



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100543/2020 (A)

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Held via CVP video-conference on 27 July 2020

Employment Judge R Gall

10 **Ms E Jamieson**

**Claimant
In Person**

15 **Ms D Watson t/a Helena Beauty**

**Respondent
In Person**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that

(1) The respondent is ordered to pay to the claimant the sum of £262.72, being payment due by way of Notice Pay, or wages earned during notice period, payment being due by the respondent to the claimant, but not having been thus far paid to her.

(2) The claim in respect of holiday pay for leave accrued but untaken at date of termination of employment is withdrawn. It is not dismissed however as the claimant wishes to be able to advance the claim in the event of the respondent in this case proceeding with any claim against her in this or in a different forum.

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REASONS

1. In this case there was a Preliminary hearing (“PH”) on 11 May 2020. As a result, the case was set down for a hearing on 27 July 2020. It was to proceed by CVP, the video conferencing platform used by the Employment Tribunal.

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An in-person hearing was not practicable due to the coronavirus pandemic. Parties consented to the hearing proceeding by CVP.

2. Each party represented themselves at this hearing. Documents had been intimated by each party.
- 5 3. The claim is for notice pay which the claimant says is due to her. She resigned giving 2 weeks' notice. The respondent did not wish her back in the premises. No notice pay, or pay during the period of notice, has been paid to the claimant.
- 10 4. Prior to the hearing Ms Watson, the respondent, had confirmed that payment of this element was accepted as being due by her to the claimant. The sum involved is £262.72, being two weeks' pay. A week's pay for the claimant was £131.36. Her hourly rate was £8.21.
- 15 5. At the hearing Ms Watson confirmed that these figures were agreed. She also again confirmed that she accepted that £262.72 was due by her to the claimant.
- 20 6. At the PH, Ms Watson said that the claimant had taken more than her accrued holiday leave. She had been paid whilst on holiday. Ms Watson sought repayment from Ms Jamieson, the claimant. Ms Watson sought to deduct the sum she said was to her by Ms Jamieson from the sum payable by her to Ms Jamieson of £262.72. It was explained to Ms Watson that there was no Employer Contract Claim, a counter claim in effect. Since that time it remains the position that no such Employer Contract Claim has been presented.
- 25 7. Ms Jamieson said that she had not exceeded accrued holidays during her employment. Her position was that there were holidays accrued by her but not taken by her at time of termination of her employment. She sought payment in respect of those holidays accrued but not taken.
- 30 8. I explained to both Ms Jamieson and Ms Watson how this hearing would proceed. I said to Ms Watson that as there was no Employer Contract Claim, the money accepted by her as being due to Ms Jamieson was payable in full, unless she argued that she was entitled to make deductions from it. To be so

entitled she would have to point to a provision in an employment contract or to a document confirming agreement in writing by Ms Jamieson to deduction of monies from wages due to her.

9. No such contract or written agreement had been produced prior to this hearing. Ms Watson that there was no contract of employment and no such written agreement.
10. It appeared to me therefore that I would hear evidence to establish whether or not there were holidays accrued but not taken by Ms Jamieson when her employment ended.
11. The dispute between Ms Jamieson and Ms Watson turns on whether the claimant took holidays on two days, 10 August 2019 and 15 December 2019. Ms Jamieson says she did not. Ms Watson says she did.
12. The impact of the 2 days being taken or not taken as holidays is that if the days were taken, then holidays taken exceed entitlement. If they were not taken, then there were days of leave accrued but not taken by Ms Jamieson.
13. Prior to evidence commencing, Ms Jamieson asked if I could decide the claim on the papers. I explained that I could not, given the difference in positions of the parties. Ms Jamieson then said that a family member was unfortunately very seriously ill and that she did not wish to insist on her holiday pay claim as that would avoid a hearing being required. I checked to ensure that she was not in fact seeking a postponement. I explained that if she did seek a postponement, I would hear from Ms Watson as to her view on that. Ms Jamieson confirmed that she did not seek a postponement. She wished not to insist on holiday pay claim.
14. In those circumstances, I explained to both parties that I would issue a Judgment for the sum of £262.72 in favour of Ms Jamieson.
15. It is a matter for Ms Watson as to whether she wishes to proceed with what would require to be a claim in the Sheriff Court for repayment of money which she says she has overpaid to Ms Jamieson given the holidays she maintains Ms Jamieson took. If she does, Ms Jamieson will remain able to defend the

claim and potentially to seek payment from Ms Watson of the payment she initially sought in this claim.

16. Judgment is therefore granted ordering the respondent to pay to the claimant the sum of £262.72.

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Employment Judge: R Gall

Date of Judgement: 27 July 2020

10 Entered in register: 29 July 2021

and copied to parties