



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr Z Demetriou**

**Respondent**

**Garde Ltd**

**Heard at: Watford**

**On: 30 March 2022**

**Before: Employment Judge French**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Not present**

**JUDGMENT** having been sent to the parties on 8 April 2022 but due to a network error, Judgment having been re-sent on 19 April 2022 and written reasons having been requested on 20 April 2022 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. This is a claim by the claimant by way of claim form dated 7 September 2020 for which he seeks unpaid notice pay and holiday pay. The respondents submitted a response to the claim, which was received by the Tribunal on 28 October 2020.
2. Employment Judge Quill rejected this response, it having been received more than 28 days after the respondent was sent a copy of the claim and it was not accompanied by and did not include an application to extend the time limit. It is understood that the respondent appealed this decision, however the appeal was unsuccessful.

3. The Tribunal subsequently corresponded with the claimant to seek further information with a view to dealing with the matter under rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
4. As a result of that the Tribunal was provided with the following documentation:
  - A) Wage slip dated 31 July 2020
  - B) Undated letter from the respondent to the claimant detailing their calculation of furlough and holiday pay.
5. As a result of that information the claim was listed for a hearing to determine the claimant's claim. The respondent was given notice of this hearing, although under rule 21 their participation would have been limited to the extent that the employment Judge allowed. In any event, on the day of the hearing, the respondent sent an email to the Tribunal stating that due to illness they would not be in attendance and would await the Tribunal's decision.
6. The hearing therefore proceeded with the claimant alone and the Tribunal heard evidence from the claimant.

### **Evidence**

7. The claimant confirmed that he was employed as a scaffold laborer by the respondent company from 11 November 2019 until 31 July 2020, working 5 days per week.
8. On 16 July 2020, he was sent a text message terminating his employment. He states he was told that he was owed 15 days annual leave which had been accrued but untaken and that this leave would be used as his notice period.
9. The claimant sought payment for 1 month's notice and 15 days accrued but untaken holiday. He confirmed that he was paid £500.00 per week.
10. The claimant also stated that he was not provided with any form of written employment contract at the start of or during the course of his employment.

### **Fact finding**

11. The respondent gave notice to terminate the claimant's employment on 16<sup>th</sup> July 2020. At that time the claimant was owed 15 days accrued but untaken annual leave.
12. The claimant gave evidence that he was not issued with a contract of employment when he began work for the respondent or during the course of his employment. He had a verbal agreement with them that he would be paid £500.00 per week.
13. When questioned about why the respondents undated letter referred to above, referenced February pay as £1317.09 which indicated a lesser weekly amount than £500.00 per week, he stated that this was because the respondent deducted pay from him for the month of February which made his pay lower. This was due to him taking a period of unpaid leave. His furlough pay was subsequently calculated based on that figure. The Tribunal was satisfied with that explanation and found the claimant to have been paid £500.00 per week. This was also

supported in the respondent's rejected response form where they did not dispute the amount of pay stated by the claimant.

14. The claimant stated that he was owed 1 month's notice although could not provide any evidence to the Tribunal to support this by way of agreement between him and the respondent. In absence of anything to the contrary, the Tribunal therefore found that the statutory period of 1 week's notice applied, based on the claimant having been employed by the respondent for more than 1 month but less than 2 years.

## **The Law**

### **Holiday pay**

15. Claims for holiday pay can be brought as complaints of unlawful deduction from wages, as complaints of breach of contract or under the Working Time Regulations 1998 ("the WTR").
16. Section 13 of the WTR give workers the right to 28 days holiday a year, including bank holidays. Section 14 of the WTR states that where employment is terminated and annual leave has been accrued but not taken, the employer shall pay the employee in lieu of leave taken. Section 16 of the WTR states that a worker is entitled to be paid for annual leave at the rate of a week's pay in respect of each week of leave.

### **Notice pay**

17. Section 86 of the Employment Rights Act 1996 states that the notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more is not less than one week's notice if his period of continuous employment is less than two years.

### **Unauthorised deduction**

18. Section 13 of the Employment Rights Act 1996 states that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised.
19. Subsection 3 of that Act states that where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by the worker on those occasions (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the workers wage on that occasion.

20. If the respondent fails to pay the correct holiday pay or notice pay this would amount to an unauthorised deduction from wages.

#### Failure to provide written particulars

21. Section 1 ERA 1996 states that an employee must be provided with written particulars of their employment and sets out what those particulars should include.

22. Section 38 of the Employment Act 2002 states that where an employer fails to provide written particulars, the tribunal must make an award to the claimant of two week's pay. If just and equitable the tribunal can consider awarding a higher amount of four week's pay.

#### Conclusions

23. The claimant had been employed by the respondent for longer than 1 month but less than 2 years and as such was entitled to a notice period of 1 week to commence from 16 July 2020 when notice was given by the respondent.

24. At the time that notice was given the claimant had accrued but not taken 15 days of annual leave. He was therefore owed a payment in lieu of the untaken annual leave totaling 15 days. This should have been paid in addition to the one week's notice pay.

25. Although the claimant was on furlough at the time notice was given to him, his 1 week notice pay and 15 days holiday pay should have been paid at his full rate of pay, namely £500.00 per week.

26. The Tribunal also heard evidence from the claimant to confirm that he was not provided with written particulars of his employment in accordance with section 1 of the Employment Rights Act 1996. As such under s38 of the Employment Act 2002, the Tribunal must make an award to the claimant of two week's pay. The Tribunal found no evidence to consider that it would be just and equitable to make the higher award of four week's pay.

#### Correction

27. It should be noted that in the course of preparing these written reasons as requested by the respondent, the Tribunal has noted that an incorrect calculation was made at the hearing, with regard to the sum due for notice pay and holiday pay. An incorrect weekly figure of £461.30 was used instead of £500.00 per week

and parties are referred to the Certificate of Correction which remedies this and provides the correct figures.

### **Remedy**

#### **Furlough pay:**

28. For the period 1-15 July 2020, prior to notice being given the claimant should have been paid furlough pay. The claimant's furlough pay was calculated based on his February pay of £1317.09 for which 80% totals £1053.67.

£1053.67 per month x 12 months is a yearly figure of £12,644.04.

Divide by 52 = £243.15 per week

Divide by 5 = £48.63 per day

29. 1 July to 15 July is a period of 2 weeks (£243.15 per week x 2 weeks) totaling **£486.30**.

#### **Notice pay:**

30. For the reasons stated above the claimant was owed 1 week's notice pay at his full rate of pay of £500.00, therefore totaling **£500.00**.

*As referred to in the heading 'Correction' above, the Tribunal's original calculation of this was £461.50 per week based on an incorrect calculation which calculated weekly pay at £461.50 based on a gross yearly figure of £24,000.00. Having re-considered the matter in the course of preparing these written reasons this calculation was wrong, the claimant's weekly pay having been £500.00 per week.*

#### **Holiday pay:**

31. The claimant was owed 15 days' holiday at his full rate of pay of £500.00 per week.

£500.00 per week x 52 weeks totals £26,000.00 per annum.

£500.00 per week divided by 5 working days is £100.00 per day.

32. 15 days at £100.00 per day is a total of **£1500.00**

*Again the Tribunal's original calculation of this was wrong because it was based on a yearly figure of £24,000.00 per annum which gave a weekly figure of £461.50 and a daily rate of £92.30. Daily rate of £92.30 x 15 days totals £1384.50 which was incorrect.*

33. Taking the correct figures, the claimant therefore should have been paid a final payment of £2486.30 gross (furlough pay £486.30 + notice pay £500.00 + holiday pay £1500.00). His final pay on 31 July 2020 was £1235.47 gross. This is therefore an underpayment of £1250.83 (£2486.30 due - £1235.47 paid) and amounts to an unlawful deduction from the claimant's wages.

Two week's pay for failure to provide written particulars

34. £500.00 per week x 2 weeks = **£1000.00**.

35. Adding this amount to the total due for holiday and notice pay gives a total of **£2250.83** gross (£1000.00 + £1250.83) which is owed to the claimant, to be paid by the respondent. This figure is gross and the claimant must account for any tax and national insurance due.

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**Employment Judge French**

18 May 2022

Judgment sent to the  
parties on: 10/6/2022

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For the Tribunal: