



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. D. A. Midwood & others

v

Moventas Gears U.K. Limited

Heard at: Leeds via CVP

On: 25 June 2021

Before: Employment Judge Wedderspoon

Representation:

Claimant: In Person

Respondents: Mr. Hill, Managing Director

JUDGMENT

1. The payments set out below are payable by 2 July 2021 :-
 - (a)Mr. Midwood is awarded £472.53 holiday pay;
 - (b)Mr. Elvidge is awarded £2,175.45 holiday pay;
 - (c)Mr. Garside is awarded £110.70.

REASONS

1. This case was first heard by CVP on 5 February 2021. On that date the parties were given notice that a further hearing would be required to clarify whether “working out payments” should have been included in the calculation of holiday pay and the actual calculation of holiday pay outstanding to the claimants.
2. In the meantime, the respondent sought a reconsideration of the Judgment. The respondent contested that Mr. Midwood was entitled to claim holiday pay from November 2018 to March 2020 because the respondent alleged there was a break in the series of deductions.
3. Mr. Hill for the respondent clarified today that the basis of his reconsideration application is that he contends that the claimant took some hours of holiday in the intervening period which he “rounded up to a full day where there were 3.7 hours were taken as holiday” by the claimants (half a day on Mr. Hill’s calculation; he says a full day was 7.4 hours).

4. Mr. Midwood contested this. He asserted the respondent was rounding up one to 2 hours as a full day and that the respondent's calculations were inaccurate, misleading and not representing the true situation.
5. The Tribunal, upon hearing from the parties, found that rounding up a few hours so to represent one day of holiday was inaccurate and unrepresentative of holiday taken by an employee and in the circumstances could not break the series of deductions. In fact, the Tribunal found the calculations of the respondent lacked transparency and it was unclear how many hours 1, 2 or 3.7 had been rounded up to deduct one day of holiday and the Tribunal preferred the claimant's submissions that the calculations were unreliable.
6. Further, Mr. Elvidge sought to update his outstanding claim. Mr. Midwood contended on his behalf that he was still not being paid correctly for holiday pay and sought to update his claim of continuing loss. Mr. Hill resisted this on the basis that his payroll department were presently dealing with this.
7. The Tribunal took into account the case of **Prakash v Wolverhampton City Council EAT 0140/06** which provides there is no reason why a cause of action that has accrued after the presentation of the original claim form was originally presented should not be added by amendment if appropriate. The Tribunal further took into account the overriding objective and concluded it would be in the interests of justice to consider the updated claim today.
8. First, dealing with the "working out payments". The parties agree that "working out" requires a special qualification; that the claimants were so qualified and did work out regularly. On this basis, the Tribunal finding is that such a sum should be included as part of pay and taken into account in terms of the calculation of holiday pay. Mr. Hill submitted he believed it had been taken into account but he admitted that this was based on the rounding up calculations. The Tribunal found that calculation was flawed. The parties were aware from the Judgment on 5 February 2021 that the Tribunal would be considering this issue and had adequate time and opportunity to consider the correct calculations.
9. By email dated 23 March 2021, Mr. Midwood set out a number of calculations for holiday pay asserted by the claimants for the respective periods. His calculations took into account the working out payments and he calculated the outstanding sums for the periods allowed having taken into account what was already paid by the respondent on the last occasion and the shortfall. He was also critical of the respondent's calculations which he asserted differed for each claimant in the respondent's table where for example in December where there are two bank holidays, Mr. Hill had calculated different holidays despite the two holidays being the same for all claimants. The Tribunal found that the claimants had established their losses on the balance of probabilities and the respondent's calculations were unreliable.

10. Mr. Midwood sought for £472.53 for outstanding holiday pay ran from November 2018 to March 2020. His calculations were based on a three month average payments taking into account working out payments and outstanding holiday pay. He claims £120 of unpaid holiday in 2019 plus the overtime which should be included is £352.53. This totals £472.53. The Tribunal award this sum.

11. In respect of Mr. Elvidge, he sought £2,175.45. From August 2019 he was paid £1,167 but he should have been paid £1640.82 for untaken holidays; this equates to a shortfall of £481.02. For the period 2020 onwards, there was a shortfall of holiday payments of £1,694.43. This was calculated over a three month average including overtime pay (19.5 days were calculated). It was agreed between the parties that Mr. Elvidge was a field service technician and regularly “worked out”. There was no particular challenge by the respondent of these calculations save that Mr. Hill said his payroll team are looking at it at present. In the circumstances, having determined all outstanding holiday pay could be dealt with today the Tribunal awards £2,175.45.

12. In respect of Mr. Garside, he sought £110.70 for the period from August 2019. The respondent conceded that its calculation of outstanding holiday pay of £9 had been calculated by “rounding up” hours to a full day. On the other hand Mr. Midwood’s calculations were based on the outstanding holiday pay owed to Mr. Garside less payments received by the respondent. Mr. Midwood’s calculations did not involve rounding up but instead cumulatively took into account the number of hours to calculate a day and calculated any shortfall. The Tribunal preferred Mr. Midwood’s calculations and Mr. Garside was awarded £110.70.

R Wedderspoon

Employment Judge

Sent to the parties on:

Date: 28 June 2021

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