



# EMPLOYMENT TRIBUNALS

Claimant

Mr C Hillman

Respondent

Ministry of Defence

## JUDGMENT ON RECONSIDERATION

### Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application, having read the respondents' comments and without a hearing, the judgment sent to the parties on 15 April 2021 is reconsidered and varied as follows;

- 1 Under the Judgment heading. A new paragraph 4 is inserted as follows:-

*"4. The claimant is entitled to the sum of £1076.66 for his statutory holiday entitlement of 8.6 days accrued during his notice period".*

- 2 Paragraph 46 will now read *"The claimant was not able to take statutory holiday during his notice period as he was not given notice. He is entitled to payment for that untaken statutory holiday of 8.6 days. I understand the sum due to be £1076.66. The claimant is not entitled to further sums as they relate to contractual holiday entitlement and the contractual position is clear that there is no payment for untaken contractual holiday, whether from previous years or the current year".*

### REASONS

- 1 By an application made on 29 April 2021 the claimant asked for reconsideration of part of the judgment sent to the parties on 15 April 2021. That judgment dismissed the claim for unfair dismissal and holiday pay but allowed the claim for wrongful dismissal (notice pay). The claimant's application for reconsideration relates to the holiday pay claim.

- 2 In summary, the claimant asks for reconsideration of the dismissal of claims for two distinct aspects of his holiday pay claim. One relates to the untaken statutory holiday during his notice period and the other for untaken contractual holiday during his suspension and from previous years.
- 3 The respondent commented on the claimant's application by email of 21 June 2021 objecting to any reconsideration. The respondent's case is that it paid outstanding statutory entitlement on dismissal and they paid the claimant for 12 days of the current year. The respondent states that the contract makes it clear there can be no payment for untaken contractual entitlement. It also resists any payment for statutory entitlement during the notice period as it states employees would be required to take any unused holiday in their notice period "*unless there are reasonable grounds preventing this*".
- 4 I considered the application on the papers. One of the difficulties at the hearing was that the claimant sought to compare how his untaken holiday was treated with that of his wife who had been reinstated. To the best of my recollection there was no clearly articulated claim that, at the very least, there should be payment for holiday entitlement in the notice period. I appreciate, as I am now reminded by the claimant, that there was such a claim in the particulars of claim. I do not recall hearing evidence or see documents on the distinction between contractual and statutory entitlement.

## Conclusions

- 5 I have now read the contractual documents and the position is quite clear. The claimant still seeks to argue that he should be paid for untaken contractual holiday during suspension and from previous years (again referring to Mrs Hillman's alleged different treatment). The policy states that upon termination "*no payment will be made for any untaken contractual leave*". There is further information in the respondent's "*Holiday Entitlement FAQ*", repeating that statutory holiday entitlement will be paid but not contractual leave. The claimant is therefore not entitled to any further sums by way of untaken contractual leave, whether accrued during suspension or in previous or current years.
- 6 However, I do find, upon reconsideration, that the claimant is entitled to payment for statutory leave accrued during the notice period. The claimant was summarily dismissed but I found that, although the dismissal was not unfair, it should have been with notice. I accept that whilst the respondent may have a policy which requires employees to take annual leave during a notice period, this could not be the case here. The claimant was not able to take unused holiday as he was not given notice. That prevented him from taking the statutory leave to which he would have been entitled if notice had been given.
- 7 The parties agree that the calculation of statutory holiday for the notice period is 8.6 days and I accept the claimant's calculation of £1076.66,

which sum I assume is gross and may have to be adjusted for tax and national insurance. The reconsideration application is therefore allowed in part.

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**Employment Judge Manley 30/7/2021**

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**Judgment sent to the parties on**

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**For Secretary of the Tribunals**