



EMPLOYMENT TRIBUNALS

Claimant: Mr I Kalucki

Respondent: Riventa Ltd

Heard at: Birmingham (CVP)

On: 10th March 2022

Before: Employment Judge Amy Smith

Representation

Claimant: In person

Respondent: Mr Jamie Cunningham, HR Manager

JUDGMENT

The Judgment of the Tribunal is that:

1. The name and identity of the respondent is amended to Riventa Ltd. There is no requirement for further service.
2. The claim of breach of the Working Time Regulations 1998 fails and is dismissed.

REASONS

Claims and Issues

3. The claimant served an ET1 form on 12th October 2021. At section 8 the claimant ticked the boxes to state he was claiming notice pay and holiday pay. Further information was included on the form. The respondent was identified as Riventa with the address being Unit B1, Walker Business Park, Threemilestone Industrial estate, Truro, Cornwall, TR4 9FB.

4. The respondent filed an ET3 on 15th November 2021. The form specified that the respondent's correct legal name was Riventa Ltd. The claims were denied.
5. At the beginning of the hearing, I asked the claimant about the respondent's name, and he confirmed that he consented to the change of the name of the respondent to Riventa Ltd.
6. In addition, it was confirmed with the parties that the claim related to whether the respondent had breached Regulation 15 of the Working Time Regulations 1998, by breaking down the holiday pay notices, and therefore in turn breaching Regulation 13.

Procedure, documents and evidence heard

7. I was provided with a bundle which reached 73 pages. The bundle included a document from the claimant headed "Claimant's statement as at 7 December 2021". This was treated as the claimant's witness statement.
8. The order for an agreed bundle was for provision by 3rd March 2022.
9. The respondent provided an electronic bundle to the Tribunal on that date. Later that same day the claimant sent an email seeking to add documents to the bundle.
10. The respondent objected to the inclusion of these documents.
11. It was clarified at the beginning of the hearing that it was a misunderstanding, and that the claimant was adding documents to the bundle that had previously been agreed and then accidentally dropped out of the bundle. It was confirmed by both parties that the 73-page bundle was agreed and the respondent withdrew their objections.
12. The claimant gave evidence and was cross examined by Mr Cunningham. The respondent did not present any witness evidence.
13. Both parties also made submissions.

Fact findings

14. The claimant was employed by the respondent from 3rd August 2020 until 31st August 2021 as a Senior Pump Test Engineer.
15. The respondent company optimises industrial pumping systems.
16. The claimant resigned by letter dated 3rd August 2021. He gave four weeks' notice, meaning his effective date of termination was 31st August 2021.
17. At this point the claimant had 14.5 days accrued but untaken holiday outstanding.
18. By four separate letters all dated 4th August 2021, the respondent gave the claimant notice under Regulation 15 WTR to force the claimant to take his outstanding holiday during his notice period and prior to 31st August 2021.
19. The holiday was broken down into four chunks: 5.5 days, 4 days, 3 days and 2 days.

20. The claimant accepted in evidence that, if broken down as such, the notice period was in compliance with Regulation 15.
21. The claimant confirmed to Mr Thomas Clifford, Chief Technical Officer, verbally that the practice was against legislation and he would be seeking further legal advice.
22. During his notice period the respondent recovered their property from the claimant, and the claimant did not return to work.
23. The claimant was paid for his last month in full.
24. On 2nd September 2021 the claimant emailed Thomas Clifford, to confirm that he did not agree to take the holiday during his notice period. He asked for a payment of £1673.08 which he said was taken from his base salary.

Law

25. Regulation 13 of the Working Time Regulations 1998/1833 provides:

“(1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.”

26. Regulation 15 provides:

“(2) A worker's employer may require the worker–

- (a) to take leave to which the worker is entitled under [regulation 13] [or regulation 13A]; or
- (b) not to take such leave [(subject, where it applies, to the requirement in regulation 13(12))],

on particular days, by giving notice to the worker in accordance with paragraph (3).

- (3) A notice under paragraph (1) or (2)

- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
- (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
- (c) shall be given to the employer or, as the case may be, the worker before the relevant date.

- (4) The relevant date, for the purposes of paragraph (3), is the date–

- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
- (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.”

27. An employer may therefore instruct a worker to take leave by giving notice under Regulation 15(2). The notice must be given before the 'relevant date'.
28. Whether it is a positive notice (where the employer is instructing the employee to take leave on a certain date or dates), the 'relevant date' is the date twice as many days in advance of the earliest day specified in the notice as the number of days (or part days) to which the notice relates (Regulation 15(4)(a)).
29. Unlike Regulation 13(12), there is no specific restriction in the Regulations on an employer's ability to give a positive notice, other than the notice period.

Conclusions

30. At the date of his resignation the claimant had 14.5 days accrued but untaken holiday outstanding.
31. The claimant's notice period was due to end on 31st August 2021.
32. The respondent was entitled by Regulation 15 to force the claimant to take holiday, on the condition that notice was given in accordance with Regulation 15(4)(a).
33. Having broken down the holiday into chunks the respondent has seemingly complied with the wording of Regulation 15. They gave the requisite notice for each period of holiday.
34. There is nothing in the Regulations which prevents employers from breaking the holiday down in this fashion.
35. The respondent gave positive notice to the claimant to take holiday in compliance with Regulation 15.
36. I therefore conclude that there was no breach of Regulation 15 of the WTR and therefore no breach of Regulation 13.
37. The claim therefore fails and is dismissed.

Employment Judge A.J. Smith

Employment Judge **Amy Smith**

Date:10.03.22