



# EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case Number: 4104877/2020

Hearing held at Glasgow on 27 November 2020

Employment Judge D Hoey

10

Miss Jessica Douglas

Claimant  
Represented by:  
Herself

15

20

Roberto & Sons Limited

Respondent  
Represented by:  
Not present nor  
represented

25

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The respondent shall pay to the claimant holiday pay amounting to the gross sum of **TWO HUNDRED AND NINETY THREE POUNDS AND SEVENTY SIX PENCE (£293.76)** (less deductions required by law) in respect of untaken and unpaid holidays due to the claimant pursuant to regulation 14 of the Working Time Regulations 1998.

30

## REASONS

35

1. The claimant lodged a claim for holiday pay on 17 September 2020 with early conciliation being commenced on 31 July 2020 with a certificate issued on 18 August 2020.

2. No response form had been lodged by or on behalf of the respondent but the company had written to the Tribunal alleging that the claimant had been kept on payroll during lockdown only to find the claimant decided to leave (and seek to encourage others to do so). No request had been made for holiday pay until after the P45 had been issued. The respondent also took issue with the claimant's suggestion that she was due £297.90 by way of holiday pay (which was what she had stated in her ET1) and argued at best she would only be due 16 hours at £9 (£144). That would be a week's pay.

5  
10

3. The respondent was given further time to lodge an ET3 and seek an extension of time (in accordance with rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. No response was lodged by or on behalf of the respondent. The claim is therefore proceeding as undefended.

15

4. The parties were advised of this hearing and the arrangements to participate. The respondent indicated that it would not attend nor arrange for representation. The respondent was of the view that the claimant was taking advantage of the fact it was a small business. No application was made for a postponement.

20

5. The issues to be determined were therefore what, if any, holiday entitlement had accrued to the claimant during her time with the respondent and what, if any, sums should be awarded to her.

25

### **Facts**

6. I am able to make the following findings of fact from the evidence presented to the Tribunal.

30

7. The claimant began her employment on 19 February 2020. The claimant's employment ended on 2 July 2020. She had therefore worked 19 weeks which is 0.365 of a year (19 divided by 52).

5 8. The claimant's gross weekly wage was £144 (16 hours at £9 an hour), which was the same as her net weekly wage.

9. As at the end of her employment she had worked 0.365 of a year.

10 10. She had therefore accrued 0.365 of 5.6 weeks by way of holidays, namely 2.04 weeks.

11. The claimant had taken no holidays during her time with the respondent.

15

### **Law**

12. The law in this area stems from the Working Time Directive and is found in the Working Time Regulations 1998. Regulation 13 sets out the entitlement to annual leave, namely 4 weeks per year. Regulation 13A sets out the entitlement to the additional leave period of 1.6 weeks a year. Thus all workers are entitled to 5.6 week's leave per year.

20

13. Regulation 14 deals with the calculation of pay where holidays have accrued and remain untaken as at the end of employment. It contains a formula to calculate what is due as at the end of employment (essentially the proportion of untaken leave that has accrued to the relevant date) and requires the employer to pay to the employee a payment in lieu of the leave that has accrued (where the amount of accrued leave is more than the amount taken).

25

30

### **Discussion**

14. Entitlement to holidays is governed by the Working Time Regulations 1998 and is a matter of law, unless the contract of employment provides a greater entitlement. There was no such supplement in this case and the claimant's entitlement is what the law provides by way of holidays.
- 5
15. Although the respondent was not present and chose not to participate in the hearing, I did take into account the arguments that had been presented to the Tribunal in assessing the claimant's claim by the respondent.
- 10 16. The claimant had worked for 0.365 of a year. As a matter of law she had accrued holidays amounting to 0.365 of the annual entitlement (5.6 weeks) which is 2.04 weeks.
- 15 17. While the claimant may have been placed on furlough during part of her employment, that does not alter her accrued holiday entitlement. Guidance in this regard can be found: <https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19>.
- 20 18. Holiday entitlement accrues during any period when a worker is still engaged by an employer even if they are placed on furlough and holiday entitlement is calculated as per the normal wages due to the claimant. Accrued holidays are therefore calculated in the normal way, irrespective of being placed on furlough since the contract of employment continues. There was no evidence in this case to suggest that the claimant had taken any holidays or that the above figures are incorrect.
- 25
- 30 19. I have also taken into account the respondent's comments that the claimant left her employment and did not seek holiday pay. As a matter of law, holidays accrue during the period when the relationship is in existence. There did not appear to be any dispute by the respondent that the claimant had not taken any holidays during her time with the respondent. While the respondent may not be comfortable with the way in which the claimant left her employment, or

by the fact she did not ask for holidays sooner, ultimately entitlement to holidays is governed by law which I must apply.

5 20. In light of the facts and applying the law, the claimant had accrued holidays during her time with the respondent. She had not taken any holidays. Her rate of pay is not in dispute nor is her working hours.

10 21. Applying the legal principles set out in the Working Time Regulations 1998, the claimant had accrued 2.04 weeks' worth of leave. As she had not taken any leave during her employment, she is entitled to be paid a sum reflecting the accrued holiday entitlement.

15 22. Her accrued holiday entitlement is  $2.04 \times \text{£}144$  which is  $\text{£}293.76$ . That is the gross sum and any statutory deductions (such as tax or national insurance) require to be deducted. That is the sum to which the claimant is entitled by way of accrued holiday pay pursuant to regulation 14 of the Working Time Regulations 1998.

20 23. The claimant is therefore due the gross sum of  $\text{£}293.76$  by way of accrued holiday pay (less any deductions required by law) and the respondent is ordered to pay her that sum.

25 Employment Judge: David Hoey  
Date of Judgment: 27 November 2020  
Entered in register: 01 December 2020  
and copied to parties