



EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Hope

Respondent: Laura Jeeves London Limited t/a Bramhall Dry Cleaners

Heard at: Manchester

On: 2 September 2022
and 12 October 2022
(in chambers)

Before: Employment Judge Slater

Representation

Claimant: In person

Respondent: Mr G Saunders, director

RESERVED JUDGMENT

1. The respondent made an unauthorised deduction from wages by failing to pay the claimant the full amount of pay in lieu of accrued but untaken holiday and is ordered to pay to the claimant the gross sum of £235.58.
2. The respondent made an unauthorised deduction from wages by paying the claimant for 30, rather than 32, hours per week in July and August 2021 and the respondent is ordered to pay to the claimant the gross sum of £106.92.
3. There was no breach of the ACAS Code of Practice on Discipline and Grievance so no uplift is made to compensation because of a breach of that code.
4. The complaint of unauthorised deduction from wages in respect of an amount alleged to be due but not paid of £2305.47 is not well founded.

REASONS

Claims and issues

1. At a private preliminary hearing on 7 March 2022, the claimant's claims were identified as being:

- 1.1. A claim for holiday pay accrued but untaken during 2020 and 2021; and
- 1.2. A claim for 12 hours unpaid wages in June, July and August 2021.

2. The complaints and issues were identified as follows:

Holiday Pay

1. Can the claimant establish that she has the right to carry over unused annual leave, or annual leave for which she was not paid, from 2020 into her final leave year?
2. Can the claimant show that she was entitled to be paid for annual leave either untaken, or taken but not paid for, at the date employment terminated, which was of a value higher than the payment in respect of holiday pay actually made to her?
3. If so, what is the amount due to the claimant?

Unauthorised deductions from pay

4. Can the claimant show that the respondent made a deduction from her pay in respect of June, July or August 2021 by paying her less than the amount to which she was contractually entitled?

ACAS Uplift

5. Did the claimant lodge a grievance about holiday pay?
6. If so, did the respondent unreasonably fail to deal with that grievance in accordance with the ACAS Code of Practice?
7. If so, is an uplift to the award in respect of holiday pay appropriate?

3. In discussion at the start of the hearing, the respondent accepted that the claimant was entitled to be paid for 2020 accrued but untaken leave on termination of employment as well as the 2021. The respondent said they had calculated the accrued entitlement as 209 hours but had paid the claimant for 221 hours in an effort to end the claim. The claimant only accepted that she had been paid the amounts set out in the schedule of loss, asserting that she was still owed £1091.60 for holiday pay. The claimant told me that someone from the CAB helped her prepare her schedule of loss. The claimant was not able to answer queries about the calculation.

4. In relation to the alleged deduction from wages in June, July and August 2021, the claimant asserted that her working hours had been reduced without her agreement from 32 hours per week to 30 hours per week and that she was owed for 12 hours, totalling £106.92.

5. In discussion at the start of this hearing, the claimant informed me that she was also claiming payment for £2305 wages for September 2021 that she said she had not received. The claimant had referred to this complaint in her claim form, but it did not appear to have been discussed at the preliminary hearing, other than in relation to the claim for holiday pay, and was not included as a separate claim in the claimant's schedule of loss. This complaint had not been withdrawn or dismissed. I arranged for an HMRC document on which the claimant relied for this claim, which she had sent to the Tribunal, to be scanned and sent to the respondent. After Mr Saunders had an opportunity to read this, during a break, he informed me that he was willing and able to deal with this complaint as well as with the other complaints at this hearing. The issues to be determined in relation to this complaint were whether this amount was owed to the claimant. The respondent asserted that no further amount was due and that the claimant had misunderstood the HMRC document which gave multiple figures for the same month, where the respondent had been required to resubmit the payroll to HMRC when they made any amendments to payslips.

Facts

6. The claimant worked for the respondent, managing its dry cleaning shop in Bramhall, from March 2015. Her employment ended on 7 September 2021.

7. The respondent agreed that the claimant was entitled to carry forward holiday entitlement from 2020 into 2021.

8. At the time the claimant's employment ended, she was earning £8.91 per hour.

9. On termination of employment, the claimant was paid an amount in lieu of accrued but untaken holiday. The respondent had calculated the entitlement as 22 days but, in error, the respondent did not pay the claimant the full amount. Ms Kilby, who gave evidence for the respondent, told me that the claimant had been paid, in error for 22 hours, rather than 22 days. As the next paragraph sets out, I have found that the claimant initially was paid for 20 hours' holiday pay, rather than 22.

10. The claimant was paid £512.33 by the respondent on 30 September 2021. This was the net amount paid but, from the information supplied by the respondent to HMRC, it appears also to be the gross amount paid. I consider it likely that this payment was in respect of wages and holiday pay. I was not shown a payslip corresponding to this payment, so have no documentary evidence about how much of this, if any, related to holiday pay. However, the claimant's schedule of loss gives credit for a payment of £178.20 in respect of 20 hours holiday pay on 30 September 2021. It appears that, at the time of producing the Schedule of Loss, the claimant and her adviser may have had access to some information which has not been shown to me. Given the likelihood that the payment after termination of the claimant's employment would have included some amount for wages owing, as well as holiday pay, I find that the claimant was paid £178.20 gross in respect

of holiday pay on 30 September 2021 and that the balance of the payment was in respect of wages owed for hours worked.

11. A payslip for 30 September 2021 shows a net payment of £1899.45. There is no evidence from the respondent's bank statements that a payment of this amount was made to the claimant. The copy of the payslip is a poor one, which has the descriptions of the payments cut off. However, it appears to me likely, from the amounts, that a gross amount of £1971.34 was intended to be made in respect of 221.25 hours holiday pay.

12. There is a payslip for 31 October 2021 showing a net payment of £232.75 to the claimant. I find that this was intended to relate to holiday pay. There is no evidence from the respondent's bank statements of a payment of this amount to the claimant. The claimant's bank account shows no payment in from the respondent on 31 October 2021 or the working days immediately before or after this date (which was a Sunday).

13. The claimant was paid an amount of £1619.87 net on 8 November 2021. This payment does not correspond with any payslip I have been shown. I find that this payment was in respect of holiday pay.

14. I find that the claimant was paid the following amounts in respect of holiday pay after termination of her employment:

£178.20 gross on 30 September 2021
£1619.87 net on 8 November 2021.

I find that the claimant was not paid any other amounts in respect of accrued but untaken holiday on termination of her employment.

15. The respondent agreed that the claimant had accrued 179.2 hours holiday for 2020 and that 51.2 hours should be added for public holidays, making a total of 230.4 hours entitlement for 2020.

16. I find the claimant took no paid holiday in 2020 other than 4 days (32 hours) in September 2020 and Christmas bank holidays. The claimant gave evidence that she had not taken any holiday during the year. Ms Kilby gave evidence that the claimant had taken a week off in September (4 days' holiday) and bank holidays over Christmas. I accept Ms Kilby's evidence that the claimant always had bank holidays off with pay. I find, based on documents relating to a grievance brought by the claimant in late 2020, that the claimant did take holiday in September 2020. Initially, this was treated as unauthorised leave and the claimant was not paid, because the respondent said she had not followed the holiday procedure. However, one of the outcomes of the grievance was that she was to be paid for this holiday.

17. I accept the calculation that the claimant's pro rata entitlement to leave in 2021 up to the date of termination was 122.8 hours plus 38.32 hours for public holidays, making a total of 161.12 hours entitlement for 2021.

18. The evidence in relation to paid holiday taken by the claimant in 2021 is not clear and the respondent has not provided any calculation of holiday pay, or leave

records, showing what leave the claimant took. The claimant confirmed in evidence that she had taken the paid holiday set out in her Schedule of Loss. This stated she had taken 32 hours holiday. However, it then set out payments received for holiday as follows, prior to September 2021 (the September payment I find being in respect of accrued but untaken holiday): 2 hours in May 2021 £114.04, 15 hours in July 2021 £133.65, 7.5 hours in August 2021 £66.83. The May 2021 payment must have been in respect of more than 2 hours' leave. At the claimant's rate of pay of £8.91 per hour, this would equate to approximately 13 hours' work. Using a corrected May holiday of 13 hours, the total of paid hours taken is 35.5, which is more than the 32 hours the Schedule of Loss suggests was taken.

19. I accept Ms Kilby's evidence that the claimant had time off with pay on bank holidays.

20. I find that the claimant took 35.5 hours' paid leave in 2021 plus bank holidays which fell in the period until termination of her employment.

21. After the ending of her employment, the claimant made a telephone call to Ms Kilby asking why she had only been paid for 20 hours holiday pay. Ms Kilby told her she would look at it, have a word with Attiyah and get back to her. The claimant did not say expressly that she was putting in a grievance. Ms Kilby understood the call to be querying the payment, as the claimant had done about other payments in the past. The claimant had not heard anything by 30 September 2021, so started early conciliation with ACAS on that date and presented her claim on 29 October 2021. The claimant did not put a grievance in writing after the ending of her employment. She had previously, during the course of her employment, brought a grievance about other matters, putting that grievance in writing.

22. I note that the claimant's previous grievance, submitted in late 2020, had included complaints about incorrect payments and about not receiving payslips on time, so she could not check whether her wages were correct. The outcome of the grievance also included that they would reach an agreement for the claimant to be able to have a lunch break without customer interruption and time away from the shop. I accept the evidence of the claimant that arrangements were never put in place to allow her to take breaks and that she continued to work 32 hours per week until the end of her employment.

23. The claimant had been paid for 32 hours per week until the end of June 2021. In July and August 2021, she was paid for 30 hours per week. The claimant was on an extended period of sick leave in early 2021, returning to work initially 2 days a week in April 2021 then back to her normal hours in May 2021. I accept Ms Kilby's evidence that payment dropped to 30 hours a week after June 2021 because she believed that the claimant was taking an hour's unpaid break each day. There is no evidence that Ms Kilby checked this was happening before she gave instructions for the claimant's wages to be reduced from 32 hours to 30 per week. As noted above, I find that the claimant continued to work 32 hours per week until the end of her employment.

24. HMRC records provided to the claimant show taxable income agreed to be in respect of the claimant's employment with the respondent, although the record is in the name of Granada Pressing and Cleaning Co Ltd, a company which I note from Companies House records is now in creditors voluntary liquidation. This gives

total taxable income in the period 30 April 2021 to 31 October 2021 as £7,724.49. In respect of some months, there are multiple entries for the same month end date. The total taxable income is the total of the last entry for each month. I find, based on this, that where there are multiple entries for a month, the last figure for that month is the corrected figure submitted by the respondent to HMRC.

Law

25. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

Submissions

26. Mr Saunders referred to an explanation he had given towards the start of the hearing about the HMRC document. He submitted that the claimant had misunderstood the position about the £2057. He submitted that, in relation to holiday pay, the claimant had failed to give credit for the payment of £512. The respondent's position was that everything due had been paid to the claimant.

27. Mrs Hope suggested that the respondent was using confusion as a tactic. If it was not this, she suggested it was incompetence.

Conclusions

Holiday pay

28. I have found that the claimant's entitlement to leave for 2020 was 230.4 hours in total, including public holidays. I found that she took 4 days' paid leave (32 hours) in September 2020 and the Christmas bank holidays, which were 25 and 28 December 2020 (16 hours taken together). The balance for 2020, which the claimant was allowed to carry over to 2021, was $230.4 - (32 + 16) = 182.4$ hours.

29. I have found that the claimant's pro rated entitlement to leave for 1 January 2021 to 7 September 2021 (the last day of her employment) was 161.12 hours. I found that she took 35.5 hours' paid leave in 2021 plus bank holidays. There were 6 bank holidays falling in the period 1 January to 7 September 2021: 1 January, 2 and 5 April, 3 and 31 May and 30 August 2021. 6 bank holidays equates to 48 hours' leave. The balance of leave for 2021, in respect of which the claimant was entitled to be paid in lieu, was $161.12 - (35.5 + 48) = 77.62$ hours.

30. The total amount of accrued leave for which the claimant was entitled to payment in lieu was $182.4 + 77.62 = 260.02$ hours.

31. The claimant's hourly rate was £8.91 per hour. She should have been paid a total of $260.02 \times 8.91 = £2,316.78$ for accrued but untaken leave on termination.

32. I have found that the claimant was made two payments in respect of holiday pay on termination. The first was a gross payment of £178.20 on 30 September 2021. This was part of the payment of £512.33 made on that date. I reject the respondent's submission that the claimant had not given credit for holiday pay received in the payment of £512.33. The Schedule of Loss includes this payment as a payment of £178.20 for holiday pay on 30 September 2021. The second payment was a net payment of £1619 on 8 November 2021. Tax and national insurance contributions would have been deducted before this payment was made. Since the payslips do not correspond to the payments made, I am unable to be sure about the amount of the gross payment i.e. the figure before those deductions were made. Using an online calculator to assist me, I estimate that the gross equivalent of the net payment of £1619 was £1903. I conclude, therefore, that the claimant was paid a total gross payment of £2081.20 (£1903 + £178.20) in respect of accrued but untaken holiday pay.

33. The amount I have conclude the claimant was entitled to be paid for holiday pay is greater than the amount she was paid. I conclude, therefore, that the respondent made an unlawful deduction from wages in the sum of the shortfall. This shortfall is £2,316.78 - £2081.20 = £235.58.

12 hours pay for July and August 2021

34. I found that the claimant continued to work 32 hours per week in July and August 2021 but was only paid for 30 hours per week. Her pay was short by a total of 12 hours pay for this period. I conclude that the respondent made unlawful deductions from wages by not paying the claimant for 32 rather than 30 hours over this period. The shortfall which the respondent is ordered to pay is £106.92 (12 x £8.91).

The £2,305.47 payment shown for 30 September 2021

35. I conclude that the claimant has made a genuine mistake in relation to this complaint, based on the records received from HMRC. The confusion has been caused by the respondent's mistakes in payroll and needing to correct these. As noted previously, where there are multiple entries for the month end date, it is the total of the last of the figures for each month that constitutes the total taxable pay. This is consistent with the explanation provided by Mr Saunders that, when they have to make a correction, they have to submit a new return to HMRC for the month.

36. The claimant has not satisfied me that there is any amount due to her, which has not been paid by the respondent, other than the shortfall in relation to holiday pay and 12 hours worked in July and August 2021, in respect of which awards have been made. I conclude that the complaint in respect of an alleged payment due but not made of £2,305.47 is not well founded.

ACAS uplift

37. The claimant sought an uplift on compensation because of an alleged failure to comply with the ACAS Code of Practice on Discipline and Grievance. I conclude that the claimant did not make it clear that she was presenting a grievance about the amount of holiday pay received, following the ending of her employment. She

did not present a grievance in writing, as is required by the ACAS Code. I conclude, therefore, that the Code did not apply and the respondent was not in breach of the Code by not convening a grievance hearing. No uplift to compensation can, therefore, be made.

Employment Judge Slater
Date: 12 October 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
17 October 2022

FOR EMPLOYMENT TRIBUNALS

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2414300/2021**

Name of case: **Mrs Y Hope** v **Laura Jeeves London
Limited t/a Bramhall Dry
Cleaners**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day, the calculation day, and the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 17 October 2022

the calculation day in this case is: 18 October 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.