



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110815/2021 (V)

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Held via Cloud Video Platform (CVP) on 19 November 2021

Employment Judge J McCluskey

10 **Ms S Taylor**

**Claimant
In Person**

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Happy Days Out of School Care Limited

**Respondent
Not Present
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

- 25 (i) The complaint in respect of holiday pay accrued but not paid as at the termination of employment is well founded, and the respondent shall pay to the claimant the sum of **£2,496.00**, subject to deduction of any tax and national insurance required to be made.

REASONS

- 30 1. The claimant presented a claim to the Tribunal on 13 August 2021.
2. The respondent entered a response on 20 September 2021. The claim was defended. The respondent denied the breach of contract claim, asserting that notice pay had been paid in full. The respondent conceded that the claimant was owed holiday pay but disputed the amount.

3. A final hearing had been fixed for 29 October 2021 at 2pm. On the morning of the final hearing the respondent made an application for postponement of the final hearing. The owner of the respondent said she was unable to attend the final hearing due to unexpected staff absence at the respondent which
5 needed to be covered by her. On the basis of this explanation I granted a postponement of the final hearing and directed that a new final hearing date be fixed.
4. A new final hearing was fixed for 19 November 2021. Notice of this date was sent to both parties by the Tribunal by email on 2 November 2021. The email
10 address used for the respondent was the email address on the ET3 and from which the respondent had previously communicated with the Tribunal.
5. On 18 November 2021 the clerk emailed both parties the log in details for the CVP hearing and asked parties to arrange a test. The respondent did not reply to the email. The clerk called the respondent using the mobile phone number
15 on the ET3 and from which the respondent had previously communicated with the Tribunal. The respondent did not answer.
6. On 19 November 2021 the clerk called the respondent on a couple of occasions before the hearing was due to start at 10.15am. The clerk used the same mobile number as before. The phone rang but nobody answered. The
20 clerk called the mobile number again not long after 10.15am and again at 10.40am. On the latter occasion the clerk left a voicemail asking if the respondent intended to attend the hearing. By 11.00am there had been no response from the respondent. I therefore determined that the final hearing should proceed without the attendance of the respondent.
- 25 7. I heard evidence from the claimant. The claimant advised that since lodging her ET1 she had been paid her notice pay. Therefore, she was no longer insisting on a breach of contract claim. The claimant confirmed her outstanding claim was for holiday pay.
8. I accepted the claimant had been employed by the respondent until 5 July
30 2021. I accepted that the claimant did not receive payment for holidays

accrued but untaken as at the termination of her employment. I accepted the claimant's calculation that this amounted to the sum of £2,496.00 gross.

9. The claimant asserted that she was entitled to reimbursement of legal fees she had incurred in relation legal advice about her breach of contract claim. She had produced an invoice addressed to her dated 25 June 2021 for this legal advice. This legal advice pre-dated the lodging of her ET1 on 13 August 2021. The claimant also asserted that she was entitled to compensation for stress and anxiety for the late payment of her notice pay.
10. I explained to the claimant that it was not within the jurisdiction of the Tribunal to make such an award of compensation nor to order reimbursement of legal fees in the circumstances narrated.
11. I determined that the claimant's outstanding claim was therefore for holiday pay accrued but not paid as at the termination of employment. I determined that this claim was well founded and that the sum due is of £2,496.00 gross, subject to deduction of any tax and national insurance required to be made by the respondent.

Employment Judge: Jacqueline McCluskey

Date of Judgment: 19 November 2021

Entered in register: 01 December 2021

and copied to parties

I confirm that this is my judgment in the case of Ms S Taylor v Happy Days Out of School Care Limited case no: 4110815/2021 and that I have signed the judgment by electronic signature.