



EMPLOYMENT TRIBUNALS

Claimant

Ms S Perra

Respondent

Premium Care Solutions Limited
(Respondent)

v

Heard at: Bury St Edmunds

On: 21 October 2021

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Mr A Dehal

This has been a remote hearing on the papers to which the parties did not object. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

JUDGMENT

(1) The claim for compensation for untaken annual leave is dismissed.

(2) The claim for unpaid wages (sick pay) is dismissed.

REASONS

Facts

1. The Claimant was employed by the Respondent as a care worker between 3 January 2020 and 16 July 2020, providing care and support to a husband and wife in their own homes as part of a team of three people (on rota).

2. In December 2019 she completed an online induction and was sent by email a copy of the Staff Handbook and the annual leave request form. She was also sent a hard copy of her contract.
3. Under her contract she had no right to sick pay other than statutory sick pay.
4. As regards annual leave clause 9 provided that employees were entitled to annual leave in accordance with the Staff Handbook. The Staff Handbook provides that the Respondent's leave year runs from 1 April – 31 March. It also provides that annual leave cannot be carried over into the next leave year and that payment in lieu of unused holiday will not be made.
5. In March 2020 the Covid-19 Pandemic hit the UK.
6. On 20 March 2020, the Respondent's management team sent a WhatsApp message to all staff asking that if they had annual leave booked "in future months" to consider whether they needed that time off and whether, if they were still planning to take annual leave, they might make themselves available for work if needed during that period.
7. On 4 and 5 July 2020 the Claimant was off work, sick.
8. In mid-July the Claimant left the Respondent's employment. She did not take any annual leave between 3 January and 31 March 2020 and claims a payment in lieu of that untaken leave. She also claims sick pay for 4 and 5 July 2020.

Conclusions

9. Under the Claimant's contract and the relevant part of the Staff Handbook (which part was expressly incorporated into Claimant's contract), it is clear she had no right to carry her leave entitlement forward from one leave year to the next, nor to compensation for untaken leave.
10. As regards the Working Time Regulations 1998, regulation 13 deals with entitlement to annual leave. Regulation 13(10) was inserted into that provision (because of the Pandemic) with effect from 26 March 2020, and provides:

"Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer, the wider economy or society), the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (11)."
11. The question is therefore whether it was not practicable for the Claimant to take any of her annual leave between 3 January and 31 March 2020. The Claimant says it was not so practicable and relies upon the WhatsApp message of 20 March 2020. However, I am not satisfied this message (or

anything else) meant it was not reasonably practicable for the Claimant to take her annual leave.

12. First, the message didn't apply to the remaining leave year (to 31 March 2020) as it applied to "future months".
13. Secondly, the message didn't require the Claimant to cancel any leave booked between 20 March and 31 March 2020.
14. Thirdly, the message didn't prevent the Claimant from booking leave between 20 March and 31 March 2020.
15. Fourthly, the message obviously didn't prevent the Claimant from taking annual leave prior to 20 March 2020, and although the Claimant was on probation for the first six months of her employment she was allowed to take annual leave from the commencement of her employment.
16. It follows that the claim for compensation for untaken annual leave is dismissed.
17. As regards the claim for unpaid wages (sick pay), since, when the Claimant was away from work on 4 and 5 July 2020, she wasn't entitled to contractual sick pay or to statutory sick pay, that claim is also dismissed.

Employment Judge S Moore

Date: 21 October 2021.....

Sent to the parties on:.

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For the Tribunal Office