



EMPLOYMENT TRIBUNALS

Claimant

Mrs A Farr

Respondent

v Eds Best Convenience Value Food Limited

Heard at: Sheffield

On: 25 August 2022

Before: Employment Judge A James

Representation

For the Claimant: By telephone

For the Respondent: Did not appear and was not represented

JUDGMENT

(1) The claim for holiday pay (Employment Tribunals (Extension of Jurisdiction) Order 1994; Regulation 30 Working Time Regulations 1998) is upheld. Holiday pay is due to the claimant in the sum of £1,592.10.

REASONS

The issues

1. In a claim form submitted on 5 February 2022, the claimant made claims for 5 weeks holiday pay and for notice pay. During her notice period, the claimant was not fit for work. She made a claim for SSP, and that has subsequently been paid (by HMRC). No further payment is therefore due in respect of notice pay. The only issue for the Tribunal to determine is whether or not the claimant is entitled to any accrued holiday pay following the termination of her employment; and if so, how much.

The proceedings

2. A hearing was listed for 5 April 2022 but that was postponed by Employment Judge Deeley on the basis that the claimant had a pre-booked holiday. The hearing was re-listed for 27 May 2022.

3. That hearing was postponed by Employment Judge Wade due to a relevant witness being abroad. The postponement letter dated 25 April 2022 stated:

Permission is required for witnesses and parties to attend from outside the jurisdiction and in this occasion it is more pragmatic to postpone rather than seek the relevant in-country permissions.
4. The hearing was relisted for 16 June 2022. Mr Shaw applied to postpone that hearing because he was 'away' until 24 June. The application was initially refused by Employment Judge Lancaster on 13 June 2022. The hearing was subsequently re-listed to 12 July 2022. That was postponed by Employment Judge Buckley in the light of medical evidence which stated that the claimant was too unwell to attend. The claimant had not in any event attended the hearing, stating in an email dated 12 July that she couldn't face the stress and upset of it.
5. This hearing was subsequently arranged. On 24 August Mr Shaw applied to postpone the hearing. He provided a MED3 dated 23 August 2022 which confirmed that the respondent is not fit for work due to depression between the period of 23 August to 22 September 2022. In a letter dated 24 August 2022, Employment Judge Lancaster refused the application for a postponement, this being the third such application, and there being no indication when Mr Shaw would be fit enough to attend. In these circumstances, Employment Judge Lancaster decided that Mr Shaw's repeated reliance on ill-health, which led to the last postponement, did not amount to "exceptional circumstances" so that rule 30 (3) (c) was not satisfied.
6. The claimant did not attend today's hearing. She was on holiday in Skegness. She was contacted by telephone and gave evidence on affirmation. No other members of the public asked to attend the hearing.

Findings of fact

7. The claimant started work in June 2019 for a stall at Crystal Peaks Market. Her employment transferred to the respondent on 23 August 2021. She was employed as a Manager of the stall. Her employment continued until 29 January 2022, when it ended due to her having given notice to terminate her employment.
8. The claimant's gross weekly earnings were £435 per week. Her normal take-home pay was £404.
9. Following the termination of her employment, the claimant commenced Acas Early Conciliation on 31 January 2022, which concluded on 2 February 2022. On 5 February 2022, the claimant submitted a claim form in which she makes claims for holiday pay and other payments.
10. The claimant's holiday year ran from April to April. From April 2021, the claimant took a week's leave, whilst working for the previous owner of the business. After Mr Shaw took over, the claimant did not take any leave. The claimant was entitled to 5.6 weeks holiday per year. She worked bank holidays, when the stall was open.
11. At the time that her employment ended, 304 days of the year had passed. $304/365 \times 5.6 \text{ weeks} = 4.66 \text{ weeks}$ accrued holiday. One week's leave had been taken so 3.66 weeks accrued leave was due.

Relevant law

12. A worker is contractually entitled to be paid accrued holiday on termination of their employment, unless the contract says otherwise. A worker is also entitled under the Working Time Regulations to 5.6 weeks holiday per year. That was also the claimant's contractual entitlement. Under regulation 14 Working Time Regulations 1998, a worker is entitled to accrued holiday pay on the termination of their employment.

Conclusions

13. The claimant had accrued 3.66 weeks untaken holiday on the termination of her employment. 3.66 weeks @ £435 per week = £1,592.10. That is the amount due to the claimant.

Employment Judge A James
North East Region

Dated 25 August 2022

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