



EMPLOYMENT TRIBUNALS

Claimant: Mr D Thushyanthan

Respondent: Mountwood Capital Ltd.

Heard at: London Central (by video) **On:** 12 October 2022

Before: Employment Judge Leonard-Johnston

Representation

Claimant: In person

Respondent: Mr Khashem, Operations Manager

JUDGMENT

1. The respondent's application for an extension of time to file its ET3 response form is granted.
2. The claim for unlawful deduction of wages and holiday pay succeeds.
3. The respondent must pay the claimant £974.33 (gross).

REASONS

1. Written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.
2. This is a claim brought by the claimant against Mountwood Capital Ltd which employed the claimant as a Senior Financial Analyst. ACAS early conciliation started on 5 July 2022 and finished on 29 July 2022. The claim was filed on 9 August 2022. This is a claim for outstanding holiday pay and notice pay.

Extension of time for filing response

3. The respondent made an application for an extension of time to submit its ET3. The reasons given were that the respondent is a very small

organisation and members of the team had been on leave when the claim was filed and that they had only just become aware of the claim. The ET3 was due on 27 September 2022, the ET3 was filed on 7 October 2022, shortly after the respondent wrote to the Tribunal on 5 October 2022 initially asking for an extension of time. I considered the overriding objective and the potential detriment to the claimant in allowing the response to be submitted late. The ET3 that had been submitted contained a short response which the claimant had had time to consider before the hearing, and no additional documentation. The balance of hardship falls on the respondent in not being able to defend the claim. I allowed the application to extend time under Rule 20 of the Employment Tribunal Rules of Procedure.

The issues

4. The claimant was employed from 10 January 2022 until 08 April 2022, having been given notice of termination on 1 April 2022. That was not in dispute. The issues in this case concern unpaid holiday pay and notice pay. Upon termination the claimant was paid £48.72 and was not provided with an explanation as to how that was calculated.
5. The holiday pay claim can be summarised as follows.
 - a. The claimant accrued seven days of holiday during his three months of employment.
 - b. The claimant had taken three days of holiday.
 - c. Four days of holiday was therefore outstanding.
6. The notice pay claim can be summarised as follows.
 - d. The claimant was given one week notice of termination of his employment by way of redundancy on 1 April 2022. He worked three days between 1 April and 8 April after receiving notice of termination.
 - e. Three days of unpaid salary is therefore outstanding.
7. The claimant calculated his daily rate at £146.15 gross which was not disputed by the respondent.

The Law

8. Section 13 of the Employment Rights Act 1996 gives employees the right not to suffer unauthorised deduction of wages. Holiday pay is included within the definition of wages so the right to holiday pay (including that under the Working Time Regulations) is also protected. Employees are entitled to be paid in lieu of accrued but untaken holiday on termination of employment.

Findings and conclusions

9. I make no findings as to the reasons for the termination of employment nor the behaviour of the parties during the course of employment. The issue before me is simply whether there was outstanding holiday and notice pay due upon the termination of the contract. Mr Khashem for the respondent agreed that the dates of employment and notice as asserted by the claimant were correct. He did not dispute that the claimant had taken 3 days of holiday. I find on the balance of probabilities that the claimant's version of events regarding the dates of employment, notice, termination and holiday

taken are correct.

10. In relation to the outstanding payment on termination, Mr Khashem could not explain how the figure of £48.72 had been calculated. His evidence was that the respondent had received this figure from their external accountants. He submitted to the Tribunal that if there had been a mistake and the claimant had been underpaid holiday and notice pay the respondent would pay it. The respondent put forward no positive case that the correct amount had been paid to the claimant.
11. On the evidence before me, and taking into account the respondent's concession on the relevant dates and failure to explain its calculation or put forward a case as to why the claimant was not entitled to the holiday pay or notice pay as claimed, I find that the claimant has made out his claim.
12. The claimant is entitled to four days' notice pay and three days accrued holiday pay. At the rate agreed by the parties of £146.15, the total outstanding amount is £1,023. Reducing that figure by the amount already paid by the respondent means that the respondent must pay the claimant the amount of £974.33 gross. The respondent will be entitled to deduct any tax and employee's national insurance contributions due on this amount before payment to the claimant.

Employment Judge Leonard-Johnston
03 February 2023

JUDGMENT SENT TO THE PARTIES ON

..03/02/2023

FOR THE TRIBUNAL OFFICE

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.