



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr Drewniak

Futturo Limited

Heard at: Watford

On: 12 January and 11 June 2021

Before: Employment Judge Cowen

Appearances

For the Claimant: Mr Soszynski (paralegal)

For the Respondent: Mr Hendley (consultant)

UPON APPLICATION made by letter on 21 November 2021 to reconsider the judgment dated 4 November 2021 under rule 71 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT

1. The claimant made an application for reconsideration of my judgment on a number of points. The parties were asked for their submissions in writing by 18 November 2021. No further submissions were provided by the respondent. I have therefore referred to the witness statement of Mr Nowicki on behalf of the respondent, in consideration of this application.
2. The claimant's application requests verification that the hourly rate of £12.50 per hour as gross of CIS contribution. This is correct. The claimant is therefore entitled to any outstanding holiday pay at the rate of £12.50 per hour gross, which is subject to taxation and NI contribution.
3. The claimant's submission for reconsideration highlighted that the agreement with the respondent was that his rest breaks (one hour per day) were paid. This is agreed by the respondent's Mr Nowicki in his witness statement in paragraph 15. He then contradicts himself in paragraph 16 where he says that the one hour break each day went to rolled up holiday pay. This cannot be correct, as this would be giving two different reasons to the single payment. I therefore accept Mr Nowicki's statement at paragraph 15 that breaks were paid.

4. I have previously found that the claimant worked from 7am to 5pm on Monday to Friday which amounts to 9 hours of active work and 1 hour of breaks per day.
5. The respondent's schedule showed that the claimant was paid for 10 hours work on such days. This was agreed by the parties and the payments received were also agreed. Thus, the payments shown on the spreadsheet account for the claimant's working time and his break time. The payment made by the respondent to the claimant each fortnight, reflected the time worked and did not include holiday pay.
6. As set out in my judgment at paragraph 37, the payment made by the respondent is unlawful. However, this is not due to a lack of particularity or transparency as stated there, but due it seems, to a lack of payment at all.
7. I therefore accept the application for reconsideration by the claimant and order the respondent to pay the claimant £7,000 gross, less any required CIS deduction, in accordance with s.62 ITEPA 2003. If no such deduction is appropriate, then the sum is owed on a gross basis and the claimant must account for the tax and National Insurance contributions within his own tax return.

Employment Judge Cowen

Date: 15/2/2022

Sent to the parties on: 21/2/2022

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For the Tribunal Office

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