



EMPLOYMENT TRIBUNALS

Claimant: Miss P Williams

Respondent: Unity Plus Healthcare Ltd

Heard at: Leeds (by CVP) **On:** 4 March 2021

Before: Employment Judge Parkin

Representation

Claimant: In person

Respondent: Mr M Patton, Finance Manager

JUDGMENT

The Judgment of the Tribunal is that:

- 1) By consent, the respondent is ordered to pay the claimant the sum of £239.61 net, as holiday pay (or compensation for accrued paid annual leave pursuant to Regulation 14 of the Working Time Regulations 1998); and
- 2) Contrary to the statutory requirements under Section 1 of the Employment Rights Act 1996, the respondent failed to provide the claimant with a full Statement of Particulars of employment within 2 months of her commencing employment. Accordingly, the respondent is ordered to pay the claimant two weeks' pay in the sum of £648.00, pursuant to Section 38 of the Employment Act 2002.

REASONS

1. The claimant presented her ET1 claim on 30 July 2020, claiming outstanding holiday pay in relation to her employment as a Community Support Worker which she said had terminated that day. The respondent resisted her claim in its response and grounds of resistance contending that she was on a "zero hours" contract and that it only paid holiday pay quarterly in arrears after the entitlement to it accrued. It did not expressly contend that she was an agency worker not an employee, but maintained that it had never terminated her

employment. There was a case management hearing before Employment Judge Lancaster on 4 January 2021 and the Judge carefully identified the issues at paragraphs 3 to 13 of the Case Management Summary and Orders sent out that day.

2. This hearing was a virtual hearing by CVP (as signified by Code V above); there were some internet connection and audibility difficulties and during the course of the hearing electronic documents needed to be provided to the Judge, who was working remotely. The parties agreed at the outset that EJ Lancaster's identification of issues was correct. The claimant accepted that she had received £280.04 net holiday pay from the respondent towards the sums she claimed were outstanding and the respondent then confirmed that it would pay her an additional amount, in accordance with the total calculation by EJ Lancaster at paragraph 11, and apologised to her for the difficulties over holiday pay. The £280.04 net paid earlier represented a payment of £312.00 gross, leaving a balance of £319.80 gross, £239.61 net to be paid. Accordingly, the Tribunal made an order that the respondent pay the claimant the net balance of £239.61 (on the basis that it will account to HMRC for her tax and National Insurance deductions based on the gross figure of £319.80).

3. All that remained for determination by the Tribunal was whether an uplift or penalty should be ordered pursuant to section 38 of the Employment Act 2002 for non-compliance by the respondent with its duty to provide a Statement of Particulars as required under section 1 of the Employment Rights Act 1996. As to this, the claimant gave oral evidence on affirmation confirming the content of her witness statement and also disputing that a scanned document provided by the respondent contained her signature. The respondent declined the opportunity to give evidence orally by its representative Mr Patton or director Mr Adam Lyle but relied upon the content of a scanned document "Unity Plus – Contract of Services". This appeared to be an Agency Worker contract, apparently signed by the claimant on 24 February 2020. Whilst the Tribunal found the claimant may have signed this document, it found that it did not represent the contract entered into by the claimant which was a contract of employment with the respondent not an agency worker contract and moreover that no copy of it or any contract was ever provided to the claimant. Indeed, when the claimant requested a copy of her contract from Mr Lyle, he told her that the respondent had completed the wrong contract and he would prepare the correct one for her; he never did so within the first two months of her employment (which commenced on 26 March 2020) or at all. Finally, as the respondent's representative acknowledged, the document did not state clearly or at all the hours to be worked by the claimant, whether "zero hours" or otherwise. In these circumstances, the Tribunal found that the respondent did not comply with its duty to give a written statement of the necessary particulars under section 1(3) and (4) ERA 1996 to the claimant within

Case No: 1804424/2020

Code V

two months of her commencing employment. The Tribunal therefore ordered the respondent to pay her the lesser award of two weeks' pay pursuant to section 38 of the Employment Act 2002. Her week's pay for 32 hours in the weeks she worked was £324.00 and the respondent is thereby ordered to pay the claimant the sum of £648.00.

Employment Judge Parkin

Date: 5 March 2021