



EMPLOYMENT TRIBUNALS

Claimant: Mr G Simmonds

Respondent: My Staff Direct Limited

Heard at: Newcastle Employment Tribunal Remotely by Cloud Video Platform ('CVP')

On: 05 January 2023

Before: Employment Judge Sweeney

Representation:

Claimant: In person

Respondent: No attendance

JUDGMENT ON REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. Judgment on liability in respect of the claim of accrued, untaken holiday pay under Regulation 30 Working Time Regulations having been sent to the parties on **09 December 2022**, the Respondent is ordered to pay to the Claimant the gross sum (i.e. before tax and National Insurance) of **£1,852.88**.

REASONS

2. On **02 November 2022**, the Claimant presented a Claim Form to the Tribunal in which he brought a complaint for failure to pay accrued but untaken holiday pay (under Regulation 30 Working Time Regulations). On **08 November 2022**, the proceedings were served on the Respondent's registered office. The date for service of a Response was **06 December 2022**. However, no response was served by that date. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 a response has been rejected and no application for a reconsideration is outstanding, an employment Judge shall decide whether on the available material, a determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone.

3. Employment Judge Loy considered that he had sufficient information to issue a judgment on liability, which he duly did. Judge Loy directed that the issue of remedy be determined at today's hearing. On **20 December 2022**, the Claimant sent copies of bank statements, pay slips and a calculation of the holiday pay he claimed was owed to him.
4. The Claimant attended today's hearing. There was no appearance by the Respondent. The Claimant gave evidence and confirmed the information as set out in his correspondence to the tribunal of **20 December**.

Findings of fact

5. The Claimant was employed by the Respondent for a period of just under 25 weeks. The holiday year commenced on the first day of his employment, namely **24 February 2022**. The Claimant's employment terminated on **14 August 2022**. His holiday entitlement was 28 days. In that period, the Claimant worked full time, 5 days a week – averaging 55 hours in a week. He had not taken any annual leave in that period. He worked bank holidays with no days in lieu. His gross weekly pay was £711.54 resulting in a daily rate (for the purposes of the Working Time Regulations) of £142.31. As of the date of termination of his employment, the proportion of the holiday year that had expired was 46.5%. As at the date of termination he had not been paid in respect of accrued untaken holiday by the Respondent. Neither was any payment made to him after that date.

Conclusion

6. Having accepted the oral and documentary evidence of the Claimant I was satisfied that I had sufficient information from the above facts to enable me to determine the amount of holiday pay owed to him. I must apply the statutory calculation in regulation 14(3)(b) Working Time Regulations 1998, where:

$$\begin{aligned} A &= 28 \\ B &= 46.5\% \\ C &= 0 \end{aligned}$$

7. The calculation is, therefore: $28 \times 46.5\% = 13.02$ days. The Claimant's daily rate of pay being £142.31, he is entitled to £1,852.88 ($13.02 \times £142.31$). In the absence of any validly presented response or any further input from the Respondent, I was satisfied that I should order the amount of £1,852.88 to be paid to the Claimant in respect of accrued untaken holiday.

Employment Judge **Sweeney**

Date: 16 January 2023