



# THE EMPLOYMENT TRIBUNALS

**BETWEEN**

**Mr De-Reece Patterson**

***Claimant***

**AND**

**Capitol Seafoods Limited**

***Respondent***

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**REGION:** London Central

**ON:** 18 February 2021

**EMPLOYMENT JUDGE:** Mr Paul Stewart

**MEMBERS:** sitting alone

### ***Appearances:***

**For Claimant:** in person

**For Respondent:** did not appear and was not represented

### **JUDGMENT**

It is ordered that the Respondent do pay to the Claimant the sum of £1,432.95 being the sum of the following:

1. £1,276.63 holiday pay that was outstanding and owing upon termination; and
2. £156.32 arrears of pay outstanding from March 2020 and owing upon termination.

### **REASONS**

1. The hearing was a remote public hearing, conducted using the Cloud Video Platform (CVP) under rule 46. The tribunal considered it as just and equitable to conduct the hearing in this way.
2. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.
3. A party attending would have been able to hear what the tribunal heard. From a technical perspective, there were no difficulties.
4. No requests were made by any members of the public to inspect any witness statements or for any other written materials before the tribunal.
5. Following the order dated 21 January 2021 and the service upon the Claimant of the letter pursuant to Rule 37 warning him that consideration is being given to striking out the claim on the basis that it is not actively being pursued, the Claimant indicated by email dated 15 February 2021 that he wished to proceed with the claim. Consistent with that indication, he attended by CVP the hearing conducted today. The Respondent did not appear and was not represented.

6. I heard evidence from the Claimant. In his ET1, he had written the following:

I was called in at the start of July late June to be told by Leslie iron man that I would be made redundant because I didnt contact the company through the redundancy period, cause I had lost my phone at the end of this furlough scheme I would be let go. I was told I would receive my holiday pay they weren't sure of the amount of days I had left or the amount with my last pay check.

When I got payed my last pay at the end of July I only recieved my normal pay I called up to discuss this and was told I had taken all my holiday in July and so I didnt have any holiday left even though I had booked holiday for September so I wouldnt of been able to take any holidays. This was obviously an attempt to do the workers out of their holiday pay when they have left. In the month before furlough I had some days off but also did overtime and was told instead of deducting one and adding overtime they would just cancel out the two against eachother I think it was about 18 hours and I missed two days these days were still deducted from my wages.

As far as is my understanding I had to be told in advance by the company the number of days holiday they wanted me to take, when they wanted this to start from and also tell me double the amount of time before for the length of time of which amount of days they want me to take so if it was 13 days they would have to tell me 26 days before the start of the 13 days none of this happened. And thus this is an obsolete excuse to withhold my holiday pay.

7. He augmented this account in his oral evidence.
8. He had worked for the Respondent from 15 August 2019 until 20 July 2020. Initially, he was employed through an agency but then he transferred into the direct employment of the Respondent. He never had a contract informing him the number of days of holiday per year to which he was entitled but he understood from others with whom he worked that the standard contract allowed the employee 28 days holiday per year (additional to bank holidays).
9. He earned £1,700 per month net. His working week comprised 5 days. His net income over 12 months was therefore £20,400. He did not work Saturdays or Sundays. Therefore, to obtain his daily rate, we divide his annual net pay by 261 (that is, 365 less 104). Thus, his net pay per day was £78.16.
10. During February 2020, the Claimant took a couple of days off which he was reluctant to have treated as holiday. He was told that, if he worked a couple of hours overtime a period of two weeks, the overtime would be treated as being the two days he had had off and his money will be the same. However, in his March pay, there was shortfall equivalent to two days' pay. He claims those two days pay which amounts to £156.32.
11. He received the message he was being placed on furlough on 23 March 2020. He had worked his normal full hours during March until 22 March. From 23 March, he was on furlough through to July 2020. For April through to June 2020, he received 80% of his wages. He corrected something he had written in his ET1: it was not during the redundancy period that he was told he had not contacted the Respondent and therefore was being made redundant but during the furlough period.
12. The Claimant intended to take some days' holiday in 2020 during April, August and September. However, he was told during furlough that all holiday to which he was entitled had been cancelled because, it was said, it was unfair for him accumulate holiday during furlough. His final month's pay – for July 2020 – was his full pay but he received no holiday pay.

13. The Claimant had taken maybe 4 or 5 days holiday during 2019. He received a bonus of £200 at the end of the year. He did not receive money for the days of holiday he had not taken during 2019. Other than the two days he had taken off in February 2020 and in respect of which he had worked overtime to avoid those days being treated as holiday, he had not had any holiday days before the termination of the employment.
14. Therefore, on termination of his employment, the Claimant had worked 7 months in 2020. He was therefore entitled to be paid 7/12ths of 28 days holiday pay which would be 7/12ths of 28 x £78.16 = £1,276.63. He did not receive any holiday pay on termination.
15. In my judgment, the Claimant is owed a total of £1,432.95 comprised of two days' pay of £156.32 that he should have been paid, but was not, in March 2020 and holiday pay of £1,276.63.
16. I recognise that the figures quoted above differ slightly from those I quoted to the Claimant during the hearing. The calculations I did at the time have not survived, hence I have repeated the calculations showing each step undertaken.

**Signed:**

Paul Stewart  
**EMPLOYMENT JUDGE**

**On:**

21 March 2021

**DECISION SENT TO THE PARTIES ON**

**22/03/2021.**

**AND ENTERED IN THE REGISTER**

**FOR SECRETARY OF THE TRIBUNALS**