



EMPLOYMENT TRIBUNALS

Claimant: Mark Anthony Matthews

Respondent: Alliance Automotive UK LV Limited

Heard at: Newcastle (by CVP)

On: 9 March 2021

Before: Employment Judge B N Speker OBE DL

REPRESENTATION:

Claimant: In person

Respondent: Mrs Tracy Noble, HR Director

Upon application made by letter by the respondent on 7 January 2021 to reconsider the Judgment entered on 13 November 2020 under rule 71 Employment Tribunals Rules of Procedure 2013, and upon hearing Mrs Noble on behalf of the respondent and the claimant in person:

JUDGMENT ON RECONSIDERATION

The judgment on 13 November 2020 is varied as follows:

- (1) The respondent shall pay to the claimant holiday pay entitlement in the sum of £121.45.
- (2) The heading of this claim shall be amended to show that the respondent is Alliance Automotive UK LV Limited of 2 Eskan Court, Campbell Park, Milton Keynes, MK9 9AN .

REASONS

1. At this reconsideration hearing the claimant attended in person and the respondent was represented by Mrs Tracy Noble, HR Director.

2. On 13 November 2020 a judgment was entered in favour of the claimant to the effect that the respondent would pay to him in respect of his holiday entitlement the sum of £426.45. That judgment was entered on the basis of submissions made by the claimant. No response had been filed by the respondent and there had been no communication from the respondent.

3. Following that judgment there was a communication from Tracy Noble on behalf of the respondent stating that the company had not received any documents from the Tribunal and that the company named as respondent, namely H Coulthard & Sons Limited, had been taken over by Alliance Automotive Group and had moved from 23 Peel Street, Bishop Auckland, County Durham (the address shown on the Judgment), and that the new address of the company was 2 Eskan Court, Campbell Park, Milton Keynes, MK9 9AN. It was stated that the respondent had been totally unaware that a claim had been submitted and had not seen the papers, and therefore had not had the opportunity of submitting a response.

4. In advance of this reconsideration hearing the respondent had submitted a form of response as well as written submission, copy payslips and other correspondence.

5. With regard to the failure to file notice of response Mrs Noble apologised and explained that although it had been arranged to put in place mail forwarding facilities through the Post Office, the Branch Manager had failed to implement this and that the consequence was that the respondent had not received the papers. Although they had been contacted under the ACAS Early Conciliation procedure, this did not indicate that the claimant would necessarily be pursuing a claim. There are other cases where individuals commence early conciliation but if this is not successful they do not necessarily proceed. Mr Matthews commented to the effect that he would have expected the company to be aware of the Tribunal correspondence bearing in mind that there were still vehicles calling at the old premises as part of the move.

6. Taking into account these representations, I find that there was an unfortunate but innocent failure by the respondent to put in place efficient arrangements so that they would have received the correspondence. It was regrettable that the failure had meant that these proceedings have been prolonged. However, applying the overriding objective and the need to do justice between the parties, it is necessary to take steps to hear from both sides. Although it is an inconvenience for Mr Matthews for the case to be effectively reopened following a judgment having been entered, I find that it is just, proportionate and reasonable to do so in order that the respondent may put before the tribunal its evidence and submissions with regard to the claim being made. Therefore, I allow the application for the judgment to be reconsidered and for me to hear the submissions and evidence from the respondent and for the claimant to be able to comment upon them.

7. The points which the respondent would wish to make in answer to the judgment entered for the claimant in the sum of £426.45 amounting to a shortfall of holiday pay were as follows:

- (1) The respondent maintains that the claimant had been paid effectively for seven days holiday during the period from 1 January 2020 to 26 June 2020:

- (a) 1 January 2020 (Bank Holiday);
 - (b) 19 February 2020;
 - (c) 10 April 2020 (Bank Holiday);
 - (d) 13 April 2020 (Bank Holiday);
 - (e) 8 May 2020 (Bank Holiday);
 - (f) 25 May 2020 (Bank Holiday);
 - (g) 22 June 2020.
- (2) Mrs Noble submitted that the Bank Holidays shown were remunerated within the payslips produced and that Bank Holidays fell as part of the normal month's pay and would never be shown separately on a payslip. The claimant had effectively been remunerated for these.
- (3) As to the two non-Bank Holiday days, the company's position was that 19 February 2020 was a day's holiday which was confirmed by tachograph evidence produced to the tribunal showing that Mr Matthews' vehicle had not moved from his home for the whole of that day.
- (4) As to 22 June 2020, this was a day where the company recorded that Mr Matthews had asked for holiday and taken it.
- (5) The company conceded that there had been shortfall in relation to payment for the Bank Holidays in that those which occurred during the furlough period had been remunerated only at the rate of 85% whereas they should have been paid at 100%; therefore, the shortfall due to the claimant amounted to £43.84.
- (6) Mrs Noble also submitted that there was an overpayment to the claimant when he was paid his final salary which showed holiday pay in the sum of £555.90 and that this was an overpayment in the sum of £12.64 or thereabouts.

8. Mr Matthews submitted that he could not see how he had been paid for his holiday pay because these were not shown separately on the relevant payslips for January, April and May. Therefore he considered that the number of days in relation to which he had not been paid holiday pay was as he had stated.

9. As to the two days of actual holiday, Mr Matthews disputed these. With respect to 19 February, he had no records of this but did not accept that the evidence produced that his vehicle had not moved was an indication that he had had a day's holiday. As to 22 June, this was a Monday. He had been contacted on Friday 19 June by his manager at a time when he was on furlough asking if he could return to work on Monday. He had said that this might be inconvenience at such short notice as he had a commitment on the afternoon of Monday 22 June. Therefore his manager had said he could come back on Tuesday 23 June. Therefore he did not accept that this amounted to holiday.

10. Mr Matthews did not of course challenge the suggestion that he had been underpaid in relation to the Bank Holidays and wished to claim the shortfall.

Findings

Bank Holidays

11. I find that Mr Matthews was paid for all of the Bank Holidays listed. It was clear that the payroll arrangements were to the effect that an employee would receive his full remuneration entitlement for each month and that this would include any Bank Holidays which fell within that month. They would not be shown separately. On this basis it was clear that Mr Matthews had received remuneration each time a Bank Holiday fell within any of the months shown.

12. It was clear that the company, as they acknowledged, had not made up the payment for the Bank Holidays from the 85% which they were paying under furlough including a 5% supplement. Therefore, Mr Matthews had been underpaid by 15% in respect of each of the Bank Holidays which fell during the relevant period and he is entitled to receive such payment.

Holidays

13. With regard to the two days which the company had treated as holidays taken, I find as follows. With regard to 19 February, there was convincing documentary evidence that the company vehicle which Mr Matthews was employed to drive had not moved from his home for the whole of that day. He could not give any other explanation as to what had occurred on that day. Accordingly, the reasonable conclusion is that this was a day's holiday which was taken and payment included in his salary. Therefore, he is not due any holiday pay for that day.

14. With respect to 22 June 2020, this was to have been a day on which Mr Matthews was on furlough. He was asked at very short notice on the Friday before if he could come back to work on that day but said that he already had a commitment and it would be inconvenient. Therefore his manager had said he could return on Tuesday 23 June. My conclusion is that this meant that 22 June was an extension of the furlough and should not be treated as a day's holiday. Accordingly, I find the claimant is entitled to pay for that day.

15. As to the calculation with regard to an alleged small overpayment in relation to the final payslip, I do not find the evidence convincing and I make no award for that.

Conclusion

16. In conclusion, therefore, the judgment entered on 13 November 2020 is varied and the sum which the respondent shall pay to the claimant is as follows:

Underpayment of payment for Bank Holidays	£43.84
Holiday pay outstanding in relation to 22 June 2020	<u>£77.61</u>
Total	<u>£121.45</u>

17. Accordingly, the judgment is varied and judgment is entered against the respondent to pay the claimant the sum of £121.45.

Employment Judge B N Speker OBE DL

Date 8 April 2021

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