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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4101944/2020**

**Hearing by Cloud Video Platform (CVP) on 30 August 2021**

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**Employment Judge: M A Macleod**

**Angela Campbell**

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**Claimant  
Represented by  
Mr G Booth  
Consultant**

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**R & F Wilmot Ltd**

**Respondent  
Not Present and  
Not Represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The claimant's claim succeeds, and the respondent is ordered to pay to the claimant the sum of **One Thousand and Twenty Three Pounds and Forty One Pence (£1,023.41)** in respect of pay for annual leave accrued but untaken as at the date of termination of her employment.

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## REASONS

1. The claimant presented a claim in which she made a number of complaints to the Tribunal against the respondent. The respondent presented an ET3 response form in which they resisted the claimant's claims.  
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2. Following withdrawal of part of the claim made, a Hearing was fixed to deal with the only claim remaining, that is, that the respondent unlawfully deprived the claimant of pay in respect of annual leave accrued but untaken as at the date of termination of her employment.
- 10 3. The claimant appeared at the Hearing, which was conducted by CVP, and was represented by Mr Booth. The respondent did not attend at the Hearing, nor were they represented.
4. The Tribunal noted that the respondent's solicitor had withdrawn from acting for them on Friday 27 August 2021, and that the clerk who attempted to call the respondent on my instructions on that afternoon had received no answer to her call. She left a voicemail message but no contact was made by the respondent in response.  
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5. As a result, the Hearing proceeded in the respondent's absence.
6. The claimant gave evidence on her own account, and productions were presented to the Tribunal in support of that evidence.  
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## Discussion and Decision

7. The claimant commenced employment with the respondent on 17 March 2009, having been employed as the manageress of the machine arcade operated by them since 2001 and having been transferred into the respondent's employment by operation of TUPE.  
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8. The claimant was entitled to a paid holiday entitlement of 5.6 weeks per annual leave year, inclusive of public holidays. The holiday year was understood by the claimant to have run from "April to April", though her statement of terms and conditions of employment confirms that the respondent's holiday year ran from 1 January to 31 December each year (26).
9. The respondent admitted, in the Further and Better Particulars provided to the Tribunal, that the claimant was entitled to be paid holiday pay for the period she was absent from work.
10. The claimant's employment was affected by a period of sickness absence which began in March 2019 and ended on her resignation with effect from 13 January 2020. During that time she took no annual leave, nor was she paid in lieu of that outstanding leave entitlement on termination of her employment.
11. She did refer to her outstanding holiday pay in her letter of resignation but no action was taken by the respondent to compensate her for this.
12. The claimant earned £936 per month. Her period of absence was 12 March 2019 until 13 January 2020, a period of 44 weeks. Her weekly pay was £216.
13. Mr Booth's submission calculated that the claimant was entitled to payment in respect of 9 out of 12 months' accrued holiday entitlement, and thereby came up with a figure of 4.2 to apply as a multiplier to the weekly pay to be made to her in respect of holidays.
14. It appears to me to be more accurate to pro rate the claimant's holiday entitlement. 5.6 weeks equates to 28 days per year. Her period of absence was 44 out of 52 weeks, and accordingly it is appropriate to calculate the appropriate payment as follows:
- The claimant's daily rate of pay is  $\frac{£216}{5} = £43.20$ .
  - The claimant's entitlement to annual leave is pro-rated by 44 weeks instead of 52, bringing out a figure of 23.69 days' leave which she should have been granted.

- Her annual leave entitlement is therefore 23.69 x £43.20, bringing out a total of £1,023.41 .

15. The claimant's claim for unlawful deductions of wages therefore succeeds, and the respondent is ordered to pay to the claimant the sum of £1,023.41 in  
5 compensation.

10 Employment Judge: Murdo Macleod  
Date of Judgment: 20 October 2021  
Entered in register: 26 October 2021  
and copied to parties

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25 I confirm that this is my Judgment in the case of Campbell v R & F Wilmot Ltd and that I have signed the Judgment.