



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Rybarczyk

**Respondent:** Leadec Limited

**Heard at:** Birmingham (via CVP)

**On:** 18 November 2021

**Before:** Employment Judge J Jones

**Representation**

Claimant: No appearance

Respondent: Miss J Duck (solicitor)

## JUDGMENT



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## JUDGMENT

1. The claim to holiday pay is struck out as having no reasonable prospect of success.

2. The claim to notice pay and unlawful deduction from wages (sick pay) is struck out as it has not been actively pursued and the claimant has failed to comply with the Order of the tribunal dated 14 June 2021.

## **REASONS**

1. By a claim form lodged on 9 June 2021, the claimant alleged that he had suffered unlawful deductions from his wages having not been paid company sick pay during his absence from work between 10 February and 15 March 2021, when he was dismissed. He also claimed 4.16 days' holiday pay accrued but not taken on the termination of his employment and a month's notice pay. There was a period of early conciliation between 28 April and 13 May 2021.
2. The respondent lodged a response denying the claims to notice and company sick pay. No company sick pay/ wages were due to the claimant it was said because he had failed to communicate with the respondent or follow their absence management procedures during the period of his leave, which was in the main, therefore, unauthorised. The week that was authorised had been paid, the respondent asserted. The respondent alleged that the claimant was dismissed for gross misconduct and therefore had no entitlement to notice pay.
3. The Respondent admitted that there was some holiday pay due to the claimant upon the termination of his employment and paid the sum of £640.40 to the claimant accordingly on 30 June 2021, subject to deductions for income tax and national insurance. This in fact exceeded the value of the claim for holiday pay, which the claimant had calculated in his claim form as being £465.72.
4. On 14 June 2021 the tribunal sent a case management order to the parties requiring the claimant to provide a schedule of loss by 12 July 2021 and the parties to prepare and exchange written statements of evidence with relevant documents attached by 9 July 2021.
5. On 14 July 2021 the respondent's solicitor wrote to the claimant's representative, Diana Janusz of England and Wales Employment Advice, requesting copies of the claimant's schedule of loss and evidence in accordance with the order. No response was received.
6. On 26 July 2021 the respondent's solicitor again chased the claimant's representative for compliance with the tribunal Order. Again, there was no response.
7. On 5 October 2021 the respondent's solicitor wrote to the tribunal, copying the claimant's representative, seeking an unless order to compel compliance with the tribunal order.

8. On 2 November 2021 Ms Janusz wrote to the tribunal advising that her organisation no longer represented the claimant and requesting further correspondence to be sent to him direct at a given email address.
9. The respondent's solicitor wrote again to the tribunal and copied this to the claimant personally at the email address given by his representative on 4 November 2021 renewing its application for an unless order and expressing concern about the lack of preparation for the hearing on 18 November 2021. There was no response to that email.
10. On 12 November 2021 the respondent's solicitor asked the claimant by email if he was pursuing his claim. He did not reply. On 18 November 2021 the respondent's solicitor emailed the claimant advising him that an application would be made for the claims to be struck out because they had not been actively pursued.
11. The claimant did not attend the hearing, did not contact the tribunal by telephone or email, did not contact the respondent's solicitor and did not answer the telephone when rung by the tribunal clerk at 10 AM due to his non-appearance.
12. In these circumstances, the tribunal concluded that the holiday pay claim would not succeed because it had already been satisfied and further that it was in the interests of justice and in accordance with the tribunal's overriding objective that the claims to notice pay and unlawful deduction from wages be struck out because they had not been actively pursued by the claimant and he had taken no steps to prepare evidence for the hearing in breach of a tribunal order.

**Employment Judge J Jones  
18 November 2021**