



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110374/2019
Employment Judge R King

Mr Emilio Giacometti

Claimant

Toni's Pizzeria West End

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's application for reconsideration is allowed and that the original Judgment is varied to the extent that-

(1) The words "*The claimant's agreed gross daily rate of pay was therefore £107.64.*" are added at the end of paragraph 11.

(2) In paragraph 27, "£11.96" is deleted and replaced with "£107.64" and "£191.36" is deleted and replaced with "£1,722.24"

(3) The respondent is ordered to pay the claimant the sum of £1,722.24. This is a gross award and the claimant shall be liable to HMRC for any payments of tax and national insurance thereon.

REASONS

1. The claimant has made an application for reconsideration dated 2 February 2021. His ground is that the Tribunal incorrectly calculated his award of holiday pay by calculating that award by reference to his gross hourly rate of £11.96 rather than the rate he claims should have been applied, namely his gross daily rate of £107.64.

2. The Tribunal's provisional view was that the application had merit and the respondent's view on the application was therefore sought. By e-mail dated 13 August 2021 the respondent replied to the effect that the claimant had already been paid all the holiday pay due to him on termination of his employment.

3. The Tribunal concluded that the respondent's comments on the reconsideration application related to a matter that had already been determined at the full hearing and did not address the basis upon which reconsideration had been sought.

4. Nevertheless, the claimant's comments were sought on the respondent's 13 August 2012 e-mail, in response to which he simply asserted that-

"The only issue I have is the miscalculation"

5. The Tribunal considered that that in the circumstances a hearing was not necessary in the interests of justice and the parties were subsequently given a further reasonable opportunity to make written representations. Neither party responded to that further invitation to comment.

6. Having considered the terms of the claimant's application for reconsideration and the calculation carried out in its original Judgment, the Tribunal was satisfied that it had made an obvious error in computing the claimant's holiday pay award. Put simply, it had applied the claimant's hourly rate of £11.96 to the calculation of the award rather than the appropriate rate, which was the daily rate of £107.64.

7. In the circumstances the Tribunal finds that it is in the interests of justice to vary the Judgment to show the claimant's gross daily rate of pay and the correct basis of calculation of his holiday pay award.

Employment Judge: Robert King
Date of Judgment: 23 September 2021
Entered in register: 23 September 2021
and copied to parties