



EMPLOYMENT TRIBUNALS

Claimant: Miss M Mikulskaia

Respondent: Tatra Rotalac Limited

Heard at: Manchester by CVP

On: 11th January 2022

Before: Employment Judge Humble

REPRESENTATION:

Claimant: In person

Respondent: Ms Hughes, Solicitor

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The respondent is in breach of contract, has made unauthorised deductions from wages, and is in breach of the Working Time Regulations in respect of a failure to pay the claimant her accrued holiday entitlement.
2. The respondent is ordered to pay the claimant the sum of £80.19.

REASONS

The Hearing

1. The hearing took place on 11th January 2022 by CVP video link. The claimant represented herself and gave evidence on her own behalf. The respondent was represented by Ms Hughes, a Solicitor, and evidence was given by Mr Richard Taylor, the respondent's financial controller. There was an agreed bundle of documents which extended to 209 pages.
2. The claimant had indicated in her particulars of claim that she was bringing a claim for statutory sick pay but confirmed at the outset of the hearing that she was aware the tribunal did not have jurisdiction to determine such a claim and so that claim was not pursued. The claimant had pleaded that there was "3-4 days" of accrued holiday pay owed to her. It was not clear however exactly what the claimant was

seeking by way of accrued holiday pay until she gave evidence when it transpired that she was in fact seeking 9 days of accrued pay. The claimant said that she only became aware of the exact dates that the respondent had allegedly failed to pay her when she received the documents upon which the respondent relied within these proceedings. The tribunal allowed the claim to proceed based upon the 9 days and, in so far as an amendment was required to the claim form, it was granted. Once the claimant had finished her evidence in chief, the respondent's representative required some time to take instructions from her client to enable it to properly address the claimant's case. This, together with some connection issues, caused some delays to the hearing and as a consequence the evidence and submissions were only concluded at 12:00pm with another case listed to take place that day. Judgment was therefore reserved.

Findings of Fact

The Employment Tribunal made the following findings of fact on the balance of probabilities (the tribunal made findings of fact only on those matters which were material to the issues to be determined and not upon all the evidence placed before it):

3. It was agreed between the parties that the claimant was entitled to 23 days holiday each year and, at the time of the termination of her employment, the daily rate for her holiday pay was £80.91.
4. The claimant explained in her evidence that she was claiming the following:
 - a) 8 days holiday pay from 2019. The claimant said that only 15 days of 23 days holiday was paid that year.
 - b) 1 day from 2020. The claimant said that one day was duplicated such that it was deducted from both her holiday entitlements in 2019 and 2020.
5. In respect of the 2019 entitlement, the claimant relied upon the respondent's annual leave record (at page 32) and cross referenced it to the pay slips for 2019 (pages 75-125) which showed only 15 days of holiday pay paid in that year. During cross examination, however, the claimant conceded that she was on holiday on the bank holidays of 3 and 31 May and that she was paid in full for those weeks, even though the payslips relevant to those days did not refer to holidays having been taken. It followed therefore that there was no loss in respect of those two dates. Mr Taylor explained that there had been a pay roll error such that payment of those days was not itemised as "holiday" on the pay slip. The tribunal also accepted Mr Taylor's explanation that the same error was made with holidays taken by the claimant on 13, 30 and 31 December 2019 when she was also paid in full. In addition, holidays taken by the claimant on 17, 18 and 19 December 2019 were not paid until 9 January 2020, again as a result of payroll errors, and so did not feature on the 2019 payslips. The respondent provided a full breakdown of the payments made (at page 30) which reconciled with the payslips. Taking account of the omissions on the payslips, and the late payment on 9 January 2020 of three days taken in December 2019, the tribunal was satisfied that the claimant was paid her full entitlement of 23 days for the leave year 2019.
6. Further, and in any event, there was no contractual right to carry forward holiday pay to subsequent years under the terms of the claimant's contract of employment (page 24), and none of the exceptions to the general prohibition on

the carry forward of leave under Regulation 13(9) Working Time Regulations 1998 were applicable. Nor was this a case in which there was said to be a series of deductions such that the unauthorised deduction from wages claim might be in time under section 23(3) Employment Rights Act 1996. The claim for holiday pay from 2019 was therefore substantially out of time.

7. In respect of the claim for the duplicate day in early 2020, the claimant again relied upon the respondent's annual leave records (pages 32-33). The claimant pointed out that her holiday taken on 2 January 2020 was deducted from her 23 days entitlement for 2019 (the top line of page 32 refers), and then also deducted from her 2020 entitlement (eight line of page 33). The claimant accepted in cross examination that she was paid for her holiday on 2 January 2020 but that did not change the fact that it should not have been deducted from her 2020 entitlement, having already been deducted from the preceding year. The claimant therefore had one additional day of leave due to her at the end of 2020.
8. The respondent conceded that it had agreed, due to the effects of furlough, to allow all employees to carry forward any untaken leave from 2020 into the 2021 leave year. It follows that the claimant should have been allocated one additional leave day at the start of 2021 and that this day was not paid to her upon the termination of her employment. Accordingly, the claimant is entitled to one day of holiday pay at the agreed rate of £89.10.
9. There was one other issue raised by the claimant to the effect that she was obliged to take 29 and 30 December 2020 as annual holiday when she did not wish to do so. The tribunal was satisfied by the respondent's evidence that this was an annual shutdown of which the claimant was on notice. Further, the claimant accepted that she was paid for it and therefore there was no loss.
10. The respondent is ordered to pay the claimant £89.10.

Employment Judge Humble

13th January 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

14 January 2022

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2414152/2021**

Name of case: **Miss M Mikulskaja** v **Tatra Rotalac Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant judgment day" is: 14 January 2022

"the calculation day" is: 15 January 2022

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office