



EMPLOYMENT TRIBUNALS

Claimant: Ms D Truelove

Respondents: (1) Mr M Sheill
(2) Helskce Limited

Heard on: 9 November 2022 by video

Before: Employment Judge Pritchard

Members:

Representation

Claimant: In person

Respondents: Mr M Sheill

JUDGMENT

1. The Claimant was employed by the Second Respondent. The First Respondent is dismissed from proceedings.
2. The Second Respondent failed to present an ET3 response to the Tribunal. Judgment is entered against the Second Respondent under Rule 21 of the Employment Tribunal Rules of Procedure 2013 as follows:

The Second Respondent failed to pay the Claimant holiday pay outstanding upon the termination of her employment.

3. The Second Respondent is ordered to pay to the Claimant the sum of £720.00.
4. When these proceedings were begun, the Second Respondent was in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars. The Second Respondent is ordered to pay the Claimant the sum of £400.00 being two weeks' pay.

REASONS

1. By way of an ET1 presented on 14 April 2021, the Claimant claimed unpaid holiday pay naming the First Respondent as her employer. Although the First Respondent failed to present an ET3, a preliminary hearing took place before Employment Judge Nash on 24 March 2022.

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2. Upon the First Respondent's representations that the Claimant was employed by the Second Respondent, Employment Judge Nash ordered that the Second Respondent be joined in proceedings and be served with the ET1 claim form.
3. The Second Respondent was served with the ET1 claim form on 16 August 2022 and informed of the requirement to present its ET3 response no later than 13 September 2022. The Second Respondent failed to present a response.
4. Employment Judge Nash set out the issues to be determined:
 - 4.1. Was the claim for holiday pay made within the statutory time limit?
 - 4.2. Was the First or Second Respondent the Claimant's employer?
 - 4.3. Do the Respondents owe the Claimant any holiday pay?
 - 4.4. When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars?
 - 4.5. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
 - 4.6. Would it be just and equitable to award four weeks' pay?
5. At the hearing today, the Tribunal was presented with a number of wage slips showing that the Claimant was paid by the Second Respondent. A letter from the Second Respondent's accountants stated that she was employed by the Second Respondent. The Claimant accepts that, although unaware during her employment, she was employed by the Second Respondent.
6. The Claimant presented her claim (taking into account the extension of time under the ACAS Early Conciliation procedures) within 3 months of the termination of her employment. The Claimant presented her claim within the statutory time limits set out in section 23 of the Employment Rights Act 1996 and Regulation 30 of the Working Time Regulations 1998.
7. The Working Time Regulations 1998 provide that unless otherwise set out in a relevant agreement, a worker's leave year begins on the date employment began and each subsequent anniversary of that date. The Regulations also provide that, save in certain circumstances, leave may not be carried over to the following leave year.
8. The Claimant told the Tribunal that although she was paid for two weeks when the Second Respondent's business was closed in December 2020, she took no other holiday and was not compensated upon the termination of her employment. She was the only person working at the reception and could not take holiday. She was never encouraged by the Second Respondent to take holiday and she was never told that if she did not take it before the end of the leave year (which was never discussed) she would lose it.

9. The Tribunal concludes that the Claimant was effectively denied the right to take paid leave and is therefore permitted to carry over accrued leave to the following leave year and that the ruling of the Court of Appeal in Smith v Pimlico Plumbers 2022 IRLR 347 disapplies the no carry over provisions of the Working Time Regulations.
10. Under the Regulations, a worker is entitled to 5.6 weeks' paid leave in each holiday year. The Claimant claims holiday pay accrued in the twelve month period immediately preceding the end of her employment on 26 February 2021.
11. She took two weeks' paid leave in that period and remains entitled to 3.6 weeks' paid leave. The Claimant was paid at the rate of £200.00 per week. $3.6 \times £200 = £720.00$.
12. The Second Respondent failed to provide the Claimant with a written statement of employment particulars as required under section 1 of the Employment Rights Act 1996. There were no exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002.
13. There was no evidence to suggest that it would be just and equitable to award four weeks' pay.

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Pritchard

Date: **9 November 2022**

JUDGMENT AND REASONS SENT TO THE PARTIES ON
Date: **16 November 2022**

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FOR THE TRIBUNAL OFFICE