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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108938/2021 (V)

Hearing heard by Cloud Video Platform (CVP) on 5 November 2021

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Employment Judge R Mackay

15 Mr N Tavares

Claimant
In Person

20 Premier Specialist Cleaning Services Ltd

Respondent
Not Present &
Not Represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 1 The Respondent's address having changed since the lodging of the ET3, the records shall be amended to reflect the address shown above.

2 The Claimant's claim in respect of unpaid overtime succeeds and the Respondent shall pay to the Claimant the sum of **THREE HUNDRED AND TWENTY POUNDS (£320)**. This is the gross sum. The Respondent shall be
30 liable to account to HMRC for any income tax and national insurance payments due in respect of the payment.

3 The Claimant's claim in respect of a failure to provide notice of termination of employment succeeds and the Respondent shall pay to the Claimant the sum of **ONE THOUSAND SEVEN HUNDRED AND THIRTY THREE POUNDS (£1,733)**. This is the gross sum. The Respondent shall be liable to account
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to HMRC for any income tax and national insurance payments due in respect of the payment.

- 4 The Claimant's claim in respect of accrued but untaken holidays succeeds and the Respondent shall pay to the Claimant the sum of **SEVEN HUNDRED**
5 **AND FIFTY ONE POUNDS (£751)**. This is the gross sum. The Respondent shall be liable to account to HMRC for any income tax and national insurance payments due in respect of the payment.
- 5 The Claimant not having the requisite continuous service in order to claim unfair dismissal, that claim is dismissed.
- 10 6 The Claimant having failed to advance a valid claim in accordance with the Equality Act 2010, his claim for purported discrimination is dismissed.

REASONS

Introduction

- 15 1 This case was previously listed for a Hearing on 20 October 2021. Very shortly before the Hearing that day, the representative of the Respondent emailed to say that her home had been affected by a power cut. Following a delay, the Employment Judge elected to postpone the Hearing until today's date.
- 20 2 By email dated 25 October 2021, the Employment Tribunal Clerk emailed the parties with a view to conducting CVP tests. The Respondent did not reply. The Tribunal Clerk sought to telephone the Respondent's representative on 4 November 2021. The mobile telephone number provided rang out. The landline number provided was no longer in use.
- 25 3 The Clerk went on to send an email. In response to that email, the representative of the Respondent emailed to say that she was out of the office and unavailable on the phone that day as it was her birthday.

- 4 On the morning of the Hearing, the Respondent did not appear and was not represented. The Employment Tribunal Clerk made various efforts to make contact by telephone and email. No response was received. There was no attempt by the Respondent to log into the Hearing.
- 5 5 The Claimant was invited to address the Tribunal on the question of the Respondent's absence. He was assisted by a Portuguese language interpreter. He asked the Tribunal to proceed with the Hearing, particularly having regard to the earlier postponement occasioned by the Respondent's absence. He expressed some scepticism about the reasons for the non-attendance of the Respondent.
- 10 6 Having regard to the Respondent's failure to attend with no explanation being provided, the presence for the second time of the Claimant and an interpreter, and having delayed the start of the Hearing to make enquires without success, the Tribunal elected to proceed in the absence of the Respondent.
- 15 7 The Claimant (through his interpreter) gave evidence on his own behalf. The Tribunal found him to be a wholly credible and reliable witness.
- 8 8 Having been unrepresented in submitting his ET1, combined with his lack of fluency in the English language, it was necessary at the outset of the Hearing to clarify precisely what claims the Claimant was making.
- 20 9 He confirmed that his continuous employment with the Respondent commenced on 3 May 2020. His employment came to an end on 29 January 2021. Although the Claimant indicated on his ET1 that his employment was continuing, that appears to have been a misunderstanding over the failure to provide written confirmation or a P45.
- 25 10 In his ET1, the Claimant indicated that he was claiming unfair dismissal. It was explained to him that he did not have the necessary qualifying service in order to make a claim for ordinary unfair dismissal. It was clear from the Claimant's evidence that his claim in this context was to do with his having

been dismissed without notice or payment in lieu of notice and having not being provided with written confirmation or a P45. He did not advance any automatically unfair dismissal (nor was any foreshadowed in the ET1) so the unfair dismissal claim was not pursued.

5 11 The Claimant also indicated in the ET1 that he was making a claim for
"sickness discrimination". The Tribunal took some time to explore with him
whether he was advancing a discrimination claim under the Equality Act
2010, having regard to the protected characteristics set out there. Given that
the Hearing was being conducted by an Employment Judge alone, it was
10 particularly relevant to identify whether a valid discrimination claim existed. It
was clear from the account of the Claimant that he felt he had been treated
differently from another employee in terms of returning from furlough. He did
not, however, suggest that the difference in treatment was due to any
protected characteristic so no discrimination claim was pursued.

15 12 Of the remaining elements of the ET1, the Claimant confirmed that he was
seeking payment for overtime pay earned but unpaid as well as for accrued
but untaken holidays.

Findings in Fact

20 13 The Claimant was employed as a Cleaning Operative with effect from 3 May
2020. He had previously been employed by the Respondent for a period in
2019 but his employment was not continuous.

14 His gross weekly pay was £433.25.

15 During July and August 2020, the Claimant worked overtime to the value of
25 £320 gross. He was never paid that sum. He was not given any explanation
as to why the overtime should not be paid.

16 During the latter part of the Christmas period, the Claimant tested positive for
COVID.

- 17 After self-isolating for the appropriate period, the Claimant sought a return to work. He was advised by the Respondent that he should remain at home until called back.
- 18 On 29 January 2021, the Claimant made contact with the Respondent
5 requesting clarification of his position and seeking payments including holiday pay and the overtime pay referred to. He received certain payments on that date. He was not thereafter paid by the Respondent, nor was any contact made with him.
- 19 The Employment Tribunal found that he had been dismissed with effect from
10 that date. In accordance with his contract of employment, the Claimant was entitled to one month's notice of termination of employment. He did not receive any notice of dismissal.
- 20 The Claimant was entitled to 28 days paid holiday per annum. Based on his
15 having accrued approximately 8/12ths of the holiday year, he was entitled to 18.67 days up to his dismissal. He took 10 days over the Christmas period, leaving 8.67 days accrued but unpaid on termination. Based on his weekly pay of £433.25 this amounts to £751 gross.

Relevant Law and Compensation

- 20 21 The Claimant having earned overtime pay of £320 and the Respondent having failed to make that payment, the Respondent is in breach of Section 13 of the Employment Rights Act 1996. The Claimant is entitled to be paid £320 gross.
- 22 The Claimant being entitled to one month's notice of termination of
25 employment under his contract of employment, and the Respondent having failed to give such notice or make a payment in lieu thereof, the Respondent is in breach of contract and the Claimant is entitled to be paid £1,733 gross

in accordance with Section 3 of the Employment Tribunals Act 1996 (and the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994).

23 The Claimant having accrued 8.67 days holiday and the Respondent having failed to make payment in respect of those accrued holidays on the
5 termination of the Claimant's employment, he is entitled to £751 gross in accordance with Section 14 of the Working Time Regulations 1998.

24 The Respondent shall be liable to account to HMRC for income tax and national insurance payments due in respect of the sums awarded.

10 Employment Judge: Ronald Mackay
Date of Judgment: 26 November 2021
Entered in register: 02 December 2021
and copied to parties

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