



EMPLOYMENT TRIBUNALS

Claimant: Mr Kolev

Respondent: Gap Personnel Holdings Limited (First Respondent)
Proactive Personnel Ltd (Second Respondent)

Heard at: Cardiff; by video **On:** 25 November 2021

Before: Employment Judge R Harfield

Representation:
Claimant: Mr Kolev
Respondent: Ms Roberts (Head of HR for the First Respondent)
Ms Jones (Legal Department Manager for Second Respondent)

JUDGMENT

1. The claim against the Second Respondent is dismissed upon withdrawal by the Claimant;
2. The claim against the First Respondent is not well founded and is dismissed.

REASONS

1. The claimant's claim is for alleged unpaid holiday pay.
2. The claim against the Second Respondent (Proactive Personnel Ltd) is dismissed upon withdrawal by the Claimant (the Claimant having agreed that he did not work on assignment for the Second Respondent at the material time).

3. The claim against the First Respondent (Gap Personnel Holdings Limited) is not well founded and is dismissed.
4. At the hearing I expressed my discontent with the Claimant's failure to respond to Tribunal correspondence (which had resulted in him being second two strike out warnings) as well as his inability to be upfront with me about what correspondence he had or had not sent to the Tribunal. I indicated, however, that I would not strike out the claim if it could still be determined at today's hearing, given he had attended.
5. At the hearing the Claimant explained that he was entitled to 39 hours paid annual leave. He accepted (having had time to check the figures against the pay slips he holds) that the hours of work he spent on assignment for the Respondent and the gross pay he received in the 9 week period between 20 December 2020 and 28 February 2021 are as set out in the table which the First Respondent annexed to their ET3 Response Form. The Claimant ultimately agreed that this 9 week period was the appropriate reference period for calculating average earnings that he was entitled to receive for his annual leave. The Claimant originally produced figures for an 11 week period but then accepted that the last 2 weeks were in fact after the annual leave period in question. The Claimant accepted that the agreed figures produced an average weekly gross earnings figure over than 9 week period of £251.52. The Claimant did not dispute the Respondent's assertion that 39 hours equated to 1.0863 weeks. He also did not dispute that £251.52 x 1.0863 produced a holiday pay figure of £273.23 and that he had been paid holiday pay of £274.07. The Claimant therefore ultimately accepted that he had been paid the correct holiday pay figure (using the average period required under the Working Time Regulations 1998, as amended to produce a figure for average weekly pay he was entitled to receive when taking annual leave) and there was no more owing to him. I therefore explained to the Claimant that I could not uphold his complaint against the First Respondent and that it would be dismissed.

Employment Judge R Harfield
Dated: 25 November 2021

JUDGMENT SENT TO THE PARTIES ON 29 November 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche