



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr El Bhaireien

**Respondent:** Lower Richmond Properties Ltd  
As agent for Abbeybay Properties Ltd

**Heard at:** On the papers, by agreement                      **On:** 10/11/2021

**Before:** Employment Judge Wright

## LIABILITY JUDGMENT

It is the Judgment of the Tribunal that the claimant's claim for holiday pay fails and is dismissed.

## REASONS

1. The claimant presented a claim on 24/8/2020 following a period of early conciliation between 24/6/2020 and 24/7/2020. In the claim form he said that his employment had not ended, that it commenced on 3/2/2018 and he had an accident on 23/2/2018. The accident is the subject of a separate personal injury claim.
2. A hearing was listed to take place on 21/9/2021 by notice of hearing dated 14/10/2020. Neither party was particularly well prepared for that hearing and it was agreed that the claimant would provide legible copies of

the documents which he relied upon and the matter would be dealt with on the papers.

3. The claimant's claim form states that he continues to be employment by the respondent and he is seeking holiday pay for the time he has been absent from work (less any holiday pay already paid to him).
4. The respondent's position is that the claimant remains in its employ.
5. At the hearing, the claimant referred to having received a P45 which showed a leaving date of 1/4/2020. The respondent denied it had sent a P45 to the claimant. The Tribunal asked to see the complete P45 as the claimant had only produced 'Part 3' 'for completion by new employer'. The details of the employer who had issued the P45 were not therefore available.
6. The full copy of the P45 was not provided. In view of that and the parties' positions, the Tribunal finds that the claimant's employment has not terminated. As such he remains employed.
7. The claim for holiday pay therefore fails as although workers on long-term sickness absence are entitled to benefit from paid annual leave under the Working Time Directive and cannot be excluded from the right, they are only entitled to a payment in lieu of unused leave, calculated at the normal rate of pay, if their employment is terminated. In this case, it is both parties' position that employment has not terminated. There is therefore no right to payment in lieu of holiday pay and as such, the claim is dismissed. The claimant's entitlement to holiday pay does however continue to accrue during the course of his employment.

10<sup>th</sup> November 2021

Employment Judge Wright

