



EMPLOYMENT TRIBUNALS

Claimant: Mr S Mitchell

Respondent: Thomas Crompton Recycling Limited

Heard at: Leeds **On:** 10 August 2021

Before: Employment Judge Cox

Representation:

Claimant: Did not attend

Respondent: Mr T Crompton, owner

JUDGMENT

The claim fails and is dismissed.

REASONS

1. Mr Mitchell presented a claim to the Tribunal on 5 June 2021 alleging that his employer, the Respondent company, had failed to give him three days' holiday to which he was entitled.
2. Mr Mitchell did not attend the Hearing of the claim to give evidence. The Tribunal 'phoned him to find out why he was not here but his 'phone went to voicemail. On the basis of what Mr Mitchell says in his claim form, what the company says in its response form and what Mr Crompton told the Tribunal in his evidence, the Tribunal finds that these are the relevant facts.
3. The company placed Mr Mitchell on furlough from 3 April to 15 May 2020. Three Bank Holidays fell during that time: 10 and 13 April and 4 May 2020. The company paid Mr Mitchell for those days at the rate of £80 per day. Mr Mitchell normally works a 10 hour day, at £10 per hour.

4. When he was recruited, Mr Mitchell was given a written contract of employment that explained that employees had 20 days' holiday that they could choose when to take, by putting in a request to take leave on certain dates. In addition, employees were to take 8 days' leave on the Bank Holidays. The Tribunal finds that this amounted to a relevant agreement which gave notice to Mr Mitchell that the company was requiring him to take a day of his annual leave on each Bank Holiday (see Regulation 15(5) of the Working Time Regulations 1998).
5. The company accepts that it should have paid Mr Mitchell at his normal rate of pay for the Bank Holidays. It paid him a total of £60 less than it owed him (that is, 2 hours on each of the three Bank Holidays, at £10 per hour).
6. There is a three-month time limit for bringing a Tribunal claim about a shortfall in holiday pay. If the claim is presented out of time, the Tribunal has no power to deal with it (see Regulation 30(2) of the Working Time Regulations 1998). The time limit runs from the date on which the proper payment should have been made. As Mr Mitchell is paid weekly, the shortfall in his holiday pay happened in April and May 2020. He did not bring his claim to the Tribunal until 5 June 2021, several months outside the time limit. The Tribunal can extend time for the claim if it accepts that it was not reasonably practicable for the claim to have been presented in time, as long as it also accepts that the claim was made within a further reasonable period. As Mr Mitchell was not at the Hearing to give evidence about why he brought his claim late, the Tribunal has had no alternative but to dismiss his claim, because it was brought after the time limit had expired. The Tribunal is hopeful, however, that the parties can still reach a mutually acceptable resolution to their dispute, outside the Tribunal process.

Employment Judge Cox
Date: 10 August 2021

Judgment and Reasons sent to the
parties on:
12 August 2021