



EMPLOYMENT TRIBUNALS

Claimant:

Miss H Ballerino

v

Respondent:

The Racecourse Association Limited

Heard at:

Reading (in chambers)

On: 24 February 2023

Before:

Employment Judge Anstis

Mrs A Gibson

(the parties having consented to a two-person tribunal)

Appearances

For the Claimant: Written representations

For the Respondent: Written representations

JUDGMENT

The claimant's application to reconsider the judgment of 11 July 2022 is refused.

REASONS

Introduction

1. We gave our remedy judgment in this case on 11 July 2022. It included an award in the claimant's favour of £1,437.13 as unpaid holiday pay. That was calculated on the basis that the claimant worked for seven months of her final holiday year and accrued $5.6 \times 7/12 = 3.27$ weeks holiday (or 2.33 days).
2. On 12 July 2022 the claimant wrote to the tribunal saying:

"Following on from the remedy hearing that took place yesterday I would be grateful if the calculation in respect of holiday pay be amended.

The calculation as indicated yesterday calculated the number of weeks entitlement in the year to be that which fell over the 7 month period from 01/01/2019 to the date my employment was terminated with immediate effect on 31/7/19.

As this termination was found to be wrongful and I was entitled to 3 months notice I understand that holidays should also have continued to

accrue over the 3 month notice period and instead the relevant holiday entitlement was over the 10 month period to 31/10/19, rather than the 7 months as calculated during the tribunal.

I would be grateful therefore if the calculation be revised to incorporate the additional 3 months owed, with the relevant multiplier of the weekly holiday pay amount being;

5.6 weeks x 10/12months = 4.67, (as opposed to the previous multiplier of 3.27)”

3. We treated that as an application by the claimant for reconsideration of our decision on holiday pay. On 5 September 2022 the respondent replied to this, opposing the application. Amongst other things the respondent said that the calculation made under the Working Time Regulations (regulation 14) was made by reference to the “termination date” which was “the date on which the termination takes effect”, not any later date on which her employment would have terminated if she had been given proper notice. The respondent also pointed out that the finding that the claimant was entitled to 2.33 days holiday pay had been made in our earlier liability judgment, not the remedy judgment. The respondent pointed out that the claimant had never applied for reconsideration of that element of the liability judgment (and it is clear that if any such application were to be made it would have been out of time by the time of the remedy judgment). The claimant responded to that on 6 September 2022
4. Following this, the tribunal notified the parties that the reconsideration would take place without a hearing, and allowed time for any further written representations. No further written representations were received, and we are proceeding to consider the matter on the basis of the original application and response and the claimant’s response to that response.

Decision

5. We have decided to refuse the application for reconsideration. The point the claimant wishes us to reconsider is the assessment that she is due 2.33 days holiday, and that was addressed in the earlier liability judgment. The remedy judgment was simply a question of quantifying the amount of holiday pay due for 2.33 days. If the application of 12 July 2022 were to be treated as an application for reconsideration of the liability hearing, it is brought out of time and no basis has been given on which we could extend time.
6. Beyond that, it is clear from paras 9 and 10 of the remedy judgment that the claimant wished her holiday pay claim to be calculated by reference to the Working Time Regulations, rather than as a matter of breach of contract. If so, the respondent is right to say that the date to which accrued holiday is calculated is the actual termination date (in this case 31 July 2019) not any

later date when the employment would have been terminated if full contractual notice had been given.

Employment Judge Anstis

Date: 24 February 2023

Sent to the parties on: 27 February 2023

For the Tribunals Office

Public access to employment tribunal decisions:

All 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.