



EMPLOYMENT TRIBUNALS

Claimant: Ms S. Hussain

Respondent: Bookingtek Ltd

Heard at: London South via CVP

On: 28 April 2022

Before: Employment Judge T.R. Smith

Representation

Claimant: In person

Respondent: Mr Vidal (Chief finance officer)

JUDGMENT

The claimant's complaints of an unlawful deduction from wages and/or breach of regulation 30 of the Working Time Regulations 1998 is not well founded and is dismissed.

WRITTEN REASONS

(Provided pursuant to a request made under rule 62 (3) of the Employment Tribunals (constitution and rules of procedure) Regulations 2013)

The issues

1. At the start of the hearing the tribunal sought to clarify with the parties the issues in dispute.
2. The tribunal has set out below the agreement reached.
3. The claimant expressly conceded that she was no longer pursuing a complaint that her contractual notice should have been paid at her contractual, pre-furlough salary rate.
4. The only issue between the parties now related to 18.5 days holiday. The respondent had paid the claimant holiday pay during her notice period. It had based the holiday pay on her pre-furlough contractual rate, not on her furlough rate of pay.
5. At the heart of the dispute was whether the respondent was entitled to require the claimant to take holiday during her contractual notice period when the claimant

contended she should have received a payment in lieu and not have been forced to take holiday during her notice period.

6.The claimant originally indicated she was claiming £3552 but conceded that there should be deducted from that sum £1452 because a failure to do so would result in double compensation. The claimant's net claim was therefore £2100.

7.Both parties agreed this was the figure subject to liability.

The material facts

8.The claimant started work with respondent on 09 September 2019 as a digital marketing manager on a salary of £50,000.

9.She was issued with both written particulars of employment and a contract of employment.

10.She was entitled to 25 days paid holiday plus public holidays under her contract with the respondent.

11.The claimant's contract stated "*Your annual holiday entitlement is set out in the written statement of particulars. The company reserves the right to require you to take holidays, or not take holidays, at such times as are specified by the company*".

12.On 07 April 2020 the claimant agreed to be placed on furlough leave. She was thereafter entitled to a furlough payment of £2500 per month.

13.The claimant was told, when she agreed to the variation of her contract to be placed on furlough, that, other than pay, her terms and conditions remained the same.

14.On 25 June 2020 the claimant was told she was being dismissed by reason of redundancy. The claimant was disappointed to have her contract terminated and also to be told that given her notice exceeded the statutory minimum her notice pay would be based on her varied furlough pay. It was for this reason the claimant was told if there was any outstanding holiday the end of her contract she would receive a payment in lieu. There was no agreement that the respondent might not require the claimant to take holiday during her notice period.

15.A letter was sent to the claimant on the same day. The letter confirmed that the effective date of termination was 24 September 2020.

16.In the letter of termination the claimant was told "*at the end of September, you will receive your final pay up to 24 September along with payment in lieu of holidays accrued but not taken up to that date*"

17.The respondent then understood that as a result of discussions with ACAS the claimant was seeking both contractual notice at her contractual rate and holiday pay in lieu. It was for this reason the respondent decided that it would require the claimant to take holiday during her notice period, as was its strict legal right

18.The respondent sent the claimant an email on 24 July 2020 confirming that she had 18.5 days holiday outstanding . The email continued "*Could you please*

therefore submit the appropriately request in “Whosoff” in the usual way so that these 18.5 days are fully taken by 24 September. Please do so by Tuesday 27th of July, close of play latest”

19.The claimant did not book any holiday, although in fairness to her, it may well have been that her computer account had been blocked once she was told her contract was to be terminated.

20.By email dated 29 July 2020 the respondent wrote to the claimant in the following terms *“Despite my email dated 24 July where I made the reasonable request that you submit the request by Tuesday 28th of July you’re not done so far. Consequently, in line with paragraph 7 (A) of the term to conditions of your employment with the company, we hereby serve notice to you that you will be on annual leave on the following dates*

03 August 2020

7 to 11 August 2020 inclusive

24 August 02 September inclusive

7 to 9th of September to midday”

21.The email concluded that if the claimant secured employment elsewhere during the notice period the respondent would be happy to accept short notice.

Decision and reasons

22.Under the Working Time Regulations 1998, for an employer to seek to compel an employee to take holiday it must give double the length of notice of the holiday that the employer requires the employee to take, see Regulations 15(2) and (3)

23.The respondent has complied with the provisions of the Working Time Regulations and has also acted in accordance with the terms of its contract with the claimant.

24.Did the email of 25 June 2020 prevent the respondent serving notice to take holiday?

25.The tribunal answered that question in the negative. The tribunal was not satisfied that the agreement reached was that the claimant would be paid 18.5 days accrued holiday at the end of her contract. There was no agreement whatsoever that it would be 18.5 days paid to the claimant. There was no agreement that the respondent would not require the claimant to take holiday during the notice period.

26.The respondent then was entitled by law both under the claimant’s contract and the Working Time Regulations to require to take her holiday and did so lawfully

27.It follows therefore the claimant’s claim must be dismissed.

Employment Judge Smith
Date: 26 May 2022

Sent to the parties on
Date: 7 June 2022