



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Liam Merrick

**Respondents:** Co-ord Sport Limited

**Heard at:** Employment Tribunal | HMCTS | 13th Floor, Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU (by CVP) **On:** 06 May 2022

**Before:** Employment Judge Hena (sitting alone)

## Representation

Claimant: Mr Merrick, In Person

Respondent: Mr Peter Collinson, Director of Co-ord Sport Ltd

# JUDGMENT

## The Tribunal makes the following findings in respect of this claim:

1. The claim for holiday pay is dismissed on the basis that the staff handbook is clear that leave must be used prior to leaving the organisation. The Tribunal believes that the respondent explained to the claimant that he had leave to use and did not have to work his 4 weeks' notice and that he was paid for the 1 week of notice which his leave did not cover.
2. There is no award to be paid.

# REASONS

## Claims and Issues

1. The claims and issues in this matter are:
  - 2.1 What was the claimant's hours of work and gross monthly pay?
  - 2.2 Is the claimant owed holiday pay?
  - 2.3 If the claimant is owed holiday pay how much is he owed?

## Evidence

4. The evidence of the claimant can be summarised as;
  - The claimant adopted his witness statement.
  - He gave evidence to say he believes he is owed holiday pay as his employment was terminated with immediate effect by the respondent and was told he would be paid in full but there was no mention of his holiday pay.
  - When his employment was terminated, he had 20 minutes to leave his work place and he had no access to his emails from thereon.
  - Whilst he was given a contract of employment, he believes it was changed three years ago and he cannot now find it. He was never given the staff handbook, but he did describe where in the office the handbook was located.
  - He confirmed he believed he was owed 15 ½ days due to COVID and it was leave that was carried over to the following leave year.
  - He said that his holiday pay was deducted from his final wages and when he questioned this via whatsapp he was told that he has agreed to use his leave as part of his notice period – but he says he did not agree to this.
  - He was not sure what type of leave he was on when he left his workplace – he thought may be it was notice period or work.
  - He believed he was owed £1,092 before tax for the holiday pay.
5. The respondent's evidence in response can be summarised as;
  - Mr Collinson on behalf of the respondent gave evidence about the claimant giving notice and how he called him into his office, he told the claimant he would prefer if he did not work his notice.
  - He maintained that he spoke to the claimant about the holiday at this point and said he wished him to use his leave, so he did not need to come into work.

- He confirmed that the company policy was that holiday must be used before leaving the respondent's workplace.
- The respondent said the claimant did not respond to the request to use his leave and notice but instead focused on why he handed his notice in and the fact that he was upset with colleagues in the office.
- Whilst the respondent did not go through the policy with the claimant, he said it was all in the handbook and he should have known this.
- The respondent said that the claimant would have received the handbook and it is not correct that he did not have it. But nevertheless, as well as it being sent digitally the hardcopy was located behind where the claimant sat in the office.
- The respondent clarified that he paid the claimant 1 weeks' notice pay and then a further 3 weeks which covered his 15.5 days of holiday.
- The respondent said that they have the discretion to make payment to former employees for untaken holiday and usually would occur if the employee had more holiday than notice period, which is relevant due to the pandemic.
- He believed he was very clear with the claimant that he had lots of holidays and there was no need for him to continue working.

## **Fact Findings**

6. The Tribunal found the following in relation to the issues;

*(a) What was the claimant's hours of work and gross monthly pay?*

7. The claimant confirmed at the outset that this issue was agreed by him and no longer an issue. He said that his ET1 was not correct regarding this and that the respondent's ET3 was correct. He said it is the case that he worked 40 hours per week when employed by the respondent.

*(b) Is the claimant owed holiday pay?*

8. The claimant appears to confirm that he was paid for 4 weeks after he handed his notice in with the respondent, but he believed that this was either 4 weeks' notice pay or maybe pay for 4 weeks for work. However, it is agreed by both parties the claimant did not work for those 4 weeks he was paid.

9. The claimant maintains that he never agreed to use his holiday in this manner and in addition to being paid the 4 weeks after he handed his notice in, he should be paid 15.5 days of holiday pay that he was unable to take prior to leaving the respondent's employment and leave from the COVID period.

10. The Tribunal preferred the respondent's evidence on this issue, that he was requested to leave the respondent's offices immediately rather than working his notice and that the 4 weeks of pay after this period was made of 1 week of notice

pay and the remainder was his holiday that he was required to use prior to terminating his employment with the respondent.

11. Whilst the Tribunal accepts that the respondent has a discretion and there are circumstances when they may pay a former employee for any unused holiday in this case this was not applicable as it had all been used. It is not accepted given the claimant's omission that he did not know how to access the staff handbook and it is surprising he did not access it prior to handing his notice in to establish his rights or request this in writing from the respondent after he left to understand the policy.
12. The claimant was also vague about his contract of employment and stated he could not find this. Given his evidence on this point the Tribunal found that the respondent did send the claimant a staff handbook digitally and he just not access it as he did not see the need.

*(c) If the claimant is owed holiday pay how much is he owed?*

13. Given the findings in relation to the above issue the Tribunal finds that the claimant is not owed holiday pay and he therefore is not owed anything as the respondent agreed for him to use his holiday as part of his notice.

## **The Law**

2. The relevant provisions of the WTR are as follows:

*13.— Entitlement to annual leave*

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

*[...] 2*

*(3) A worker's leave year, for the purposes of this regulation, begins—*

*(a) on such date during the calendar year as may be provided for in a relevant agreement; or*

*(b) where there are no provisions of a relevant agreement which apply—*

*(i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or*

*(ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.*

14.— *Compensation related to entitlement to leave*

(1) *This regulation applies where—*

(a) *a worker's employment is terminated during the course of his leave year, and*

(b) *on the date on which the termination takes effect (“the termination date”), the*

*proportion he has taken of the leave to which he is entitled in the leave year under*

*[regulation 13] 1 [ and regulation 13A] 2 differs from the proportion of the leave year which has expired.*

(2) *Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).*

(3) *The payment due under paragraph (2) shall be—*

(a) *such sum as may be provided for for the purposes of this regulation in a relevant agreement, or*

(b) *where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—*

$$(A \times B) - C$$

*where—*

*A is the period of leave to which the worker is entitled under [regulation 13] 1 [ and regulation 13A] 2;*

*B is the proportion of the worker's leave year which expired before the termination date, and*

*C is the period of leave taken by the worker between the start of the leave year and the termination date.*

16.— *Payment in respect of periods of leave*

*(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 [ and regulation 13A], at the rate of a week's pay in respect of each week of leave.*

*(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).*

### *30.— Remedies*

*(1) A worker may present a complaint to an employment tribunal that his employer—*

*(a) has refused to permit him to exercise any right he has under—*

*(i) regulation 10(1) or (2) , 11(1), (2) or (3) , 12(1) or (4) , 13 or 13A;.....*

*(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).*

*(2) Subject to [regulations 30A and 30B] 4, an employment tribunal shall not consider a complaint under this regulation unless it is presented—*

*(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;*

*(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.*

*(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—*

*(a) shall make a declaration to that effect, and*

*(b) may make an award of compensation to be paid by the employer to the worker.*

*(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—*

*(a) the employer's default in refusing to permit the worker to exercise his right, and*

*(b) any loss sustained by the worker which is attributable to the matters complained of.*

*(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.*

3. The relevant provisions of the ERA provide as follows:

*13.— Right not to suffer unauthorised deductions.*

*(1) An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) 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*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question,*

*or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) 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 the wages properly payable by him to the worker on that occasion (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 worker's wages on that occasion.*

*23.— Complaints to employment tribunals*

*(1) A worker may present a complaint to an employment tribunal*

*(a) that his employer has made a deduction from his wages in contravention of section*

*13...*

*(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

*(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

*(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

*(3) Where a complaint is brought under this section in respect of—*

*(a) a series of deductions or payments, or*

*(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received....*

*(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

*(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.*

*(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).*

*15. A breach of contract claim in the employment tribunal is brought pursuant to*

*Article 3 of the Employment Tribunals Extension of Jurisdiction (England and*



*Wales) Order 1994 (the "Extension of Jurisdiction Order"). This provides that a tribunal has jurisdiction to hear a claim for damages or any other sum where the claim arises or is outstanding on the termination of an employee's employment.*

**Employment Judge Hena**

**Date: 28 October 2022**