in respect of accrued but untaken annual leave?
- b. If not, has he now been paid his full entitlement?

8. The claimant's unfair dismissal claim was dismissed on withdrawal at the preliminary hearing (case management) on 25th June 2020.

9. The claimant's breach of contract claim, in relation to his payment in lieu of notice, was dismissed on withdrawal at the final hearing.

Procedure, documents and evidence heard

10. I had sight of the claimant's ET1 and the respondent's ET3. I was also provided with a bundle of documents, which ran to 54 pages and which included copies of the claimant's payslips for the period from February 2018 to November 2019.

11. In terms of oral evidence, I heard evidence from the claimant for himself and from Ms Jane Bradshaw (People Solutions Senior Manager / Business Partner) for the respondent.

12. A witness statement was provided for Ms Bradshaw, but the claimant failed to comply with the Case Management Order dated 13th July 2020 and had not prepared a witness statement in advance. The claimant's ET1, which was expanded upon orally, therefore formed his witness statement.

13. The claimant stated that he had not had sight of Ms Bradshaw's witness statement in advance of the hearing, nor had he received a copy of the bundle of documents. Copies were therefore provided to him and there was a break in proceedings in order that he could review these prior to giving evidence.

Findings of Fact

14. The claimant was an employee of the respondent. He was employed in a sales role from 30th May 2006.

15. The claimant was initially employed on a full-time basis.

16. At some point, the claimant moved to part-time working. The claimant's ET1 stated that he was employed to work 24 hours per week. However, the claimant's oral evidence was that he usually worked 2 shorter days and 1 longer day. His payslips showed that he was paid 7.5 hours for a working day, but he also received overtime and was required to use 8 hours to take a day's holiday. Taking into account this information and also the calculation of his payment in lieu of notice (which was not in dispute), I found that the claimant was employed to work 23 hours per week.

17. The claimant was paid £8.21 gross per hour and was paid on a fortnightly basis, earning £377.66 gross every two weeks.

18. The maximum holiday entitlement for part-time employees of the respondent (which included the claimant) was 21 days. Considering the claimant's working hours, he therefore accrued in the region of 161 hours of holiday in a full holiday year.

19. On 17th June 2019, the claimant's employment was terminated by the respondent following a period of ill-health absence. I made no findings of fact regarding that dismissal, save as to say that this decision was subsequently overturned by the respondent.

20. As at the initial termination of his employment on 17th June 2019, the respondent calculated that the claimant had 105.07 hours of accrued but untaken holiday. On 5th July 2019, the claimant received a payment in lieu of this accrued holiday in the amount of £862.62 gross (£8.21 per hour, 105.07 hours).

21. On 16th September 2019, the claimant was reinstated.

22. Had the claimant received his normal pay for the period from 17th June 2019 to 16th September 2019, he would have received £2,265.96 gross (£8.21 per hour, 23 hours per week, 12 weeks). The respondent accepted in its oral evidence that this amount was properly payable to the claimant.

23. On 27th September 2019, for the period from 17th June 2019 to 16th September 2019, the respondent made a retrospective payment to the claimant for the pay that he would have received had his employment not been terminated, as if he had been off sick during this time. He was paid SSP amounting to £1,131.00 gross (£188.50 per fortnight).

24. There was therefore a shortfall in this payment of £1,134.96, equating to the net amount of £892.00 (by reference to the respondent's witness statement).

25. The respondent sought to argue, in its oral evidence, that a payment was made to the claimant in October 2019 to address this shortfall. I found this not to be the case. At the preliminary hearing on 13th June 2020, the respondent's position was that the claimant was not fit to attend work during the reinstatement period and that he was entitled to SSP only with no amounts owing. For a payment to have been made in October 2019, prior to this, would be inconsistent with this chronology.

26. The claimant was absent from work due to ill health from 16th October 2019 onwards.

27. On 8th November 2019, the claimant was paid for the 2-week period starting on 16th October 2019. He received pay for 1 hour's work in the amount of £8.21 gross. He was not paid any SSP for this period.

28. The respondent asserted that the claimant had not submitted a fit note for this period and that he was therefore not entitled to SSP. The claimant's evidence was that he had provided the relevant information to the respondent regarding his absence and that SSP ought to have been payable. No documentary evidence was provided by either party for me to consider. I took into account the claimant's witness evidence and balanced this against the evidence of Ms Bradshaw, whose evidence

was that she did not know why the claimant received only £8.21 gross pay for this period.

29. I found that the claimant was entitled to SSP for the 2-week period starting on 16th October 2019.

30. On 29th November 2019, the claimant's employment was terminated by the respondent by reason of redundancy.

31. During the period from 17th June 2019 up to the termination of the claimant's employment on 29th November 2019, the respondent calculated that the claimant had accrued 73.33 hours of holiday. On the basis that the claimant had been paid in lieu of 105.07 hours for the period up to 17th June 2019 and given that his annual holiday entitlement amounted to in the region of 161 hours, I accepted the respondent's calculation of holiday owing and found that the claimant had therefore accrued 73.33 hours for this period.

32. During this period (from 17th June 2019 to 29th November 2019), the claimant took 23 hours' holiday.

33. On termination of his employment, the claimant was paid in lieu of 30.55 hours' accrued but untaken holiday.

34. After the preliminary hearing (case management) on 25th June 2020, the respondent made the following further payments to the claimant:

- a. On 6th November 2020, the claimant was paid in lieu of a further 14.27 hours' accrued but untaken holiday.
- b. On 6th November 2020, a payment was made to the claimant to reflect a shortfall in pay during the reinstatement period in the amount of £380.58 net. In its oral evidence, the respondent accepted that its calculation of this shortfall was incorrect.

The Law

35. Section 13(1) of the Employment Rights Act 1996 provides that:

"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 worker's contract, or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

36. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to section 23 of the Employment Rights Act 1996.

37. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not

reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

38. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which employment ends. There will be an unauthorised deduction from wages if the employer fails to pay the worker on termination of employment in lieu of any accrued but untaken leave.

Decision

Wages for period 17th June 2019 to 16th September 2019

39. For the period from 17th June 2019 to 16th September 2019, the claimant was entitled to receive full pay and the amount of wages properly payable to him was £2,265.96 gross (£8.21 per hour, 23 hours per week, 12 weeks' pay).

40. The claimant received a payment of £1,131.00 gross (by way of SSP) on 27th September 2019, leaving a shortfall of £1,134.96 gross (£892.00 net).

41. The claimant received a further payment of £380.58 net on 9th November 2020, equating to a gross payment of £468.25.

42. The respondent therefore made an unauthorised deduction from the claimant's wages and was ordered to pay the claimant the gross sum of £666.71 (£2,265.96 shortfall less £1,131.00 paid on 27th September 2019 and £468.25 paid on 9th November 2019).

Wages for the 2-week period commencing 16th October 2019

43. In relation to the payment made to the claimant on 8th November 2019, which covered the 2-week period commencing 16th October 2019, having found that the claimant was off sick and was entitled to SSP, the amount properly payable was £188.50 gross.

44. The claimant was paid £8.21 gross on 8th November 2019.

45. The respondent therefore made an unauthorised deduction from the claimant's wages and was ordered to pay the claimant the gross sum of £180.29 (£188.50 less £8.21).

Accrued holiday pay

46. Finally, in relation to the claimant's accrued holiday, the claimant had accrued 73.33 hours' holiday for the period from 16th June 2019 to 29th November 2019. He had taken 23 hours as holiday during this period and the amount of holiday pay properly payable to the claimant on termination was therefore £413.21 gross (73.33 hours less 23 hours taken, being 50.33, £8.21 per hour).

47. The respondent paid the claimant £367.97 gross in lieu of accrued but untaken holiday (30.55 hours, £8.21 per hour, paid on 29th November 2019 and 14.27 hours, £8.21 per hour, paid on 9th November 2020).

48. The respondent therefore made an unauthorised deduction by failing to pay the claimant in lieu of 5.51 hours of accrued but untaken holiday, amounting to £45.24 gross (5.51 hours, £8.21 per hour).

Employment Judge Peck

Date: 3rd March 2021

REASONS SENT TO THE PARTIES ON

11 March 2021

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